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September 25, 2015

City of San Diego  
Development Services Center  
Attention: Ms. Martha Blake, Environmental Planner  
1222 First Avenue, MS 501  
San Diego, CA 92101

Re: Stadium Reconstruction Project, Draft Environmental Impact Report  
Project No. 437916 / SCH No. 2015061061

Dear Ms. Blake:

On behalf of the Endangered Habitats League, San Diego Audubon Society, and Save Our Heritage Organisation, we have reviewed the Draft Environmental Impact Report prepared by the City of San Diego Development Services Department for the "Stadium Reconstruction Project," dated August 2015.

Endangered Habitats League (EHL) is a regional conservation organization focused on biodiversity conservation and land use. EHL has been engaged on City of San Diego land use and MSCP issues since 1993. EHL submitted a comment letter on the Notice of Preparation dated July 19, 2015.

San Diego Audubon previously provided comments on the Notice of Preparation, dated July 14, 2015. These comments were not addressed in the EIR. Therefore we attached them and incorporate them by reference as part of our comments on the EIR. San Diego Audubon works to protect birds, other wildlife, and their habitats. Therefore, Audubon is concerned with potential impacts of the Stadium Reconstruction Project that are not sufficiently addressed in the EIR. Audubon is particularly concerned with the biological resource, hydrology, and greenhouse gas emission impacts of the proposed Project. San Diego Audubon has no position regarding the stadium project itself, but seeks to ensure the EIR is adequate for public and decision maker use.

Through education, advocacy, and stewardship the mission of Save Our Heritage Organisation (SOHO) is to preserve, promote and support preservation of the architectural, cultural and historical links and landmarks that contribute to the community

identity, depth and character of our region. Since 1969, SOHO has led the community as a powerful catalyst for preservation by raising awareness and appreciation of our region's architectural and cultural heritage.

Our clients advocate an alternative that would develop the River Park, including a trail, and implement the River Park Master Plan (RPMP) as a condition of redevelopment. They also advocate full compliance with the San Diego Multiple Species Conservation Program (MSCP). Our client SOHO supports and adaptive reuse of the stadium which would preserve its historical character.

Our office also provided comments on the NOP in comments dated July 20, 2015. These comments were not addressed in the EIR. Therefore we attached them and incorporate them by reference as part of our comments on the EIR.

## **INTRODUCTION**

We submit these comments to assist the City in preparing adequate environmental review in compliance with the California Environmental Quality Act. Our clients are very interested in working with the City to consider the Stadium Reconstruction Project, but the City must first slow down and complete the CEQA process correctly while incorporating public concerns. Unfortunately, based on our detailed review, the Draft EIR falls far short of CEQA's rigorous procedural and substantive requirements. Areas of legal deficiency include:

- The Draft EIR fails to accurately identify and analyze the Project's significant environmental impacts across a range of topics, including biological resources, health risks, greenhouse gases, air quality, noise, hazards, hydrology, land use, and traffic. We identified a number of new significant impacts and impacts that are substantially more severe than what was presented in the Draft EIR.
- The City mandated an unrealistic schedule for preparation for the EIR so that the City could approve the project in October 2015 and submit a bond measure for the voters to consider in January of 2016. The City Attorney advised the City in February 2015 that it would take 12 to 18 months to prepare a legally adequate EIR. Instead the City chose to ignore the City Attorney's advice and delayed the preparation of the EIR for months and then artificially compressed the time frame to a few weeks to prepare the draft EIR to meet an election date in January that the City has now abandoned. This unrealistic schedule left virtually no time for the environmental consultants to prepare the necessary studies, reports and analysis as required by CEQA and, as a result, the EIR is wholly deficient.

- The City failed to provide adequate notice to the public and other agencies, which is prejudicial. The City also failed to incorporate comments from expert agencies that commented on the Notice of Preparation, including detailed comments from the California Department of Fish and Wildlife expressing concern about impacts to the San Diego River and species relying on its important habitat and detailed comments from the California Department of Transportation. The City also failed to respond to the comments supplied by us on the Notice of Preparation.
- The Draft EIR is legally deficient because, for many topics, it lacks the basic information necessary to allow meaningful public review. Even though we are very experienced with CEQA, we often had to hunt for information buried in technical appendices to understand the nature of the Project's impacts, and many times we were unable to find the data behind the Draft EIR's conclusions despite an extensive search, rendering the Draft EIR more of a black box than an informational document for these topics.
- The Draft EIR analysis is fatally flawed because it is grounded upon an inaccurate baseline that does not reflect existing conditions at the Project site.
- Although the Draft EIR is rife with significant environmental impacts, it offers a paltry, insufficient set of mitigation measures, many of which are improperly vague or unenforceable.
- The Project Objectives are artificially narrow and legally flawed, reflecting the City's predetermined focus on certifying the EIR and approving the proposal for a new stadium in Mission Valley, even going so far as to limit any other alternative sites or locations by selecting a 2019 opening date for the Stadium and stating, without any evidence, that no other site could meet this artificial deadline.
- The alternatives analysis falls far short of CEQA's strict requirements to select alternatives that reduce or eliminate significant environmental impacts while meeting most of the Project Objectives and rejecting offsite alternatives for little reason except that they did not meet the City's self-imposed timing constraints (which the City has now abandoned).

Public agencies are obligated to ensure that the California Environmental Quality Act is scrupulously enforced and followed. The City of San Diego, in its role as land use regulator, knows this obligation well, and typically the City works hard to ensure that projects are fully and adequately analyzed under CEQA.

Unfortunately, here, the City, in its role as applicant, has disregarded its responsibilities under the law. The City has turned into an advocate, hastily racing to finish an EIR process in unprecedented time for which the City has already prejudged the outcome: complete and approve the EIR for the stadium project no matter the environmental impacts. The EIR only confirms that the City has already made up its mind to rush ahead regardless of the consequences to the public or the environment. Sadly, the City has spent millions of taxpayer dollars on an EIR that is nothing more than a post hoc rationalization of its publicly stated plan to approve a new stadium on this site in Mission Valley.

The City's EIR for a new and more impactful Mission Valley stadium is legally defective and falls far below CEQA's high bar. The EIR fails on many fronts.

**The EIR Merely Identifies Significant Impacts Without Seeking Real Solutions.** Although the EIR finds many significant and unmitigated impacts, a review of the EIR reveals that many more impacts were missed by the rushed analysis. The project will significantly affect air quality, public health, biological resources, historic resources, hydrology, water quality, public utilities, and visual impacts. These are not minor, technical impacts, but rather, major harms that will pollute the air, exacerbate fire risks, put the public at increased cancer risk, degrade traffic, worsen flooding, increase noise, and damage wildlife. CEQA requires more than identifying significant impacts. CEQA required the City to investigate mitigation and alternatives that would avoid or reduce these impacts to the maximum extent feasible. Yet, despite the burden imposed by this project, the EIR offers a paltry, insufficient set of alternatives and mitigation measures, ignoring many better solutions than the City's thrown-together pre-ordained proposal.

**The City Failed To Notify Expert Agencies And Ignored Comments.** CEQA establishes strict requirements to notify the public and expert agencies of projects that may affect the environment, an obligation the City botched. It failed to notify multiple expert agencies with jurisdiction over resources significantly impacted by the project. And where agencies did respond – including the California Department of Fish and Wildlife, citing serious concerns about impacts to listed species and sensitive habitat – the City rushed ahead with a cursory analysis that brushed aside the comments.

We specifically incorporate by reference each of the comment letters and request that all comments set forth in each NOP letter be responded to as part of the EIR process. The failure to have already done so makes the EIR legally defective and we respectfully request that a revised EIR be recirculated addressing the NOP comments and the comments set forth in this letter.

**The EIR's Impact Analysis Is Defective.** The EIR's technical analysis is rife with errors, data gaps, internal inconsistencies and incomplete analyses. The information is presented in a confusing, incomplete manner, often forcing the reader to dig for key details buried in technical appendices – if it is even there at all. The defects run throughout the document, rendering it structurally flawed and beyond a simple fix. As just several examples among many, the EIR claims that traffic will actually be better in 2019 with the new stadium. This conclusion is untenable and relies on the unsupported assumption that 20 percent more people will take the trolley than do so today. The City fails to analyze the obvious impacts to the adjacent residential communities from thousands of stadium patrons driving through their communities looking for parking and then parking on the neighborhood streets. The City fails to address the major impacts to the existing groundwater contamination remediation program for which the City has been and is suing the adjacent landowner. The City also turns a blind eye to major flooding risks during the five-year construction period by building in the floodplain, even though the site is currently subject to frequent flooding during relatively minor rain events. With scant discussion, the City also plans to move the stadium to within a few hundred feet of a tank farm that results in significant risk to stadium spectators, players and workers from releases or explosions, even though a fully viable onsite alternative is available that would move the stadium *farther away*. The City fails to quantify the actual risk of death and injury despite the obvious increased risk.

**The EIR Wrongly Rejects Superior Alternatives.** CEQA requires that the City identify project objectives that form the basis for evaluating alternatives to avoid or reduce significant impacts. The City has triply erred. First, it included a project objective – a new stadium by 2019 – that is already unachievable because the City has publicly recognized it cannot bring this matter to a public vote until June 2016 or November 2016 (and possibly later or never). Second, it concluded that moving the stadium next to a major tank farm and sensitive habitat is preferable to locating it on the other side of the site, which would reduce or eliminate an array of impacts. Third, it refused to analyze a Downtown stadium option even though it meets all the City narrowly and impermissibly defined objectives.

In sum, these errors, and many others, render the EIR so infirm that the City must start the process over. Now that the City has conceded that there will be no election in January 2016, there is no reason to continue at an unprecedented speed. If the City is serious about pursuing a new stadium in San Diego, it must start over. If the City is not, then the City would be best served by abandoning this EIR, which is structurally defective and cannot withstand legal challenge in its present form.

The City has failed to meet the spirit of CEQA and public disclosure with this rushed Draft EIR and minimum review period. If a developer attempted to do what the

City has done here, the City would never allow such a document to be circulated to the public. It is a disservice to the residents of Mission Valley and the greater San Diego area to simply treat the EIR process as a “check the box” exercise approving a pre-determined result—a new stadium in Mission Valley. The City should slow down and get this right.

We also respectfully request that the City revise the EIR and recirculate the Draft EIR as should be done in accordance with the requirements of CEQA. Further, based upon both the size and complexity of the Draft EIR, and the range of potential impacts associated with such a large and complicated development, the current review period was and is insufficient for us and the public to complete a thorough review of the Draft EIR and formulate a comprehensive set of comments. Accordingly, we reserve the right to submit supplemental comments on the Draft EIR and request that the City consider and provide responses to such supplemental comments.

Our detailed comments follow. Because of the length of this letter, we provide the following Table of Contents:

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## **I. THE CITY APPEARS TO HAVE PREJUDGED THE OUTCOME, WHICH CEQA PROHIBITS**

The Draft EIR merely rationalizes after the fact the acceptability of the Project, which the City has already committed to implement. The California Supreme Court has established in *Laurel Heights Improvement Association v. Regents of University of California* that a lead agency cannot predetermine the outcome before completing the EIR process. (1988) 47 Cal.3d 376, 394. The court stated that “[a] fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIR’s would likely become nothing more than *post hoc* rationalizations to support action already taken.” *Id.*; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50 (2007) (“The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome . . . . [T]he public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.”).

The City understands fully that it cannot implement the EIR in a manner that prejudices the outcome. In a February 2, 2015 update on the “Legal Role of the Mayor’s Stadium Task Force,” the San Diego City Attorney explicitly informed the City that it “may not commit to a specific project before the CEQA process is completed.”<sup>1</sup> Ignoring the City Attorney’s clear advice to start the EIR process, the City instead chose to delay the process and then in June of 2015, the City finally decided to start the EIR process but artificially established a time frame to complete the EIR and have the City Council

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<sup>1</sup> City Attorney Update, Legal Role of the Mayor’s Stadium Task Force, February 2, 2015, available at <http://www.sandiego.gov/real-estate-assets/pdf/stadium/memofromcityattorneyjangoldsmiththelegalroleofcsag.pdf>.

approve the EIR in October in time to have a bond measure on the ballot in January of 2016.

Nevertheless, there is no doubt that the City has predetermined the outcome of the CEQA process for new stadium in Mission Valley, as evidenced by the public statements of numerous City officials, including Mayor Faulconer, asserting that the Project will be included in a January special election.<sup>2</sup> The Mayor's office even went as far as stating that the City has hired the planning firm AECOM to employ about 100 experts and planners to complete the Draft EIR in time for a January 2016 election.<sup>3</sup> These and numerous other statements demonstrate that the City had pre-committed itself to certifying an EIR in October 2015 in order to finalize a stadium project in time to hold an election in January, and that the City is committed to a stadium project *at the Mission Valley site*. To comply with CEQA, the City must wait for the EIR to run its course before settling on a specific plan, which may mean changing designs or locations to address environmental impacts.

That the City has already committed itself to build a stadium at the Mission Valley site and prejudged the outcome of the CEQA review is seen from the alternative selected for review in the Draft EIR and from the narrow project objectives. The Draft EIR purports to analyze seven alternatives, including a stadium in the northwestern corner of the Mission Valley site, a major renovation of Qualcomm both with and without an NFL team still using the stadium; the Project with retention of Qualcomm; a stadium in the northwestern corner of the Mission Valley site with retention of Qualcomm; and two "no project" alternatives. (Draft EIR, p. 8-12.) The Draft EIR only considers two real alternatives: a stadium on the Mission Valley site and no project at all. The Draft EIR does not consider offsite alternatives outside of a Downtown San Diego Stadium Alternative (the "Downtown Alternative") that was summarily rejected as infeasible without analysis or real explanation except that offsite alternatives did not meet the City's unrealistic schedule (which is now obsolete), despite significant public support and a long history of considering Downtown as a potential site for a new stadium.<sup>4</sup>

Likewise, the project objectives reflect the City's intent to approve a stadium project on the Mission Valley site. The City's secondary objective is to "[r]eplace the

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<sup>2</sup> Mayor Faulconer Press Release, "City, County Leaders Announce Forward Momentum on New San Diego Stadium," August 10, 2015, *available at* [http://www.sandiego.gov/mayor/news/releases/20150810\\_StadiumDraftEIRDesignsFinancingConcepts.shtml](http://www.sandiego.gov/mayor/news/releases/20150810_StadiumDraftEIRDesignsFinancingConcepts.shtml).

<sup>3</sup> *Id.*

<sup>4</sup> Jason Hughes, Put the new Chargers stadium Downtown, San Diego Metro ("(1) The San Diego Chargers must stay in San Diego, (2) In order to do so, they need a new stadium, and (3) That new stadium should be in the heart of the city's Downtown.") (available at <http://www.sandiegometro.com/2010/07/put-the-new-chargers-stadium-downtown/>).

existing Qualcomm Stadium with a new stadium to minimize the City's existing long-term maintenance and operational obligations." (Draft EIR, p. 8-2.) The City also has a third objective to "[d]evelop a new stadium on a site currently under contiguous City ownership." (*Id.*) Only by advancing the project at the Mission Valley site could the City meet these narrowly drawn objectives, despite the fact that the City does not even own the entire Mission Valley site.

Accordingly, the City should discontinue the current Draft EIR process and develop Project Objectives and Alternatives that are not a result of the City's pre-commitment to a specific stadium plan. As part of this process, the City should conduct community outreach to determine the priorities of the residents of Mission Valley and the greater San Diego area and recirculate a revised EIR.

## **II. ENVIRONMENTAL IMPACTS CANNOT BE PROPERLY ASSESSED GIVEN THE LACK OF "BASELINE" INFORMATION**

In many cases the Draft EIR impact analysis is based on quantitative data of existing conditions. This lack of baseline data prevents the Draft EIR from being an adequate informational document for decision making by precluding the Draft EIR from fully evaluating the Project's environmental impacts. The Project involves the demolition of Qualcomm and the construction of a larger stadium designed to host a greater number of events. Since the Draft EIR is based on data collected in July 2015, prior to the NFL season, the Draft EIR fails as an informational document. The Draft EIR must include deeper analysis of conditions as they exist today to allow the public and responsible agencies to understand the potential future impacts of the Project associated with air quality, greenhouse gases, biological resources, noise and traffic.

Under CEQA, "[a]n EIR must focus on impacts to the *existing environment*, not hypothetical situations." (*Sunnyvale W. Neighborhood Ass'n v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351, 1373.) "It is only against this baseline that any significant environmental effects can be determined. (CEQA Guidelines, §§ 15125, 15126.2, subd. (a).)" "[U]sing hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent." (*Communities for a Better Env. v. S. Coast Air Quality Management District* (2010) 48 Cal.4th 31, 322.)

Thus, an EIR is deficient without an adequately developed baseline because the true impact of the project cannot be disclosed. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 87 ["Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the FEIR adequately investigated and discussed the environmental impacts of the development project."]);

*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952 [“Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.”])

CEQA does not permit a lead agency to make assumptions about what current conditions are or should be. Rather, the proper baseline for analysis of environmental impacts is “what [is] actually happening,” not what might happen or should be happening. *Citizens for East Shore Parks v. State Lands Commission* 202 Cal.App.4th 549 (2001). In fact, the Supreme Court has held that comparing project impacts to what *could* happen under existing permits, rather than comparing project impacts to what *is* actually occurring, constitutes reliance on an impermissible hypothetical baseline that masks a project’s true impacts. (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 311.)

Moreover, a project that will change the operations of an existing facility requires an analysis of past operational patterns to assess the project’s impacts. (*County of Amador, supra*, 76 Cal.App.4th at 931.) In the City’s rush to prepare an EIR, we are unclear how the City can possibly have collected the necessary baseline data to analyze the impacts of the new stadium in numerous impact areas.

Based on our review of the baseline information within the Draft EIR, the Draft EIR must be revised to reflect the present conditions across all resources areas, as described more fully below. In addition to specific deficiencies mentioned below, we request that the City provide:

A complete inventory of existing onsite and mobile emissions (actual measured emissions, not modeled) for all criteria pollutants, toxic air contaminants and greenhouse gases during NFL games, concerts, non-event days, Supercross events, and other expected events;

Noise levels evaluated on a short-term and long-term basis during NFL games, concerts, non-event days, Supercross events, and other expected events;

Traffic counts at key intersections discussed below during NFL games, concerts, non-event days, Supercross events, and other expected events;

Flooding levels and flood maps of the site during 5-, 10-, 25-, 50- and 100-year flood events given the site’s history of frequent flooding from Murphy Canyon Creek during event relatively minor rain events;



Water quality surveys of discharges to the San Diego River and Murphy Canyon Creek from onsite run-off, both during flooding and non-flooding events;

Protocol level surveys of biological resources to determine the extent of sensitive species using the San Diego River, Murphy Canyon Creek and the site;

Phase I and Phase II reports detailing the soil contamination and groundwater contamination levels on the site, as well as a soil vapor study for potential impacts to stadium users and surrounding residents; and

A modeled, risk-based analysis of the consequences of a major release and/or explosion at the adjacent tank farm.

Please provide the requested information of baseline conditions in the revised Draft EIR prior to recirculation. If this information is not provided, we request a detailed explanation for how such an omission can comply with CEQA even though this information is readily available and can be gathered with reasonable diligence from the City, which would allow an informed analysis based on real-world, on the ground conditions.

### **III. THE DRAFT EIR FAILS TO PROPERLY ANALYZE NUMEROUS SIGNIFICANT ENVIRONMENTAL IMPACTS**

#### **A. Biological Resources**

When preparing a Draft EIR, a lead agency must give notice to and accept comments from each agency that has discretionary approval power over the project (each, a “responsible agency”). (Pub. Resources Code § 21080.4(a); Cal Code Regs. §§ 15375, 15381.) The responsible agency must then “specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency . . . and which, pursuant to the requirements of this division, shall be included in the environmental impact report.” (Pub. Resources Code § 21080.4(a); *see also Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165, 185 (2001) [“When the lead agency determines that an EIR is necessary, it must notify all other responsible agencies which must, in turn, specify to the lead agency the scope and content of the EIR that is germane to that agency’s area of responsibility.”]) The lead agency must therefore either respond with substantial evidence to the issues that the relevant agency raises, or provide a clear explanation for why it has not done so.

Here, the City provided notice to the California Department of Fish and Wildlife (“CDFW”), a responsible agency, yet, its Draft EIR does little to meet the City’s statutory requirement to incorporate CDFW’s suggestions as provided in CDFW’s July 20, 2015

comment letter (the “Comment Letter”). The Comment Letter made numerous concrete recommendations to the City regarding elements that the City should incorporate into the EIR, but the City has either given these suggestions only cursory review or else ignored them entirely. The City should incorporate CDFW expert analysis in a revised and updated Draft EIR. These failings render the Draft EIR inadequate and require the City to supplement its analysis with adequate information, then recirculate a revised Draft EIR. We request that the Draft EIR be revised and recirculated to address each issue below, and if such revisions are not provided, a detailed explanation for how such omissions comply with CEQA.

**1. The Project Must Provide Adequate Habitat Areas And Comply With The MSCP**

**a. Adequate And Appropriately Managed Buffers And Habitat Areas**

CDFW’s Comment Letter notes the Project’s proximity to the San Diego River corridor, which is important habitat for numerous protected species (including the least Bell’s vireo and the southwestern willow flycatcher), and recommended that the Project incorporate a wetland buffer of at least 100 feet. For example, CDFW also recommended that the buffer “be designed such that post-construction storm water facilities and brush management areas are located within the development footprint and not in the buffer.” (CDFW Comment Letter at 3.) Additionally, CDFW recommended minimizing public trails within the buffer zone, providing for control of disruption.

In response to these recommendations, the Draft EIR delivers either a cursory description of future analysis to be undertaken or nothing at all. The City suggests that it will employ a biologist to prepare a Biological Construction Mitigation/Monitoring Exhibit (“BCME”), which will include a discussion of how to properly implement buffers. (Draft EIR, p. 4.2-61.) It will also employ a biologist to survey the area for the presence of bird species that require mitigation measures, including the least Bell’s vireo and the southwestern willow flycatcher. The EIR fails entirely, however, to consider the federally listed endangered species, the California gnatcatcher, which must receive careful consideration due to its protected status. While this species is included in the list of species included in the Biological Technical Report, it receives no substantive attention in the Draft EIR, despite having record of occurrence in the project area. (*See* Draft EIR Appendix C.) This is, unquestionably, a substantial oversight.

Even for the species for which the Draft EIR contemplates hiring a biologist to conduct a survey, these measures are merely anticipatory plans, and the Draft EIR contains no specific information on the buffer for the new Project or the mechanisms for protection of listed species. Moreover, these mitigation measures entail only the hiring of

a qualified biologist, and do not themselves reduce, avoid or minimize any impacts. For these reasons, the Draft EIR fails to address the recommendations raised by CDFW and fails as an informational document designed to inform policymaking.

The City should revise the Draft EIR to include a robust discussion of potential impacts to federally listed endangered species, including the least Bell's vireo and the southwestern willow flycatcher. Moreover, the City should revise the Project to incorporate a wetland buffer of at least 100 feet.

**b. Compliance With MSCP Subarea Plan**

The CDFW Comment Letter states that “[t]he Draft EIR should accurately and thoroughly disclose how the proposed project is consistent with the City’s MSCP SAP [Multiple Species Conservation Program Subarea Plan] . . . and how the project would avoid and minimize biological impacts to the maximum extent possible.”

The City does include some analysis of how it intends to comply with certain aspects of the Subarea Plan (“SAP”), such as drainage, lighting and noise, but in each case the draft concludes that the impacts of the Project would be less than significant once the mitigation measures were applied. (Draft EIR, p. 4.2-51—56.) However, these mitigation measures are almost universally vague and insufficient, as discussed below. Without real mitigation measures, the Draft EIR’s discussion of the SAP amounts to little more than an acknowledgement that problems with compliance exist and could result in significant impacts unless more concrete but as-yet-unspecified steps toward mitigation are taken in the future.

**2. The Proposed Mitigation Measures Are Vague And Insufficient And Fail To Analyze Key Impacts**

**a. The Data Used To Determine Mitigation Measures Are Flawed**

The determinations of what mitigation measures are required are based upon analysis in the body of the Draft EIR that makes numerous assumptions without providing evidence or support upon which to base such assumptions. It is therefore impossible to determine whether the mitigation measures listed would in fact be sufficient to resolve certain significant impacts.

For example, in assessing the direct impacts of the project on any sensitive species, the Draft EIR asserts without elaboration that the only such potential direct impacts from the project would be the removal of ornamental trees that might harm nesting bird species, and, potentially, harm to birds that fly into the windows or solar

panels of the new stadium. Why these risks would be the *only* direct risks to the numerous sensitive species in the area is not explained. Instead, the mitigation measures go on to address these issues as if their resolution were all that the Project required in order to resolve all direct impacts on species.

Without a more thoroughgoing analysis of the significant impacts that the project might create, it is impossible to know whether additional mitigation measures might not be required. Regrettably, the City provided no such analysis. As discussed below, however, even the mitigation of the potential issues on this cursory and likely incomplete list is insufficient.

**b. The Mitigation Measures Are cursory, Vague, Or Unresponsive**

The Biological Resources analysis of the Draft EIR concludes with 19 proposals labeled “mitigation measures,” which are used to justify the Draft EIR’s finding that the Project will not result in any significant impacts, except for one unavoidable impact resulting from avian collisions with the new stadium and photovoltaic panels to be installed in the parking lot. For the most part, however, these mitigation measures are so vague or so predicated on assurances of actions based on future studies rather than evidence contained within the EIR, that they cannot support the document’s findings of no significant impact.

Mitigation measure number two (labeled “BIO-2”), for example, simply repeats verbatim the cursory assertions regarding drainage mitigation contained in the body of the section, asserting that “[s]tormwater runoff shall be reduced from current levels, which would decrease pollutant load contributions to the San Diego River.” (Draft EIR, p. 4.2-59.) But the Draft EIR contains no analysis of pollutant load, meaning that it is impossible to determine if the measure would result in any change or reduction of pollutants entering the river. Issues left unconsidered include the fact that the new stadium, [possibly] moved closer to Murphy Canyon Creek, might increase flows into this body, which in turn would flow into the river. Moreover, some of the design features included in the ostensible mitigation measure, such as the capture, storage, and subsequent use of some stormwater, would clearly have additional impacts of their own that are simply ignored, despite the fact that if “a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed.” (CEQA Guidelines § 15126.4(a)(1)(D); *see also Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal. App 4th 99 (2001) [finding that mitigating the effects of groundwater pumping by decreasing pumping at another site in the area required the Draft EIR to include an analysis of the impacts of diminished irrigation on the other

land].) Without significantly more analysis, the conclusions of the impact analysis regarding drainage are mere speculation.

BIO-3 is no better. In order to explain how the Project will avoid contribution of chemicals or other toxics to the environment, the Draft EIR asserts without basis or explanation that “[n]o trash, oil, parking, or other construction/development-related material/activities shall be allowed outside any approved construction limits.” (Draft EIR, p. 4.2-59.) This assurance comes coupled with a statement that the building will be LEED Gold certified, despite the fact that the Project’s design has not even been finalized yet. This vague “mitigation” simply defers any determination of how to reduce impacts to a later unspecified date.

BIO-9 states that, in order to minimize impacts on avian and bat species, “a letter shall be provided to the City’s Mitigation Monitoring Coordination (MMC) section stating that a Project Biologist . . . has been retained to implement the Project’s biological monitoring program.” (*Id.*, at 4.2-61.) How the sending of this letter will protect bird and bat species is left to the reader’s imagination. Additional mitigation measures that require the work of the biologist, specifically measures 10, 11 and 19, include assurances that the biologist will conduct future monitoring and recordkeeping in order to determine what actions are necessary in order to protect species. Because no assessment of danger to these species (or even a list of what species are actually present and at risk) exists, it is impossible to determine what the biologist’s work will entail or whether such work will be sufficient to alleviate the significant impacts identified (much less those left unascertained). Moreover, the uncertain, future nature of these mitigation measures renders them inadequate because there is no assurance that they will ever be implemented. (*See Federation of Hillside & Canyon Associates v. City of Los Angeles*, 83 Cal. App. 4th 1252, 1261 fn.4 (2000) [“[T]o incorporate mitigation measures into a project means to amend the project so that the mitigation measures necessarily will be implemented, such as by reducing the scope of the project or requiring that mitigation measures be implemented as a condition of the project.”]) Vague assurances that a biologist will review the project later do not constitute true mitigation.

The Draft EIR leaves even the location of potentially sensitive areas unspecified. Rather than providing a delineation of sensitive areas in the Draft EIR itself, which could be used to design the project so as to minimize or avoid impacts, BIO-13 suggests that the limits of construction will be determined at a later time by the placement of an orange plastic fence around the construction site. This qualifies as a mechanism for “avoid[ing] direct permanent impacts to sensitive habitats and species.” (*Id.*, at 4.2-62.)

Moreover, even where certain mitigation measures provide a degree of specificity, the Draft EIR’s conclusion that such measures will be sufficient to reduce impacts to below the significance threshold are impossible to support because no underlying

analysis or modeling has been done. For example, BIO-4 provides some specific actions to reduce the impacts of artificial lighting on species, such as using low-reflective glass and shielded lights. While these steps may be laudable, their sufficiency is entirely speculative. This is because the Draft EIR fails to consider the effect on lighting impacts that moving the stadium closer to the avian habitat in Murphy Canyon Creek will have. Similarly, the Draft EIR fails to analyze the impact of additional events in the stadium, with associated increases in the use and frequency of lighting; the Draft EIR does not even specify how many of these new events will occur at night or during a particular time of year that might coincide with breeding season. Without specific data regarding how the increased proximity of the stadium lights to the habitat or their increased frequency of use will affect species or even the levels of light that will reach the habitat with and without the mitigation measures, it is impossible to judge the efficacy of such measures.

This is just a sample of the deficiencies contained in the mitigation measures for biological resources. Nearly every one of the nineteen measures discussed contains some vagary, asserts a desired result without specific measures sufficient to realize it, or simply fails to respond to the issues requiring alleviation. Such unsupported “mitigation” provides policymakers with little upon which to make their decisions about the Project. CEQA’s informational goals go almost entirely unmet.

Even if the vagueness and lack of enforceability of these mitigation measures is ignored, the measures fail under CEQA as an improper use of mitigation deferral. CEQA generally disallows deferring analysis unless it is not practical to do so in the EIR. (*See* CEQA Guidelines § 15126.4(a)(1)(B); *Sacramento Old City Assn. v. City Council* (1991) 229 Cal. App. 3d 1011, 1029.) In cases where mitigation measures include future analysis not included in the EIR, the mitigation measure must identify specific performance standards by which the analysis will be applied. (*See* CEQA Guidelines § 15126.4(a)(1)(B).) CEQA prohibits mitigation measures that simply require a developer to comply with any recommendations in a future analysis. (*See Rialto Citizens For Responsible Growth v. Wal-Mart Real Estate Business Trust* (2012) 208 Cal. App. 4th 899, 944-945.)

As summarized above, many of the biology mitigation measures merely involve vague or aspirational statements or goals contemplating further studies or actions. Completely missing are clear performance standards or metrics by which the public could review the measure to assess its worth. Instead, the public is left in the dark. This problem is not cured by mere references to complying with applicable standards, such as by preparing a SWPPP or obtaining RWQCB approval. As discussed above, a determination that compliance with regulatory standards is adequate to mitigate project impacts *must be* based on a project-specific analysis of potential impacts and the consequence of applying the regulatory compliance. (*Californians for Alternatives to*

*Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App. 4th 1; *Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal. 4th 936, 956 [even though the Department of Pesticide Regulation had assessed environmental effects of certain herbicides, it did not excuse the lack of analysis in the EIR to assess effects of their use for specific timber harvesting project].)

### **3. Mitigation Measures For Some Identified Impacts Are Simply Lacking**

The Draft EIR notes that “[c]onstruction fugitive dust can adversely impact plants by coating the surfaces of the leaves and reducing the rates of metabolic processes, such as photosynthesis and respiration, and by degrading the quality of adjacent riparian vegetation communities potentially occupied by the special status species.” (*Id.*, at 4.2-36.) The impact analysis notes that these impacts could result from “the transport of fill dirt for the new stadium construction and during demolition of Qualcomm Stadium.” (*Id.*) Despite these observations, no mitigation measure even attempts to address the impacts of fugitive dust. This omission is representative of the slapdash style of the Draft EIR, which frequently makes observations that it fails to connect to other important and related findings or to adequate mitigation.

### **4. The Project And Proposed Mitigation Are Inconsistent With The Habitat Conservation Plan**

The Natural Community Conservation Plan and Habitat Conservation Plan (“NCCP/HCP”) for San Diego require that new construction projects avoid discharge into the San Diego River and minimize noise impacts during breeding season.<sup>5</sup> The Draft EIR, however, asserts that the Project would not eliminate existing stormwater drainage into the San Diego River and its surrounding Multiple Habitat Planning Area (“MHPA”). The City attempts to suggest that because these impacts exist with respect to the current stadium, this is not a significant impact or violation of the NCCP/HCP. (Draft EIR, p. 4.2-52.) But the Project qualifies as new construction, and therefore is required to comply with the NCCP/HCP’s prohibition on discharge into the river. Moreover, the Draft EIR does not even contemplate the potential impacts of contaminated discharges during the three to five years of construction, except to note that the City will hire someone to prepare a Stormwater Pollution Prevention Plan (SWPPP) at some point before construction begins.

Given the potentially significant contaminated discharges into the San Diego River during both the protracted construction and subsequent operation of the new facility from its new location closer to Murphy Canyon Creek, this inability to provide any concrete

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<sup>5</sup> San Diego NCCP/HCP Plan § 6.4.2.6, p. 6-29; § 6.11.6(5), p. 6-81.

plan for compliance with the NCCP/HCP discharge requirements constitutes a major failing in the Draft EIR. Attempts at mitigation are merely speculative and do not provide nearly the level of detail required in order for policymakers to evaluate the impacts of the Project.

With respect to the NCCP/HCP's noise requirements—which state that excessively noisy uses or activities adjacent to breeding areas must incorporate noise reduction measures and be curtailed during the breeding season of sensitive species, and that adequate noise reduction measures should also be incorporated for the remainder of the year—the Draft EIR asserts that the noise resulting from the operation of the new stadium would be similar to the old stadium's noise, without providing any support for this claim. The new stadium, however, will differ in at least two material respects. First, it will be located closer to the sensitive species, including birds, potentially nesting around Murphy Canyon Creek. Without an analysis of the impact of moving the stadium closer to these species, it is impossible to assert that the Project will not have a significant impact on breeding birds and other animals.

Second, the Project will feature approximately 52 extra events each year (or one additional event per week in addition to the four already occurring). The Draft EIR asserts that “[t]his increase in the number of events could potentially increase noise indirect effects to nesting birds in the San Diego River and Murphy Canyon Creek by number of exposures as compared to existing conditions,” but then asserts, without any attempt at evidentiary support, that because noise levels on any particular night would not exceed the loudest currently occurring events, the cumulative effects of additional noisy nights would not change the behavior of species. (Draft EIR, p. 4.2-42.) Without support for the idea that increasing the total number of events by twenty-five percent will have no impact on species behavior, this Draft EIR has not met its evidentiary requirement. Policymakers cannot be expected to make decisions based only on blind faith.

Finally, the Draft EIR discusses the noise impacts of the three to five years of construction, which will span multiple breeding seasons, only to state that “noise from construction . . . would be higher than existing noise levels” and that “[i]ncreases in ambient noise levels in the MHPA areas would adversely affect species, in particular birds, which rely on sound to communicate.” (*Id.*, at 4.2-54.) While the City argues that these impacts are not significant because its SWPPP will provide adequate mitigation, the City has no way of knowing this until data has been collected and a plan put in place.

In short, the Draft EIR conflicts with the NCCP/HCP in a number of different ways, rendering the report inadequate and necessitating further review.



## **5. Mitigation Measures Must Provide Quantified Benefits**

We request that the mitigation measures for Biological Resources be revised as discussed above. The Draft EIR must also demonstrate and quantify the impact of such mitigation to allow a meaningful evaluation of the project's impacts. It is not enough merely to list a series of aspirational measures of future steps without quantifying the benefits, particularly where the EIR finds no significant impact, which is the case here. Without substantially more information and analysis, it is impossible to evaluate the Project's impact on biological resources and listed species.

## **6. The Environmental Baseline Is Based On Only cursory Observation**

The Draft EIR established the environmental baseline for the Project based only on a one-day biological survey of certain portions of the site regarded as most likely to contain species. The survey was conducted via meandering transects and views of habitat via binoculars, and focused on the edges of the Project site. (*Id.*, at 4.2-5—6.) Large portions of the site, apparently including the bulk of the area where construction will occur, were not considered, because they were deemed unlikely to possess sensitive species, even though the Draft EIR elsewhere suggests that the potential for birds to nest in ornamental trees to be removed during construction represents a potential direct impact to sensitive species. (*Id.*, at 4.2-33.) Habitat mapping, although displayed in increments down to 1/10th an acre, is only roughly estimated.

Moreover, the species lists generated by the survey are based only on incidental observations, making it difficult to ascertain with certainty what species are present. Although one special-status plant species, the San Diego sagewort, was observed, and another, the San Diego marsh-elder, was deemed moderately likely to be present, no protocol-level surveys were conducted to determine if additional individual special-status plants were present in other locations that might be indirectly impacted by the Project. Moreover, while the survey included a review of two databases for historical occurrences of special-status species on the site, the survey failed to check the California Natural Diversity Database, meaning that additional occurrences of sensitive species may have occurred without being included in the survey.

It is therefore difficult to be certain what sensitive species might be present on the site prior to the commencement of the Project. Without a satisfactory environmental baseline, it is impossible to judge potential significant impacts or generate adequate mitigation measures. Therefore, we request that the draft EIR be revised and recirculated to include a biological survey of the entire site and more precise habitat mapping. This information is readily available and feasible for the City to obtain. If this information is not provided, we request a detailed explanation on how such an omission complies with

CEQA given the need to compare project impacts against real world conditions. Based on the appropriate biological survey and mapping, the City should identify feasible mitigation measures that would reduce the significant impacts below a level of significance.

## **7. The Analysis Of Hydrology And Flooding Impacts On Species Is Unsupported**

The Hydrology section of the Draft EIR, as discussed below, identifies significant flooding risks during the three to five years of construction. While the Draft EIR concludes that the hydrology of Murphy Canyon Creek will not change, despite the substantial changes to the landscape that the Project will effect on the Creek's western edge, the proximity of the new stadium to the Creek, and the as-yet-undetermined design features to direct floodwaters from the Creek around the stadium, suggest that hydrology is in fact likely to change, potentially to the detriment of species living in Murphy Canyon Creek. To assert that mitigation measures will prevent damaging changes to hydrology and the ecosystem before those mitigation measures have even been designed—and while the stadium those flood control measures are designed to protect is *itself* still being designed—represents an unjustifiable display of assurance. (*Id.*, at 4.2-48—49.) No data or analysis support this claim or the assertion that any impacts will be less than significant.

In fact, the impacts on species resulting from changes to the hydrology of Murphy Canyon Creek and the San Diego River below where the Creek connects with it are likely to represent a significant impact. As the Draft EIR notes, “Sedimentation and erosion could potentially change the structure of the existing river channel and degrade the quality of adjacent jurisdictional waters and wetlands.” (*Id.*) Elevated flow rates during flooding represent another insufficiently analyzed threat to species habitat. Moreover, the reduction of the floodplain area during the three to five years of construction has the potential to increase flow rates which can impact vegetation along both Murphy Canyon Creek and the San Diego River downstream. This may include direct impacts on the San Diego sagewort, a special status species known to be present on the south side of the site. Changes to riparian vegetation could also affect species inhabiting the stream banks and river, including, potentially, federally endangered species like the least Bell's vireo and southwestern willow flycatcher. While the Draft EIR does note these potential issues, it makes no effort to quantify the risk to special-status species, and it does not analyze whether habitat loss could qualify as “take” of a listed species under the state or federal Endangered Species Act, nor whether the City's HCP is implicated by this issue. Finally, despite finding that Murphy Canyon Creek serves as an important connector for species between different habitats, the Draft EIR fails to assess connectivity impacts resulting from increased flows in the Creek and potential changes to its hydrology. The draft EIR

must be revised and recirculated to include a quantification of the risks to sensitive species based on the changes to the hydrology of Murphy Canyon Creek and the San Diego River . Based on this quantified risk, the City should identify feasible mitigation measures that would reduce the significant impacts below a level of significance.

We request that the Draft EIR be revised and recirculated with a detailed explanation of the impacts to wildlife and habitat from the significant flooding risks resulting during the project's 5-year construction period. To understand these risks, the impact of flooding must be modeled during 10-, 25-, 50-, and 100-year events. It is not enough to merely address the 100-year event because the site is already frequently impacted by small rain events that have a high possibility of occurring during the construction period.

## **8. Jurisdictional Issues Do Not Receive Sufficient Analysis**

While the Draft EIR notes that “[b]oth the San Diego River to the south of the Project site and Murphy Canyon Creek to the east of the Project site could potentially fall under the jurisdiction of CDFW and the [U.S. Army Corps of Engineers (“USACE”)],” the Draft EIR also concludes that “[n]o formal delineation was conducted for these two features during the reconnaissance survey because the Project site does not contain potentially jurisdictional features and therefore no direct impacts would occur.” (*Id.*, at 4.2-12.) Indeed, both features appear to fit within the USACE’s jurisdiction under the Clean Water Act, because the San Diego River is a traditional navigable water, while Murphy Canyon Creek possesses a bed, banks, and ordinary high water mark, qualifying it as a “tributary” of the San Diego River. (33 C.F.R., § 328.3.) Moreover, as evidenced by the floods experienced at the Project site in recent years, the site lies within the 100-year floodplain of these jurisdictional waters. Under the new federal “Clean Water Rule,” jointly issued by the U.S. EPA and USACE on May 27, 2015, it is unclear whether the federal agencies assert jurisdiction over dry lands that fall within this transitional zone. (*See, e.g.*, “Clean Water Act Jurisdiction Under the Newly Issued Clean Water Rule,” LexisNexis Legal Newsroom: Environmental (July 21, 2015) (discussing the ambiguity created by the absence of a definition for the term “dry land” in the Clean Water Rule).)<sup>6</sup>

As a result, it is possible that the Project will need to acquire a Section 404 permit in order to remain in compliance with the Clean Water Act. Similarly, under California’s Porter-Cologne Act, it is possible that the Project will require a Streambed Alteration Agreement – an issue also identified in the CDFW’s Comment Letter, which was not fully analyzed in the Draft EIR. The potential implications of these issues, which could

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<sup>6</sup> Available at <http://www.lexisnexis.com/legalnewsroom/environmental/b/cleanaircleanwater/archive/2015/07/21/clean-water-act-jurisdiction-under-the-newly-issued-clean-water-rule.aspx>.

significantly affect the implementation and operation of the Project, are not considered in the Draft EIR. We request that the Draft EIR be revised and recirculated with a formal determination of whether the Project will impact jurisdictional waters under the federal or state Clean Water Acts, including an analysis of the Clean Water Rule's implications for the site and the Project.

## **9. Birdstrikes Caused By Extensive Use Of Glass Must Be Mitigated**

We make the following suggestions from the Cornell Institute of Ornithology – a very highly regarded institute in the birding community- for how to make extensive glass surfaces at the Project less dangerous for birds. See [http://www.birds.cornell.edu/AllAboutBirds/faq/attracting/challenges/window\\_collisions](http://www.birds.cornell.edu/AllAboutBirds/faq/attracting/challenges/window_collisions)

### **a. Glass Surfaces Can Be Deadly For Birds**

Ornithologists estimate that up to 100 million birds are killed each year by collisions with windows. These collisions usually involve small songbirds, such as finches, that may fall unnoticed to the ground. Sometimes the birds are merely stunned and recover in a few moments. Often, though, window hits lead to severe internal injuries and death. Or a bird can be temporarily disabled and taken by a predator while disabled or eventually die from injuries from a collision with a window or reflective surface.

### **b. Why Birds Collide With Glass Surfaces**

It's thought that birds hit glass surfaces because they see the landscape—trees, sky, clouds—reflected on the glass surface but do not realize that a hard, transparent surface lies between them and that apparent open space. Panicking birds, fleeing for cover to escape predators, are even more likely to fly into windows.

### **c. Use These Ideas To Make Glass Surfaces Safer**

Break up external reflections with stickers or plastic wrap. Break up glass surface reflections by sticking objects to the outside of the glass. There is special glass that looks like a wall to birds and there are wraps to put on existing glass that make the glass less like an open passage.

Reduce reflections with trees or awnings. Reduce the amount of light reaching a problem window by planting shade trees close to it.

Cover glass surface with netting. It provides a physical barrier to birds flying into the glass, yet won't obstruct the view. The Cornell Lab of Ornithology installed crop

netting—the kind used to keep birds away from fruit trees—in front of a large picture window next to a bird-feeding garden. The result was no more dead and injured birds. Small-mesh netting is best—at 5/8" (1.6 cm) in diameter—so if birds do fly into it they won't get their heads or bodies entangled but will bounce off unharmed.

We also commend to your attention, and ask for a response about the usage of the mitigation techniques listed in the following publication:

<https://www.audubon.org/magazine/november-december-2008/when-birds-and-glass-collide>.

#### **10. Nightlighting Impacts On Wildlife Near The Stadium Could Be Significant**

The Project would include significantly greater sources of artificial nighttime lighting from the stadium and parking lot lights, animated and moving signs, and vehicle headlights. Light pollution caused by this artificial lighting can have significant impacts on wildlife species. Artificial lighting disrupts sleep patterns for wildlife much the way it does for humans, which can disrupt nesting and make sleeping wildlife more susceptible to predation. (April 7, 2006 Science Magazine article by David Hill The Dark Side of Night Lighting.) The DEIR fails to analyze the project level and cumulative impacts of increased light pollution on the many species that reside near the Project site, including sensitive species and species relying on the riparian and other sensitive natural habitat communities located on the project site.

Artificial lighting also physically attracts many species of birds, serving as a magnet that can cause night migrating birds to collide with brightly lit tall buildings. (Our Vanishing Night p. 108; see also [www.audubonmagazine.org/darksideoflight.html](http://www.audubonmagazine.org/darksideoflight.html), incorporated by reference) The DEIR fails to analyze the project level cumulative impacts of the development's artificial lighting on migrating and other bird species.

Stray light can also give nocturnal predators an unnatural advantage over birds and other wildlife. Or the stray light can discourage wildlife from taking advantage of habitat that is otherwise suitable because of the increased advantage of nocturnal predators.

The DEIR does not address how even minimal nighttime lighting affects migrating bird populations, which are protected by the Migratory Bird Treaty Act (MBTA). Migrating birds will often follow nighttime lights, especially those located in the sky, believing they are following the moon. As a result, they will often circle buildings with rooftop lighting until they collide with the structure, each other, or die of exhaustion. Birds that survive are easily preyed.

<http://www.fws.gov/birds/documents/Collisions.pdf>;

[http://www.flap.org/flap\\_home.htm](http://www.flap.org/flap_home.htm).) The U.S. Fish and Wildlife Service estimates that up to fifty million birds die each year, circling high-rise developments and radio towers. (<http://www.fws.gov/birds/mortality-fact-sheet.pdf>.) If rooftop lights are required by the FAA, impacts to birds can be minimized if these lights are white or green in color (not red). Instead of solid or traditional blinking patterns, a strobe pattern with a long “off” period should be used. ([http://library.fws.gov/bird\\_publications/tower\\_collisions00.htm](http://library.fws.gov/bird_publications/tower_collisions00.htm).) Rooftop lighting should also be reduced during migrations.

## **11. Habitat Fragmentation Impacts Could Be Significant**

As proposed, the Project creates island of isolated habitat, separated by large developed areas. The proposed placement of the stadium maximizes habitat fragmentation. Smaller and narrower habitat fragments, such as would be created by dividing habitat around the stadium, are discouraged by conservation biologists because they have proportionally more urban edge. Habitat fragmentation isolates species populations, leading to decreased genetic diversity and survivorship. Soule, et al (1988) found that isolated populations of cactus wrens in coastal sage scrub have high rates of extinction. (Crooks, K.R. and M.E. Soule. 1999. Mesopredator release and avifaunal extinctions in a fragmented system. *Nature* 400:563-566.) The effects of temporary construction-related habitat fragmentation and permanent fragmentation due to the placement of the stadium must be studied in the final EIR. The Project should be reconfigured to reduce fragmentation of habitat.

### **B. Health Risk Assessment**

Table 4.1-11 highlights conclusions of the Draft EIR’s Health Risk Assessment (HRA). The table shows *no significant health risk*; specifically, it indicates a cancer risk of seven in a million, a level below the significance threshold. Reading this, a member of the public would reasonably conclude the project would not significantly impact public health.

That is not the case. The text of the Draft EIR reveals a conflicting result of 14 cancer risks in a million, a significant impact. It is difficult to find this information and a reader who is unfamiliar with how Health Risk Assessments are presented might not be to locate the conflicting language in the text or the technical appendices. It is reasonable to assume that the average reader would look at the summary tables without scouring the text for conflicting results.

This misleading information renders the HRA fundamentally flawed. CEQA does not require the public to hunt for the results of the analysis. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1249 [“information scattered here and there in EIR appendices, or a report buried in an appendix, is not a substitute for a

good faith reasoned analysis in response.”] [internal citations omitted].) The public should be able to rely on summary tables, such as Table 4.1-11. Doing so here, however, would result in an inaccurate understanding of the project’s impact. We request that the HRA be corrected and recirculated to give the public an opportunity to comment this important issue, as the discrepancy between Table 4.1-11 and other portions of the Draft EIR amounts to substantial new information. Failure to recirculate would prejudice the public.

An HRA must be completed for construction and operational emissions based on revised OEHHA Guidance. The Office of Environmental Health Hazard Assessment (“OEHHA”) adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments. (Guidance Manual.)<sup>7</sup> As discussed in Section 8.2.10 of the Guidance Manual, “[t]he local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation.”

Agency guidance indicates that new OEHHA methodology will substantially increase the estimated significance of toxic air contaminants. For example, SCAQMD staff estimate that a six-month construction project for a typical one-acre office project could cause a significant HRA impact. (See SCAQMD Staff Presentation, Potential Impacts of New OEHHA Risk Guidelines on SCAQMD Programs, Agenda Item 8b.)<sup>8</sup>

The Draft EIR’s Health Risk Assessment only focused on construction impacts, neglecting long-term operational impacts despite moving the stadium closer to sensitive receptors. Operational impacts must be analyzed with an Health Risk Assessment. The HRA, at a minimum, should include emissions from the following sources:

- (a) Idling trucks;
- (b) Trucks with refrigerated units;
- (c) Charbroiling facilities at stadium restaurants;
- (d) Tailgating activities (including charbroiling);
- (e) Idling cars and RV units while tailgating;

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<sup>7</sup> Available at [http://www.oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://www.oehha.ca.gov/air/hot_spots/hotspots2015.html).

<sup>8</sup> Available at <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/may-specsess-8b.pdf>.

- (f) Fireworks;
- (g) Cooling towers;
- (h) Emergency Diesel Generators; and
- (i) Other stadium and related sources

In addition, we request the HRA to be updated to account for operational emissions and as follows:

The EIR should analyze health-risk impacts from diesel particulate matter emissions at congested intersections. The analysis should not be limited to carbon monoxide emissions.

The EIR should prepare an HRA and evaluate asthma risks to future residences associated with the reasonably foreseeable Mixed-Use Development. The EIR should evaluate impacts of residences sitting within close proximity of a major freeway based on the reasonably foreseeable Mixed-Use Development based on guidance from the California Air Resources Board.

Soil vapor intrusion risks from residual site contamination should be analyzed because of the site's long history of contamination.

The EIR should evaluate installing air conditioning and air filter units on impacted residences, schools and other sensitive receptors where local air emissions will cause significant health effects from on-site or off-site emissions. (*See Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1030 (1997) (EIR deficient for failing to evaluate whether air conditioning or filters would mitigate significant localized air quality impacts).)

## **C. Greenhouse Gas Emissions**

### **1. The GHG Analysis Fails To Establish An Appropriate Baseline**

The Draft EIR GHG Analysis states that “[e]xisting emissions were modeled using ... the existing Qualcomm Stadium’s annual GHG emissions using *current* attendance and utilities records.” (GHG Analysis, p. 8 (emphasis added).) This statement is misleading as the GHG analysis was not based on current stadium conditions because the Draft EIR was released prior to the beginning of the current NFL season. Therefore, the GHG analysis does not include actual data of NFL games nor does it reflect the worst case scenario Monday night games. Without actual baseline data, the City has not met its



obligations to “adequately investigate[] and discuss[] the environmental impacts of the development project.” (*Cadiz Land Co.*, *supra*, 83 Cal.App.4th at 87.)

**2. The GHG Analysis Conclusions Are Not Supported By Substantial Evidence And Fails To Establish An Appropriate Baseline**

Climate change is proving to take a substantial toll on many wildlife species including birds, as reported in a recent National Audubon Society report. This project will be the reason for huge movement of people, which can result in large discharges of GHGs, depending on its design and operation. It is very important that this project fully implement the goals of our City, State, and Federal reduction programs.

As is currently at issue in the case of *Center for Biological Diversity v. California Department of Fish and Wildlife*, California Supreme Court case number S217762, the use of a business-as-usual baseline in evaluating greenhouse gas emission impacts is not permissible since it provides a misleading evaluation. Instead, the EIR should calculate the total emissions that would be generated by a stadium project, compare that to the currently existing site conditions, and make a determination if the increase is significant.

Even if comparison to a hypothetical business as usual were appropriate, the Draft EIR does not provide substantial evidence to support the GHG calculations. The Draft EIR fails to make clear whether the GHG emissions inventory has appropriately accounted for all of the potential emissions sources. Given this lack of information, it is impossible to conduct meaningful review of the project’s GHG emissions.

In addition, the Draft EIR does not provide adequate analysis or discussion regarding how the Project will meet the state’s goals for 2030 and 2050 GHG reductions. The GHG analysis must be revised to incorporate this information.

**D. Air Quality- Criteria Pollutants And Toxic Emissions**

**1. The Draft EIR Is Technically Flawed, Lacking Adequate Information To Allow Meaningful Environmental Review**

**a. The Baseline Is Grossly Deficient**

The Draft EIR fails to properly quantify baseline emissions. No study of existing emissions is reported. Rather, the Draft EIR “models” the baseline emissions by relying on generic emissions factors in CalEEMod (an air quality model). No explanation is given for why the Draft EIR does not include *actual* site emissions, which is the typical approach. The apparent reason may be the City’s intent to rush the Draft EIR instead of waiting for the NFL season to start to measure actual emissions.

Mere projections of baseline information are insufficient for baseline analysis. (*See Our Peninsula Committee v. Monterey Bd. of Supervisors*, (2001) 87 Cal.App. 4th 99 (stating that CEQA “requires that the preparers of the EIR conduct the investigation and obtain documentation to support a determination of preexisting conditions....This is a crucial function of the EIR.”).) Further, *County of Amador v. El Dorado County Water Agency* states that recitation of raw data without explanation of how such levels were derived or maintained “does not provide an adequate description of the existing environment.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931.) Similarly, *Citizens for East Shore Parks v. State Lands Commission* held that the proper baseline for analysis of environmental impacts is “what [is] actually happening,” rather than what might happen or should be happening. (*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal. App. 4th 549.)

The Draft EIR does not provide adequate documentation to allow meaningful review of the project’s criteria pollutants or toxic emissions from operations. The Draft EIR appears to rely upon the CalEEMod default “arena” land use category to estimate the emissions for natural gas and area source emissions. If this is the case, the Draft EIR does not explain whether the “arena” category accounts for all the sources of criteria pollutant and air toxic contaminant emission that are currently occurring, including such sources as tailgating, cooking/restaurants, emergency diesel generators, fireworks, and heating/cooling systems.

The Draft EIR’s use of CalEEMod to estimate baseline emissions instead of simply measuring existing operations violates basic CEQA principles that “the impacts of the project must be measured against the ‘real conditions on the ground.’” (*Save Our Peninsula Committee, supra*, 87 Cal.App. 4th at 121 [citing multiple cases].) Instead of comparing the estimated project emissions against “real conditions on the ground,” the Draft EIR compares modeled project emissions against modeled baseline conditions. Moreover, the Draft EIR fails to explain how even its adequate modeling of baseline emissions was done, simply stating the values in a summary table, with no discussion or explanation. Although some information can be gleaned from technical modeling files buried in the appendices, such information is unintelligible to the layperson.

In short, the Draft EIR does not provide substantial evidence to support the baseline/existing conditions emissions inventory reported. We request that the Draft EIR be revised and recirculated following the investigation of existing operations to provide the information requested above, including a detailed description of *actual emissions at the site* and not a CalEEMod estimate of the baseline. We also request an explanation for the appropriateness of the use CalEEMod “arena” setting without accounting for other emission sources described above.

**b. Air Quality Modeling Results Cannot Be Replicated  
Because The Draft EIR Lacks Basic Information  
Necessary To Meaningfully Evaluate The Project**

The Draft EIR and supporting appendices do not contain substantial evidence to support the assumptions incorporated into the analyses. For example, for the Draft EIR to support a meaningful review of how the project's emissions were calculated, it should identify the emission sources and estimates, trip length and number of trips, natural gas usage and other input assumptions about non-NFL events.

The modeling output files are impossible for a layperson to understand. In many cases, the Draft EIR does not summarize or present information in the modeling data that is needed to allow meaningful review of such a complex analysis such as the construction fleet mix, the hours of construction, the scheduling for different areas, and other relevant information. The appendices lack tables of contents, summary tables, and cross-references to the Draft EIR section (and vice versa), making it a difficult task for the public to find information. The different sections appear to use different assumptions, such as the traffic and GHG sections not matching up for energy and natural gas use.

This lack of information renders the air quality unworkable for a layperson. (*See Kings County Farm Bureau v. City of Hanford*, ((1990) 221 Cal.App.3d 692 [“[a] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”] [citing *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 403-05].)

It also runs counter to CEQA's mandate that an EIR must contain facts and analysis, not just bare conclusions. (*See Association of Irrigated Residents v. County of Madera*, (2003) 107 Cal. App. 4th 1383 [“An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.”]; *see also* Guidelines, § 15151 [standards of adequacy].) The rationale for this requirement is that policymakers and the public should not be forced to rely only on the agency's unsupported opinion, but should have access to the basis for that opinion, so as to be able to make informed decisions. (*See Santiago Water District v. County of Orange* (1981) 118 Cal.App.3d 818,831 [“The EIR must contain facts and analysis, not just the bare conclusions of a public agency.”]) Without such supporting methodological description, it is impossible to meaningfully review the air quality analysis and CEQA's informational purpose is not met. We request that the Draft EIR be revised to include the requested information about the CalEEMod analysis.

## **2. The Project May Result In New Significant Exceedances Of Ambient Air Quality Standards That Were Not Analyzed**

The EIR must analyze localized and ambient air quality impacts for all criteria pollutants from project construction and operations. The City of San Diego CEQA Thresholds state that a project may cause a significant impact if it “[e]xpose[s] sensitive receptors to substantial pollutant concentrations including air toxics such as diesel particulates.” (City of San Diego CEQA Thresholds, p. 7.) Thus, the EIR should consider localized impacts associated with criteria pollutants (not limited to carbon monoxide), as well as toxic air contaminants, as discussed below.

Further, the San Diego CEQA Thresholds state that an EIR should “[a]pply AAQS as the threshold where accepted methodology exists when the project involves a sensitive receptor or if the potential exists for a significant cumulative air quality impact.” (*Id.*, p. 10.)

The Draft EIR did not analyze ambient air quality impacts for criteria pollutants even though modeling methods are readily available. A proper evaluation of whether the project may result in ambient air quality impacts for criteria pollutants. If so, these impacts would represent *new significant impacts not evaluated in the Draft EIR*. Further, because the ambient air quality standards were developed to protect public health, exceedances of the standards indicate that health risks may result, which must be analyzed and mitigated. This issue is not addressed by the Draft EIR’s analysis of carbon monoxide concentrations because the basin is in attainment for carbon monoxide, but the basin is not in attainment for ozone, PM<sub>10</sub>, and PM<sub>2.5</sub>, increasing the risk of ambient air quality exceedances for ozone precursors and PM.<sup>9</sup>

We request that a detailed ambient air quality analysis be included in the recirculated EIR, including a detailed discussion of whether the project would lead to ambient air quality violations, and if so, a description of the health consequences of doing so.

## **3. Numerous Significant Air Quality Exceedances (Many Times Over The Thresholds) Will Result In Health Consequences That Must Be Quantified And Disclosed**

The Draft EIR identifies numerous significant air quality impacts during project construction and operation. The story is clear: the project will result in prolonged exposure of residents and sensitive receptors, both locally and regionally, to significant levels of air pollution that can adversely impact public health. These impacts must be

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<sup>9</sup> See <http://www.sdapcd.org/info/facts/attain.pdf>.

analyzed and disclosed. It is not enough under CEQA to simply call an impact significant without performing the necessary substantive analysis. (*See, e.g., Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App. 4th 342, 371-75 [finding that the analysis of an identified significant impact arising from the generation of wastewater was insufficient; more thoroughgoing analysis was required].)

The Draft EIR is rife with significant air quality impacts. Table 4.1-8 shows significant impacts for NO<sub>x</sub> and CO on a maximum hourly basis and ROG, NO<sub>x</sub>, CO, PM<sub>10</sub> and PM<sub>2.5</sub> on a maximum daily basis. These exceedances are not just a small amount over the threshold. NO<sub>x</sub> emissions are almost ten times the threshold and CO emission are eleven times greater than the threshold. On the daily basis, exceedances are two to seven times the standards.

The impacts shown in Table 4.1-9, for combined emissions during the project's construction period (which lasts 3-5 years) and operations, are even more extreme. For maximum hourly emissions, the Draft EIR identifies significant impacts with emissions of NO<sub>x</sub> and CO that are *29 and 18 times greater than their respective thresholds*. For maximum daily emissions, the Draft EIR identifies significant impacts with emissions of ROG, NO<sub>x</sub>, CO, PM<sub>10</sub> and PM<sub>2.5</sub> that are *3, 12, 11, 15 and 8 times greater than their respective thresholds*. For maximum annual emissions, the Draft EIR identifies significant impacts with emissions of ROG, NO<sub>x</sub>, CO, PM<sub>10</sub> and PM<sub>2.5</sub> that are *3, 12, 11, 15 and 8 times greater than their respective thresholds*.

What is the net result? The project will harm air quality with a steady stream of significant air quality exceedances on an hourly, daily and annual basis and, notably, these exceedances are *far beyond* the applicable thresholds.

The Draft EIR is patently deficient for failing to analyze and disclose the health consequences of exposing sensitive receptors to such extreme emissions over an extended period of time. The City must include a detailed, substantive analysis that includes modeling results to show the true impact. The City cannot simply determine the impact to be significant without a detailed assessment of the consequences. The Court of Appeal in *Berkeley Keep Jets Over The Bay v. Board of Port Commissioners* has made it clear that a lead agency is not relieved of its obligations to analyze and disclose significant environmental impacts merely because it called such impacts significant:

We also find unpersuasive the Port's argument that the absence of a health risk assessment can be excused because the Port Commissioners, in approving the EIR, found that the effect of TAC's would be significant but that overriding considerations warranted proceeding with the project anyway. This approach has the process exactly backward and allows the

lead agency to travel the legally impermissible easy road to CEQA compliance. Before one brings about a potentially significant and irreversible change to the environment, an EIR must be prepared that sufficiently explores the significant environmental effects created by the project. *The EIR's approach of simply labeling the effect "significant" without accompanying analysis of the project's impact on the health of the Airport's employees and nearby residents is inadequate to meet the environmental assessment requirements of CEQA.*

(*Berkeley Keep Jets Over The Bay v. Board of Port Commissioners* (2001) 91 Cal.App. 4th 1344, 1371 (emphasis added).) To resolve this issue, the City must recirculate the Draft EIR with detailed modeling results showing health consequences of the Project's numerous significant impacts. We note that this request cannot be satisfied merely by updating the HRA because the HRA applies to toxic air contaminants, not the significant criteria pollutant exceedances described above.

#### **4. Non-Cancer Health Impacts, Including Asthma Risks, Need To Be Evaluated For Construction And Operational Emissions And Truck Trips**

The Draft EIR fails to analyze the health consequences of onsite emissions and off-site mobile emissions (primarily truck trips) on sensitive receptors living near the site and along affected truck routes. Sensitive receptors can be adversely impacted by diesel particulate matter by living near truck routes. The California Air Resources Board has identified that significant health risks may result from residents living within 500 feet of major freeways or roadways.<sup>10</sup>

The Draft EIR analyzes the impact of carbon monoxide at impacted intersections but this analysis is insufficient because the basin is already in attainment for carbon monoxide. The Draft EIR should also analyze the impact of diesel particulate emissions at the same impacted intersections analyzed for carbon monoxide for health risks, including asthma risks.

#### **5. The Analysis Of Stadium Implosion Is cursory And Qualitative**

The Draft EIR makes only a cursory, qualitative assessment of the stadium "implosion" event that does not satisfy CEQA's disclosure requirements. The analysis only looks at PM10 (dust) impacts, even though other criteria pollutants and toxic air contaminants could be released. The Draft EIR recognizes that the stadium likely contains asbestos and PCBs but makes no attempt to quantify the level of asbestos or

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<sup>10</sup> See The California Air Resources Board Air Quality and Land Use Handbook, April 2005.

PCBs and does not describe how the toxics will be removed, except for a vague mitigation measure saying the project would comply with applicable air district standards. The Draft EIR cannot avoid disclosing the level of the impact merely by stating that approval from the air district will eventually be required.

No modeling or health risk evaluation was completed for the implosion. The only “analysis” was an attempt to compare the stadium implosion to a 2003 study “that documented air monitoring results associated with the implosion of a 22-story building in Baltimore, Maryland.” (Draft EIR, p. 4.1-19.) The Draft EIR conceded that the Baltimore study “may not be indicative of the outcome of the implosion of the existing stadium” and does not give an explanation for why the study should be applied to the stadium project. (*Id.*, p. 4.1-20.) Despite the deficiencies, the Draft EIR relies solely on the study stating that the PM10 cloud would dissipate in an hour or two and, therefore, not be significant.

In an attempt to gather more information about this issue, we reviewed the Air Quality technical appendix, which stated that the “most recent sizable implosion in the San Diego vicinity took place on February 2, 2013, at the South Bay Power Plant (SBPP) in Chula Vista, San Diego County, California.” (Draft EIR, Air Quality Appendix, p. 41.) Despite this statement, no mention of the SBPP was made in the main Draft EIR. It is hard to imagine why the SBPP was identified as the best example for understanding implosion impacts in San Diego, yet the Draft EIR focused instead on an old study for a small building in Baltimore. This discrepancy alone must be adequately explained and supports the need for the EIR to be recirculated with a full modeling analysis of the implosion impacts. Indeed, the Air Quality appendix referred to the Baltimore study as “[t]his limited study.” (*Id.*, p. 42.)

The Air Quality appendix included measures not mentioned in the Draft EIR: “the Qualcomm Stadium implosion and post-implosion demolition activities should be managed to keep fugitive dust within the property boundaries.” (*Id.*) It also noted that the SBPP implosion was performed in phases in order to reduce both the area of disturbance and the amount of dust. (*Id.*) The Draft EIR analysis should also be recirculated to study phasing the implosion impacts and limiting dust emissions to the construction footprint (not including nearby sensitive biological resources or sensitive receptors). As currently written, the Draft EIR’s analysis of implosion impacts is internally inconsistent, difficult to understand, cursory in nature and lacks adequate information to allow a meaningful analysis.

We request that these measures be incorporated into the EIR. We request an explanation for why the SBPP did not form the basis of the analysis instead of the Baltimore study. We also request a detailed, expert assessment of whether the Baltimore study provides a scientifically valid basis for analyzing the stadium implosion risks.

Mitigation Measure AQ-3 requires evaluating the *feasibility* of staged implosion. What if AQ-3 results in a conclusion that implosion is not feasible for all or some of the stadium? Because it is reasonably foreseeable that AQ-3 may find feasibility constraints with implosion, the Draft EIR must be revised and updated to analyze the impacts of demolishing the stadium using construction equipment and the related emissions.

Asbestos, lead and PCB risks were also improperly addressed because both would be removed prior to demolition, according to HAZ-5 and HAZ-6. However, a closer examination of HAZ-5 and HAZ-6 makes clear that they are little more than statements that the stadium will be surveyed for asbestos and PCBs prior to demolition and, if found, removed in accordance with regulatory standards. While in some cases it is appropriate under CEQA to rely on regulatory standards as mitigation measures, the EIR must still fully evaluate and assess the impact. We request that the Draft EIR be revised to include this critical analysis, or, if not, a detailed explanation of how this omission complies with CEQA even though it would be feasible for the City to provide more information in the EIR about expected asbestos and PCBs levels in the stadium and remediation options.

A determination that compliance with regulatory standards is adequate to mitigate project impacts must be based on a project-specific analysis of potential impacts and the consequence of applying the regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agriculture*, an EIR for a statewide crop disease control plan was rejected because it did not include an evaluation of the risks to the environment and human health from the proposed program, but simply concluded that there would not be significant impacts from use of pesticides that were approved pursuant to California Department of Pesticide Regulation. (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App. 4th 1; *see also Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal. 4th 936, 956 [even though the Department of Pesticide Regulation had assessed environmental effects of certain herbicides, it did not excuse the lack of analysis in the EIR to assess effects of their use for specific timber harvesting project].)

We request that an “Implosion Plan” be developed and included for evaluation in a revised Draft EIR. Without adequate analysis of the environmental impacts from the implosion of a superstructure, the Draft EIR fails as an information document.

We request that the Draft EIR be revised and recirculated with a detailed analysis and modeling of the implosion risks, including from pollutants other than PM10, as well as risks to biological resources from the implosion, noise risks (including an estimated maximum sound level at the nearest sensitive receptor) and a draft plan for the removal of PCBs and asbestos from the stadium.



## **6. The Draft EIR Does Not Consider Impacts To Disadvantaged Communities**

The Office of Environmental Health Hazard Assessment (OEHHA) developed the California Communities Environmental Health Screening Tool: CalEnviroScreen Version 2.0 (CalEnviroScreen 2.0), as a screening methodology to identify California communities that are disproportionately burdened by multiple sources of pollution. CalEPA has used the tool to designate California communities as disadvantaged pursuant to Senate Bill 535.<sup>11</sup> A search on CalEnviroScreen 2.0 reveals several disproportionately burdened communities near the Project Site, the closest being 1.2 miles away, as shown in Exhibit A attached to our comments submitted to the NOP. As shown therein, residential communities surround the project and are listed as having a higher percentage “Pollution Burden.”

CalEnviroScreen 2.0 identifies communities with higher “Pollution Burdens” based on various characteristics related to local pollution risks, such as ozone levels, particulate matter concentrations, and proximity to hazardous materials. Based on a CalEnviroScreen report for the area surrounding the Qualcomm property, communities to the east, west and south are identified as having a high Pollution Burden (see attached CalEnviroScreen Report For Area Near Qualcomm Site). A number of communities with a high Pollution Burden are also located along possible transportation routes that could be impacted by the project. Accordingly, the Draft EIR should have analyzed impacts to potential disadvantaged communities that may be impacted by the Project.

## **7. Paltry Mitigation Measures Are Improperly Vague And Unenforceable**

CEQA requires mitigation measures to be clearly written with defined standards and implementation measures. Mitigation measures must be fully enforceable. Overly vague mitigation measures are patently unenforceable because it is not clear “who” will do “what” and “when.” (*See California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App. 4th 173 [holding that “mitigation measures [were] too speculative, vague or noncommittal to comply with CEQA,” where the plan did not discuss how much the mitigation measures would cost or how they would be implemented]; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App. 4th 1173, 1182 [holding that fees were insufficient mitigation where it was vague as to how such fees would be used to mitigate the effects of traffic].)

Despite the wide swath of significant impacts to air quality that the project will cause, the Draft EIR offers paltry mitigation measures that are improperly vague and

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<sup>11</sup> See Office of Environmental Health Hazard and Assessment, CalEnviroScreen Version 2.0, <http://oehha.ca.gov/ej/ces2.html>.

unenforceable. The Draft EIR also fails to calculate the benefit of any of the mitigation measures:

- MM AQ-1 merely requires the contractor to tune equipment. No evidence is given how this measure will be enforced or its expected benefit, if any.
- MM AQ-2 simply states that the project will comply with a law limiting idling times. It is unclear how this reduces impacts relative to what was already assumed in the analysis, which, ostensibly, assumed compliance with applicable laws.
- MM AQ-3 reads: “A blasting execution plan shall be developed and approved prior to any implosion event. This blasting execution plan shall evaluate the feasibility of staged implosion to minimize dust generation and exposure.” It is unclear *who* will prepare this plan or *who* will approve it or *what* standards will be applied. The measure is also completely unclear on who will evaluate the feasibility of the staged implosion for minimizing dust and what will be the result if implosion is found infeasible (by the mystery reviewer).
- MM AQ-5 does not clarify what is considered a low wind event and who makes that determination.
- MM AQ-6 does not say who will prepare the dust control plan or what standards will be applied or how any assurance can be provided that the measures actually reduce dust.
- MM AQ-7 does not explain the purpose of the ambient air quality measure or how that will actually reduce emissions, who will monitor, whether the results will be reported, and what will be the consequences of exceedances.

This weak mishmash of mitigation amounts to little more than a few vague aspirational goals that appear unlikely to result in any meaningful or quantifiable mitigation measures. It misleads the public to suggest that the project's many significant impacts are being “mitigated” with these measures, falling short of CEQA’s mandates. These recommended mitigation measures should be adopted as part of a revised and recirculated Draft EIR.

We request that the City slow the pace of construction to reduce peak emission impacts. The construction schedule is overly compressed. It is feasible for the project to spread out construction to reduce emissions. As stated herein, the City’s unrealistic objective of having the stadium operational by 2019 has already been superseded by

recent events, so the need for schedule compression has been reduced and, in any instance, does not override CEQA's requirement to impose all feasible mitigation.

We request that the Project's air quality mitigation measures be quantified to give the public a reasonable understanding of how the City is cutting impacts from this project. We request that the City incorporates all of the feasible mitigation measures and a quantification of the result of adding the mitigation. If mitigation is not included, we request the City provides a detailed explanation for why the mitigation is not feasible.

## **E. Noise Impacts**

### **1. The Draft EIR's Noise Impact Analysis Fails To Identify Potential Impacts And Improperly Analyzes The Existing Environmental Setting**

The Draft EIR's analysis of the Project's noise impacts is both inaccurate and insufficient and fails to satisfy CEQA's basic purpose to "[i]nform governmental decision makers and the public about the potential significant effects" of the proposed project. (CEQA Guidelines § 15002(a)(1).) The analysis is fundamentally flawed in a number ways described below.

The Draft EIR also analyzes a single event (a One Direction concert on Thursday, July 9, 2015) (Draft EIR, p. 4.11-6) to study actual, existing noise conditions. While this may be appropriate to establish baseline conditions for a concert event, it may not be comparable to a sold-out nationally televised NFL game. This concert drew a crowd of 50,000 and the Chargers average 65,000 per game attendance last season, which did not include Monday Night Football.<sup>12</sup> On September 13, 2015, the Chargers hosted a home football game attended by 66,093.<sup>13</sup> Did the City collect noise data at the identified receptors at this game to confirm its projections and models? Without this necessary baseline data, the City has not met its obligations to "adequately investigate[] and discuss[] the environmental impacts of the development project." (*Cadiz Land Co.*, *supra*, 83 Cal.App.4th at 87.)

High noise levels affect bird courtship, nesting, warning calls, and other necessary communications. Wildlife seems to respond to peak noise levels, not averages. So the EIR should analyze for the impact of peak noise sources that will result from the project.

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<sup>12</sup> Compare [http://espn.go.com/nfl/attendance/\\_/year/2014](http://espn.go.com/nfl/attendance/_/year/2014) and <http://www.sandiegouniontribune.com/news/2015/jul/10/one-direction-tour-debut-concert-review/>.

<sup>13</sup> <http://www.nfl.com/teams/sandiego%20chargers/schedule?team=SD&season=2015&seasonType=REG>

**2. The Draft EIR Fails To Identify Its Selected Modeled Source Sound Levels For Events**

It is well understood that “[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Laurel Heights Improvement Assn.*, 47 Cal.3d at 405.) By failing to identify the source sound levels for modeled “Events” (*see* Draft EIR, p. 4.11-24 - 4.11-25), the Draft EIR precludes informed public participation and fails as an information document. (*See San Joaquin Raptor II*, 149 Cal.App.4th at 653.) The City should provide that information and allow the public to assess the adequacy of the analysis as to the range of events analyzed. Given that it is foreseeable that sound levels from various types of events/activities could exceed sound levels from the studied events and the public should have a right to understand this issue in detail given that the calendar for Qualcomm Stadium indicates these events occur on a somewhat regular basis.<sup>14</sup>

**3. The Draft EIR Fails To Analyze And Disclose The Increased Project Noise Against The City Noise Ordinance Standards**

While the Draft EIR mentions that operational noise levels would exceed the City’s noise ordinance (Draft EIR, p. 4.11-36), it does not identify for which events, at which receptors, or by how much the noise ordinance standards would be exceeded due to event noise. Nor does it mention how often this would be expected to occur. Further, the Project is expected to result in substantially more annual events than currently hosted at Qualcomm (Table 3-4) and would bring the stadium closer to sensitive receptors. Therefore, the magnitude of how much/often each event type would exceed the City’s noise limits needs to be evaluated in the Draft EIR to allow decision makers and the public to understand the true potential impacts of the Project.

**4. The Draft EIR Should Incorporate Feasible Mitigation Measures Following An Updated And Corrected Analysis**

Once an adequate review of the potential noise impacts from the Project are included in a revised Draft EIR, the City should identify feasible mitigation measures that would reduce the significant impacts below a level of significance. The City should consider at a minimum the effectiveness of the following mitigation measures: smaller stadium, relocation of stadium offsite, relocation of the stadium onsite (including providing full noise assessments for Alternatives 1-3), design of stadium to ensure the exterior shell has no large openings, restriction on hours of events (*e.g.*, all noisy events should conclude by 10 PM), restriction on the number of events permitted each year, acquisition of sensitive residential receptors, and installation of sound-reduction measures

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<sup>2214</sup> <http://www.sandiego.gov/qualcomm/pdf/calendar.pdf>.

at residential receptors. We request that these additional mitigation measures be analyzed in the revised Draft EIR and be incorporated if feasible.

**F. Hazardous Material/Human Health/Public Safety**

**1. The Draft EIR Fails To Sufficiently Analyze Risks From Moving The Stadium Closer To The Kinder Morgan Tank Farm**

The City has proposed to move the stadium from approximately 1,500 feet from the Kinder Morgan tank farm to about 500 feet from the tank farm. Moving the stadium closer to the tank farm could increase the risk of harm to people in the stadium in the event of a fire or explosion.

The Draft EIR concludes that there would be a significant, unmitigable risk in the event of a large fire at the adjacent Kinder Morgan tank farm. (Draft EIR, p. 4.6-33.)

The Draft EIR does not, however, attempt to quantify the risks associated with moving the existing stadium 900 feet closer to the tank farm. Instead, to analyze impacts, the Draft EIR references a 2014 draft study at another location (Carson, California) of a storage tank release that indicated that flammable vapor hazards may extend 1,500 feet, but does not provide any details regarding the assumptions associated with this study or its application to the Site.

The City has not fulfilled its obligation under CEQA by simply identifying an impact and calling it significant. It is well established that an EIR must fully evaluate and disclose an impact even if it is found to be significant. (*Berkeley Keep Jets Over The Bay, supra*, 91 Cal.App.4th at 1371 (“The EIR’s approach of simply labeling the effect “significant” without accompanying analysis of the project’s impact on the health of the Airport’s employees and nearby residents is inadequate to meet the environmental assessment requirements of CEQA.)) CEQA requires an EIR evaluate and a city to adopt all feasible mitigation measures for the project’s significant impacts. “A gloomy forecast of environmental degradation is of little to no value without pragmatic, concrete means to minimize the impacts...” (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.)

The Draft EIR provides that moving the stadium to within only a few hundred feet of up to 28 million gallons of stored fuel is a significant and unavoidable impact. It is not unavoidable. The stadium does not *have* to be moved to within 500 feet of the tank farm. The stadium could be left in place (Alternatives 2-3), moved offsite (downtown alternative) or moved *further from the tank farm* on the site (Alternative 1). The City does not say why this cannot be done. Yet the City is obligated to do so. It cannot simply sweep this problem under the rug.

For the public to be informed about the actual risks associated with moving the stadium 900 feet closer, we request that the Draft EIR include a quantitative, site specific analysis, looking at the actual fuel mixtures and tank size at the Kinder Morgan facility. The analysis should quantify the risk from the Kinder Morgan facility at the proposed site, the current stadium and Alternative 1 site to clearly show the implications of locating the stadium on different areas of the site. We request that the analysis depict the implications of different emergency events (explosion, fire, vapor cloud) at different events (NFL games, concerts, Supercross).

## **2. The Draft EIR's Hazardous Material Impact Analysis Fails To Identify Potential Impacts And Improperly Analyzes The Existing Environmental Setting**

The Draft EIR's analysis of the Project's potential hazardous material impacts is insufficient and fails to satisfy CEQA's basic purpose to "[i]nform governmental decision makers and the public about the potential significant effects" of the proposed project. (CEQA Guidelines § 15002(a)(1).) As acknowledged in the Draft EIR, there have been "[s]everal incidents related to spills and releases of hazardous materials at the Project site ..." (4.6-4). The Draft EIR further acknowledges that there may be pesticide, asbestos, lead based paint, and PCPs exposure. (*See* Draft EIR, p. 4.6-4:7). Based on historical site conditions, the Draft EIR goes on to conclude that "[t]he Project has the potential to create a significant hazard to the public and environment ... mainly because development activities have the potential to uncover contaminated soil and groundwater during site grading and excavation." (Draft EIR, p. 4.6-25:26.) Rather than determine the extent or scope of this impact, the City proposes mitigation through a Contaminated Soils and Groundwater Management Plan. Further, the Draft EIR notes: "A detailed Contaminated Soils and Groundwater Management Plan shall be developed prior to any on-site grading. (*Id.*, at 4.6-35.) The Draft EIR States that the Plan shall be "subject to review and approval of the County of San Diego Department of Environmental Health and the Regional Water Quality Control Board (RWQCB)." (*Id.*)

Committing to avoid significant impacts, the potential extent of which the Draft EIR does not investigate, via a future plan violates CEQA<sup>15</sup> because instead of analyzing the impacts now and committing to specific action to mitigate the significant risk

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<sup>15</sup> The Draft EIR's fundamental purpose is to identify how significant impacts can be mitigated or avoided. (Pub. Res. Code, §§ 21002.1, subd. (a), 21061.) Mitigation measures must be defined with sufficient specificity for the public and the decision makers to weigh their efficacy. Mitigation measures are legally inadequate when they are so undefined that their effectiveness cannot be gauged. (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) Accordingly, deferring the formulation of mitigation measures to the future is improper. "Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR." (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915.)

associated with contaminated groundwater and soil, the City is relying on the discretion of other agencies to approve a future undefined plan. This is problematic, given that the City could analyze the impacts now, develop the mitigation plan, and secure the necessary approvals now. This would allow the public to be informed of what will actually be done to ensure that there will not be significant impacts associated with the redevelopment of a site with a long history of soil and groundwater contamination.

It is also uncertain that a separate plan would even be permitted by the Regional Board, given that there is an existing CAO for the site directing groundwater monitoring and remediation requirements. Given that the Draft EIR concludes that redevelopment has the potential to impact remediation or monitoring activities given the Project's proposed location (Draft EIR at 4.6-30) the City will likely need to work with Kinder Morgan and the Regional Board to amend the CAO 92-01 and associated work plans. Timing for amending the CAO/work plans could range significantly.

Changes caused by the Stadium could affect the continuity of historic data on the Kinder Morgan flows causing a lack of ability to identifying progress, lack of progress, or setbacks in the cleanup of those discharges. The EIR also needs to analyze the potential impacts to wildlife of hazardous materials used or stored on the site.

The Draft EIR should analyze impacts of the project on the groundwater monitoring and remediation infrastructure. The Draft EIR fails to investigate the extent of risk associated with constructing the Stadium in an area where there are over 100 monitoring wells and a number of SVE wells. The Draft EIR notes that "[c]onstruction of the Project shall not proceed until the RWQCB has determined that remediation infrastructure in the vicinity of the current and new stadium is no longer necessary and can be closed and either removed from the site or abandoned in place." (Mitigation Measure HAZ-3). While we appreciate that construction will not commence until the Regional Board approves a plan with respect to the wells and remediation infrastructures, the public must be given a better understanding of what potential impacts could occur during this EIR process. There is no explanation or discussion of where new monitoring wells may be installed, what could happen to groundwater quality if remediation infrastructure is removed and moved or the environmental risks associated with abandoning wells in place. Without this information, the Draft EIR fails as an information document. To address this deficiency, the Draft EIR should, at minimum, identify the monitoring wells and remediation infrastructure that will be removed and prepare a detailed plan for the relocation of such wells and infrastructure for public review as part of this environmental review process. The City has provided no reason why this analysis could not be developed now, and its failure to do so violates CEQA's disclosure requirements. (*See San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670.)

This information is particularly important for the public, given that the City itself has previously expressed significant concerns that once groundwater levels stabilize onsite, monitoring will show that the Site remains impacted by contamination. As explained by the City in a March 2015 letter to the Regional Board “there is still considerable concern that the full effects of the release will impact this [the City’s groundwater resources] for some time, and that mitigation and restoration of the resource is far from over.” (See attached City of San Diego March 25, 2015 Letter to David Gibson, Executive Officer California Regional Water Quality Control Board re Evaluation Report of Remediation for Kinder Morgan’s Mission Valley Terminal Off-Site Release.) Now, the Stadium is being proposed in the very area where there are significant monitoring wells and remediation infrastructure designed to ensure remediation efforts are successful. The extent of the potential impacts on remediation efforts at the Site needs to be included in the Draft EIR.

### **3. The Draft EIR Should Analyze Potential Impacts Of The Project On Montgomery Field**

Similar to how the Draft EIR attempts to mitigate risks from contaminated soil and groundwater, to address risk associated with Project’s location within the AIA of the Montgomery Field ALUCP, the Draft EIR notes that “Notices of Proposed Construction or Alteration with the FAA (FAA Form 7460-1) shall be filed” and prohibits development absent receipt of a “Determination of No Hazard to Air Navigation” by the FAA. Rather than analyze the potential impacts and identify a design to avoid such impacts, the City has improperly deferred its analysis. Again, the City has provided no reason why this analysis could not be developed now, and its failure to do violates CEQA’s disclosure requirements. (See *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670.) Even if deferred mitigation was reasonable and appropriate, the City failed to provide the required “specific performance criteria.” Even if one assumes the FAA relies on “specific performance criteria” in issuing a “Determination of No Hazard to Air Navigation”, as the Draft EIR alludes, the Draft EIR is insufficient. The criteria must be specifically indicated or provided.

### **4. The Draft EIR Fails To Analyze The Potential Impacts Associated With Disposing Of Contaminated Groundwater**

The Draft EIR acknowledges that the Project may also entail dewatering, but does not expand or explain the likelihood or amount of dewatering required. The Draft EIR further notes that a project specific permit from the Regional Board is “anticipated for the proposed Project due to the subsurface contamination potential.” (See Draft EIR, p. 4.8-42 The Draft EIR then concludes that “[b]y way of complying with these RWQCB-issued conditions, potential impacts to the environment and water resources would be minimized or avoided.” The Draft EIR’s fundamental purpose is to identify how



significant impacts can be mitigated or avoided. (Pub. Res. Code, §§ 21002.1, subd. (a), 21061.) Mitigation measures must be defined with sufficient specificity for the public and the decision makers to weigh their effectiveness. Instead of analyzing the amount of groundwater and anticipated contaminants contained therein, the Draft EIR avoids the issue by acknowledging a permit from the Regional Board may be necessary. Such deferral does not comply with CEQA's public disclosure requirements. We request that the City investigate the likely amount of groundwater to be discharged, the discharge location, the potential impacts of such discharge on surface water quality and other biological resources, and identify and incorporate mitigation measures to prevent significant impacts to such resources.

## **G. Hydrology**

### **1. The Draft EIR Fails To Analyze And Identify Significant New Impacts Associated With Displacing The Floodplain During The Project's Extended 3-5 Year Construction Schedule**

The Draft EIR finds that, during the Project's 3-5-year construction period, it will displace 15 acres of 100-year floodplain and 12 acres of 500-year floodplain, resulting in a significant temporary impact. The Draft EIR improperly trivializes the scope of the impact by focusing only on the 100-year flood, which it determines is unlikely to occur.

There is clear evidence that flooding risks will be much worse than disclosed. The Draft EIR explains that Murphy Canyon Creek *currently* overflows the property during a 10-year flood event, flooding the parking lot. (Draft EIR, pp. 4.2-48, 4.2-29, 4.8-22.) Indeed, the Draft EIR indicates flooding may occur even more frequently than the 10-year event if Murphy Canyon Creek has not been recently cleared of vegetation. This is a *very frequent level of flooding*. Therefore, the site has two important existing characteristics that make it susceptible to flooding risks: (1) the site is located within the 100-year floodplain; and (2) the site is subject to very frequent flooding events. Despite these distinguishing characteristics, the Draft EIR does not even complete a bare bones analysis of hydrological risks. No explanation is given in the Draft EIR for the paltry level of review. In a baffling omission, the Draft EIR does not even describe or map the extent of the frequent 10-year flooding events. This omission is inexplicable and renders the section facially deficient. Equally surprising, the Draft EIR does not model or map the 25-year, 50-year or even 100-year flood events. This falls far short of the level of detail necessary for developing a major facility in the 100-year floodplain, particularly when the facility has such an extended expected life span as the stadium.

Again, the hydrology section is completely missing a discussion regarding the frequency and extent of existing flooding in the Project area, which is a fatal flaw for a site that is *located in the floodplain* and is *subject to frequent flooding*. This lack of

analysis is never explained. To allow meaningful public review, at an absolute minimum, the document should have a figure depicting the extent of water in a 10-, 25-, and 50-year event under current conditions and under proposed conditions. Without this information, it is impossible to review the Draft EIR and determine the significance of the project on flooding for 10-, 25-, and 50-year events. As discussed in these comments, based on the limited information that is included in the Draft EIR, unless more detailed modeling or analysis is provided, the only conclusion that can be reached is that the project will have a significant impact on hydrology during 10-, 25-, and 50-year events. There is no substantial evidence in the Draft EIR to conclude that such impacts will be less than significant.

According to the Draft EIR, the Project area floods during any event greater than a 10-year event, which means that, in any one year, there is a 10 percent chance of a 10-year flood event. Given that construction may last 5 years (or longer, as delays are common with large construction projects), there is a reasonably high likelihood that one or more 10-year flood events will occur during construction, and it is not speculative to assume that a 25-, 50- or even 100-year event could occur. Therefore, the Draft EIR's conclusion that the Project would have a significant and unavoidable impact to the area's floodplain only during 100-year or greater events during construction period is not supported by the evidence. The Draft EIR should analyze flooding impacts between 10-year and 100-year events during construction.

This lack of analysis makes the Draft EIR fatally deficient. The Hydrology section amounts to a "drive by" analysis that CEQA does not allow. CEQA requires an EIR to contain facts and analysis, not just bare conclusions. (*See, e.g., Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383 ["An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."])

In short, the Draft EIR does not adequately evaluate the potential reduction of the floodplain area during construction. This reduction of floodplain area during construction has the potential to increase flow rates and flood heights in Murphy Canyon Creek upstream of the Project site, resulting in increased local flooding of other properties. On page 4.8-27, the Draft EIR acknowledges this, but the Draft EIR does not contain any analysis of the potential magnitude of this effect. The effects from this situation are potentially significant and should be evaluated further in the EIR.

The EIR must analyze the impact of the project on hydrology when construction is complete and is in operation. The probability of a 10 year, 100 year, or even 500 year event is high during the anticipated life of the stadium. Debris and cars washed into the River by a storm during a stadium event would cause water pollution and habitat damage. Getting this debris out would also result in extensive habitat damage.

We request that these deficiencies be addressed with a detailed modeling analysis of the Project's flooding impacts during 10-, 25-, 50- and 100-year events. We request that the analysis include maps and summary tables to assist the public with interpreting the results. We request that the analysis identify any nearby residences, sensitive receptors, roadways or public infrastructure that could be adversely impacted by flooding during 10-, 25-, 50- and 100-year events, with corresponding maps to facilitate public review. Without these revisions and additional analysis, the EIR section is fatally flawed and the public is prejudiced.

**2. Frequent "Run-On" Flooding From Murphy Canyon Creek Is Not Fully Analyzed, Ignoring Significant Impacts**

The Draft EIR does not adequately address the frequency and effect of flooding on the site due to run-on from the reach of Murphy Canyon Creek upstream of the site.

The Draft EIR states that the upstream area of Murphy Canyon Creek just north of the Project site has a 50-year storm event flow capacity. Given this potential for Murphy Canyon Creek to flood the site from the north in a 50-year or greater storm, the 50-year floodplain needs to be map and analyzed. Without this information, the Draft EIR lacks substantial evidence to conclude that such impacts will be less than significant. As a result, we request that the Draft EIR be revised to include a detailed analysis and depiction of run-on events from Murphy Canyon Creek, during current conditions, project construction and project operations.

**3. Significant Backwatering Impacts Are Ignored**

The Draft EIR has not adequately analyzed backwatering risks associated with Murphy Canyon Creek during construction. During construction, the area of the floodplain will be substantially reduced, as discussed above, which will exacerbate backwatering of Murphy Canyon. The scale of this impact was not fully disclosed or analyzed in the Draft EIR.

We request that the Draft EIR be revised to disclose the frequency and extent of existing flooding in the area, including maps showing 10-, 25-, and 50- and 100-year events under current conditions and under proposed conditions. Without this information, the only conclusion that can be reached is that the project will have a significant impact on backwater flooding.

**4. FEMA Pre-Approval Is Required Before Project Construction Can Begin, but Information in the Draft EIR Indicates Such Approval May Be Very Difficult to Obtain**

The EIR assumes that flooding risks from the project will be addressed by compliance with FEMA standards. Regardless of whether this assumption is correct, the Draft EIR does not satisfy CEQA. Substantial evidence has not been provided to support a conclusion that FEMA standards can be met – or shown how they can be met. The public is being told “trust us” without being shown the details. This is a major gap in the analysis because the Draft EIR hides behind these assumptions to avoid study and impact disclosure required by CEQA.

While in some cases it is appropriate under CEQA to rely on regulatory standards as mitigation measures, the EIR must still fully evaluate and assess the impact. That has not happened here. Rather, the Draft EIR mirrors other failed EIRs where the lead agency improperly neglected to actually study and disclose the impact merely because a later regulatory approval would be required. For example, in *Californians for Alternatives to Toxics v. Department of Food & Agriculture*, an EIR for a statewide crop disease control plan was rejected because it did not include an evaluation of the risks to the environment and human health from the proposed program, but simply concluded that there would not be significant impacts from use of pesticides that were approved pursuant to California Department of Pesticide Regulation. (2005) 136 Cal. App. 4th 1; *see also Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal. 4th 936, 956 (even though the Department of Pesticide Regulation had assessed environmental effects of certain herbicides, it did not excuse the lack of analysis in the EIR to assess effects of their use for specific timber harvesting project).

The Draft EIR must be revised and recirculated to include an analysis of whether or not the Project will comply with FEMA standards and that construction of a new facility while the old facility remains on site will be feasible. As a result, we request a detailed assessment of how FEMA compliance will be assured. We request that this information be provided in the Draft EIR and made available for public review and comment instead of deferring the mitigation to a later date after the EIR is certified.

**5. Impacts to Local Water Quality Are Not Supported by Substantial Evidence**

The Draft EIR does not analyze changes in the floodplain and water conveyance during construction if flood events were to occur. The Draft EIR must fully evaluate risks from erosion and sedimentation. As mentioned above, there is a reasonable probability that a 10-year (or greater) flood event will occur during the construction period, which could cause erosion of the banks along the San Diego River and Murphy

Canyon Creek. The Draft EIR does not provide a detailed model or hydrological assessment of the likely sedimentation, erosion, scouring or trampling of vegetation, habitat or individual species. Without detailed explanation, the Draft EIR simply assumes that the SWPPP will be sufficient to address these impacts and similar impacts related to pollution runoff. This falls far short of CEQA's requirement to actually analyze and disclose the impact. The site is very constrained and with the flooding anticipated, a SWPPP may be incapable of fully resolving pollution concerns. Therefore, we request a detailed assessment and a draft SWPPP be included in the revised Draft EIR to demonstrate that water quality levels will be protected and that species/habitat will not be adversely impacted by erosion and scouring during flood events.

## **6. Compliance with Local Requirements Is Flawed**

The Draft EIR does not explain how the stadium proposal will comply with the requirements of the Land Development Code, which mirror federal regulations allowing only an increase in the base flood elevation of up to one foot. As noted above, the Draft EIR lacks detail to ensure that the one-foot limit will be met and it is not enough to simply defer such a determination to a post-EIR process.

We request that the Draft EIR include a detailed explanation and modeling that demonstrates the one-foot limit will be met.

The diversion of the Murphy Canyon Creek may eliminate the wildlife corridor from Murphy Canyon to the River. This connection is a grave concern. It must not only be maintained, but it should be enhanced.

## **H. Land Use**

### **1. Construction Of A Stadium On The Mission Valley Site Is Inconsistent With The Municipal Code And The Mission Valley Community Plan**

The Draft EIR mischaracterizes the City's land use policies applicable to building a stadium on the Mission Valley site. The Mission Valley site is zoned MVPD-MV-CV. The Draft EIR states "[a]ccording to Table 1514-03J, Commercial Zones Use of the MVPDO, the stadium use would be considered a Recreation Facility – Open Air and would require approval of a Conditional Use Permit (CUP), a Site Development Permit (SDP), and other approvals. Through the CUP/SDP process, the Project would be reviewed for compliance with the required development regulations." (Draft EIR, p. 4.9-6.) However, the City Zoning Code provides: "[N]o building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the uses listed for applicable zones

in Table 1514-03J.” (SDMC § 1514.0305(b).) *Contrary to the conclusion in the Draft EIR, Table 1514-03J does not include stadium or any use that could support the construction of a stadium.*

Again, the Draft EIR states that a stadium “would be considered a Recreation Facility-Open Air” and would be allowed through a CUP. (Draft EIR, p. 4.9-6.) This is false. A “Recreation Facility- Open Air,” as defined by the Municipal Code, does not include stadiums and does not allow stadiums through a CUP. (See SDMC § 126.0303(b), (c) [showing that different classes of CUPs are required for different uses].) The Draft EIR cannot assert that a stadium is “Recreation Facility-Open Air” when the Municipal Code clearly states otherwise. As a result, the Project is inconsistent with the MVPDO and the Municipal Code.

The Draft EIR’s failure to address this issue adequately in the Land Use analysis creates a significant legal issue because stadiums are not permitted on environmentally sensitive land (floodplain) or in the MVPD-MC-CV zone (which further uses otherwise permitted in the CV zone). (See SDMC Section 131.0520 [stating that uses permitted under Section 131-05B “may be further limited by ... (3) The presence of environmentally sensitive lands, pursuant to Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations); or (4) Any other applicable provision of the San Diego Municipal Code.”].) *Simply put, a new stadium is not an allowable use on the Project site.*

The Draft EIR also claims that the Project is consistent with the Mission Valley Community Plan. (Draft EIR, p. 4.9-33.) The Mission Valley site is designated Commercial-Recreation in the Mission Valley Community Plan. This designation does not include stadiums and the plan does not mention stadiums in its discussion of allowable uses in the Commercial-Recreation land use designation. (See Mission Valley Community Plan, at p. 49.) Allowable uses include lodging facilities, recreational facilities, and entertainment facilities, not stadiums. (*Id.*)

Because a stadium is not allowed on a floodplain, the Project is also in conflict with the General Plan. General Plan Policy CE-E.7 is as follows: “Manage floodplains to address their multi-purpose use, including natural drainage, habitat preservation, and open space and passive recreation, while also protecting public health and safety.” (Draft EIR, p. 4.9-22.) The Draft EIR concludes that the Project is consistent with this policy even though the Project would be located in a 100-year and 500-year floodplain. (*Id.*) The Draft EIR asserts that impacts from the location of a Stadium in a flood plain would be mitigated. Nonetheless, the Project is inconsistent with this Policy because stadiums are not permitted on floodplains under the Municipal Code. (SDMC Section 131.0520.)

## **2. Demolition Of Qualcomm Is Inconsistent With The General Plan And The Mission Valley Community Plan**

The Draft EIR glosses over its inconsistencies with the General Plan and the Mission Valley Community Plan. After plainly stating that the Project would “would conflict with some of the goals and policies of the City of San Diego General Plan ... and some objectives, guidelines and proposals of the MVCP,” the Draft EIR concludes that the “Project is consistent with the MSCP and General Plan in terms of land use and overall vision of development for the site as discussed in the MVCP.” (Draft EIR, p. 4.9-43.) However, as stated above, a stadium is not permitted on the Mission Valley site as currently zoned.

In addition, Qualcomm Stadium is a historical resource and “is one of few remaining mid-century designed multi-purpose stadiums left in the United States.”<sup>16</sup> Save Our Heritage Organisation, a local historical group, has urged the City to “find a way to preserve this modern monument.”<sup>17</sup> The Cultural and Heritage Resources Element of the MVCP describes the importance of the Stadium as a “community landmark” that “dominates the view from almost any vantage point in the eastern portion of the Valley.” (MVCP, at 167.) The Urban Design Element also describes the Stadium as a community landmark, noting that such landmarks “provide community identity” and calls for them to “remain highly visible.” (MVCP, at 185.)

Further the demolition of Qualcomm Stadium is inconsistent with the preservation goal of the City’s General Plan, which is to “preserve, protect and enrich natural, cultural, and historic resources that serve as recreation facilities.” The Draft EIR states that the Project is inconsistent with the preservation goal of the General Plan because “impacts to historic resources would occur as a result of the Project due to Qualcomm’s eligibility for listing as a historic structure” *i.e.*, the demolition of Qualcomm. (Draft EIR, p. 4.9-20.)

Despite the inconsistency between the Project and the MSCP and General Plan, the Draft EIR concludes that the “Project is consistent with the MSCP and General Plan in terms of land use and overall vision of development for the site as discussed in the MVCP.” (Draft EIR, p. 4.9-43.) The opposite is true, the Project is inconsistent with the MSCP and the General plan due to the demolition of Qualcomm, which should be preserved under both the MSCP and General Plan.

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<sup>16</sup> <http://www.sohosandiego.org/angered/mel2007/stadium.htm>

<sup>17</sup> *Id.*

### **3. The Draft EIR Lacks Substantial Evidence That The Project Is Consistent With The City Of San Diego MSCP Subarea Plan**

The Draft EIR concludes that the Project is consistent with the San Diego MSCP Subarea Plan. The MSCP Subarea Plan “[s]torage of materials (e.g., hazardous or toxic, chemicals, equipment, etc.) ... within the MHPA.” (Draft EIR, p. 4.9-41.) The Draft EIR states that “[n]o hazardous or toxic materials would be stored within or immediately adjacent to the MHPA.” (*Id.*) To achieve this standard, the Draft EIR includes the following design guideline: “Storage of materials (e.g., hazardous or toxic, chemicals, equipment, etc.) would be prohibited within the MHPA and ensure appropriate storage in any areas that may impact the MHPA, especially due to leakage.” (Draft EIR, p. 4.9-41.) This analysis is circular and does little to explain how the City will ensure that no hazardous or toxic, chemicals or equipment will be stored in the MHPA.

The project includes the demolition of Qualcomm Stadium. The existing stadium was built in 1967 and, therefore, its demolition could result in the disturbance and transportation of hazardous materials, including asbestos. “Demolition of the existing Qualcomm Stadium would be initiated by implosion of the structure using explosives in one coordinated event.” (Draft EIR, p. 4.11-22.) The Draft EIR does not provide analysis of how the City will ensure that the implosion of the stadium will not result in the storage, even if only temporarily so, of “hazardous or toxic, chemicals, equipment, etc.” in the MHPA. Instead it simply avoids the analysis, indicating that the implosion will be done according to the Demolition and Implosion Plan submitted to the Development Services Department and Fire Department for review and approval. (Draft EIR, p. 4.6-37.) Without analyzing the potential risks now the Draft EIR lacks substantial evidence for its conclusion that the Project is consistent with the MSCP Subarea Plan.

#### **I. Traffic**

##### **1. The Traffic Impact Analysis Not Does Comply With CEQA And Must Be Redone; The Trip Generation Assumptions Of The Traffic Analysis Are Not Supported By Substantial Evidence And Are Contradicted By Empirical Data**

The Traffic Impact Analysis Report (“TIA”) and the analysis in the Draft EIR contain a number of significant flaws and fail to address fully the traffic impacts of the proposed new and larger stadium. These significant flaws include:

- The failure to conduct an analysis consistent with the Court of Appeal’s decision in *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351.



- The use of flawed data to estimate trip generation and trip distribution, resulting in trip rates that are drastically lower than what are actually occurring.
- Relying on extreme “modal shifts” to accommodate the drastic reduction in parking at the stadium where such reductions are not supported by substantial evidence or even a draft Transportation Demand Management Plan.
- The comparison of transportation impacts against an incorrect baseline.
- Failure to complete the TIA in accordance with Caltrans’ direction, which constitutes error and an abuse of direction as Caltrans is a responsible agency under CEQA.

As a preliminary matter, the TIA is not a reliable predictor of future transportation impacts because it is based on mere projections of baseline information. This is insufficient under CEQA. (*Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238; *Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99 [CEQA “requires that the prepares of the EIR conduct the investigation and obtain documentation to support a determination of preexisting conditions.”]). *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549 held that the proper baseline for analysis of environmental impacts is “what [is] actually happening,” not what might happen or should be happening.

While the EIR does present data of existing conditions *without* a game, the City did not conduct traffic studies of existing conditions *on game days*. The City was required to present actual data on traffic counts and not mere projections or guesses based on parking receipts. As noted in an NOP comment letter, this was especially important because the NFL is increasingly scheduling games on weekdays, which impacts rush hour traffic. In 2015 alone, the Chargers have two Monday night games.

Presumably, the City did not wait to collect this necessary data because it was rushing to publish an EIR in order to meet its artificial deadline to have an election in January 2016. The City has now admitted that this will not occur. The City is now looking at an election as late as November 2016. This provides ample additional time for the City to collect new traffic data and conduct a proper traffic study. In fact, the Chargers already have held one home game, on September 13, 2015. Did the City collect traffic data at this game to confirm its projections and distribution models? We ask that the City collect data of existing conditions on game days at the appropriate hour and include this analysis in a recirculated Draft EIR.

What is perhaps less comprehensible is that the transportation analysis presents a picture of traffic in Mission Valley generally and around the stadium on game days specifically as one without traffic problems and where traffic flows freely. Of course, as has been noted in numerous other City-prepared documents and in the attached news articles, this is just not the case. The fact is that traffic in Mission Valley is severely impacted and it is just fallacy for the EIR to conclude that the Project, a larger stadium with more than 114 additional events per year, will actually improve traffic in many places and will not otherwise result in a significant impact. There is just no substantial evidence in the record to support this conclusion and the assumptions on which the TIA and the EIR rely on are unsupportable.

## **2. The TIA Does Not Account For The Project's *Increase In Stadium Size***

The TIA states that the size of the stadium will decrease. This is incorrect. Table ES-1 plainly shows that the maximum number of attendees will actually increase from 71,500 to 72,000. The problem with this error is that the TIA's analysis assumes, and in fact states many times, that impacts will be less than the existing stadium because the stadium's capacity will decrease. (See, e.g., Draft EIR, at 4.5-18 ["The new stadium would result in a net decrease in the total number of seats compared to the existing Qualcomm Stadium"]; 4.9-30 ["The Project would have approximately 2,560 less seats and less parking spaces onsite than the existing Qualcomm Stadium"]; 4.13-7 ["The new stadium would have approximately 2,560 less seats than the existing Qualcomm Stadium..."].) This discrepancy needs to be explained.

The TIA analysis of traffic based on the 68,000 seat stadium, therefore, misleads the public and decisionmakers as to the project's impacts. The analysis must be redone to reflect a true "worst case" scenario of 72,000 attendees at an event at the stadium. Please update the traffic analysis to reflect an increase in the number of seats or otherwise explain why it was correct for the TIA to assume attendance would remain the same despite greater capacity.

## **3. The TIA Applies The Wrong Baseline In Calculating The Project's Future Transportation Impacts**

The heart of the TIA is Section 9.0, which purports to identify the potential impacts of the Project. However, the analysis is fatally flawed because it improperly assumes that an NFL team will continue to play at Qualcomm Stadium *without* the project. That is not the case. It is certainly probable based on media reports that the correct baseline is no team in the stadium in 2019. The San Diego Chargers, however, have made it clear that it is likely they will not be playing in Qualcomm stadium in

2019.<sup>18</sup> Thus, the proper baseline is not some future where the an NFL team is playing in Qualcomm Stadium *without* the Project, but a future with no NFL football games in Qualcomm Stadium.

When this comparison is done, the impacts are in fact significant and numerous. For example, the number of intersections impacted with no games on weekdays in 2019 is four, but the number of intersections impacted with games is eleven, a nearly three-fold increase. (See Draft EIR 4.10-56, 59.) Similarly, the number of intersections impacted on weekends goes from zero without games to four on Saturdays and seven on Sundays. (*Ibid.*) These are the true impacts of the Project that have been obfuscated by the improper baseline. The same is the case with impacts to roadway segments, freeway segments, and ramp meters.

#### **4. The TIA's Assumption That Traffic Will *Decrease* On Game Days In 2019 Is Not Supported By Substantial Evidence**

Setting aside the issue of the baseline for the moment, the TIA concludes that transportation impacts will be the same or better in 2019 when there is a game as compared to the “no project” game day condition. This conclusion is unsupportable and appears to be based on an assumption of a nearly *32 percent increase* in the number of people using public transit on weekdays and a nearly *22 percent increase* in the number of people using public transit on weekends. (Compare Draft EIR Table 4.10-7 to Table 4.10-8.) This assumption is arbitrary and capricious and unsupported by any evidence in the record.

Not only is the EIR defective for failing to identify how this modal split will be achieved because there is no defined Transportation Demand Management Program, the underlying assumption for why the modal split will occur – which is loss of parking – appears to be incorrect. The EIR states that the modal shift will occur for two reasons. The first is the undefined TDM program. The second is that “[d]uring the events in which the parking demands are to exceed capacity, a modal shift is anticipated since attendees are expected to seek alternative modes of transportation.” (Draft EIR, at 4.10-30.)

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<sup>18</sup> *Chargers Reject San Diego Election on New Stadium*, Associated Press, USA Today, (June 16, 2105) <http://www.sandiegouniontribune.com/news/2015/sep/11/chargers-miss-deadline-for-stadium-vote/>; *Despite Chargers' Rejection, City Moving Ahead with New Stadium*, Time of San Diego (July 14, 2015) available at <http://timesofsandiego.com/politics/2015/07/14/despite-chargers-rejection-city-moving-ahead-with-new-stadium/>; Cork Gains, *The Chargers Scoffed at San Diego's \$350 Million Stadium Offer and Now They're Frontrunner to Move to LA*, (Aug. 11, 2015) available at <http://www.businessinsider.com/san-diego-chargers-stadium-proposal-2015-8>.

What the EIR fails to recognize, however, is that parking at the project site is already at levels anticipated to be available upon the project's implementation. The EIR states that there are currently 18,870 parking spaces available at the site. However, 3,000 spaces are "rendered unusable during major stadium events. This leaves just over 15,000 parking spaces to be used by attendees. The EIR estimates that 7,810 vehicles arrive at the stadium two hours before kickoff on weekdays and 6,600 arrive at the stadium two hours before kickoff on weekends. (See Draft EIR, Table 4.10-12, Table 4.10-13.) If the stadium parking lots fill up two hours before kick-off and only 7,000 to 8,000 cars are arriving prior to that time, then there is substantially less than 15,000 parking spaces available. Even when the number of cars estimated to arrive between one and two hours are included, there are still 6,320 cars and 5,100 cars arriving one hour before game time on weekdays and weekends, respectively. (*Ibid.*) If the parking lot is full two hours before kickoff, the lack of parking at the stadium today has clearly not forced the modal shift that the EIR predicts will occur.

Said another way, the assumption that a decrease in parking will lead to a modal shift is belied by what the EIR says about parking conditions today. Today there is a parking shortfall at the stadium, yet thousands of vehicles continue to drive to events and find parking outside of the stadium.

The TIA also undercuts the argument that a modal shift will occur because of a future parking deficiency-meaning that if the stadium has less parking that people will take the trolley. There is no basis for this unsupported conclusion. The true effect will be patrons parking in the community.

While unsupported by the evidence already in the record, the TIA states that "parking deficiency is anticipated to occur only on weekday games." (TIA, at 8-2.) At most, the TIA concludes, there will be a deficiency of 1,420 if the River Park Master Plan is put into effect. (*Ibid.*) In light of the TIA's conclusion that there will not be a parking deficiency on weekend games (TIA, Table 8-1), it is arbitrary and capricious for the Draft EIR to conclude that there will be a modal shift of 22 percent (or 2,200 cars), because of a projected shortfall of only 1,420 parking spaces.<sup>19</sup>

For this reason, the assumption that trips will decrease because of a parking shortfall is merely wishful thinking, unsupported and unsupportable by any evidence. Neither the EIR nor the TIA provides the basis for these assumptions. The City must provide the basis for these assumptions so that the public can evaluate whether they are reasonable.

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<sup>19</sup> It may be that the Table 8-1 statements regarding parking deficits assumes the magical "modal shift," but neither the TIA nor Table 8-1 makes this clear.

**5. The TIA Does Not Account For The Project's Massive Parking Shortfall Both During And After Construction Of The New Stadium**

Construction Parking Impacts. The EIR admits that there will be a significant impact on parking during the Demolition Phase in 2019, but it is entirely unclear why that same impact will not exist during the entirety of the construction phase. Construction of the new stadium will eliminate many thousands of parking spaces. Not only will the stadium's footprint eliminate parking spaces, but the laydown and staging areas will eliminate many more. The EIR does not even attempt to quantify how many spaces will be eliminated during the three year construction phase. The EIR must be recirculated so that the public can understand how many parking spaces will be eliminated during construction and what the impact on the surrounding environment (including air quality, noise, and transportation from cars circling adjacent neighborhoods) will be during this three-year period.

Permanent Parking Impacts. While it appears that there already is insufficient parking at the stadium and that shortfall will be exacerbated during construction, the Project proposes to reduce permanent parking even further. Table 3-1, page 3-2, states that with the implementation of the River Park Master Plan, the number of striped parking spaces would be reduced to 13,860 spaces. Assuming, as the EIR states, that up to 3,000 parking spaces are lost every game day due to special event tents, tailgating, etc., the stadium is anticipated to only provide 10,000 parking spots for 72,000 attendees. The EIR fails to disclose the nature and extent of the parking impacts to the adjacent communities.

Under the City's thresholds of significance, a parking shortfall would cause a significant impact where the parking is deficient by more than 10% of the required amount of parking and would substantially affect the availability of parking in an adjacent residential area, including the availability of public parking. (Draft EIR, at 4.10-73.)

While the City does not have a set parking ratio for stadiums, it does have one for "Exhibit Halls & Convention Facilities," which are closely related to Stadiums in terms of capacity and how visitors travel to them. Under the City's Code, one space is required for every three seats or, if the project is within a Transit Area, then 85% of the minimum required. (SDMC Table 142-05G.) The Project proposes a 72,000 seat stadium. At 72,000 seats, 24,000 parking spaces would be required. Even assuming the site is within a Transit Area, then 20,400 spaces would be required. The proposed 13,860 permanent spaces is only 68% of the required number of spaces. This significant shortfall coupled with the anticipated intrusion into residential neighborhoods and use of public parking is

an unidentified significant impact. The EIR must be recirculated to address this impact and to identify mitigation for it.

There is no analysis of impacts on residential neighborhoods even though many attendees are seen walking from surrounding residential neighborhoods on game days. Please conduct an analysis of parking impacts on residential neighborhoods.

## **6. The EIR Improperly Defers Mitigation By Deferring The Development Of The TDM**

The Transportation Demand Management (TDM) program is the sole reason on which the EIR concludes that there will not be significant traffic or parking impacts. The TDM is critical to the success or failure of the critical assumptions made in the TIA and EIR. Yet, the TDM is not defined or even presented for review by the public or the decisionmakers. Moreover, the TDM is not even a mitigation measure for transportation impacts because the EIR just assumes that the significant “modal shift” that underlies the conclusions will occur all by itself. The TDM is only a mitigation measure to address a parking deficiency identified during the 2019 Demolition Phase, though the same parking deficiency will occur both during the Construction Phase and the life of the project.

CEQA does not permit this and this is a fatal flaw in the EIR that not only permeates the transportation section, but the Air Quality and GHG analysis that relies on the assumptions regarding vehicle trips set forth in the TIA.

“A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) “[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

“Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological [or other] report and then comply with any recommendations that may be made in the report.” (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.) “If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient

to articulate specific performance criteria and make further approvals contingent on finding a way to meet them.” (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793.)

There is no TDM program contained in the EIR. The only thing contained is a few pages of discussion in the TIA of some of the mechanisms that a TDM program could employ. There are only “recommendations” (TIA, at 803) and nothing requires the City to implement any of them. Further, some of the recommendations involve agency over which the City of San Diego has no control. For example, the TIA recommends that trolley capacity could be increased by decreasing headway between the trolleys. (TIA, at 8-7.) However the trolley is operated by the Metropolitan Transit System, which is overseen by a 15-member Board with only four of those appointees on the Board coming from the City of San Diego. Thus, there is no ability for the City of San Diego even to enforce some of the TIA’s recommendations.

“This is inadequate. No criteria or alternatives to be considered are set out. Rather, the mitigation measure does no more than require a report be prepared and followed, or allow approval by [the City] without setting any standards.” (*Endangered Habitats League, Inc. v. County of Orange, supra*, 131 Cal.App.4th, at 794.)

The Draft EIR must be revised and recirculated to include a TDM with criteria and alternatives and analysis of whether or not the specified criteria, if employed, would in fact mitigate significant impacts.

## **7. The TIA Does Not Analyze Transportation Impacts Against Existing Conditions Or Evaluate The Frequency Of Impacts**

An EIR analyzing multiple baseline scenarios must always include analysis of project impacts measured against an “existing condition” baseline, in addition to its analysis of the projected future conditions. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552.)

Neither the EIR nor the TIA analyze the Project’s impacts against existing conditions. While the City does analyze impacts created by the existing stadium, this analysis is insufficient to project the impacts of the Project for at least two reasons.

First, the Project will *increase* capacity of the existing stadium. (Draft EIR, p. 3-2, Table 3-1 [special event capacity seating increasing by 500 seats].) Because the seating capacity will actually increase, it is not enough for the EIR to merely say that impacts will be the same on game days with and without the Project.

Second, the Project will substantially increase the *frequency* of major events at the site. Frequency of impacts must be considered when determining whether an impact is significant or not. The EIR states that the number of events will increase by 114 per year. (Draft EIR, at 3-22 [Table 3-4].) Most remarkably events with up to 15,000 attendees are anticipated to increase from 4 to 52 and events with up to 20,000 attendees are anticipated to increase from 4 to 10. (Ibid.) In total, there are proposed to be 346 events per year, almost one per day. Compare this to the 232 events occurring now, of which 170 involve less than 500 attendees. Thus, there will be a two-thirds increase in the number of events with nearly 30 percent of the new events having 5,000 to 72,000 attendees. There is no analysis at all in the TIA or EIR about the increased impacts as a result of the increased frequency

In *Berkeley Keep Jets Over the Bay Commission v. Board of Port Commissioners*, 91 Cal. App. 4th 1344 (2001), the court ruled that the Port Commission's EIR for an airport expansion project failed to consider how the increased frequency of night flights would affect residents. Accordingly, the court found that the increased frequency of night flights required further study. Similarly, in *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645 (2007), the court found that the EIR's analysis of impacts to roads and roadways was deficient because it did not take into account the frequency of the truck trips that an expanded mining project would cause. Specifically, the court noted that the "analysis should have been made of long-term impacts on road physical structures based on the reasonable potential of greater frequency or regularity of annual mine operations at or near the maximum production." (*Id.*, at 665-66).

Here, because the EIR discusses only the potential impacts from large events, there is no discussion of the frequency of the impacts that are likely to be created by the many more events with the numbers of attendees ranging from 5,000 to 72,000 attendees. The Draft EIR must be revised and recirculated to include this analysis. Please conduct an analysis of impacts from events with attendees ranging from 5,000 to 50,000 in addition to larger events.

## **8. The TIA Errs By Ignoring Caltrans' Direction**

Caltrans set forth specific criteria for how the TIA should analyze impacts to State facilities – existing and proposed. (Caltrans NOP Comment Letter, June 29, 2015.) Among other directives, Caltrans stated that the TIA should use Caltrans' Guide for the Preparation of Traffic Impact Studies, that all State-owned signalized intersections should be analyzed consistent with the Caltrans Highway Design Manual, and that all state highway facilities where traffic would be added and where there is queuing that exceeds ramp storage capacities should be analyzed.



While the TIA references Caltrans Guide for the Preparation of Traffic Impact Studies, it does not appear that the TIA otherwise complies with any of Caltrans specific direction. For example, Caltrans directed that intersections be analyzed using the “intersecting lane vehicle” procedure. However, the TIA and Draft EIR only analyze intersections using the HCM methodology for City of San Diego.

The NOP comment letter also states that ramp metering delays in excess of 15 minutes are “excessive” and, therefore, would be a significant impact. The Project increases the delay at two ramps that already have more than 15 minutes of delay, but no impact is identified.

These are just two examples of plain error. In *StopTheMilleniumHollywood.com, et al. v. City of Los Angeles, et al.* (LASC Case No. BS144606), the Superior Court ruled that the City erred and abuse its discretion when the City failed to include in the EIR the information required by Caltrans. (*Id.*, at 21 [“If Caltrans is a responsible agency, then the City was required to include in the FEIR the information required by Caltrans.”].) “The City’s choice of methodology did not comply with the substance of what Caltrans required, and the City was not free to ignore it.” (*Id.*, at 23.)

As in *StopTheMilleniumHollywood.com*, the EIR fails to analyze traffic impacts to State-impacted facilities “as Caltrans directed in its role as responsible agency” and the EIR’s failure to do so is “is a failure to proceed in a manner required by law.” “The City was obligated to provide the information and analysis which Caltrans, specified as a responsible agency, should be performed. Compliance with the requirements of CEQA is ‘scrupulously enforced.’” (*Id.*, at 24 [citations omitted].) Because the City did not do so here, the City must conduct such analysis now and recirculate the EIR to provide the public with an opportunity to comment on it.

#### **9. The Traffic Analysis Fails To Evaluate Neighborhood Intrusion In An Area Known To Experience Significant Traffic Volumes And Significant Impacts During Events**

Neighborhood cut-through traffic represents a significant problem in the area surrounding the stadium and other parts of Mission Valley. Residents of Mission Valley have witnessed the growing congestion and associated safety hazards, as traffic on major roadways in and around Mission Valley has worsened with development. Some past projects in Century City and elsewhere have failed to adequately address and mitigate impacts associated with these intrusions which in turn encourages neighborhood intrusion as drivers seek alternate routes.

Courts have long recognized the potential significance of past projects’ cumulative impacts. (See, e.g., *City of Antioch v. Pittsburg*, 187 Cal.App.3d 1325, 1337 (1986).

Moreover, the cumulative impacts of many projects may be (and often are) greater than the sum of the individual impacts of the various projects, and a failure to account for the cumulative effects of past projects or operations renders an EIR defective. *Environmental Protection Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 624–625; see also *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 (impacts may occur incrementally from a variety of sources).

Here, development of a larger stadium which anticipates an increase of 114 events per year, as well as future development anticipated on the balance of the stadium property, will significantly increase traffic impacts and attendant safety risks of neighborhood intrusion, as the creation of significant and unavoidable traffic impacts will induce more and more drivers to avoid congestion by traveling through residential neighborhoods.

#### **10. The EIR Fails To Analyze Impacts From Future Roadway Enhancements**

Figure 3-1 of the Draft EIR identifies an area along Friars Road, Mission Village Drive, and San Diego Mission Road as slated for Future Roadway Enhancements. These “enhancements” appear to be part and parcel of the proposed project, yet the impacts from them and their impacts on the transportation system are not analyzed. This constitutes improper piecemealing under CEQA. Just as the failure to analyze the redevelopment of the parking lots consistent with the projections in the CSAG report constitutes improper piecemealing. The TIA’s analysis, as well as all other impact areas, must be reanalyzed to include the impacts from the unstudied future roadway “enhancements.”

Thus, when the EIR states that the “[a] existing roadways facilities would remain the same in the Project conditions” and “[t]he Project would not change the existing roadway network,” it appears to be in error. (See EIR, at 4.10-67.)

#### **11. The EIR Does Not Analyze The Project Under The City’s Adopted Thresholds Of Significance**

While a lead agency has the discretion to choose thresholds and methodologies if this election is based on substantial evidence, the agency cannot deviate from an established threshold or methodology to minimize the significance of an impact. Here, the City has adopted a number of significance thresholds and methodologies, which the EIR even references. However, in numerous instances the EIR deviates from and fails to apply the City’s adopted thresholds, instead formulating its own performance standards or improperly focusing on an initial study checklist question. As a result, material information and analysis has been omitted. The public has a right to know the result of

analyses that incorporate the standard and established thresholds and methodologies under the City's adopted thresholds. Please complete a full analysis under the City's thresholds of significance.

**12. The EIR's Freeway Capacity Threshold Is Flawed And Not In Accord With Relevant Case Law**

The EIR adopts a threshold to evaluate freeway capacity that does not differentiate between acceptable and unacceptable baseline conditions. Per *Gray v. County of Madera* (2007) 167 Cal.App.4th 1099, 1122-1123, a lead agency must adopt a more sensitive threshold of significance when evaluating a project's impacts against a background of substandard conditions. The EIR and TIA provide that a significant impact to a freeway facility would occur if the project reduces v/c on a freeway segment operating at LOS E by more than 0.010 or speed by 1.0 mph or reduces v/c on a freeway segment operating at LOS F by 0.005 or speed by 0.5 mph. (Draft EIR, at 4.10-53 [Table 4.10-22].) The threshold must be more sensitive in undertaking the "worsening" analysis. The Draft EIR must be revised and recirculated to include an analysis of potential impacts when applying threshold of significant that is more sensitive given the background of substandard conditions.

**13. Construction Traffic Conclusions Are Not Supported By Substantial Evidence**

The EIR concludes that construction impacts are "not expected to significantly impact peak hour traffic conditions." (Draft EIR, p. 4.10-58.) This conclusion is not supported by the evidence presented in the EIR or the TIA. The Project construction period and demolition period when taken together will last at least four years and, on a daily basis, last as long as 12 hours. The EIR estimates that there would be 80 workers who would travel to the site per day and that only 26 works would travel during morning peak hours. (*Ibid.*) During demolition, it is anticipated that there would be 240 passenger car equivalent (PCE) trips per day. (TIA, at 6-43.) These numbers are remarkably low for a construction and demolition project of this size. When compared to the estimates for the construction of Farmers Field in Los Angeles or Levi's Stadium in Santa Clara, it is clear that the EIR's estimates are woefully deficient. (*See, e.g., Farmers Field DEIR, at IV.B.1-149*)<sup>20</sup> For example, Farmers Field estimated that the total number of haul trucks and concrete/delivery trucks, which are not even discussed in the City's EIR here, would typically range from about 160 truck trips a day (for about 37 months of the 48 month construction period) to about 575 truck trips a day (for about 11 months). These would be equivalent to about 23 PCE trips per hour and 83 PCE trips per hour,

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<sup>20</sup> Available at <http://planning.lacity.org/eir/ConventionCntr/DEIR/files/IV.B.1%20Transportation.pdf>.

respectively. (Farmer Field DEIR, at IV.B.1-149.) For the demolition effort at Candlestick in San Francisco, the EIR estimated that there would be 140 to 570 truck trips per day during the demolition phase.<sup>21</sup> (Candlestick EIR, at III.D-68.) Further, the EIR does not address whether there would be any lane closures, sidewalk closures, or other disruptions to the public right-of-way as part of the construction and demolition phases. This needs to be disclosed.

#### **14. The TIA Fails To Account For The Use Of Remote Parking Facilities**

The Project relies not only on parking on the premises, but also on remote lots. However, the TIA does not evaluate transportation impacts related to attendees traveling to or from these lots. The Draft EIR must be revised and recirculated to include an analysis of the potential impacts associated with attendees traveling to and from remote parking facilities. It does not appear that any analysis was done concerning where off-site attendees are parking. A game day survey of off-site parking lots, their availability, and the number of attendees parking there must be completed.

#### **15. The Related Project List Improperly Omits Numerous Projects**

The Related Project List appears to be woefully inadequate. As a result, the cumulative impacts of development of the new, bigger stadium and the substantial development occurring in Mission Valley and the greater San Diego area are understated.

As just one example, the EIR does not include the Grantville Focused Plan Amendment as a related project. Located immediately to the east of the Project site, the Grantville Focused Plan Amendment will substantially change the character of the exiting land uses by adding, among other things, over 8,000 new dwelling units. It was error not to consider this major influx of new residential development just to the east of the Project site.

Additionally, it appears that there are at least 9,000 apartments and condominiums in progress or under consideration that were not considered in the cumulative analysis. This includes dwelling units to be added as part of the large and under construction Civita project and the recently announced Riverwalk golf course. Per the attached article, local Mission Valley population is poised to increase by 150 percent. Neither the overly narrow related project list nor the growth factor applied account for this massive increase

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<sup>21</sup> Available at <http://www.sf-planning.org/modules/ShowDocument.aspx?documentid=284>, and incorporated in full to this comment letter by this reference.

in population immediately surrounding the Project site.<sup>22</sup> The Draft EIR must be revised and recirculated to include a more accurate Related Project List that includes, at a minimum, the Grantville Focused Plan Amendment and the at least 9,000 apartments and condominiums described above.

#### **IV. THE CITY DID NOT MEET CEQA'S REQUIREMENTS TO INCLUDE ALL FEASIBLE ALTERNATIVES AND MITIGATION MEASURES TO REDUCE SIGNIFICANT ENVIRONMENTAL IMPACTS**

##### **A. The Draft EIR Does Not Analyze A Reasonable Range Of Alternatives**

##### **1. CEQA Requires Lead Agency To Reject A Project If Feasible Alternatives Would Substantially Lessen Significant Environmental Impacts While Meeting Most Of The Project's Basic Objectives**

It is appropriate to include an alternative that would have provided a fully usable wildlife corridor along the east side of the Project which would have included a widened Murphy Creek Channel. The widening would be intended to provide for lower flow velocities during rains, less risk of channel failure, more absorption for dry weather flows, and more vegetation for cover in the channel for wildlife and to filter out pollutants. All alternatives should have taken a range of measures to avoid bird strikes. Unfortunately the DEIR has an insufficient set of meaningful alternatives which will be discussed in the following paragraphs.

CEQA states that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Resources Code § 21002; *see also* § 21002.1(d) (stating that a “lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project”); *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.) Lead agencies are therefore statutorily prohibited from approving a project unless and until the EIR can establish that all alternatives to the proposed project are infeasible.

Courts have interpreted this as “a ‘substantive mandate’ requiring public agencies to refrain from approving projects with significant environmental effects if ‘there are feasible alternatives or mitigation measures’ that can substantially lessen or avoid those effects.” *Cnty. of San Diego v. Grossmont-Cuyamaca Cmty. Coll. Dist.* (2006) 141 Cal.

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<sup>22</sup> Matthew Hose, *Mission Valley Keeps Getting More Roads—and More Traffic*; Voice of San Diego, (Dec. 15, 2014) available at <http://www.voiceofsandiego.org/all-narratives/growth-housing/mission-valley-keeps-getting-more-roads-and-more-traffic/>.

App. 4th 86, 105 (citing *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134). For example, in *Uphold Our Heritage v. Town of Woodside*, in which a preservationist group challenged the town's authorization of the demolition of a historically significant mansion, the court held that "unless and until it is properly established that the alternatives to demolition are not feasible—i.e., 'capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors' (§ 21061.1; CEQA Guidelines, § 15364)—the Town is prohibited from authorizing the demolition." (2007) 147 Cal.App. 4th 587, 603; see also *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App. 4th 1277, 1305 ("CEQA does not permit a lead agency to omit any discussion, analysis, or even mention of *any* alternatives that feasibly might reduce the environmental impact of a project on the *unanalyzed theory* that such an alternative *might not* prove to be environmentally superior to the project.").

An EIR must "describe a range of reasonable alternatives to the project. . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (CEQA Guidelines § 15126.6(a).) "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (*Id.*, at § 15126.6(b).)

The CEQA Guidelines provide that an EIR should identify the alternatives that the lead agency considered but rejected as infeasible during its scoping process, along with the reasons for its determination. (§15126.6(c).) Moreover the basis for a determination that an alternative is not feasible must be explained in meaningful detail. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404.) In selecting alternative sites to evaluate in an EIR, a lead agency is required to consider 1) site suitability, 2) economic viability, 3) available infrastructure, 4) general plan consistency; 5) regulatory limitations, 6) jurisdictional boundaries, and 7) potential to acquire an alternative project site. (CEQA Guidelines §15126.6(f)(1); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.) Further, the power of eminent domain to acquire property and access to public lands provides public agencies a broad range of feasible alternative sites. (*Goleta Valley, supra*, 52 Cal.3d at 574.) It is particularly important for projects with regional impacts to consider alternative sites. (CEQA Guidelines §15126.6(f)(1).)

A project alternative need not accomplish each and every objective of the proposed project. Rather, for an alternative to be valid, it need only accomplish *most* of the core objectives of the proposal. As the court in *Flanders Foundation v. City of*

*Carmel-by-the-Sea* stated, “[t]he entire purpose of the alternatives section in an EIR is to consider environmentally superior alternatives that would ‘accomplish most of the project objectives.’” (*Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App. 4th 603, 623 (citation omitted); *see also Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App. 4th 1059, 1089 [“The purpose of an EIR is *not* to identify alleged alternatives that meet few if any of the project's objectives so that these alleged alternatives may be readily eliminated. Since the purpose of an alternatives analysis is to allow the decisionmaker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts.”])

## **2. The EIR Analyzed An Improperly Narrow Range Of Alternatives**

The Draft EIR purports to analyze seven alternatives:

1. Stadium in Northwest of the Mission Valley site;
2. Major renovation of Qualcomm with an NFL team;
3. Major renovation of Qualcomm without an NFL team;
4. The Project with retention of Qualcomm;
5. Stadium in Northwest of the Mission Valley site with retention of Qualcomm;
6. No Project / No Build without NFL; and
7. No Project / No Build with NFL.

(Draft EIR, p. 8-12.) These alternatives are really broken down into two groups, a stadium on the Mission Valley site (Alternatives 1 through 5) or no project. Keeping the existing Qualcomm Stadium next to the new stadium is patently unreasonable giving the parking limitations on the Mission Valley site and should not have been considered feasible. It is not a real alternative.

Thus, the only real alternative considered was locating the stadium in the northwest corner of the site and this alternative, as discussed below, is in fact environmentally superior to the project and feasible. Essentially the range of alternatives are two. A stadium at Mission Valley and No Project. No alternative locations. No

alternative designs. No analysis of using the southern area of Mission Valley site (since this is where the unanalyzed mixed use development will go).

This is not a reasonable range of alternatives. The Draft EIR should have considered other alternatives in the design of the stadium, including purpose, size and capacity, alternative siting on the southern area of the Mission Valley site, demolishing Qualcomm Stadium (with the team playing in an alternative venue if the team is still in San Diego) and rebuilding at the same location on the site, alternative locations including Downtown.

**a. The Draft EIR Erroneously Failed To Analyze A Downtown Stadium Option**

The Draft EIR purports to analyze a Downtown Alternative but dismisses this alternative as infeasible without adequate consideration or explanation. The Draft EIR concludes, without any supporting explanation, that the Downtown Alternative “was eliminated from detailed study because it does not meet most of the project objectives and would not be environmentally superior to the Project due to additional land use, hazardous waste, circulation, and displacement impacts.” (Draft EIR, p. 8-9.)

This conclusion lacks substantial evidence and is based on the City’s predetermination to proceed with a project located at the existing Mission Valley site. As previously stated, the location of a new stadium on the Mission Valley site is inconsistent with the City zoning code, General Plan, and would result in the construction of a new stadium in a floodplain. Further, the Mission Valley location is above a contaminated groundwater plume that includes leaded and unleaded gasoline, gasoline additives, jet fuel, diesel, ethanol and transmix. Construction of a new stadium will increase the risks of further groundwater contamination and may place thousands of people in harm’s way due to the close proximity of the Kinder Morgan tank farm. Additionally, the Draft EIR fails to demonstrate that traffic would be worse if the project were located Downtown. A true comparison of the Downtown Alternative and the Project is not conducted in the Draft EIR and, therefore, the Draft EIR rejects the Downtown Alternative without substantial evidence.

Additionally, the Draft EIR rejected the Downtown Alternative and the accompanying Downtown Alternative with the Convention Center Expansion based on a conclusion that the Downtown Alternatives do not meet “most of the project objectives.” (Draft EIR, pp. 8-9,8-10.) The Draft EIR states that the Project objectives are the following:

8. Develop a sustainable LEED Gold sports/entertainment stadium.



9. Replace Qualcomm Stadium with a new stadium to minimize the City's long-term maintenance/operational obligations.
10. "Develop a new stadium on a site currently under contiguous City ownership with nearby access to multiple freeways, and adjacent to existing public transit and transit stations, existing utilities, and enhanced remote parking facilities to encourage mobility and modal shift."
11. Construct a fully operational stadium prior to the opening of the 2019 NFL football season.

(Draft EIR, p. 8-2.)

The Downtown Alternative has the potential to comply with these Project Objectives. However, the City specifically designed these objectives so narrowly that only the Mission Valley site had the potential to meet each and every one.

Nonetheless, despite the City stacking the deck against the Downtown Alternative, the Draft EIR rejects the Downtown Alternative because it purportedly does not meet objectives three and four. (Draft EIR, pp. 8-9.) As to these objectives, the Draft EIR claims as follows: "The site cannot be acquired or controlled by the City in the timeframe needed to provide a stadium for the 2019 NFL season..." (*Id.*) The Draft EIR reaches this conclusion based on the following conclusory statement: "[The Downtown Alternative] cannot be implemented within the required time frame due to potential delays resulting from property acquisition, environmental remediation, IAD relocation, and needed infrastructure improvements." (*Id.*) This conclusion is not supported by substantial evidence and fails to demonstrate why the Downtown Alternative could not be constructed by 2019 given the City's eminent domain power.

Of the 22 properties considered for the downtown location, only three properties are owned by private entities. Fifteen of these parcels are controlled by the City. Therefore, the Draft EIR lacks substantial evidence for its conclusion that a downtown alternative is not feasible due to lack of available property, especially in light of the fact that the Mission Valley site is partially controlled by the water utility.<sup>23</sup>

The Draft EIR also incorrectly states that there are no plans available for the Downtown Alternative. De Bartolo + Rimanic Design Studio developed stadium plans

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<sup>23</sup> [City Attorney Memorandum, Appraisal of Water Utility Property at Qualcomm Stadium, November 26, 2014.](#)

for a downtown option. These plans are publicly available and should be considered as an alternative in the Draft EIR.<sup>24</sup>

Moreover, the 2019 date is arbitrary and appears to be chosen solely for the purposes of excluding alternatives that involve the purchase of additional land and to meet the City's own deadline to place the Project on an election ballot. This is reinforced by project objective three, which limits possible sites for the stadium to properties that are currently under "contiguous City ownership." With these narrow project objectives in place, the only possible site available appears to be the Mission Valley site. As a result of the narrowly focused project objectives, the Draft EIR does not fully consider an offsite project alternative. Accordingly, the Draft EIR does not consider a reasonable range of alternatives. (*See Habitat and Watershed Caretakers v. City of Santa Cruz*, 213 Cal.App.4th 1277, 1305 (2013) [failure to evaluate "any" alternative capable of reducing significant project impacts an abuse of discretion because it subverted CEQA's information disclosure purposes].)

A side by side comparison of Project and the reasons the City rejected the Downtown Alternative reveals that the City's rejection of the Downtown Alternative is not based on substantial evidence. In many instances, the Downtown Alternative is environmentally superior to the project, including impacts to land use and hazardous waste.

#### DOWNTOWN ALTERNATIVE AND PROJECT COMPARISON

Reasons for Rejection	Downtown Alternative	The Project
Project Objective 3: "site currently under contiguous City ownership"	Site is not under contiguous city ownership. (Draft EIR, p. 8-9.) 15 of the 18 parcels are controlled by the City	Site is partially controlled by the water utility with special charter and code requirements. <sup>25</sup>
Project Objective 4: Development Schedule	Despite the City's eminent domain power, additional property cannot be acquired in to meet the City's development schedule. (Draft EIR, p. 8-9.)	Section 3.2 provides the development schedule which anticipates that construction would begin in December 2016. However, a vote will be required to approve the Stadium project and the City had intended that vote to be

<sup>24</sup> Downtown Stadium Renderings, available at [http://www.dbrds.com/Site/masterplanning\\_-\\_east\\_village\\_stadium.html](http://www.dbrds.com/Site/masterplanning_-_east_village_stadium.html).

<sup>25</sup> City Attorney Memorandum, Appraisal of Water Utility Property at Qualcomm Stadium, November 26, 2014.

Reasons for Rejection	Downtown Alternative	The Project
		scheduled for January 2016. <sup>3526</sup> Because a January 2016 vote has been abandoned <sup>27</sup> the Project Schedule will be necessarily delayed.
Land Use Impacts	“[A]lternative would require a zone change and amendment to the Downtown Community Plan.” (Draft EIR, p. 8-9.)	The Mission Valley site is zoned MVPD-MV-CV. This designation does not include stadium uses. (SDMC § 1514.0305(b); Table 1514-03J.) The Mission Valley site is designated Commercial-Recreation in the Mission Valley Community Plan. This designation does not include stadiums. (See Mission Valley Community Plan, at p. 49.) Mission Valley Site is in the middle of a floodplain, which is inconsistent with the General Plan. (SDMC Section 131.0520.)
Hazardous Waste	“7.75-acre lot has operated as a transit vehicle fueling and maintenance yard” and due to “elevated levels of petroleum contaminants and benzene” the site may be subject to further environmental remediation.” (Draft EIR, pp. 8-7, 8-9.) “Leaking fuel tanks have been	“The Project has the potential to create a significant hazard to the public and environment ... mainly because development activities have the potential to uncover contaminated soil and groundwater during site grading and excavation.” (Draft EIR, p. § 4.6-25:26.)

<sup>3526</sup> (Lori Weisberg, *Deadline Missed for Chargers Stadium Vote*, SAN DIEGO UNION TRIBUNE, (Sept. 11, 2015); Neil DeMause, *San Diego Missed Deadline for January Chargers Stadium Vote, Still Plenty of Other Months in the Year*, FIELD OF SCHEMES.COM, (Sept. 14, 2015); Lou Hirsh, Faulconer: *Chargers Stadium Vote Still Possible Despite Deadline’s Passing*, SAN DIEGO BUSINESS JOURNAL, (Sept. 11, 2015).)

<sup>27</sup> Roger Showley & Lori Weisberg, “Will Missed Deadline Hurt Stadium Effort?” SAN DIEGO UNION-TRIBUNE (Sept. 6, 2015), available at <http://www.sandiegouniontribune.com/news/2015/sep/06/missed-chargers-stadium-deadline-no-surprise/>.

Reasons for Rejection	Downtown Alternative	The Project
	<p>removed from the site, and a combined total of 3,030 cubic feet of contaminated soil was removed from the site in 1993 and 1997.” (<i>Id.</i>)</p>	<p>The Mission Valley site also borders the Kinder Morgan Energy Partners Mission Valley Terminal which has accidentally released “200,000 gallons of gasoline into the soils and groundwater... including land beneath the Project site” (Draft EIR, p. 4.6-8.) Stadium has been now moved to be closer to an larger tank farm which will expose stadium patrons, players and workers to increased hazards from explosion and fire.</p>
Circulation	<p>“This alternative would provide a limited parking lot along the east side of 12th Avenue but would also result in the loss of a full block of parking (12th Avenue/K Street/14<sup>th</sup> Avenue/Imperial Avenue) that is currently used for Petco Park.” Draft EIR asserts that this alternative “require[s] additional improvements in the rail system, specifically high-capacity station platforms as exists at the Project site, particularly given the parking spaces that would be lost through stadium development” but does not specify how much parking is lost. (Draft EIR, p. 8-7.)</p>	<p>Parking is already inadequate at Qualcomm. The Project would reduce permanent parking further. Implementation of the River Park Master Plan will reduce parking to 13,860 spaces. The Draft EIR states that up to 3,000 parking spaces are lost every game day due to special event tents, tailgating. etc. Therefore, the stadium is anticipated to only provide 10,000 parking spots for 72,000 attendees. (Draft EIR, p. 3-2; Table 3-1.)</p>

**B. Proposed Project Must Be Rejected Because Other Feasible Alternatives Would Substantially Lessen Environmental Impacts While Meeting Most Of The Project Objectives**

**1. The Project Itself Does Not Comply With The Narrowly Drawn Objectives Because The Mission Valley Site Is Partially Under The Control Of The Water Utility, Which Has Unique Charter And Code Requirements**

The third Project Objective is to “[d]evelop a new stadium on a site currently under contiguous City ownership...” (Draft EIR, pp. 8-9,8-10.)

The Draft EIR fails to disclose the fact that the San Diego Water Utility (“Water Utility”) actually controls approximately half of Mission Valley site. The Water Utility is entitled to receive fair market value for the sale of the Mission Valley site and rent and revenue for the operation of Qualcomm Stadium.<sup>28</sup>

By way of further background, in 1904, the Mission Valley site was acquired for water utilities purposes as part of the acquisition of the Lake Hodges Reservoir. From 1966 to 2005, over the course of a 40 year lease with the San Diego Stadium Authority, which was terminated in 1995 in anticipation of issuing new bonds, the Water Utility received \$15,000 per year for the use of its land. In 2014, the Water Utility discovered that since 2005 it was no longer receiving rent for its property. Accordingly, the San Diego Public Utilities Department informed the City that a new appraisal must be done to determine the fair market value to be paid to the Water Utility for rent.

In 2014, the San Diego City Attorney found that “the Water Fund may only be used for construction, operation, and maintenance of the water system. The water utility may not support or subsidize the operation of Qualcomm Stadium because there is no nexus between the stadium and providing water service to City customers.”<sup>29</sup> Therefore, the City Attorney concluded that the City could not rely on a 2007 appraisal which characterized the Water Utility as a co-owner and passive investor in Qualcomm Stadium.

The Draft EIR does not disclose the limitations of the Mission Valley site based on Water Utility ownership. Water funds may only be used for purposes related to the construction, operation, and maintenance of the City’s water system. (San Diego Charter § 53.) Accordingly, the City Attorney has concluded that “[t]o help ensure the water

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<sup>28</sup> City Attorney Memorandum, Appraisal of Water Utility Property at Qualcomm Stadium, November 26, 2014. City Attorney Memorandum Lease and Potential Sale of Sikes Adobe Property, May 13, 2005.

<sup>29</sup> City Attorney Memorandum, Appraisal of Water Utility Property at Qualcomm Stadium, November 26, 2014.

utility has sufficient revenue to accomplish its mission, the water utility must receive fair market value for the use or sale of its property, even if the property is being used or purchased by another City department.”<sup>30</sup> Further, the City attorney has explained to the City Council that City’s water bond covenants, conditions of obtaining public financing of capital improvements to the water system, indicate fair market value must be determined upon the sale, lease, or other disposition of water utility property, through an arms-length transaction.<sup>31</sup> Any further limitations on this site by virtue of the water utility control must also be disclosed.

Since the Water Utility owns half the site and is entitled to fair market value for its ownership interest, the Draft EIR incorrectly states that the Project complies with the Project Objectives. Accordingly, the Draft EIR fails as an informational document in this regard.

**2. Alternative 1 - Qualcomm Stadium Site Northwest, Is The Environmentally Superior Alternative And It Meets The Project Objectives As Well As The Project**

Alternative 1 is the same as the Project except that the stadium would be built in the northwest corner of the Mission Valley site. The Draft EIR explains that Alternative 1 would reduce impacts associated with biological resources, hazardous materials/human health/public safety, hydrology and water quality and land use. (Draft EIR, pp. 8-14.) Overall, the impacts associated with Alternative 1 are less or similar to the Project in all resource areas with the exception of traffic. (*Id.*, at 8-13.) As shown on Table 8-2 of the Draft EIR, “Project Alternatives Impact Summary”, Alternative 1 also has less or similar impacts than the Project.

Despite having lesser/similar impacts than the Project in all resource areas, the Draft EIR attempts to distinguish Alternative 1 by asserting that traffic impacts associated with Alternative 1 are greater than the Project because locating the stadium in the northwest corner of the property would displace two access gates, the Marquee Gate and Gate 4. (*Id.*, at 8-21.) The Draft EIR concludes that “this alternative would have greater transportation/traffic impacts than the Project as two access points would be required to be displaced by the stadium and would require relocation.” (*Id.*) However, the Draft EIR fails to consider whether the relocation of the two access gates would mitigate impacts associated with the removal of the two access gates. If the two access gate can be relocated, it is likely that the impacts associated with Alternative 1 are less or similar to

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

the Project in all resource areas, including traffic. Accordingly, the City should reevaluate Alternative 1 as the preferred alternative and recirculate the Draft EIR.

Selection of Alternative 1 would also avoid the significant impact of locating the stadium “within approximately 750 feet of the [Kinder Morgan]” tank farm. (Draft EIR, p. 8-19.) The Draft EIR explains that “the existing Qualcomm Stadium structure is approximately 1,450 feet from the center of the southern portion of the [Kinder Morgan tank farm] and 1,400 feet from the edge of the nearest storage tank. In comparison, at its closest point, the new stadium structure would be approximately 600 feet from the center of the southern portion of the [Kinder Morgan tank farm] and 550 feet from the edge of the nearest storage tank.” (Draft EIR, p. 4.6-33.) Therefore, the Project would locate the new stadium significantly closer to the tank farm, thus exposing the occupants of the stadium to a greater risk in the event of an explosion. The Draft EIR references a 2014 City of Carson study of pool fires and flammable vapors for gasoline storage, which found that hazards from such fires “may potentially extend out to 1,500 or more feet from a storage tank release.” (Draft EIR, p. 4.6-33.) The Draft EIR does not explain how the City of Carson study applies to the Kinder Morgan tank farm, but nonetheless concludes that the closer stadium location creates a significant and unavoidable impact. (Draft EIR, p. 4.6-34.)

In contrast to the Project, the Draft EIR explains that under Alternative 1, “the new stadium and users inside and adjacent to the stadium would be located approximately 1,800 feet from the KMEP MVT.” (Draft EIR, p. 8-19.) Alternative 1 would locate the stadium outside of the 1,500 foot range identified by the City of Carson. Therefore, the Draft EIR demonstrates that Alternative 1 should be selected as the Project to avoid or mitigate a known significant impact.

Further, relocating the stadium to northeast corner of the Mission Valley site places a significant obstacle in a wildlife corridor and will cause greater impacts to wildlife movement than Alternative 1. Murphy Canyon Creek is located along the western border of the Mission Valley site and runs to the San Diego river to the south. (Draft EIR, Biological Technical Report, Figure 2.) The Biological Technical Report, Appendix C of the Draft EIR, states that “Murphy Canyon Creek functions primarily as “stepping stone” for avian and bat species to travel between the San Diego River MHPA and larger fragments of MHPA...” (Draft EIR, Biological Technical Report, p. 51.) Further “Murphy Canyon Creek likely serve as stopover habitat or stepping stone corridors for this broad movement of migrating birds. Individuals stopping over in the BSA may winter, forage, or nest in these riparian areas or continue to migrate through the landscape.” (*Id.*) The Draft EIR finds that the Project would result in construction and operation-related indirect impacts to wildlife movement and has required mitigation measures to reduce these impacts. (Draft EIR, p. 4.2-51.) Alternative 1 would locate the

stadium on the corner of the property and would avoid impacts on Murphy Canyon Creek and wildlife corridors.

The Draft EIR plainly shows that development of the northwest corner involves lesser impacts to biological resources, hazardous materials/human health/public safety, hydrology and water quality and land use. (Draft EIR, pp. 8-14.) Nonetheless, in an effort to preserve the Mission Valley site for future development, the City has not designated Alternative 1, the alternative with the least environmental impacts, as the environmentally superior alternative. However, the selection of the Project as the environmental superior alternative is simply not supported by substantial evidence.

### **3. Alternative 2 Also Meets Most Of The Project Objectives And Reduces Significant Environmental Impacts**

Alternative 2 is a “Major Renovation of Qualcomm Stadium with an NFL Team.” (Draft EIR, p. 8-23.) Under this alternative, Qualcomm would be renovated to update the interior to provide a “modern NFL stadium” similar to recent NFL stadium projects in Chicago, Kansas City, and Green Bay. (*Id.*)

The Draft EIR rejects this alternative after finding that it “does not meet most of the Project’s objectives.” (*Id.*) However, the Draft EIR did not provide significant analysis as to why this alternative does not meet the Project Objectives. Rather it appears that the draft EIR only analyzed Project Objective number 4, which is to “[c]onstruct a fully operational stadium prior to the opening of the 2019 NFL football season and without displacing current NFL football games off-site during construction off-site.” (Draft EIR, p. 8-2.) The Draft EIR provides the following conclusory analysis of Alternative 2 and Project Objective 4:

This alternative does not meet the project objective of avoiding any displacement of existing Qualcomm Stadium events during Project construction because there would be no feasible local alternative venue for the NFL, Aztecs, or bowl games during the two-to-three-year construction timeframe. Many of the systems and building features would be less efficient, and this Alternative would not minimize the City’s long term maintenance and operational obligations.

(Draft EIR, p.8-23.)

Since no analysis is provided as to any other project objectives, we assume that the sole reason the City has rejected Alternative 2 is because the Chargers may be required to play a number of games offsite during renovation of Qualcomm. This is an artificial reason for rejecting an alternative that otherwise is environmentally superior. Moreover,



this alternative can be designed to accommodate NFL games and other events so that construction does not displace scheduled events. The Draft EIR cites to the recent renovation projects in Kansas City and Green Bay. However, the Draft EIR does not disclose the fact that when these stadium renovation projects were undertaken, the Chiefs and Packers were not displaced by construction activities. In the case of the Green Bay Packers, the team continued to play at Lambeau Field during the 2001 and 2002 seasons, including, in both cases, both regular season and postseason games, despite extensive renovations from 2001 to 2003, which added more than 12,000 additional seats, luxury boxes, a hall of fame museum, new restaurants and special events areas, training facilities and a gymnasium for players, new lighting and sound systems, a new scoreboard, and modernized facilities for the opposing team and the press.<sup>32</sup> Likewise, the Kansas City Chiefs continued to play at Arrowhead Field between October 2007 and the end of the 2009 season, during which time similarly extensive renovations were underway.<sup>33</sup>

Even if the City insists on developing a renovation alternative that would displace regularly schedule events, including NFL games, it remains feasible for displaced events to be held in an interim location until construction is complete. In 2002, because Soldier Field was undergoing a renovation project, the Chicago Bears played all of their home games at Memorial Stadium at the University of Illinois.<sup>34</sup> Therefore, given the NFL's prior approval of the use of temporary sites for home games, the City's rejection of Alternative 2 is arbitrary.

The Draft EIR states that Alternative 2 has lesser impacts than the Project in the following twelve resource areas: (1) Air Quality and Odor, (2) Biological Resources, (3) Geology and Soils, (4) Hazardous Materials, (5) Historical Resources, (6) Land Use, (7) Traffic, (8) Noise, (9) Paleontological Resources, (10) Public Utilities, (11) Visual Effects and (12) Cumulative Impacts. (Draft EIR, p. 8-13.) Further, the Draft EIR states that implementation of Alternative 2 would avoid impacts to the following seven resource areas: (1) Air Quality and Odor, (2) Biological Resources, (3) Hazardous Materials/Human Health/Public Safety, (4) Historical Resources, (5) Land Use, (6) Noise and (7) Visual Effects and Neighborhood Character. (Draft EIR, p. 8-23.) In

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<sup>32</sup> Lambeau Field Redevelopment, Turner Construction, available at <http://www.turnerconstruction.com/experience/project/1DC/lambeau-field-redevelopment>; "Behind Vick, Falcons End Pack's Home Playoff Rule," ESPN (Jan. 5, 2003), available at <http://espn.go.com/nfl/recap?gameId=230104009>.

<sup>33</sup> See, e.g., Chris Thorman, "Previewing the Kansas City Chiefs 2009 Schedule: Week 2," SB Nation: Arrowhead Pride (June 22, 2009), available at <http://www.arrowheadpride.com/2009/6/22/920935/previewing-the-kansas-city-chiefs>.

<sup>34</sup> 2002 Chicago Bears, Chicago Bears History, available at <http://www.bearshistory.com/seasons/2002chicagobears.aspx>; see also 2002 Chicago Bears season, available at <http://www.bearshistory.com/seasons/2002chicagobears.aspx>.

contrast, the Draft EIR states that Alternative 2 has greater impacts in the following three resource areas: (1) Energy, (2) Hydrology and Water Quality and (3) Greenhouse Gas Emission.

Therefore, it appears that this alternative is environmentally superior to the Project and the City's rejection of this alternative is unreasonable and without substantial evidence.

#### **4. Of All The Analyzed Alternatives, The Proposed Project Appears To Be The Worst Option For The Environment**

The Draft EIR's rejection of all alternatives is not supported by substantial evidence given that the Project appears to have the greatest impact on the environment.

When the Project's impacts are compared both to Alternative 1 (new stadium in Northwest corner of the site), Alternatives 2 and 3 (renovation of existing stadium), and Alternatives 4a and 4b (two stadiums in Mission Valley), it is clear that the Project is the most environmentally impactful.

As discussed above, the Draft EIR provides no evidence, let alone substantial evidence, for the City to make the necessary findings to reject either Alternative 1 or Alternative 2/3. These findings are that the alternatives are infeasible. Pub. Resources Code, § 21081(a)(1)-(3). Based on the Draft EIR, there appears to be no basis for finding that these alternatives are infeasible.

While an agency may reject an alternative as infeasible because, for example, it does not meet project objectives, there is no substantial evidence in the EIR that the alternatives would not meet the project objectives. As discussed above, Alternative 1, for example, meets the project objectives to the exact same extent that the proposed Project does. Similarly, Alternatives 2/3 are found to meet most of the Project's objectives in the EIR, which is the basis on which they are included. Thus, if the City intends to approve the Project despite the fact that the EIR confirms that three of the alternatives meet the Project's objectives and reduce the Project's significant impacts, it cannot do so on the grounds that they do not meet the Project's objectives.

Similarly, there do not appear to be an "[s]pecific economic, legal, social, technological, or other considerations" that would "make infeasible...project alternatives identified in the...EIR." (CEQA Guidelines, § 15091(a)(3).) Alternative 1 is essentially the same as the proposed Project and is environmentally superior. The only difference is the location on the site, which location ameliorates all Project impacts. The only possible basis for rejecting it is that it would be in conflict with future redevelopment opportunities for the site. The City, however, cannot rely on this as a reason for rejecting

Alternative 1 because the City has professed to have no such plans. Otherwise, of course, such plans would have had to have been analyzed as part of this Draft EIR. They were not, which we believe was in error. Similarly, Alternative 2/3 would also be environmentally superior and there are no bases for finding them infeasible under section 15091 of the CEQA Guidelines.

Given these deficiencies, we request that the City revise and recirculate the Draft EIR, with a detailed alternative analysis that addresses the issues raised herein and fully analyzes a reasonable range of offsite alternatives. We request that the City hold multiple public workshops to gather public feedback about what would constitute a reasonable range of alternatives. We request that the City reject the proposed project and select Alternative 1 or Alternatives 2/3, or select another newly identified offsite alternatives, as a feasible alternative that reduces or eliminates significant environmental impacts while meeting most of the project objectives, or, if not, an explanation for why a failure to do so complies with CEQA.

**V. THE CITY FAILED TO PROVIDE ADEQUATE NOTICE TO THE PUBLIC AND OTHER AGENCIES, WHICH IS PREJUDICIAL**

**A. The City Failed To Distribute The NOP To All Required Agencies**

Lead agencies are obligated to send all public agencies with authority over certain aspects of the project or resources affected by the project a copy of the Notice Of Preparation (“NOP”). This notice must be sent to each of these agencies, called “responsible agencies,” as well as each trustee agency and federal agency that needs to approve or fund the project. (Pub. Resources Code § 21080.4(a); CEQA Guidelines § 15082(a)). A “responsible agency” is an agency that has some discretionary responsibility for carrying out or approving a project. (Pub. Resources Code § 21069; CEQA Guidelines § 15381.)

Under CEQA, if the lead agency determines an EIR is required, it must send notice to each responsible agency. (Pub. Resources Code § 21080.4(a).) Once notice is received, each responsible agency “shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency . . . and which, pursuant to the requirements of this division, shall be included in the environmental impact report.” (Pub. Resources Code § 21080.4(a).) The CEQA Guidelines also require that a responsible agency provide detail about the scope and content of environmental information that “must be included in the draft EIR.” (CEQA Guidelines § 15082(b).)

Further, the City must provide information about the various relevant responsible agencies in the Draft EIR. (CEQA Guidelines § 15096(b)(2).) The Draft EIR may

require revision or expansion to conform to the responses from the responsible agency. (CEQA Guidelines § 15082(a)(4); *see also Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10 Cal.App.4th 908, 922 [finding that lead agencies have a duty to produce comprehensive environmental documents].)

It appears that the City has not notified all potential responsible agencies, based on a review of the distribution list for the NOP included on the City's website. In failing to do so, the City has rendered it impossible to gather essential information from responsible agencies. Without this information, the Draft EIR fails as an information document for the public and decision makers.

Specifically, the following agencies appear to have been omitted from the list:

- Federal Agencies:
  - U.S. Army Corps of Engineers, because the site is located in a flood zone and is proximate to jurisdictional waters (the Draft EIR identifies Murphy Canyon Creek and the San Diego River as jurisdictional waters under the Army Corps' authority, which highlights the critical error in not giving the Army Corps notice of this major undertaking);
  - U.S. Fish and Wildlife Service, because the site is proximate to the San Diego River, meaning that federal approvals are required for any impacts to species listed as threatened or endangered; (the Draft EIR identified a number of species listed under the federal Endangered Species Act that could be adversely effected by the Project, making the failure to notify the U.S. Fish and Wildlife Service as the applicable responsible agency even more problematic); and
  - The Federal Aviation Administration ("FAA"), because the Project's height and proximity to the Montgomery Field Airport render it of potential concern for airplanes using the field; (under the Draft EIR, the FAA's approval of the Project is required by mitigation measure HAZ-4, stating that "Project development shall not proceed until a 'Determination of No Hazard to Air Navigation' is made by the FAA," rendering the failure to notify the FAA a fundamental flaw in the NOP process.)
- Local Agencies:
  - San Diego County Regional Airport Authority, because of the project's proximity to the Montgomery Field Airport; and

- The San Diego Public Utilities Department, for which formal notification is required, even though it is an owner of a portion of the site.

We request that the City provide a complete list of all the agencies that were provided the NOP. As required by CEQA Guidelines § 15082(a)(3), please provide evidence of the City's "use [of] either certified mail or any other method of transmittal that provides it with a record that the notice was received." For the five agencies listed above, if the City does not have evidence of providing the NOP in a timely manner, we request a response for how such an omission can comply with CEQA and an explanation for why the NOP was not revised and recirculated following our NOP comments on this issue.

**B. The NOP Provided Inadequate Detail For The Public And Responsible Agencies**

This NOP failed to identify key facts, including such basic issues as where on the Project site the stadium will be constructed, when demolition of the existing stadium will occur or whether the NFL games will need to be in an interim facility during demolition and construction, and, if so, where. The NOP neglected to discuss the City's obligations to the Chargers with respect to the existing lease, as well as whether the City must provide fully operational facilities to the team during construction. The Project proposes that the new stadium be built while the old stadium continues to operate. This information needed to be included in the NOP, because it would have affected the ability of agencies and the public to comment on the additional displaced parking which will occur during the period when both stadiums are standing or under construction. Given these issues, it is all the more troubling that the NOP did not describe how parking will be provided during the period when both stadiums are standing or if a parking structure will be constructed for the new stadium. Furthermore, the NOP makes no mention of the fact that the Public Utilities Department owns a major portion of the site and must obtain full market value for the property, which may not be met by parking alone.

Moreover, the Draft EIR does not consider offsite alternatives, rather it summarily dismisses the Downtown Alternative as not meeting the City's self-imposed time deadline and does not identify any other locations. Finally, the NOP completely omitted any discussion of contamination at the Project site, even though the City is currently involved in litigation against the adjacent property owner arising out of contamination that migrated from the adjacent property onto the Project site, causing harm to soil and groundwater. These omissions prevented the public and responsible agencies from being able to meaningfully comment on critical issues before the City released the Draft EIR.

We request a response for why the NOP was not revised based on our earlier NOP comments.

**C. The NOP Did Not Allow Meaningful Review Because It Failed To Describe Potential Environmental Impacts**

The NOP failed to meet the requirement under CEQA that a lead agency provide enough information about the Project and its potential environmental effects to enable all relevant responsible agencies to meaningfully respond. (*Id.*, § 15082(a)(1).) Rather than identify potential environmental effects, as required, the NOP simply identifies “issues areas [that] have been identified for additional study” under broad topics such as “Air Quality” and “Historical Resources.” Such issue areas act only as a recitation of the categories typically included in an EIR, rather than identifying actual potential environmental impacts, as required by statute. The California Department of Fish and Wildlife (“CDFW”) has stated in its NOP comment letter that the project may significantly impact biological resources; despite this, the NOP failed to even include “Biological Resources” on its issues list and the U.S. Fish and Wildlife Service appears not even to have received notice of the Project. CDFW’s NOP comments raised a diverse, detailed and significant number of environmental issues that needed be addressed in the Draft EIR. Many of these issues require complex modeling and studies, including but not limited to local health risks, traffic congestion, noise effects, air pollutants, and impacts to biological resources. In each case, however, the Draft EIR provides only cursory analysis of the issues raised by the comments, if it addresses them at all.

The detailed July 21, 2015 comments from CDFW and the California Department of Transportation (“Caltrans”) deserve particular attention as prime exemplars of the types of issues that needed to be carefully examined in the Draft EIR, but were not. The comments relate to CDFW’s jurisdiction under of the California Endangered Species Act over the natural resources that would be affected by the Project. CDFW was concerned that the NOP did not discuss Biological Resources for study in the EIR and requested that the EIR include “an in-depth analysis of impacts to biological resources.” CDFW also made a number of specific comments, including the following, which are not addressed in the Draft EIR; these recommendations included:

- Providing a reasonable range of alternatives in the EIR that look at options to “expand/maximize” open space. (CDFW Comment Letter, pp. 5-6.) The Draft EIR failed to consider alternatives to expand open space, convert the site to a public park or simply not building the stadium at all. Specifically the Draft EIR should have fully evaluated a downtown project an alternative to the Mission Valley site. A downtown stadium, either stand alone, or in conjunction with a convention center has been widely discussed

and even requested by the public, and would have allowed the current site to be converted to parkland.<sup>35</sup>

- Advising that the project “should consider returning Murphy Canyon Creek to a more natural configuration, and allowing the San Diego River channel to occupy a greater area.” (*Id.*, pp. 3-4.) The Draft EIR also failed to address this comment or include this option as part of an alternative. The Draft EIR also failed to address this comment or include this option as part of an alternative. In short, CDFW’s expert advice was fully ignored. The City should have analyzed this option as part of the Project Description directly or as reasonably foreseeable alternative.

Caltrans also submitted a comment letter, on June 29, 2015. Caltrans stated that a “traffic impact study (TIS) is necessary to determine this proposed project’s near-term and long-term impacts to the State facilities—existing and proposed—and to propose appropriate mitigation measures.” The City’s response to these comments was manifestly insufficient: Section 4.10 of the Draft EIR does not include a study of the Project’s near-term operations. Rather, the Draft EIR is based on traffic counts from July 2015, which could not include the present and near-term operation of the stadium on NFL game days. The first pre-season NFL game at Qualcomm stadium did not occur until after the City had released the Draft EIR, while the first regular-season game was not scheduled until September 13, more than halfway through the comment period. If the City did not artificially compress the timeframe for preparation of the Draft EIR, the City could have had real baseline traffic information from a real NFL game and actually determine what the potential impacts would be from a new stadium. The present and ongoing regular season should have been examined in the Draft EIR as part of the near term operation of the Project, as suggested by Caltrans. Without such analysis, the Draft EIR cannot make any claim to providing the necessary traffic-flow data necessary for informed decision-making about the Project.

We request that the City discontinue the current Draft EIR process and recirculate an updated NOP to all responsible agencies as described above. The updated NOP should be revised to include an accurate and complete project description, along with a detailed description of the Project’s potential environmental impacts, to enable responsible agencies to provide meaningful comments on the proposed project. After the

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<sup>35</sup> R. Stickney, Chargers Refused Downtown Stadium Offer: Ex-CSAG Spokesman; NBC SAN DIEGO (Aug. 13, 2015), *available at* <http://www.nbcsandiego.com/news/local/Chargers-Downtown-Stadium-San-Diego-321780102.html>; Cal Setar, NFL RUMORS: Chargers Tell San Diego ‘No Thanks’ on Expediting New Downtown Stadium Process, HNGN.COM, (Jul. 14, 2015), *available at* <http://www.hngn.com/articles/109350/20150714/nfl-rumors-chargers-tell-san-diego-no-thanks-on-expediting-new-downtown-stadium-process.htm>; Dan McSwain, Chargers Downtown Stadium Not Dead, SAN DIEGO UNION TRIBUNE (March 21, 2015), *available at*, <http://www.sandiegouniontribune.com/news/2015/mar/21/chargers-downtown-stadium-not-dead/>.

NOP is recirculated, the City must recirculate the Draft EIR. Additionally, the City should incorporate all responsible agency comments into a revised and updated Draft EIR for recirculation.

Moreover, the Draft EIR failed to respond to the numerous comments submitted by the public including our firm. Given the failure of the Draft EIR to respond to the comments submitted by our firm, we respectfully request that the comments submitted by our firm be treated as comments on the EIR and be responded to by the City and a revised EIR be recirculated.

## **VI. THE PROJECT DESCRIPTION IS LEGALLY DEFICIENT**

CEQA requires that the nature and objectives of a project be disclosed so that the lead agency may fully evaluate the “the whole of an action” which will have a significant effect on the environment. (CEQA Guidelines §§ 15124, 15378(a).) “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) The project description in the Draft EIR fails to meet the statutory requirements of CEQA because it fails to include reasonably foreseeable development and fails to consider all aspects of the Project. Additionally, the development schedule is not attainable and the Project objectives are unreasonably narrow. For these reasons, the Draft EIR is insufficient as an informational document.

### **A. The Draft EIR Fails To Consider Reasonable Foreseeable Development**

The Draft EIR does not review the inevitable commercial and residential mixed use development which the Mayor’s own advisory group, the Citizens’ Stadium Advisory Group (CSAG), foresees and suggests. This development is a reasonably foreseeable part of the Project and must be considered.

The CEQA Guidelines define “Project” broadly as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines § 15378).

If an EIR does not consider the whole of the action “the environmental considerations [may] become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.) The Court of Appeal has considered CEQAs prohibition of such “piecemealing” many times.



## **B. CEQA Requires EIR To Consider “Whole Of The Action”**

CEQA requires an analysis of the “whole of an action, which has the potential for physical impact on the environment.” CEQA Guidelines, § 15037. The determination of the scope of a project is a question of law. (*See Communities for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, 83 (applying *de novo* review to question of project scope).)

In the seminal case of *Laurel Heights Improvement Assn. v. Regents of University of California*, (1998) 47 Cal. 3d 376, the California Supreme Court set aside an EIR for failing to analyze the impacts of the reasonably foreseeable multiphase project. That case involved a plan by the University of California to move its School of Pharmacy units to a new building, of which only about one-third was initially available. (*Id.* at 393.) The EIR acknowledged that the school would eventually occupy the remainder of the building, but the EIR only discussed the environmental effects relating to the initial move. (*Id.* at 396.) The court concluded that the EIR should have analyzed both phases. (*Id.* at 399.) In so holding, the court announced the following test: “[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Id.* at 396.)

## **C. Mixed-Use Development Of Site Is A Reasonably Foreseeable Consequence Of The Stadium Project And Should Be Evaluated By The EIR**

Multiple reports and proposals, including the Mayor’s task force, link the stadium (and other stadiums) to a potential mixed-use development (e.g., residences, commercial, hotel, etc.) (the “Mixed-Use Development”). The failure to include in the Draft EIR an analysis of such a reasonably foreseeable element of the stadium development is a significant flaw in the Draft EIR that needs to be addressed in a recirculated EIR. Even though no formal applications for the Mixed-Use Development have been proposed at this time, the following demonstrates that it is a reasonably foreseeable consequence of the Project and has been sufficiently described to allow meaningful analysis in the EIR.

### **1. Citizens’ Stadium Advisory Group (CSAG) Report**

The Mayor of San Diego commissioned CSAG to study the feasibility of building a new stadium in San Diego without taxpayer support. CSAG issued its findings in May 2015, a month before the NOP was issued. The close proximity of timing between the Report being issued and the NOP supports a conclusion that the CSAG Report provides a reasonable representation of the project scope.

CSAG advised the City to include, as a key component of the project's financing, the \$225 million sale of 75 acres of land surrounding the new stadium to a private developer for a mixed-use development.

In addition to using the \$225 million sale price as roughly 16% of the financing for the stadium development itself, "CSAG recommends [that] the tax revenue from the 75-acre development should pay for community benefits (including parks, additional parking, road and transit upgrades), and to help the City and County recoup its [sic] capital costs." CSAG Site Selection and Financing Plan at p. 2. CSAG estimates that the tax revenue would "conservatively yield \$5.5 million annually, resulting in roughly \$116 million in net present value." (*Id.* at p. 15.) The Mixed-Use Development would include "3,300 housing units, 1 million square feet of commercial space, 175,000 square feet of retail space, and a 500-room hotel." (*Id.*) Given that the Mayor's own task force has proposed the Mixed Use development it defies any credibility to have failed to include the Mixed use Development as a foreseeable element of the Project. This issue should be fully addressed by the EIR.

## **2. Councilman Sherman's Proposal**

San Diego City Councilman Scott Sherman has also announced a development plan in conjunction with a new stadium, calling the mixed-use development a chance to create a new "catalyst for economic development . . . [that can] be an overall economic engine and amenity . . . in the City of San Diego."<sup>36</sup> Clearly, additional development at the Mission Valley site has been and is contemplated. Such development should have been included as part of the environmental analysis in the Draft EIR. Under any test, such development is reasonably foreseeable.

## **3. Relocating Stadium To Northeast Corner Of Site Removes A Key Obstacle For The Mixed Use Development**

One of the obvious key reasons for selecting the northeast or northwest corner of the Mission Valley site for the stadium location was to free up the south area of the property for a mixed use development. The southern area of the Mission Valley site is actually owned by the City's municipal water utility. Building the new stadium in the northeast or northwest corner of property removes a key obstacle to the future Mixed-Use Development project, meaning the EIR should analyze the reasonably foreseeable consequences. See *California Unions for Reliable Energy v. Mojave Desert Air Quality Management District*, 178 Cal. App. 4th 1225, 1241, 1242 (2009) (EIR failed to analyze not-yet-planned road paving project because air district's approval "was the first step in a

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<sup>36</sup> See City of San Diego, *Councilmember Sherman Releases Stadium Options*, YOUTUBE (April 2, 2015), [https://www.youtube.com/watch?v=P\\_td8p9vPXU](https://www.youtube.com/watch?v=P_td8p9vPXU).

process of obtaining governmental approval for such road paving”). A public agency’s decision to authorize an activity that starts in motion a chain of events that will result in foreseeable impacts on the physical environment is treated as approval of a project subject to CEQA. *See, e.g., San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.*, 139 Cal. App. 4th 1356, 1379 (2006) (school consolidation is project on basis of potential traffic and parking impacts).

Courts have required EIRs for projects which alone are limited, but that function as “catalyst” for foreseeable future development. In *City of Antioch v. City Council of the City of Pittsburg* (1986) 232 Cal.Rprt. 507, the court agreed that the city violated CEQA because the city had approved construction of a roadway and appurtenant utilities on the basis of a negative declaration that the project was without significant environmental impact rather than on the basis of an EIR. The court noted that the reason the city approved the project was “to provide a catalyst for future development.” (*Id.*, at 514.) In this case, the new stadium project would catalyze additional development because by their nature modern stadiums include mixed use development and amenities and features which are not included in the City’s proposal but were sufficiently foreseeable to be suggested by the Mayor’s advisory group.

#### **4. Mixed-Use Development Would Substantially Impact The Environment And Its Omission From The Analysis Renders The Draft EIR Severely Flawed**

According to the CSAG report, the development would include “a low- to mid-rise mixed-use village concept consisting of 3,300 housing units, 1 million square feet of commercial space, 175,000 square feet of retail space, and a 500-room hotel.” (CSAG Report, p. 15.)<sup>37</sup> In addition, the CSAG report also contemplates the restoration and enhancement of a 31-acre San Diego River Park on land that is now part of the stadium site, including the addition of walking and bike paths.

Even if the Mixed-Use Development ultimately involves a different use configuration than that identified by CSAG, the CSAG report nonetheless provides a reasonably foreseeable framework for analyzing environmental impacts associated with the stadium project.

Including the Mixed-Use Development in the EIR would affect a number of resource areas, including, but not limited to: Biological Resources (especially the east-west wildlife corridor), Traffic and Transportation (substantially adding to already major congestion and traffic impacts); parking (reducing onsite parking options and increasing parking demand); noise (onsite sensitive receptors impacted by the stadium and freeway

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<sup>37</sup>Available at [http://sdstadium.org/blog/wp-content/uploads/2015/05/CSAG\\_Report\\_FINAL\\_web.pdf](http://sdstadium.org/blog/wp-content/uploads/2015/05/CSAG_Report_FINAL_web.pdf).

traffic, while adding to overall project noise levels); air quality (increasing overall air emissions and locating sensitive receptors onsite); water supply (need to identify water supply for additional residential and commercial demand); water quality, health risks (onsite sensitive receptors impacted by the stadium emissions and freeway traffic); hazardous waste (exposing onsite sensitive receptors to ongoing contamination risks); aesthetics; and construction impacts. We respectfully request that the City provide detailed information as to the potential environmental impacts associated with this reasonably foreseeable development.

### **5. The Additional Development Must Be Considered As Part Of The Project's Cumulative Impacts**

Assuming the additional development is severable from the stadium, the additional development must be considered as part of the stadium's cumulative impacts. The two 'separate' projects would be "individually limited but cumulatively considerable." (Pub. Resources Code, § 21083 subd. (b).) An EIR must evaluate such cumulative impacts caused by other past, present and reasonably foreseeable probable future projects, even when such projects are outside the control of the agency. (CEQA Guidelines §§ 15130 subd. (a), 15355; Pub. Resources Code, §21083 subd. (b)(2).) A probable project must be included in the EIR where it is "reasonable and practical" to evaluate the cumulative impacts. (*City of Long Beach v. Los Angeles Unified School District*(2009) 98 Cal.Rptr.3d 137, 153).)

Cumulative effects of reasonably foreseeable future uses must be included in the Draft EIR. In *City of Santee v. County of San Diego* (1989) 263 Cal.Rptr. 340, 350, an EIR was insufficient for a temporary jail facility because it failed to consider the cumulative effects of future uses of the facility; specifically the court noted that because the city had studied and prepared reports on alternatives it was a "reasonable inference ... that a larger project was contemplated." Here, the Mayor's request for CSAG to study the best options for stadium development resulted in a recommendation for mixed used development. Accordingly a reasonable inference that the project will include future uses and future additional development exists. Therefore, this development must be included in the Draft EIR. Without this analysis, the Draft EIR is insufficient and fails as an informational document.

Therefore, the cumulative effects of reasonably foreseeable future uses must be included and analyzed in a revised and recirculated Draft EIR.

**6. At A Bare Minimum, The Adjacent Development Proposal Should Have Been Considered As A Project Alternative**

An EIR must “describe a range of reasonable alternatives to the project. . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (CEQA Guidelines § 15126.6(a).) As part of the “range of reasonable alternatives” the Draft EIR should have considered the Mixed-Use Development as an alternative to the Project and building a stadium.

We request that the Draft EIR be revised and recirculated to incorporate a full analysis of the reasonably foreseeable adjacent development. If this change is not made, we request a detailed response of how such an omission can comply with CEQA and why the adjacent development could not be analyzed as part of the whole of the action, as a cumulative impact and/or an alternative.

**7. The Draft EIR Does Not Adequately Describe All Aspects Of The Project**

The purpose of an EIR is to provide an informational document that fully discloses the nature and objectives of a project so that the lead agency may fully evaluate the “the whole of an action.” (CEQA Guidelines §§ 15124, 15378(a).) The Draft EIR failed to materially discuss the increased seating capacity of the stadium, the decreased parking, and an additional road expansion project. Accordingly the Draft EIR fails to meet the statutory requirements of CEQA. The Draft EIR mentions briefly in Table 3-1 that the total seating capacity will be increased from 71,500 to 72,000. The document additionally reiterates the increase in capacity and specifies the breakdown of type of seats in Section 3-11.

Table 3-1 of the Draft EIR also shows that the total number of parking spaces, even after demolition of the Qualcomm Stadium, will be decreased from 18,870 to 16,500, which is a loss of 2,370 spaces. Moreover, the parking will potentially decrease by more than 5,000 spaces due to implementation of the River Park Master Plan. The Draft EIR attempts to minimize this 12 percent to 25 percent reduction in parking spaces by declaring that “a limited quantity of existing parking stalls would be lost,” and expressing that the current parking layout is insufficient. (Draft EIR, pp. 3-9.) However, the Draft EIR does not discuss the implications of providing dramatically fewer parking stalls, except to assert that increased modal efficiencies will be found-but provides no basis for such assertion. The EIR fails to analyze the impacts to adjacent residential communities of parking in their neighborhoods and traffic impacts from people circulating in their neighborhoods to find parking. There is literally no analysis of these issues in the Draft EIR. We request that a full study be included analyzing parking,

traffic, air quality, public safety and other impacts to the neighborhoods from this parking and traffic intrusion.

Without a discussion of the effects of parking demand exceeding the available spaces, the Draft EIR fails to provide sufficient information for decisionmakers or the public to consider the effects of the project. Accordingly the Draft EIR fails to meet its statutory requirements and we request that it be revised and recirculated after incorporating this analysis.

The Draft EIR anticipates a future roadwork project, as indicated in Figure 3-1. The legend on that Figure identifies a “Future Roadway Enhancement” with a red dotted line to the north of and outside of the project site. Despite including this roadway project on Figure 3-1 the Draft EIR fails to discuss this road work project. Omitting discussion of this related project and its environmental impacts causes the Draft EIR to fail as an informational document. In this case, the Draft EIR literally fails to describe the “whole of the action.” Without disclosure of key plans such as this roadwork project the lead agency and the public are not equipped to make intelligent decisions about the stadium and environmental resources.

Therefore, the City should recirculate a revised Draft EIR that analyzes the effects of the 72,000 seats, the decrease in parking and the planned roadway enhancement project.

#### **D. The Schedule Included In The Draft EIR Is Not Attainable**

The Draft EIR provides an inaccurate and misleading development schedule. Specifically, section 3.2 provides the Project Schedule which anticipates that construction would begin in December 2016. While the media has widely reported that a vote will be required to approve the Stadium project and the City had intended that vote to be scheduled for January 2016,<sup>38</sup> this has now changed. The Mayor has now abandoned the January 2016 vote. As a result, the Mayor has indicated a vote would have to be later in the year. (*Id.*) Accordingly, it is unrealistic to assume the stadium will start construction in December 2016 and certainly will not be opened as set forth in the Draft EIR schedule. The Project Description is inaccurate because it fails to reflect a true and accurate development schedule. A revised schedule should be prepared and the EIR revised to reflect the revised schedule.

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<sup>38</sup> (Lori Weisberg, *Deadline Missed for Chargers Stadium Vote*, SAN DIEGO UNION TRIBUNE, (Sept. 11, 2015); Neil DeMause, *San Diego Missed Deadline for January Chargers Stadium Vote, Still Plenty of Other Months in the Year*, FIELD OF SCHEMES.COM, (Sept. 14, 2015); Lou Hirsh, *Faulconer: Chargers Stadium Vote Still Possible Despite Deadline's Passing*, SAN DIEGO BUSINESS JOURNAL, (Sept. 11, 2015).)

Moreover, our technical comments highlight numerous areas where the Draft EIR assumes an unrealistic schedule to complete highly complex environmental and engineering steps.

When considered together, the only conclusion that can be logically reached is that there is no likelihood of the City meeting the schedule set forth in the Draft EIR. Also, given the real schedule will be later than 2019, additional alternative should also be explored.

The Draft EIR must be revised and recirculated to reflect the true development schedule for the Project. Without an accurate understating of when the project will be built, the Draft EIR fails as an informational document to the public and decisionmakers.

#### **E. The Project Objectives Are Unreasonably Narrow**

The Project Description is also inadequate because the Project Objectives are unreasonably narrow. The CEQA Guidelines require an EIR to include a statement of objectives which should include the underlying purpose of the project. (CEQA Guidelines §15124(b).) The statement of objectives is a crucial component of the EIR because it helps shape the entire discussion of a project and its alternatives and helps decision makers evaluate the project. (*Id.*) Thus, the identified objectives must be supported by substantial evidence. (*Habitat and Watershed Caretakers City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1299-1300.) Further, “a lead agency may not give a project’s purpose an artificially narrow definition.” (*In re Bay-Delta Programmatic EIR/Env’t Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166.) An EIR is deficient if an artificially narrow set of objectives is used to improperly reject alternatives that would otherwise be reasonable, which is what happened here, as discussed below. (*See, e.g., Save Round Valley v. County of Inyo* (2007) 157 Cal. App. 4th 1437 [applicant’s narrow project objectives could not be used to avoid consideration of alternative site with fewer environmental impacts]).

In this case, the City provides extremely narrow drawn objectives so narrowly crafted as to exclude a reasonable range of alternatives:

Project Objective N. 2 - This objective is to “[r]eplace the existing Qualcomm Stadium with new stadium to minimize the City’s existing long-term maintenance and operational obligations.” This objective is flawed because this it unreasonably excludes the retention of Qualcomm in its present condition. Qualcomm is presently functioning efficiently enough to host major sized events including NFL events including the Chargers game on September 13, 2015, attended by 66,093 people.<sup>39</sup> Further, this

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<sup>39</sup><http://www.nfl.com/teams/sandiego%20chargers/schedule?team=SD&season=2015&seasonType=REG>

objective emphasizes the City's intent to "*replace*" Qualcomm rather than "*renovate*" as several cities have recently done, including Chicago, Kansas City and Green Bay. (Draft EIR, p. 8-23.) A renovation would "minimize the City's existing long-term maintenance and operational obligations" to the same extent a replacement would. The City's decision to choose a Project Objective that excludes the renovation of Qualcomm is further evidence that the City has prejudged the EIR process.

Project Objective N. 3 – The objective is to "[d]evelop a new stadium on a site currently under contiguous City ownership with nearby access to multiple freeways, and adjacent to existing public transit and transit stations, existing utilities, and enhanced remote parking facilities to encourage mobility and modal shift." The objective is unreasonable because the City this essentially precludes virtually any other alternative site, fails to recognize that the City could actually purchase a site from a willing seller, and ignores that the City has condemnation authority which would make any other non-city owned sites potentially feasible. Further, the objective assumes that a mobility and modal shift is necessary. A mobility and modal shift is only necessary if the parking capacity is reduced, as proposed under the Project. Such a shift would not be required if the current stadium was renovated or a new stadium was built downtown (with better transportation options). These issues indicate that the City has prejudged the Project in favor of building a new stadium in Mission Valley with dramatically reduced parking. By doing so, this objective appears to be included to prevent the development of any offsite alternatives and tilt the Draft EIR against any renovation alternatives.

Project Objective N. 4 – This objective is to "[c]onstruct a fully operational stadium prior to the opening of the 2019 NFL football season and without displacing currently NFL football games to another facility during construction." This objective is flawed because the 2019 timeline is arbitrary and appears to be chosen solely for the purposes of excluding alternatives that involve the purchase of additional land or condemnation of any other sites. This objective also appears to be designed to meet the City's original (and now abandoned) artificial deadline to have an election in January 2016 to approve funding for the Project. Further given that the Mayor has now stated that the January election will not happen, the Mission Valley site is unlikely to meet the objective's timeline and now should be rejected. (*See supra*, Section II.)

Accordingly, we request that the City revise the Project Objectives to allow the City to consider a reasonable range of project alternatives. Specifically, the City should revise the Project Objectives to eliminate references to sport-specific and location-specific stadiums, as well as self-imposed deadlines. As part of this process, we request that the City conduct community workshops and hearings to determine the priorities of the residents of Mission Valley and the greater San Diego area before recirculating the revised EIR.



## CONCLUSION

Given the extensive deficiencies that pervade the Draft EIR, including prejudgment of outcome, a vague and unstable project description, improper baseline analysis, the failure to analyze and disclose and resolve many environmental impacts, post-hoc rationalization for the project site, and the failure to provide adequate mitigation measures and alternatives, the City must restart the CEQA process with a new NOP and a new draft EIR.

Therefore, for the reasons set forth above we respectfully request that the City commence a new environmental review process to consider the impacts of an updated Stadium Reconstruction Project.

Sincerely,



Douglas P. Carstens

Enclosures:

Chatten-Brown & Carstens LLP Comment on NOP letter

Endangered Habitats League Comment on NOP letter

San Diego Audubon Society Comment on NOP letter

City Attorney Memoranda dated November 26, 2014 and May 13, 2005

City of San Diego March 25, 2015 Letter to David Gibson, Executive Officer California Regional Water Quality Control Board re Evaluation Report of Remediation for Kinder Morgan's Mission Valley Terminal Off-Site Release

City Attorney Update, Legal Role of the Mayor's Stadium Task Force, February 2, 2015, available at <http://www.sandiego.gov/real-estate-assets/pdf/stadium/memofromcityattorneyjangoldsmiththelegalroleofcsag.pdf>

City Attorney Memorandum, Appraisal of Water Utility Property at Qualcomm Stadium, November 26, 2014, available at <http://docs.sandiego.gov/memooflaw/ML-2014-14.pdf>.

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City Attorney Memorandum Lease and Potential Sale of Sikes Adobe Property, May 13, 2005, available at <http://docs.sandiego.gov/memooflaw/ML-2005-10.pdf>.

ENCLOSURE 1

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July 20, 2015

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City of San Diego Development Services Center  
1222 First Avenue, MS 501  
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Re: Possible Stadium Reconstruction Project in Mission Valley

Dear Ms. Blake,

We write to express our concern about, and objections to, the process that appears to be taking shape for hasty approval of a football stadium and associated mixed use development in Mission Valley that would involve demolition of the historic Qualcomm Stadium (formerly San Diego Jack Murphy Stadium). The stadium, designed by Gary Allen, is one of the last remaining mid-century multi-purpose stadiums left in the United States. Review of its future and potential re-use of the site should be informed by a thorough, legally adequate environmental review pursuant to the California Environmental Quality Act (CEQA).

Our law firm has been involved in efforts to ensure CEQA is properly implemented in projects throughout the state, including in sports stadiums. We helped oppose special exemptions for football stadium proposals in the Cities of Industry and Los Angeles (Farmers Field), and continue to be opposed to public agencies providing special treatment or unique processes for sports stadiums. We view the Mission Valley proposal as the latest in this string of poor policy decisions seeking quick approval and avoidance of CEQA rather than protection of the environment and affected communities to the greatest extent possible and necessary. We provide comments on the notice of preparation (NOP) for an environmental impact report for the potential project below. Given the extremely limited information provided in the NOP, we urge the City to reissue the NOP with substantially more information as requested herein.

**I. NOTICE OF PREPARATION PROCEDURAL REQUIREMENTS**

**A. NOP Does Not Satisfy CEQA Requirements**

The NOP failed to identify whether the project or an alternative was on list established pursuant to Government Code § 65962.5. See Public Resources Code § 21092.6. Pursuant to Section 65962.5(d), the State Water Resources Control Board is directed to compile a list of, among others, the following: all underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code; and all cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

Here, the Qualcomm site or Kinder Morgan site next door may be on the applicable State Water Board lists. The factors leading to including a site on such lists are present, meaning there is a reasonable likelihood that the site has either been added to the list or the site was inadvertently omitted from the list. The purpose of the list—to notify the public as to the risks of developing projects on these types of contaminated sites—is present in this case and warrants notice in the NOP.

#### **B. NOP Does Not Properly Describe the Project**

The NOP failed to describe the need for voter approval, the use of public bond funding or the reasonably foreseeable adjacent development project, which the Citizens' Stadium Advisory Group (CSAG) report makes clear is an integral part of any funding plan. (See Attached CSAG Report).

The NOP failed to identify where the stadium would be relocated on the property, stating only that the current stadium footprint would be rebuilt for parking. Changing the location would move the stadium closer to sensitive receptors located immediately northeast and northwest of the site, and, if moved south, closer to the San Diego River.

The NOP fails to describe when the existing stadium will be demolished, stating only that the "Qualcomm stadium structure...would be subject to future demolition and parking would be constructed on the existing stadium site." The NOP fails to clarify how parking would be provided onsite if the demolition of Qualcomm is delayed, or whether the parking would be surface parking or a parking structure. If structured parking is foreseeable, the EIR must examine the construction impacts related to the structured parking. The NOP does not describe whether the Chargers would need to play temporarily in an offsite location while the new stadium is being constructed.

The NOP does not describe the City's ongoing litigation involving soil and groundwater contamination from the adjacent Kinder Morgan property, which has contaminated the Qualcomm stadium site. Further, the NOP does not discuss whether relocating the new stadium to a different area of the site may impact ongoing monitoring and remediation activities.

#### **C. NOP Does Not Notify All Responsible Agencies**

The purpose of a NOP is to solicit not just comments from the public, but also guidance from other public agencies on the scope and content of the environmental information to be included in the EIR. Pub. Res. Code § 21080.4(a); 14 Cal. Code Regs. § 15375. The lead agency must send the NOP to all public agencies with authority over the project or resources affected by the project, including each responsible agency, trustee agency, each federal agency involved in funding or approving the project. Pub. Res. Code § 21080.4(a); CEQA Guidelines § 15082(a).

There are a number of potentially responsible agencies: County of San Diego (County Bond offering), Regional Water Quality Control Board (401 certification), San Diego Air

Pollution Control District (air quality permits), San Diego County Regional Airport Authority (consistency determination), U.S. Army Corps of Engineers (404 permit), U.S. Fish and Wildlife Service (take permit) and California Department of Fish and Wildlife (SAA and take permit). It appears that the NOP was not sent to the San Diego County Regional Airport Authority, U.S. Army Corps of Engineers or U.S. Fish and Wildlife Service.

## **II. PROJECT DESCRIPTION**

### **A. CEQA Requires EIR to Consider the “Whole of the Action”**

CEQA requires an analysis of the “whole of an action, which has the potential for physical impact on the environment.” CEQA Guidelines, § 15037. The determination of the scope of a project is a question of law. *See Communities for a Better Environment v. City of Richmond*, 184 Cal. App. 4th 70, 83 (2010) (applying *de novo* review to question of project scope).

In the seminal case of *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376 (1998), the California Supreme Court set aside an EIR for failing to analyze the impacts of the reasonably foreseeable multiphase project. That case involved a plan by the University of California to move its School of Pharmacy units to a new building, of which only about one-third was initially available. *Id.* at 393. The EIR acknowledged that the school would eventually occupy the remainder of the building, but the EIR only discussed the environmental effects relating to the initial move. *Id.* at 396. The court concluded that the EIR should have analyzed both phases. *Id.* at 399. In so holding, the court announced the following test: “[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” *Id.* at 396.

### **B. Mixed-Use Development of Site Is a Reasonably Foreseeable Consequence of the Stadium Project and Should Be Evaluated by the EIR**

Multiple reports and proposals closely link the need to include a mixed-use development (e.g., residences, commercial, hotel, etc.) with the new stadium to make it financially feasible for the Chargers without being an economic burden on the community (the “Mixed-Use Development”). A “stadium plus parking” project is substantially different from a “stadium and Mixed-Use Development” project. Even though no formal applications for the Mixed-Use Development have been proposed at this time, the following demonstrates that it is a reasonably foreseeable consequence of the stadium project and has been sufficiently described to allow meaningful analysis in the EIR.

#### **1. Citizens’ Stadium Advisory Group (CSAG) Report**

The Mayor of San Diego commissioned CSAG to study the feasibility of building a new

stadium in San Diego without taxpayer support. CSAG issued its findings in May 2015, a month before the NOP was issued. The close proximity of timing between the Report being issued and the NOP supports a conclusion that the CSAG Report provides a reasonable representation of the project scope.

CSAG advised the City to include, as a key component of the project's financing, the \$225 million sale of 75 acres of land surrounding the new stadium to a private developer for a mixed-use development.

In addition to using the \$225 million sale price as roughly 16% of the financing for the stadium development itself, "CSAG recommends [that] the tax revenue from the 75-acre development should pay for community benefits (including parks, additional parking, road and transit upgrades), and to help the City and County recoup its [sic] capital costs." CSAG Site Selection and Financing Plan at p. 2. CSAG estimates that the tax revenue would "conservatively yield \$5.5 million annually, resulting in roughly \$116 million in net present value." *Id.* at p. 15. It is unclear how the City would finance any of these aspects of the project without the revenue from the land-sale and mixed-use development. The Mixed-Use Development would include "3,300 housing units, 1 million square feet of commercial space, 175,000 square feet of retail space, and a 500-room hotel." *Id.* This issue should be fully addressed by the EIR.

## **2. Councilman Sherman's Proposal**

San Diego City Councilman Scott Sherman has also announced a development plan in conjunction with a new stadium, calling the mixed-use development a chance to create a new "catalyst for economic development . . . [that can] be an overall economic engine and amenity... in the City of San Diego."<sup>1</sup>

## **3. Relocating Stadium To Northeast Corner Of Site Removes a Key Obstacle for the Mixed Use Development**

Building the new stadium in the northeast or northwest corner of property removes a key obstacle to the future Mixed-Use Development project, meaning the EIR should analyze the reasonably foreseeable consequences. *See California Unions for Reliable Energy v. Mojave Desert Air Quality Management District*, 178 Cal. App. 4th 1225, 1241, 1242 (2009) (EIR failed to analyze not-yet-planned road paving project because air district's approval "was the first step in a process of obtaining governmental approval for such road paving"). A public agency's decision to authorize an activity that starts in motion a chain of events that will result in foreseeable impacts on the physical environment is treated as approval of a project subject to CEQA. *See, e.g., San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.*, 139 Cal. App. 4th 1356, 1379 (2006) (school consolidation is

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<sup>1</sup> *See* City of San Diego, *Councilmember Sherman Releases Stadium Options*, YOUTUBE (April 2, 2015), [https://www.youtube.com/watch?v=P\\_td8p9vPXU](https://www.youtube.com/watch?v=P_td8p9vPXU).

project on basis of potential traffic and parking impacts).

#### **4. Mixed-Use Development Would Substantially Impact the Environment**

According to the CSAG report, the development would include “a low- to mid-rise mixed-use village concept consisting of 3,300 housing units, 1 million square feet of commercial space, 175,000 square feet of retail space, and a 500-room hotel.”<sup>2</sup> In addition, the CSAG report also contemplates the restoration and enhancement of a 31-acre San Diego River Park on land that is now part of the stadium site, including the addition of walking and bike paths.

Even if the Mixed-Use Development ultimately involves a different use configuration than that identified by CSAG, the CSAG report nonetheless provides a reasonably foreseeable framework for analyzing environmental impacts associated with the stadium project.

Including the Mixed-Use Development in the EIR would affect a number of resource areas, including, but not limited to: traffic and Transportation (substantially adding to already major congestion and traffic impacts); parking (reducing onsite parking options and increasing parking demand); noise (onsite sensitive receptors impacted by the stadium and freeway traffic, while adding to overall project noise levels); air quality (increasing overall air emissions and locating sensitive receptors onsite); water supply (need to identify water supply for additional residential and commercial demand); health risks (onsite sensitive receptors impacted by the stadium emissions and freeway traffic); hazardous waste (exposing onsite sensitive receptors to ongoing contamination risks); aesthetics; and construction impacts.

#### **C. Accurate Description of Construction Equipment and Truck Trips Must Be Provided To Properly Evaluate Demolition and Construction Activities**

To complete demolition and construction activities within the rapid schedule necessary to meet NFL timelines, construction of the new stadium and demolition of the old stadium would likely need to be done concurrently, or at least with the potential for significant overlap. Unless the City is willing to accept a condition that the construction and demolition cannot overlap, then the EIR must analyze worst case assumptions of concurrent construction/demolition activities.

An accurate construction fleet mix and schedule of activities must be provided to allow a detailed evaluation of construction/demolition impacts, including health risks, air quality, traffic, parking and noise impacts.

The construction/demolition phase will require numerous offsite truck trips. Given the highly congested traffic environment around the stadium and the limited access routes, a critical environmental concern will be how offsite truck trips will impact the community. As a result, the EIR must accurately describe the expected truck routes, the volumes of trucks and the

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<sup>2</sup> CSAG Report, p. 15



frequency of trucking activities to give the public a meaningful opportunity to evaluate project impacts, including related to traffic, noise, air pollution, health risks and environmental justice concerns.

**D. Temporary Use of Offsite Stadium**

The Chargers may need to play temporarily in an offsite stadium while the new stadium is being constructed, which must be fully analyzed in the EIR, including traffic, noise, parking and air quality impacts. If a temporary location is not used, how will parking and traffic be impacted if the new stadium is under construction while the Chargers continue to use the existing stadium?

**E. Changes to the Stadium Location, Frequency of Events, and Nature of Events Are Critical to Understanding Operational Impacts**

The proposed stadium would not merely replace the existing Qualcomm stadium. The EIR must fully describe and evaluate the operational impacts from these changes, including the following.

Location change: According to the NOP, parking would be built on the current stadium site, so the new stadium will be located elsewhere on the property. Based on the CSAG report, the stadium would make room for the Mixed-Use Development. Given the proximity to sensitive receptors on the east and west side of the property (200 feet or less from the property boundary), changing the stadium location will result in important environmental consequences, including changes to localized air quality impacts, health risks, noise and aesthetics, which must be analyzed in the EIR.

Frequency of Events: According to the CSAG report, the frequency of events would increase at the new stadium, which would host a year-round source of activities. Increasing the frequency of events would significantly impact the community and environment, even if the impacts from any given event do not change. *See Berkeley Keep Jets Over the Bay Commission v. Board of Port Commissioners*, 91 Cal. App. 4th 1344 (2001) (EIR failed to analyze how increasing the frequency of night flights would adversely affect residents). The EIR should include the number of events for past representative years and provide a list of the projected number of events for the future. Environmental impacts related to the expected scope of events must be analyzed.

Nature of Events: The CSAG report identified a range of events that could be held at the new stadium. Events other than NFL games have the potential to create different impacts, such as increased noise effects, which should be evaluated in the EIR.

### **III. ENVIRONMENTAL IMPACTS**

#### **A. Significant Impacts to Qualcomm Stadium and Other Cultural Resources Must be Analyzed and Mitigated.**

Qualcomm Stadium satisfies the requirements for designation of a historical resource under CEQA. Under Public Resources Code § 21084.1: “For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant.”

According to CEQA Guidelines § 1504.5: “Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852) including the following:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- (B) Is associated with the lives of persons important in our past;
- (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) Has yielded, or may be likely to yield, information important in prehistory or history.”

Qualcomm Stadium (formerly San Diego Jack Murphy Stadium) has been recognized for historic attributes. Its demolition should be evaluated as a potentially significant adverse impact to a major cultural landmark. The Mission Valley Community Plan called the stadium “probably the most distinct landmark in Mission Valley,” with an “award-winning design” that has “made it a community landmark.” (p. 167.) It has played host to the Super Bowl three times, in 1988, 1998, and 2003, as well as the World Series in 1984 and 1998 and the Major League All-Star Game in 1978 and 1992. It is one of only three stadiums in history to have hosted all three events.

The Save Our Heritage Organisation (SOHO) has emphasized the significance of the stadium. Designed by Gary Allen, it is one of the last remaining mid-century multi-purpose stadiums left in the United States. A classic example of the Brutalist architectural school, it

possesses “innovative design features which include pre-cast concrete, pre-wired light towers, and spiral concrete pedestrian ramps,” which led to the stadium’s receipt of the American Institute of Architects Honor award in 1969 for outstanding design. This marked the first time in history that a San Diego design firm had received a national honor.<sup>3</sup>

Additionally, the project site is in an area of high sensitivity for archaeological resources. For example, the EIR for nearby Quarry Falls notes that “the project site is located in an area of high sensitivity for cultural resources, and earth-moving activities would have the potential to affect unknown resources located within the undisturbed areas of the project site.”<sup>4</sup>

## **B. Quantitative Studies Are Needed to Establish “Baseline” Conditions**

Mere projections of baseline information are insufficient for baseline analysis. *Fairview Neighbors v. County of Ventura*, (1999) 70 Cal. App. 4th 238; *Save Our Peninsula Committee v. Monterey Bd. of Supervisors*, (2001) 87 Cal. App. 4th 99 [CEQA “requires that the preparers of the EIR conduct the investigation and obtain documentation to support a determination of preexisting conditions.”]. Further, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931 states that recitation of raw data without explanation of how such levels were derived or maintained “does not provide an adequate description of the existing environment.” *Citizens for East Shore Parks v. State Lands Commission*, (2011) 202 Cal. App. 4th 549 held the proper baseline for analysis of environmental impacts is “what [is] actually happening,” not what might happen or should be happening.

**Traffic:** The City is required to conduct traffic studies of existing conditions on game days. The City must present actual data on traffic counts and not mere projections. This is especially important because the NFL is increasingly scheduling games on days other than Sunday, which will impact rush hour traffic. In 2015, the Chargers have two scheduled preseason games at Qualcomm, one on Thursday and one on Saturday. During the regular season, two Monday night games are scheduled to be held at Qualcomm.<sup>5</sup>

**Air Quality/Health Risks/GHG:** To evaluate emissions from onsite activities and stadium-related traffic (onsite and offsite) requires the City to have actual game day trip counts to ascertain impacts on air quality, health risks and greenhouse gas emissions. For ambient air quality impacts and health risks from toxic air contaminants, it is important to identify current emissions sources to evaluate impacts with moving the stadium closer to nearby residents.

**Cultural and Historical Resources:** The City must determine whether Qualcomm stadium is an historical resource for purposes of CEQA, as well as the potential to impact underground cultural resources if the site is moved (with related excavation). As such, the City must complete

<sup>3</sup> SOHO has identified the stadium as an important historical resource. See <http://www.sohosandiego.org/endangered/mel2007/stadium.htm>.

<sup>4</sup> City of San Diego, Quarry Falls Project Program EIR, July 2008 Update, p. 6.

<sup>5</sup> [http://espn.go.com/nfl/team/schedule/\\_/name/sd/san-diego-chargers](http://espn.go.com/nfl/team/schedule/_/name/sd/san-diego-chargers).

an historical evaluation of the stadium and study the probability of impact to underground resources based on historical and paleontological activities in the area.

Hazardous Wastes: The City must fully evaluate and describe the current status of the monitoring and remediation activities associated with the Kinder Morgan soil and groundwater contamination, including the location of any monitoring or extraction wells that could be impacted by changing the stadium location. In addition, the City must evaluate the current level of contamination on the Qualcomm property and the potential for contamination to worsen as the water table rises (with Kinder Morgan reducing extraction activities) to assess the impact of project-related site changes and excavation.

Noise: Game-day traffic counts in the vicinity of the stadium are also necessary to determine noise impacts to the neighborhoods nearest to the proposed stadium. Both preseason games and three regular season games are night games and have the potential elevate ambient noise in the surrounding neighborhoods during night hours. It is also important to obtain noise readings from the stadium's current location to understand the impact of moving the stadium closer to nearby residents.

Without this type of baseline data, the City cannot properly establish the environmental setting and its analysis is not based on substantial evidence.

### **C. Impacts to Sensitive Receptors**

The proposed project is close to a number of sensitive receptors that will be adversely affected by project construction, demolition and operations.

There are multiple residential areas immediately surrounding the site. On the east side, an adjacent residential development is approximately 185 feet from the property line. Similarly, on the west side, residences are located within several hundred feet of the property line or less. The San Diego campus of the University of Redlands is also about half a mile west of the stadium. Additionally, at least two hotels or motels are located proximate to the stadium: Motel 6 (4380 Alvarado Canyon Rd.), and San Diego Marriott Mission Valley (8757 Rio San Diego Dr.). There are at least three daycare centers within approximately half a mile of the stadium complex, including the YMCA Childcare Resource Service, the Children's Home Society, and Gethsemane Christian Preschool.

The Office of Environmental Health Hazard Assessment (OEHHA) developed the California Communities Environmental Health Screening Tool: CalEnviroScreen Version 2.0 (CalEnviroScreen 2.0), as a screening methodology to identify California communities that are disproportionately burdened by multiple sources of pollution. CalEPA has used the tool to designate California communities as disadvantaged pursuant to Senate Bill 535.<sup>6</sup> A search on

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<sup>6</sup> See Office of Environmental Health Hazard and Assessment, CalEnviroScreen Version 2.0, <http://oehha.ca.gov/cj/ces2.html>.

CalEnviroScreen 2.0 reveals several disproportionately burdened communities near the Project Site, the closest being 1.2 miles away. (See Exhibit A attached hereto.) As shown in Exhibit A, residential communities surround the project and are listed as having a higher percentage "Pollution Burden."

CalEnviroScreen 2.0 identifies communities with higher "Pollution Burdens" based on various characteristics related to local pollution risks, such as ozone levels, particulate matter concentrations, and proximity to hazardous materials. Based on a CalEnviroScreen report for the area surrounding the Qualcomm property, communities to the east, west and south are identified as having a high Pollution Burden (see attached CalEnviroScreen Report For Area Near Qualcomm Site). A number of communities with a high Pollution Burden are also located along possible transportation routes that could be impacted by the project. Accordingly, the EIR should analyze impacts to potential disadvantaged communities that may be impacted by the stadium project.

The San Diego River immediately south of the project is important to plants and animals and to recreational users of the river. The San Diego River should be considered a location for recreational users and other sensitive receptors.

#### **D. Traffic, Transportation and Parking**

Overburdened roadways, congested freeways and inadequate transportation infrastructure in the Mission Valley area will be significantly impacted by years of construction/demolition traffic and increased frequency of stadium events.

The Mission Valley Community Plan identified major traffic and transportation deficiencies in the Mission Valley area including the following:

(1) *"Many streets are under-designed and route an excessive number of cars on streets that were never intended for such volumes," and "the transportation system for Mission Valley falls far short of the ideal."*<sup>7</sup>

(2) The major streets in the area are *not built to major street standards at this time and are experiencing congestion*, especially during the peak-hour periods. This congestion is both a function of incomplete or undersigned major streets, and the congestion on the freeways during peak hours causing backup onto the surface street system."<sup>8</sup>

(3) Existing problems would be exacerbated by the stadium project, which is located on Friars Road, the primary arterial through Mission Valley, upon which other traffic flow in the area relies. The Mission Valley Community Plan highlights that when

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<sup>7</sup> Mission Valley Community Plan at p. 71 (emphasis added).

<sup>8</sup> *Id.*

the existing stadium is used, it “overloads Friars Road,” “overburden[ing] the surface street system” and plans to increase seating in the stadium and to hold additional events there will “generate even more traffic in the future.” The segment of Friars road directly outside the stadium (from Mission Village Drive to Mission Gorge Road) has been identified as a high congestion area.<sup>9</sup>

A Caltrans report identified “unacceptable” traffic and congestion in Mission Valley. According to the I-8 Transportation Concept Summary for San Diego County, the I-8 corridor “currently experiences congestion and operates at unacceptable levels of service during the morning and afternoon peak hours” throughout the Mission Valley area. Caltrans found that “[t]he present transportation system in Mission Valley has inadequate capacity,” and that “it will be unable to handle future local circulation and regional transportation needs.”<sup>10</sup> Caltrans identified a need for “[a] significantly upgraded surface street system in Mission Valley,” which “is needed to reduce reliance on I-8 for travel within Mission Valley. This will require overcoming a problematic “lack of any uniformity” to the street system in Mission Valley, where “[m]any streets are under-designed and transport an excessive number of cars on streets that were never intended for such volumes.” There is also “an inordinate amount of out of direction travel.”<sup>11</sup>

Gridlock and congestion are well known problems in Mission Valley. See: <http://www.voiceofsandiego.org/growth-housing/mission-valley-keeps-getting-more-roads-and-more-traffic/> (“Any San Diegan knows Mission Valley at rush hour is a gridlocked mess.”)

These traffic infrastructural impacts must be considered in the context of a region that is rapidly developing and adding further stress to the strained street system. The population of the area around the stadium is expected to more than double from 33,000 to 75,000.

#### **1. Analysis of Impacts to Critical Intersections and Major Arteries**

The EIR must consider a wide range of different event activities to fully evaluate the impacts of the project, including, but not limited to: Saturday day games, Sunday day games, weekday evening games, weekday evening non-game events, and weekend non-game events.

The City of San Diego Environmental Analysis Section has established specific criteria to determine if a traffic impact at an intersection, roadway segment, or freeway is considered significant. Both project specific and cumulative project impacts can be significant impacts. These include:

-If any intersection or roadway segment affected by a project would operate at LOS E or

<sup>9</sup> *Id.* at p. 72 (emphasis added).

<sup>10</sup> Interstate-8 San Diego County Transportation Concept Summary, June 2012, pp. 1-2 (emphasis added).

<sup>11</sup> *Id.*

F under either direct or cumulative conditions and the project exceeds specified increases in delay or intersection capacity utilization or volume-to-capacity ratios;

-If a project would add a substantial amount of traffic to a congested freeway segment, interchange, or ramp;

-If a project would increase traffic hazards to motor vehicles, bicyclists, or pedestrians due to proposed non-standard design features (e.g., poor sight distance, proposed driveway onto an access-restricted roadway;

-If a project would result in a substantial restriction in access to publicly or privately owned land;

-If any facility affected by a project would degrade from an acceptable level of service (LOS D or better) to an unacceptable level of service (LOS E or worse).

As a result of these criteria, it appears reasonably possible that the stadium project would cause significant traffic impacts. The segment of I-8 most immediately proximate to the stadium—the segment between I-805 and I-15—receives a Level of Service (LOS) rating of F, a failing rating. In fact, every highway segment for at least four miles in either direction of the stadium (encompassing most of the highway's length within the City of San Diego) currently receives a LOS F rating.<sup>12</sup>

As revealed by the Mission Valley Community Plan and the Quarry Falls EIR, there are a number of heavily impacted intersections in the area of influence that would be adversely affected by the project's construction and operational traffic. Traffic flow analysis will be necessary at key intersections and highway on- and off-ramps (including differentiated analysis of peak morning and afternoon traffic hours), as well as of the anticipated effects of construction and operation of the new facility on those intersections. At a minimum, the following points of traffic concern should be modeled and evaluated in the EIR's transportation analysis (for both construction and operational impacts) under a variety of scenarios (weekend games, weekday games, non-game events such as concerts, etc.):

- I-15 north from Friars Road, south from I-8, north from I-805;
- I-805 north and south from I-8, north from highway 163, south from highway 15, south from highway 94;
- I-8 east and west from I-15, east and west from I-8, west from highway 163, west from I-5, east from College Avenue, east from highway 125;
- I-5 north and south from I-8, south from highway 163, south from highway 94;

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<sup>12</sup>

*Id.* at p. 4.

- Friars Road from Mission Gorge Road to Ulric Street;
- Mission Village Drive from Friars Road to Gramercy Drive;
- Camino Del Rio N and Camino Del Rio S from Fairmount Avenue to Qualcomm Way;
- San Diego Mission Road from Friars Road to Twain Road;
- Fenton Parkway (and Fenton Marketplace);
- Northside Drive;
- Mission Gorge Road from Fairmount Avenue to Princess View Drive;
- Fairmount Avenue from Mission Gorge Road to Aldine Drive;
- I-15 exits 7, 7A, 7B, and 6B;
- I-805 exits 17 and 17B;
- I-8 exits 6A, 6B, 7, 7A, 7B, and 8;
- Friars Road intersections with Mission Gorge Road, San Diego Mission Road, Mission Village Drive, Northside Drive, Fenton Parkway, Qualcomm Way, and Mission Center Road;
- San Diego Mission Road with Mission Gorge Road;
- Camino Del Rio N and Camino Del Rio S with Fairmount Avenue;
- Impacts to ingress to and egress from major nearby residences and public and private facilities, including nearby residential communities, Fenton Marketplace, and Kaiser Foundation Hospital.

## **2. Farmers Field EIR Identified Numerous Transportation Impacts**

The Farmers Field EIR provides an example of the type of traffic impacts that may be associated with the stadium project. The Farmers Field EIR identified numerous significant traffic impacts (see attached table).



### **3. Analysis of Impacts to Mass Transit, Bikeways, and Pedestrians**

The City's light rail Green Line passes by and stops at the stadium. Mass transit analysis of the impacts of construction and operation of the facility on the intensity of use of the Green Line and other interconnected transit lines must be conducted.

The City's bus lines numbered 18, 235, 60, 13, and 14 all pass within a short distance of the stadium. Mass transit analysis of the impacts of construction and operation of the facility on the intensity of use of these bus lines and other interconnected transit lines must be conducted.

The City has three classifications for bikeways: Class I (Bike Path or Trail), Class II (Bike Lane), and Class III (Bike Route). Analysis must consider the impacts of construction and operation of the facility on all three classes of bikeways in the area.

The impacts of construction and operation of the facility on pedestrian traffic must also be considered, including pedestrian access from various bus stops for the lines discussed above.

### **4. Parking**

The NOP indicates that parking would be provided on the location of the existing stadium. Will this be surface parking or a parking structure? The EIR must address how parking would be provided onsite if the demolition of Qualcomm is delayed.

The EIR should address where attendees would park during construction of a new stadium and demolition of the old stadium, both of which will significantly limit available parking on the site.

How will reduced on-site parking and increased reliance on off-site parking impact traffic patterns and non-stadium parking needs around the stadium? How will reduced on-site parking impact public transportation use? How will sufficient capacity be ensured? Given that the southern portion of the property may be used for a Mixed Use Development, that would mean there is not sufficient land for surface parking on site. That would require either a parking structure or off-site parking, both of which options should be fully analyzed in the EIR. Also, given that the southerly portion is owned by the water department, the EIR should analyze what the possible environmental effects will be if the water department property is not available for stadium uses. Given that the water department is required to receive market value for the use of its property, the EIR must analyze the entirely possible circumstance that this portion of the property cannot be used for stadium uses (either a stadium or parking).

## **E. Air Quality**

### **1. Scope of Analysis**

Air Quality impacts should be analyzed under a variety of scenarios, including:

construction of new stadium; demolition of existing stadium; concurrent construction and demolition; concurrent construction/demolition and operations (if applicable); Mixed-Use Development (overlapping with construction/demolition, if applicable).

Air quality impact analysis of operations should include both operational emissions on a *daily* basis and also on an *annual* basis, as identified by the City of San Diego significance thresholds. The annual analysis will account for increased frequency of events and resultant emissions. The increased frequency of events can cause a significant noise impact even if any particular single event does not change.

## **2. Regional Emissions**

The stadium project has the potential to emit significant air emissions that exceed applicable thresholds. These emissions could be individually and cumulatively considerable.

## **3. Localized Emissions**

The EIR must analyze localized and ambient air quality impacts for all criteria pollutants from project construction and operations. The City of San Diego CEQA Thresholds state that a project may cause a significant impact if it “[e]xpose[s] sensitive receptors to substantial pollutant concentrations including air toxics such as diesel particulates.”<sup>13</sup> Thus, the EIR should consider localized impacts associated with criteria pollutants (not limited to carbon monoxide), as well as toxic air contaminants.

Further, the San Diego CEQA Thresholds state that an EIR should “[a]pply AAQS as the threshold where accepted methodology exists when the project involves a sensitive receptor or if the potential exists for a significant cumulative air quality impact.” The SCAQMD Localized Significance Thresholds establish a proven, accepted methodology for evaluating localized health risks based on criteria pollutant concentrations and the Ambient Air Quality Standards (AAQS), both for concentration and operational emissions.<sup>14</sup>

Substantial evidence demonstrates that localized concentrations of criteria pollutants can result in significant health impacts, based on both short-term and long-term exposure.

Given the size and intensity of the construction activities that likely would be required, construction of a new stadium may result in significant air quality impacts, given the standards established by the San Diego APCD and City of San Diego. For example, there may be significant impacts related to VOC, CO, and NO<sub>x</sub> during construction, and other projects of this size have resulted in significant air quality impacts. (See, e.g., Farmers Field EIR [finding air quality impacts of new football stadium in Downtown LA had significant and unmitigable

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<sup>13</sup> City of San Diego CEQA Thresholds, p. 7.

<sup>14</sup> <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

impacts during construction even with the incorporation of all feasible mitigation measures].)

Due to the increased capacity of the proposed stadium and the proposed adjacent development, the operation of the project may result in potentially cumulative impacts to air quality from increased vehicle trips.

Because the stadium's location has not been identified, the EIR should include worst case assumptions about its location.

#### **4. The Farmers Field EIR Identified Numerous Air Quality Impacts**

The Farmers Field EIR provides an example of the type of air quality impacts that may be associated with the stadium project. The Farmers Field EIR identified air quality impacts at a regional and localized level (see attached table).

#### **F. Health Risks**

##### **1. A Health Risk Assessment (HRA) Must Be Completed Based on Revised OEHHA Guidance**

The Office of Environmental Health Hazard Assessment (OEHHA) adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (Guidance Manual).<sup>15</sup> As discussed in Section 8.2.10 of the Guidance Manual, "[t]he local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation."

Construction impacts must be analyzed with an HRA. Agency guidance indicates that new OEHHA methodology will substantially increase the estimated significance of toxic air contaminants. Because the new OEHHA methodology includes a number of conservative assumptions about potential impacts to infants and children, short term construction emissions could lead to significant HRA results. For example, SCAQMD staff estimate that a six-month construction project for a typical one-acre office project could cause a significant HRA impact.<sup>16</sup>

The proposed stadium could be located within 185 feet of sensitive receptors, including residents on the west and east side of the property (or potentially closer, depending on the nature of the reasonably foreseeable Mixed-Use Development). Modeling estimates must be completed at the following locations: residences located adjacent to the site on the west and east side; the nearest location to the south where recreationists or walkers use the San Diego River.

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<sup>15</sup> See [http://www.oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://www.oehha.ca.gov/air/hot_spots/hotspots2015.html).

<sup>16</sup> See SCAQMD Staff presentation, Potential Impacts of New OEHHA Risk Guidelines on SCAQMD Programs, Agenda Item 8b, <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/may-specsess-8b.pdf>.

Operational impacts must be analyzed with an HRA. Moving the stadium closer to sensitive receptors could increase the potential for significant health risks. The HRA should include emissions from at least the following sources:

- (a) Idling trucks;
- (b) Trucks with refrigerated units;
- (c) Charbroiling facilities at stadium restaurants;
- (d) Tailgating activities (including charbroiling);
- (e) Idling cars and RV units while tailgating;
- (f) Fireworks;
- (g) Cooling towers;
- (h) Emergency Diesel Generators
- (i) Other stadium and related sources

Because the stadium's location has not been identified, the EIR should include worst case assumptions about its location.

**2. Health Risks to Sensitive Receptors at Key Offsite Intersections and Roadways Should Be Evaluated**

The EIR should analyze health risk impacts at congested intersections. The analysis should not be limited to carbon monoxide emissions, but rather should include ambient concentrations of criteria pollutants (which can cause localized health impacts from vehicle emissions) and toxic air contaminants.

**3. Asthma Impacts From Construction Emissions and Project-Related Traffic Should Be Quantified and Mitigated**

Numerous studies have identified asthma impacts associated with diesel particulate matter exposure. The EIR should analyze the impact of such exposure from construction and operations on nearby residences, including offsite traffic.

**4. Mixed-Use Development**

The EIR should prepare an HRA and evaluate asthma risks to future residences

associated with the reasonably foreseeable Mixed-Use Development.

The EIR should evaluate impacts of siting residences within close proximity of a major freeway based on the reasonably foreseeable Mixed-Use Development based on guidance from CARB.

#### **5. Soil vapor intrusion risks**

Soil vapor intrusion risks from residual site contamination should be analyzed.

#### **6. Air conditioning and air filter units**

The EIR should evaluate installing air conditioning and air filter units on impacted residences, schools and other sensitive receptors where local air emissions will cause significant health effects from on-site or off-site emissions. *See Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1030 (1997) (EIR deficient for failing to evaluate whether air conditioning or filters would mitigate significant localized air quality impacts).

### **G. Noise**

#### **1. Scope of Noise Analysis**

The EIR should conservatively assume that noise impacts from demolition and construction will occur simultaneously. To evaluate worst case noise impacts, the EIR should assume demolition and construction activities occur simultaneously unless the City commits to staging construction activities to ensure that there is no overlap.

The location of stadium is critical to noise assessment. Unless the DEIR identifies a specific location for the stadium footprint, the EIR must analyze multiple “worst case” scenarios of locating the stadium near the east, west and south boundaries to determine the impact on sensitive receptors.

The EIR must apply appropriate noise standards. Noise analysis must include onsite noise and offsite traffic noise. According to City of San Diego CEQA Significance Thresholds, Interior and Exterior Noise Impacts from Traffic Generated Noise, Table K-2, traffic from the project will be significant if it causes noise levels at sensitive receptors (residents, schools, hospitals, etc.) to exceed 45 dBA interior or 65 dBA exterior.

For transportation-related noise, impacts should be considered significant if project-generated traffic results in increases in ambient noise levels that generate a noise level of 60 dBA CNEL or greater at noise-sensitive receptors, based on the City of San Diego General Plan Noise Level Compatibility Standards for multifamily residences.<sup>17</sup> For roadways that currently generate

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<sup>17</sup> See San Diego Marriott Marquis & Marina Facilities Improvement & Port Master Plan

a noise level of 60 dBA CNEL or greater, an increase in ambient noise level of more than 3 dBA CNEL would generally be considered a significant impact. Accordingly, the EIR should consider transportation related impacts.

Increasing the frequency of events can be significant impact under CEQA even if single event noise does not increase. The increased frequency of events can cause a significant noise impact even if any particular single event does not change. (*Berkeley Keep Jets Over the Bay Commission v. Board of Port Commissioners*, 91 Cal. App. 4th 1344 (2001) [EIR failed to analyze how increasing the frequency of night flights would adversely affect residents].) Thus, the EIR must consider how the increased frequency of events at the stadium will adversely impact the environment, including noise-related impacts.

Incremental increases in noise-impacted areas should be evaluated for significance. Increases in noise less than 3 dba should be considered cumulatively significant in areas already heavily impacted by noise, such as the areas around Qualcomm Stadium. (*Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1025 (1997) [EIR found insufficient where existing ambient noise level of 72.1 dBA already exceeded the recommended maximum of 70 dBA and would only increase by another 2.8 – 3.3 dBA at build-out, an increase the EIR considered insignificant because the EIR only applied a strict change in dBA threshold without considering whether the project-related impact would be significant for impacted sensitive receptors “in light of the serious nature of the traffic noise problem already existing around the schools”].)

## **2. Construction and Other Types of Noise Must be Considered.**

Construction Equipment - According to the City of San Diego Municipal Code, § 59.5.0404, construction noise is limited to 7:00 am—7:00 pm, Monday through Saturday (except holidays). Further, per Section 59.5.0404(b), “it shall be unlawful for any person, including The City of San Diego, to conduct any construction activity so as to cause, at or beyond the property lines of any property zoned residential, an average sound level greater than 75 decibels during the 12-hour period from 7:00 a.m. to 7:00 p.m.” The proposed project construction has the potential to significantly impact a number of sensitive receptors from onsite construction and demolition activities and from offsite traffic noise.

There are multiple residential areas immediately surrounding the site. On the east side, an adjacent residential development is approximately 185 feet from the property line. Similarly, on the west side, residences are located within several hundred feet of the property line.

Construction noise, including demolition, grading, foundation-laying, pile-driving, and construction traffic are all likely, individually and cumulatively, to constitute significant and substantial noise pollution affecting sensitive receptors. This was true for the Convention Center

Phase III, which required substantial mitigation measures.<sup>18</sup> Additionally, the construction of the new 49ers stadium (which does not involve demolition or the transportation of the demolished materials), was expected to generate the following average noise levels (measured at 50 feet): ground clearing (83-84 dBA), excavation (88-89 dBA), foundation-laying (77-88 dBA), building and construction (79-87 dBA), and finishing work (84-89 dBA). Even at 700 feet, the nearest residences were expected to be subjected to an average noise range of 54-66 (with a maximum of 71) dBA, exclusive of background noise.

**Fireworks-** Impacts from fireworks at the stadium should be analyzed.

**Construction Traffic-** The EIR must analyze traffic-related noise impacts onsite, at entrance/exit points, and at major intersections along the truck haul routes, including all intersections where traffic impacts are potentially significant.

**Use of Explosives -** The Candlestick park demolition considered the use of explosives for demolition given the difficulty of demolishing the stadium using mechanical techniques. Here, the City should assume that explosives may be used based on the Candlestick precedent and model noise impacts associated with explosives. Specific locations where explosives may be used and noise impact zones should be analyzed in the EIR.

**Helicopters -**The possible use of helicopters for construction should be analyzed in the EIR, including flight routes, helicopter type and noise contours.

### **3. Operational Noise**

Proximity to sensitive receptors, like residential areas, will impact this calculation. An interior CNEL of 45 dB is set by the State of California Noise Insulation Standards for multiple family dwellings, hotel and motel rooms. Residential units are located directly across I-15 from the stadium complex and already have to deal with substantial ambient noise from the highway. The project proposal may move the new stadium much closer to the residences. This proximity would have impacts during both the construction and operation phases of the new project.

Stadium events, such as sporting events and concerts, will also generate significant noise. For example, outdoor activities and events at the Convention Center were found to have the potential to create significant noise impacts, which required mitigation activities.<sup>19</sup> The sound system for the stadium, including the distribution of speakers, as well as cheering crowds, added traffic, fireworks, etc. must all be factored into the calculations. Based on other recent stadium projects, the EIR should also consider:

- (a) Even before games begin, ambient noise from tailgating in the parking lot; at

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<sup>18</sup> San Diego Convention Center Phase III Expansion and Expansion Hotel Project & Port Master Plan Amendment Final Environmental Impact Report (Sept. 2012), at p. 3-62.

<sup>19</sup> San Diego Convention Center Phase III FEIR at pp. 3-63, 3-66.

Candlestick Park, these noise levels reached 57-61 dBA at the monitoring station 1,350 feet from the edge of the stadium (but reached 75 dBA at roughly 300 feet, with the average around 57-63 dBA); tailgating activities had a significant impact on nearby residents.<sup>20</sup>

- (b) When spectators exited Candlestick Park, ambient noise rose to 63 dBA at the 1,350-foot monitoring station.<sup>21</sup>
- (c) During a game at Candlestick Park, maximum noise levels ranged from 95-103 dBA, and the average was roughly 78-92 dBA. Use of the PA system in the stadium created ambient noise at 1,350 feet of about 56 dBA, cheering ranged from 52-65 dBA, and the national anthem and fireworks generated a sound of 61-62 dBA (at 1,450 feet—closer data is unavailable for these). This was also a significant impact. By contrast, the Padre Gardens Apartments would be only a few hundred feet from the new stadium, and would already have significant ambient noise from I-15.<sup>22</sup>
- (d) At Candlestick Park, non-NFL sporting events were almost identical in the noise levels generated and also qualified as significant impacts on nearby residents.<sup>23</sup>
- (e) Concert events would generate an average noise level of 95 dBA, measured 100 feet from the speakers. Noise levels were comparable to, or slightly lower than maximum crowd noise at an NFL event, and constituted a significant impact on residents.<sup>24</sup>

Additionally, the EIR for Phase III of the Convention Center project noted that HVAC and other air-handling systems, loading and unloading activities, and other stationary and recurring on-site activities also contribute significantly to noise pollution.<sup>25</sup> Ground-borne vibrations caused by vehicle circulation within the proposed parking facilities, on-site delivery truck activity, and added off-site traffic, as well as stationary on-site mechanical equipment, like air handling units, condenser units, cooling towers, exhaust air fans, and electrical power generators could cause noise impacts. Therefore, these activities should be analyzed in the EIR.

#### **4. Noise Impacts on Wildlife.**

The EIR should consider noise impacts to sensitive wildlife, which may require

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<sup>20</sup> The 49ers Stadium Project, City of Santa Clara, Draft EIR (July 2009), Sec. 4.10.1.4, p. 241.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at pp. 246-48.

<sup>24</sup> *Id.* at pp. 248.

<sup>25</sup> San Diego Convention Center Phase III FEIR at pp. 3-63.



mitigation measures. Notably, impacts to certain avian species during their breeding season may create the need for mitigation, depending on whether or not the project is occupied by the California gnatcatcher, least Bell's vireo, southern willow flycatcher, least tern, cactus wren, tricolored blackbird or western snowy plover, and whether or not noise levels from the project, including construction during the breeding season of these species would exceed 60 dB(A) or existing ambient noise level if above 60 dB(A).

#### **5. Mixed-Use Development Noise Impacts**

The EIR should analyze noise impacts to future residences associated with the reasonably foreseeable Mixed-Use Development.

#### **6. Farmers Field EIR Identified Numerous Noise Impacts**

The Farmers Field EIR provides an example of the type of noise impacts that may be associated with the stadium project. The Farmers Field EIR identified significant noise impacts (see attached table). Notably, the proposed project appears to have more sensitive receptors in close proximity to the project site than the Farmers Field project.

### **H. Water Resources**

#### **1. The Proposed Development May Fall Within U.S. Army Corps' Jurisdiction Based on Newly Issued Rules**

The EPA and U.S. Army Corps of Engineers have recently issued new rules clarifying the scope of the "Waters of the United States," which establishes the scope of federal jurisdiction over certain bodies of water pursuant to the Clean Water Act. The San Diego River, which runs directly to the south of the stadium, is a jurisdictional water. The ponds within the river-course approximately half a mile to the east of the stadium appear to also qualify. The new rule also establishes that any water within the 100-year floodplain or within 4,000 feet of the high water mark of such a body of water may fall within federal jurisdiction. The stadium site falls within the 100-year floodplain of the river.

The EIR should include a wetlands delineation and analysis of whether the stadium project would directly or indirectly impact any waters of the United States, and determine whether an Army Corps permit is required.

Impacts from construction and operation of the new stadium that lead to contamination of the San Diego River or any of its tributaries could also be subject to regulation under the Clean Water Act.

Furthermore, construction of the new stadium may substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of the river and floodplain. Further, the project may degrade water quality if it interferes with existing

remediation activities.

## **I. Aesthetics**

### **1. Light Pollution**

Use of the new stadium's bright lights on an increased number of evenings throughout the year would contribute additional light pollution to the area, and would particularly impact nearby residential areas to the east of the site.

Light from additional car headlights resulting from both construction trucks and, once the project is completed, from extra year-round events and increased stadium capacity would also impact nearby residences.

The Farmers Field EIR notes that "New nighttime light sources have the potential to increase ambient nighttime illumination levels and result in spillover of light onto adjacent properties. These effects have the potential to interfere with certain functions including vision, sleep, privacy, and general enjoyment of the natural nighttime condition."<sup>26</sup> Residential and some commercial uses are among the most adversely impacted. For the residential units, the increased proximity and frequency of lights could be a major issue.

Beyond light pollution from artificial lights, glare (during both daytime and nighttime hours) from the reflection of sunlight or artificial light off of highly polished surfaces, such as window glass or reflective materials (including cars parked in the parking lot). Analysis should include potential impacts on glare-sensitive uses, which include light-sensitive uses and transportation corridors (i.e. nearby residential units and nearby roadways, including Friars Road, I-15, and possibly I-8), and should consider the impacts on glare of moving the stadium closer to sensitive residential receptors.

### **2. Visual Impacts**

The stadium project, including the demolition, subsequent construction, and new stadium, would be visible from at least the following locations, which should be analyzed in the EIR: (i) from Friars Road, the major arterial passing to the north of the site; (ii) from I-8, passing to the south of the stadium, across the river, I-15, directly to the east of the stadium, and I-805, half a mile west of the stadium; (iii) from residential units to the east of the stadium, across I-15; (iv) and from residences, businesses, and roadways on the northern and southern slopes of Mission Valley, as well as from residences and public parkland on the northern and southern ridgelines of the Mission Valley canyon in Serra Mesa (to the north) and in Kensington and along N. Mountain View Drive (to the south).

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<sup>26</sup> City of Los Angeles, Convention and Event Center [Farmers Field] Project Draft EIR, April 5, 2012, p. IV.D.2.-1.

The existing stadium has an award-winning design and has become a cultural institution in the region. The stadium “dominates the view from almost any vantage point in the eastern portion of the Valley.” (MVCP, at 167). Replacing this with a different structure could negatively impact the aesthetic integrity of the site.

By moving the stadium closer to the residences to the east of the site, the stadium may also impact the ability of those residences to receive afternoon light. For example, the Farmers Field EIR considers shadowing issues at each solstice and equinox, and places particular emphasis on the impacts to residences. *See Farmers Field Draft EIR at p. IV.D.1-1—1-37.*

## **J. Hazardous Waste and Materials**

### **1. Background to contamination issues with the site.**

The EIR must fully describe how the stadium project will affect ongoing monitoring and remediation associated with the Kinder Morgan site contamination. Kinder Morgan’s Mission Valley Terminal (MVT) is an aboveground storage tank (AST) facility located to the northeast of Qualcomm Stadium. Petroleum products currently or historically stored at the MVT include leaded and unleaded gasoline, gasoline additives, jet fuel, diesel, ethanol and transmix. Petroleum hydrocarbons released from MVT have migrated in the subsurface and contaminated the soil and groundwater underlying the Qualcomm stadium site, triggering remediation and monitoring obligations under the authority of the San Diego Regional Water Quality Control Board to protect the environment and human health. Constructing the stadium project would likely complicate and possibly exacerbate future remediation of the Qualcomm stadium site while potentially creating new risks to future onsite sensitive receptors. Moreover, the stadium project may trigger the need for additional Regional Board approvals to manage and remediate the contamination.

The Regional Board issued a Cleanup and Abatement Order (CAO) to address MVT’s contamination in 1992 (CAO No. 92-01). Since 1992, the Regional Board has issued seven addenda to the CAO, including Addendum 5 in 2005. Addendum 5 requires Kinder Morgan to remediate contamination at the Qualcomm stadium site. Kinder Morgan implemented a remediation response consisting of soil vapor extraction (SVE) coupled with localized dewatering in two areas of the stadium site. Kinder Morgan completed remediation of the primary site on December 2010 and the secondary site in December 2013. Kinder Morgan ceased active remediation on the stadium site in the first quarter of 2014 and submitted a report in March 2014 to the Regional Board that concluded: “by the end of 2013, the selected remedial strategy had removed LNAPL [Light Non-Aqueous Phase Liquid] from the [secondary] LNAPL zone to the extent technically practicable.” Kinder Morgan ceased monitoring on the stadium site following the Regional Board’s approval in January 2015. However, the Regional Board required monitoring to resume in April 2015.<sup>27</sup>

**2. There Continues to be Ongoing Uncertainty About the Contamination Risk.**

While remediation efforts may have reduced contamination at the Qualcomm stadium site since the CAO was issued, significant concerns remain that once groundwater levels stabilize onsite, monitoring will show that the Qualcomm stadium site remains impacted by contamination. As explained by the City in a March 2015 letter to the Regional Board “there is still considerable concern that the full effects of the release will impact this [the City’s groundwater resources] for some time, and that mitigation and restoration of the resource is far from over.”<sup>28</sup> For instance, the most recent data suggests that levels of tert-butyl alcohol (TBA) and benzene are rebounding in the LNAPL zone at the stadium site.<sup>29</sup> The rising water table can cause “smearing” in the LNAPL zone, essentially dislodging latent contamination in soils at the stadium site. Following receipt of the City’s analysis, the Regional Board, on April 3, 2015, required Kinder Morgan to resume groundwater monitoring “to determine if groundwater cleanup levels have been achieved in accordance with [the CAO]” following groundwater level stabilization.<sup>30</sup> Kinder Morgan’s proposed monitoring plan, submitted on April 14, 2015, indicated that approximately 20 wells have had TBA, benzene, or MTBE concentrations above state response levels in the last year.<sup>31</sup> Monitoring may trigger additional remediation requirements. The EIR should fully disclose the current status of the ongoing cleanup and monitoring activities, as well as analyze potential impacts to the site contamination from the project. Given the City’s written position on the nature and scope of contamination, the EIR must analyze the potential for pulling of contamination from off-site locations with further dewatering associated with the new stadium construction.

**3. Stadium Construction May Exacerbate Risks.**

Ongoing testing following groundwater level stabilization may demonstrate continuing contamination risks. In the event monitoring demonstrates the need for additional active remediation, any contemplated redevelopment at the stadium site would require consultation with Kinder Morgan and the Regional Board. If the stadium has had the potential to impact remediation or monitoring activities (likely given the scale of development work and extensive well network on the stadium site), the City may need to work with Kinder Morgan and the Regional Board to amend the CAO and associated work plans. Timing for amending the

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Monitoring and Reporting Requirements (Apr. 3, 2015).

<sup>28</sup> See City of San Diego March 25, 2015 Letter to David Gibson, Executive Officer California Regional Water Quality Control Board re Evaluation Report of Remediation for Kinder Morgan’s Mission Valley Terminal Off-Site Release.

<sup>29</sup> Post-Remediation Groundwater Quality, Mission Valley Aquifer, at 33 (Mar. 25, 2015).

<sup>30</sup> Regional Board Response to Kinder Morgan Request for Suspension of Groundwater Monitoring and Reporting Requirements at 1 (Apr. 3, 2015).

<sup>31</sup> Request for Revision of the Monitoring and Reporting Program at 2 (Apr. 14, 2015).

CAO/work plans could range significantly and should be analyzed in the EIR.

#### **4. City Liability If Environmental Contamination Worsens**

If the City moved forward with construction and demolition without Regional Board approval, it potentially could put itself at risk of being named a responsible party at the stadium site for exacerbating or accelerating the migration of contamination. Exacerbation or acceleration of migration during construction could also subject the City to owner/operator liability under federal law. See *Kaiser Aluminum & Chemical Corp. v. Catellus Development Corp.*, 976 F.2d 1338 (9th Cir. 1992).

#### **5. The City Should Evaluate the Impact of Dewatering.**

Environmental risks due to discharging water from construction dewatering must be analyzed. In the event the significant excavation required for a new stadium and/or Mixed-Use Development requires extensive construction dewatering (which we view as likely given the current dewatering at the Stadium itself), it is foreseeable that the City will need to obtain a NPDES permit from the Regional Board to discharge dewatered groundwater encountered during construction. While under most circumstances construction dewatering can be covered by a Regional Board issued "General Permit," given the quality of groundwater in the area (specifically the high naturally occurring Total Dissolved Solids (TDS)), it is reasonably foreseeable that the Regional Board may require a Time Schedule Order (TSO) prior to discharge. Prior to approving a TSO, the Regional Board must provide the public the opportunity to review and comment on the approval. See, e.g., Cal. Water Code § 13167.5(a)(4) (providing for notice and comment prior to adoption of any a "time schedule order" pursuant to Water Code § 13300) and an aggrieved party can petition the State Board for review. See Water Code § 13320(a). If the State Board denies review, or a party does not prevail on the merits before the Board, an aggrieved party may file a petition for a writ of mandamus with the Superior Court requesting review of the State Board or Regional Board decision. Water Code § 13330(a).

Timing for the review and processing of a TSO can range significantly based on the nature of the request and Regional Board staff resources. In a relevant example, it took approximately four months after the public notice and nine months after the notice of violation necessitating its issuance for the Regional Board to adopt a TSO for the MVT discharge.<sup>32</sup> In general, a Regional Board can take as few as three months to over a year to process and adopt a TSO. In the event a party challenges an issued TSO via writ of mandamus, like any litigation, proceedings may take a year or more before resolution.

The necessity of a TSO appears to be reasonably foreseeable, and should be analyzed in the EIR because the Regional Board issued Kinder Morgan's MVT facility a TSO in 2011 after

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<sup>32</sup> See Regional Board Time Schedule Order No. R9-2011-0052.

determining that naturally occurring TDS had the reasonable potential to cause a violation the water quality objectives established in the Water Quality Control Plan for the San Diego Basin.<sup>33</sup>

## **6. Hazardous materials from demolition**

The existing stadium was built in 1967 and, therefore, its demolition could result in the disturbance and transportation of hazardous materials, including asbestos, which must be fully analyzed in the EIR. A complete analysis of the presence of hazardous materials in the existing stadium must be provided.

## **7. Ongoing Litigation Involving the Kinder Morgan Contamination**

The City of San Diego is involved with ongoing litigation involving the Kinder Morgan Contamination, which must be thoroughly discussed and analyzed in the EIR.<sup>34</sup> – The City alleged that Kinder Morgan’s slow progress in remediation and abatement entitled the City to damages under a variety of claims. The City additionally alleged that Kinder Morgan had continued to contaminate the site and had permitted additional leaks and discharge of chemicals.

## **K. Hydrology**

The property is located within the 100-year floodplain. Impacts related to flooding should be evaluated in the EIR. Will flood control infrastructure be required to protect the site from flooding, and if so, what are the implications for other issues areas (biological resources, visual resources, etc.)? (See attached FEMA map.)

## **L. Biological Resources**

Take of species listed under the federal Endangered Species Act as threatened or endangered is only authorized if the person first receives an incidental take permit from the USFWS, either through the Section 7 consultation process (if another federal agency has discretionary authority over the project) or the Section 10 process (requiring approval of a Habitat Conservation Plan).

Construction and demolition activities for the project may disturb habitat along the San Diego River. Based on a U.S. Fish and Wildlife Service (USFWS) online database search, a project near the Qualcomm site and related portion of the San Diego River has the potential to impact over 50 species managed or regulated by the USFWS, including endangered species such as the Coastal California Gnatcatcher, Least Bell’s Vireo, Southwestern Willow Flycatcher and Western Snowy Plover.<sup>35</sup>

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<sup>33</sup> See *id.*

<sup>34</sup> See *City of San Diego v. Kinder Morgan Energy Partners* (District Court Case No. 07-CV-1883 W) (Court of Appeals Docket #13-55297).

<sup>35</sup> See attached results from the USFWS database search, available at

Under Fish and Game Code § 1600 *et seq.*, a Lake and Streambed Alteration Agreement is required if an activity may substantially adversely affect existing fish or wildlife resources and the activity will: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake.

Section 2081 of the Fish and Game Code allows the California Department of Fish and Wildlife (CDFW) to issue incidental take permits for species listed under the California Endangered Species Act. For species listed under both the federal and state Endangered Species Acts, CDFW may issue a consistency determination under Section 2080.1.

Here, CDFW's authority is generally similar to, but broader than, the USFWS' and Army Corps' authority under statutes described above. Therefore, if the project impacts to the San Diego River or endangered species would require federal approval, then CDFW approval would also be triggered. Even if federal approval is not required, it is possible that impacts to state-listed species or waters of the state could obligate the need for CDFW approval.

#### **M. Greenhouse Gases**

The project's construction and operations would result in new GHG emissions that need to be evaluated for significance. GHG emissions, including those generated by the new trips to and from stadium events, need to be evaluated for significance. GHG emissions from construction need to be evaluated for significance as well.

The Project would generate both direct and indirect GHG emissions via the following emissions sources, including:

1. Construction: Emissions associated with dust control (water), construction debris disposal, and construction-related equipment and vehicular activity;
2. Transportation: Emissions associated with Project-generated vehicular operations;
3. Building Operations: Emissions associated with space heating and cooling, water heating, and lighting;
4. Water: Emissions associated with energy used to pump, convey, treat, deliver, and re-treat water; and
5. Solid Waste: Emissions associated with waste streams (embodied energy of materials), trips, energy use, water use, construction.

The proposed project would generate and contribute to cumulative increases in sources of GHGs.

## **N. Geology and Soils**

A detailed analysis of whether the project would expose people or structures to substantial adverse effects including death as a result of seismic related ground failure, including liquefaction, should be analyzed in the EIR, including considering the following.

San Diego's Seismic Safety Study indicates that there is a high potential for liquefaction at the property. This means that the property is at a moderate to high risk of hazard.<sup>36</sup>

The Seismic Safety Study also outlines the required geotechnical studies for different categories of development. A stadium would fall into Group 3, which includes "places normally attracting large concentrations of people." Based on the hazard category, relative risk, and building type, a stadium project would have to conduct a soil investigation and a geologic investigation prior to receiving planning and development permit approval.<sup>37</sup>

The Seismic Safety Study concludes that developments will require a geotechnical investigation prior to development. All buildings within the high potential liquefaction area require the completion of a geotechnical investigation prior to receiving building permit approval.<sup>38</sup>

## **O. Land Use**

The project must be evaluated for consistency with land use regulations, under CEQA. The zoning code for the current zone in which the stadium is located, MVPD-MV-CV, states that "no building or improvement, or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the uses listed for applicable zones in Table 1514-03J." (SDMC § 1514.0305(b).) In turn, Table 1514-03J does not list "stadium" or any use that could be construed as permitting a stadium. While Table 131-05B indicates that stadiums are permitted in the CV zone, Section 131.0520 states that the uses permitted under Section 131-05B "may be further limited by...(3) The presence of environmentally sensitive lands, pursuant to Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations); or (4) Any other applicable provision of the San Diego Municipal Code." The property is both located within environmentally sensitive land (floodplain) and in a zone (MVPDMC- CV) that limits further uses otherwise permitted in the CV zone. Stadiums are not permitted in floodplains.

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<sup>36</sup> San Diego Seismic Safety Study Map, Grid Tiles 21 and 26.

<sup>37</sup> San Diego Seismic Safety Study Map, Sheet 2.

<sup>38</sup> San Diego Seismic Safety Study Map, Sheet 3.



As discussed below, the project may require a consistency determination by the San Diego County Regional Airport Authority. Further, the Project could impact on San Diego River Park Master Plan ([http://www.sandiego.gov/planning/programs/parkplanning/pdf/sdriverparkpdf/sdrp\\_master\\_plan\\_full.pdf](http://www.sandiego.gov/planning/programs/parkplanning/pdf/sdriverparkpdf/sdrp_master_plan_full.pdf)), which should be analyzed in the EIR.

#### **IV. A REASONABLE RANGE OF ALTERNATIVES MUST BE ANALYZED**

A reasonable range of alternatives must be addressed. Besides the no project alternative, these could potentially include a downtown stadium such as JMI Realty's proposed joint stadium/convention center east of Petco Park (<http://www.sandiego.gov/real-estate-assets/pdf/stadium/jmifacilitystudy2014.pdf>.) The range should also include remodeling/refurbishing the existing stadium instead of building a new stadium. This would reduce construction impacts and keep the stadium in the center of property to reduce impacts on surrounding sensitive receptors. This would require a temporary location for the Chargers to play while the existing stadium is demolished and a new stadium is constructed at the same location. It would also have reduced impacts on ongoing remediation efforts. The alternatives should include a reduced stadium size, or a stadium for a soccer team in lieu of a football stadium. The City should evaluate a domed stadium option to reduce noise impacts. The City must also evaluate reasonably foreseeable permutations of the Mixed-Use Development. Because the NOP does not identify where the stadium would be located, the EIR should fully analyze impacts associated with locating the stadium on different possible areas of the property. And the EIR must examine the possibility of a large parking structure to accommodate the stadium parking requirements.

Finally, while preservation of the historic stadium would be ideal, alternatives could include creation of a public park and expansion of San Diego River Park. (<http://www.voiceofsandiego.org/topics/opinion/mission-valley-needs-more-of-what-it-doesnt-have-no-more-of-what-it-does/>.)

#### **V. ADDITIONAL GOVERNMENTAL APPROVALS WOULD BE NECESSARY**

Based on a preliminary assessment, it is reasonable to assume that discretionary approvals may be required from one or more of the following responsible agencies that may have approval authority over the stadium, which must be analyzed in the EIR.

*County of San Diego* – CEQA applies to “[a]ctivities financed in whole or in part by a governmental agency.” (CEQA Guidelines § 15002(b).) A governmental bond offering that helps fund a specific development project that will change the physical environment constitutes a “project” under CEQA because it is “[a]n activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.” Pub. Res. Code § 21065(b); CEQA Guidelines § 15378(a)(2).

Where the Legislature has intended to exempt certain bond financing from CEQA, it has

expressly done so. Here, because the County of San Diego bond offering would result in governmental funding of the stadium project, and the stadium would result in changes to the physical environment, the bond offering constitutes a project under CEQA, obligating the need for environmental review.

Because the County bond offering would help fund the stadium project, the County must satisfy CEQA before issuing the bonds. If the City EIR does not fully describe the project (such as by failing to include the reasonably foreseeable Mixed-Use Development), then the County would be obligated to complete its own CEQA review prior to the bond offering.

*Regional Water Quality Control Board* – To approve site contamination or water discharge measures. If a Clean Water Act Section 404 permit is required, the Regional Board would need to issue a Section 401 certification. The Regional Board or State Water Resources Control Board must issue a Section 401 certification if a Section 404 permit is required under the Clean Water Act.

*San Diego Air Pollution Control District* – Operation of the proposed stadium may trigger the need for SDAPCD permits for stationary sources onsite, such as emergency diesel generators. The SDAPCD does not publicly list what permits are held by Qualcomm Stadium. However, other stadium facilities in southern California require permits for emergency diesel generators, charbroiling facilities and air conditioning units. In addition, demolition of the current stadium may require obtaining pre-approval for an asbestos removal plan. (See SDAPCD Rules 361.145, 361.150.)

*San Diego County Regional Airport Authority*-- According to the Montgomery Field Airport Land Use Compatibility Plan map, the Qualcomm Stadium site is within the Montgomery Field Airport Influence Area, Review Area 2. The San Diego Municipal Code § 132.1550(c)(4) requires: “Prior to approval of development within the Airport Land Use Compatibility Overlay Zone, the applicant shall obtain a consistency determination from the SDCRAA for the following types of development: . . . (4) Development that includes a rezone or approval of a land use plan.” Here, the stadium proposal and/or the adjacent development project may require a General Plan or zoning amendment, potentially triggering the need for a consistency review.

According to the Montgomery Field Airport Land Use Compatibility Plan, Section 2.6.2(a)(2), development within Review Area 2 requires a consistency review in the following cases: (1) Any object which has received a final notice of determination from the FAA that the project will constitute a hazard or obstruction to air navigation, to the extent applicable. (2) Any proposed object in an area of terrain penetration to airspace surfaces which has a height greater than 35 feet above ground level. (3) Any project having the potential to create electrical or visual hazards to aircraft in flight, including: electrical interference with radio communications or navigational signals; lighting which could be mistaken for airport lighting; glare or bright lights (including laser lights) in the eyes of pilots or aircraft using the Airport; certain colors of neon lights- especially red and white- that can interfere with night vision goggles; and impaired

visibility near the Airport. The local agency should coordinate with the airport operator in making this determination. (4) Any project having the potential to cause an increase in the attraction of birds or other wildlife that can be hazardous to aircraft operations in the vicinity of the Airport. The local agency should coordinate with the airport operator in making this decision.

If the San Diego Regional Airport Authority determines that the development is inconsistent with the airport land use plan, the project would have to be revised to ensure consistency or the City of San Diego could overrule the Regional Airport Authority after holding two public hearings and making certain findings. *See* San Diego Municipal Code § 132.1555. Notification to the Federal Aviation Administration is also required if the stadium would include heights over 200 feet above ground level.

*U.S. Army Corps of Engineers* – Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States, including wetlands. On May 27, 2015, the Environmental Protection Agency and Army Corps co-released the final version of a rule clarifying what constitutes waters of the United States, including tributaries, adjacent waters, wetlands and other waters with a significant nexus to waters of the United States. Here, if the stadium proposal and/or the adjacent development project would directly or indirectly result in fill of the San Diego River, a Section 404 permit may be required. If an individual permit is required, NEPA would be triggered.

*U.S. Fish and Wildlife Service* – Take of species listed under the federal Endangered Species Act as threatened or endangered is only authorized if the person first receives an incidental take permit from the USFWS, either through the Section 7 consultation process (if another federal agency has discretionary authority over the project) or the Section 10 process (requiring approval of a Habitat Conservation Plan). Based on a USFWS online database search, a project near the Qualcomm site and related portion of the San Diego River has the potential to impact over 50 resources managed or regulated by the USFWS, including endangered species such as the Coastal California Gnatcatcher, Least Bell's Vireo, Southwestern Willow Flycatcher and Western Snowy Plover. *See* <http://ecos.fws.gov/ipac/project/VTOJ7C5JHRCCLBCXGHKSWRKOTHM/overview>. Here, given the presence of listed species in the general project area, it is reasonable to conclude that the stadium project and/or adjacent development have some potential to impact listed species, in which case, approval from the USFWS would be required.

*California Department of Fish and Wildlife (CDFW)* – Under Fish and Game Code § 1600 *et seq.*, a Lake and Streambed Alteration Agreement is required if an activity may substantially adversely affect existing fish or wildlife resources and the activity will: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Section 2081 of the Fish and Game Code allows CDFW to issue incidental take permits under certain circumstances for species listed under the California Endangered Species Act. For species listed under both the federal and state Endangered Species Acts, CDFW may issue a consistency determination under

Section 2080.1. Here, CDFW's authority is generally similar to, but broader than, the USFWS' and Army Corps' authority under statutes described above. Therefore, if project impacts to the San Diego River or endangered species would require federal approval, then CDFW approval would also be triggered. Even if federal approval is not required, it is possible that impacts to state-listed species or waters of the state could obligate the need for CDFW approval.

*National Historic Preservation Act* – Where federal discretionary agency approval is required, the federal agency must satisfy the Section 106 consultation process under the National Historic Preservation Act.

## **VI. ADEQUATE TIME FOR PUBLIC REVIEW AND COMMUNITY ENGAGEMENT MUST BE PROVIDED.**

Given the complexity of demolishing the existing stadium, constructing a new stadium and planning for a potential future Mixed Use Development, the City should give the public more than the minimum period of public review and comment on the Draft EIR. The minimum period will not allow adequate time to review all the technical information and, if necessary, to prepare different analyzes for the City to consider.

Given the high number of sensitive receptors that will be affected by this project, and the potential for communities with a high pollution burden to be impacted, the City should complete additional scoping meetings and EIR workshops to facilitate community outreach and awareness. Given the high percentage of Spanish speakers in San Diego, all materials must be made available in Spanish as well as English.

## **CONCLUSION**

We strongly urge you to conduct adequate environmental review pursuant to CEQA before making any decisions that profoundly affect the future of Mission Valley. The Supreme Court's admonition regarding adequate environmental review must be heeded:

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 391–392, 253 Cal.Rptr. 426, 764 P.2d 278.) For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.

*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50. Before the City decides to move forward with a football stadium in Mission Valley, it should develop a full understanding of the environmental consequences of

Martha Blake, Senior Planner  
City of San Diego Development Services Center  
July 20, 2015  
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such a decision, examine potential alternatives that could avoid the negative consequences, and ensure that those consequences are taken into account in any decisions made.

We reserve the right to provide further comments. We believe that the NOP should be reissued given the paucity of information provided for in the original NOP. We hereby request notice of all further proceedings pursuant to Public Resources Code section 21092.2.

Thank you for your attention and consideration.

Sincerely,

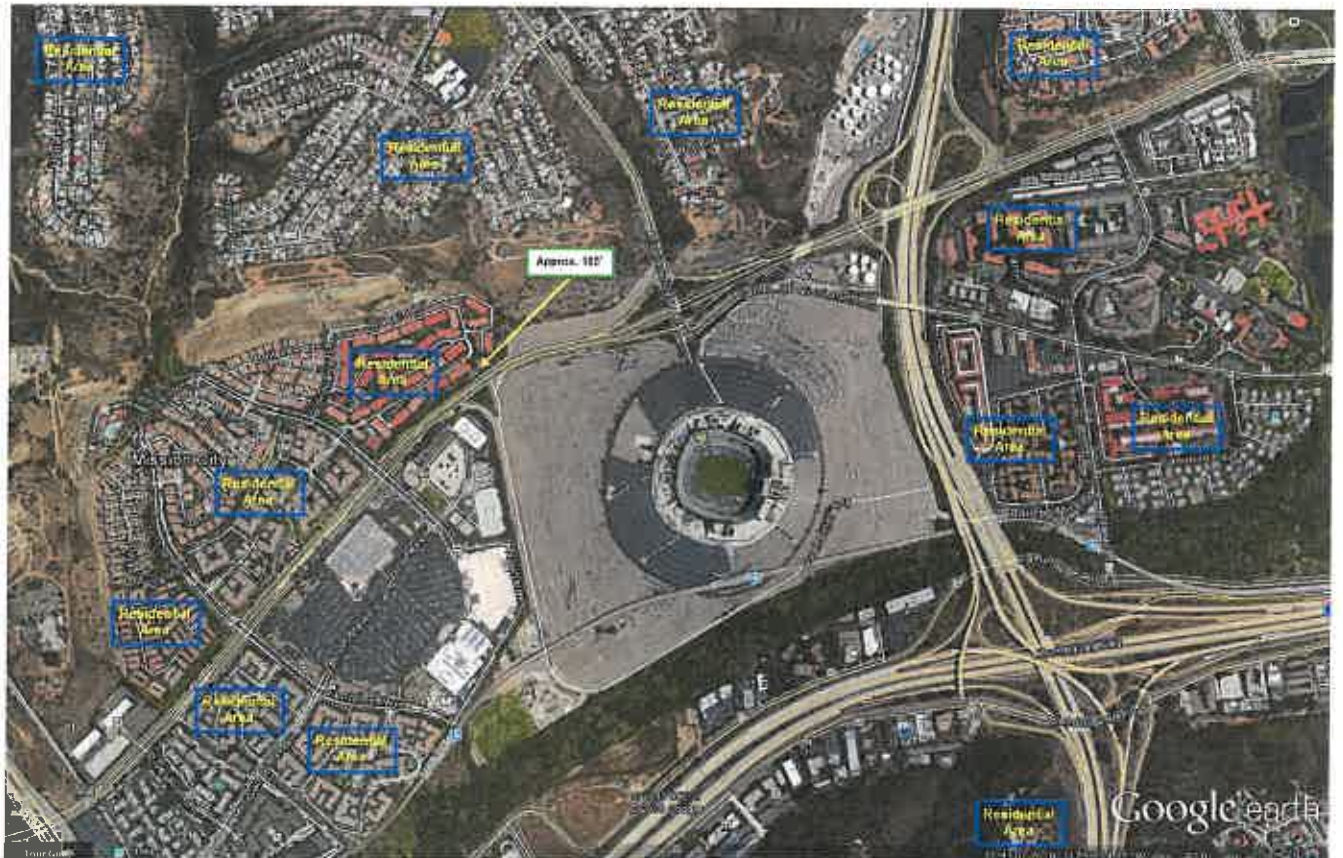
A handwritten signature in black ink, appearing to read "Douglas Carstens", with a stylized flourish at the end.

Douglas Carstens

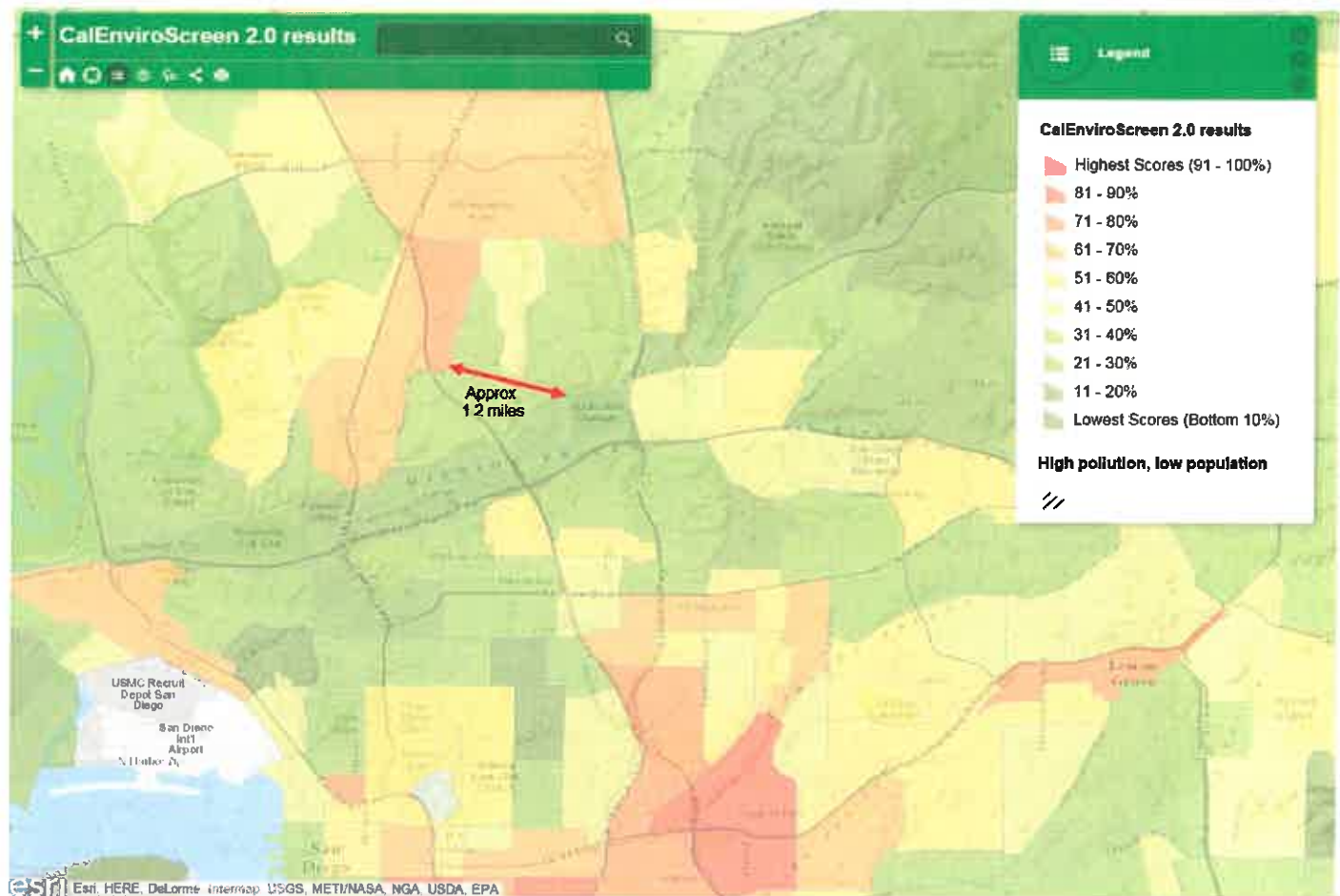
Enclosures

**Exhibit A**

**Potentially Disproportionately Burdened Communities**







#### CalEnviroScreen 2.0

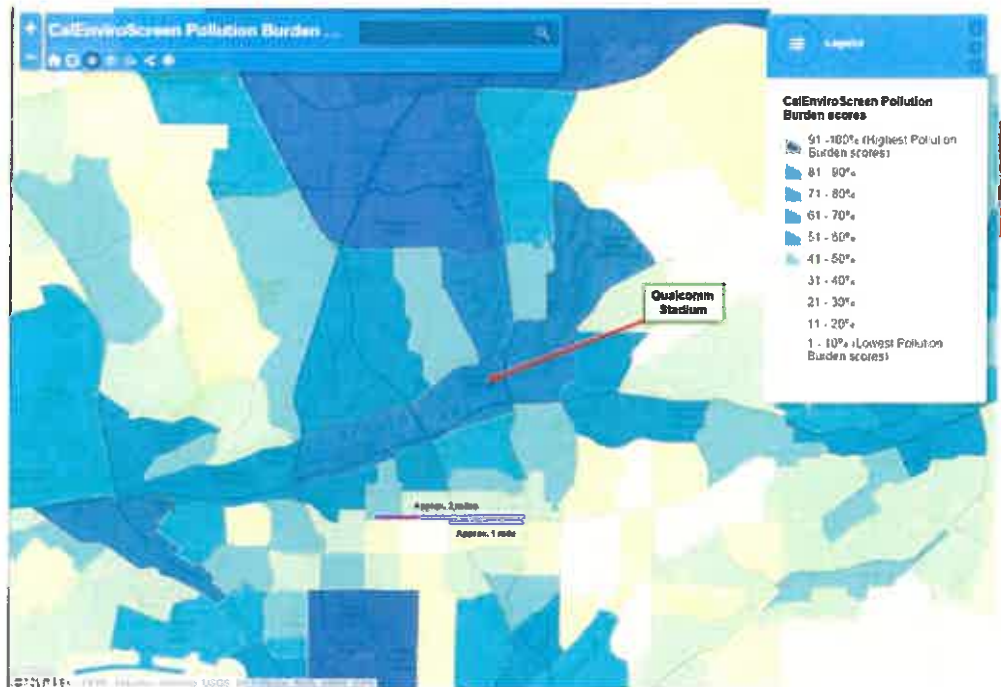
##### CalEnviroScreen 2.0 Pollution Burden Scores

Overall CalEnviroScreen scores are calculated from the scores for two broad groups of indicators: Pollution Burden and Population Characteristics. This map shows *only* the combined Pollution Burden scores. The 12 indicators that make up the Pollution Burden are:

- Air Quality: Carbon
- Air Quality: Fine Particles (PM2.5)
- Diesel Particulate Emissions
- Drinking Water Contaminants
- Pesticide Use
- Toxic Releases from Facilities
- Traffic Density
- Cleanup Sites
- Groundwater Threats
- Hazardous Waste Sites and Facilities
- Impaired Water Bodies
- Solid Waste Sites and Facilities

These indicators are described in detail in the [CalEnviroScreen report](#).

To explore the map, zoom to a location or type an address in the search bar.



#### CalEnviroScreen 2.0

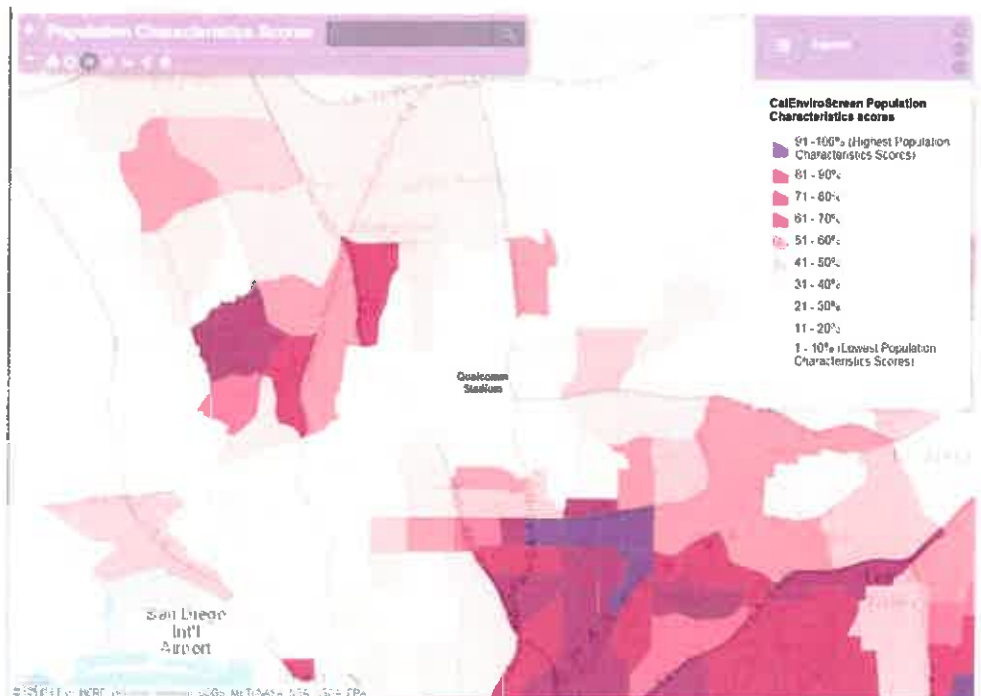
##### CalEnviroScreen 2.0 Population Characteristics Scores

Overall CalEnviroScreen scores are calculated from the scores for two broad groups of indicators: Pollution Burden and Population Characteristics. This map shows *only* the combined Population Characteristics scores. The seven indicators that make up the Pollution Burden are:

- Age (Children and Elderly)
- Asthma: Emergency Department Visits
- Low Birth Weight Infants
- Low Educational Attainment
- Linguistic Isolation
- Poverty
- Unemployment

These indicators are described in detail in the [CalEnviroScreen report](#).

To explore the map, zoom to a location or type an address in the search bar.







# CSAG

CITIZENS' STADIUM  
ADVISORY GROUP

## Site Selection and Financing Plan for a New Multi-Use Stadium in San Diego

May 18, 2015







May 18, 2015

The Honorable Kevin L. Faulconer  
Mayor, City of San Diego  
202 C Street  
San Diego, CA 92101

Dear Mayor Faulconer:

It is our honor to submit our report entitled, "Site Selection & Financing Plan for a New Multi-Use Stadium in San Diego."

On January 30, 2015, you announced the creation of the Citizens' Stadium Advisory Group (CSAG). You directed us to do two things: Select one of two proposed sites, and develop a fair and workable financing plan for a new multi-use stadium in San Diego.

Faced with this unprecedented task and pressure from competing stadium dynamics in Los Angeles, CSAG has successfully met its goals. We did so in 108 days, or four months before our original deadline.

We worked collaboratively with all stakeholders, reviewed an enormous amount of data from the past 12 years, hosted a public forum, interviewed dozens of industry experts and civic leaders and maintained an objective and independent eye toward solving one of the region's largest public policy issues. As a result of our collaboration, we are pleased to present our plan as a blueprint for initiating negotiations with the San Diego Chargers.

The attached report answers the two issues you asked us to resolve. A path to a new state-of-the-art stadium now exists in San Diego. We propose a stadium that is modern and efficient, occupying a smaller footprint than the existing stadium, and creating new opportunities and experiences for San Diegans and tourists. We selected the site that works financially for all parties involved. It meets the time constraints presented by the Chargers, and gives the City an opportunity to create an iconic place showcasing a restored and enhanced San Diego River Park and a new walkable entertainment and residential village linked to mass transit that is the new paradigm for smart urban planning and design.

Along with presenting this exciting vision, our plan spells out a list of important recommendations we believe are needed to complete the work we have started. It also addresses the concerns we have heard from the Chargers and the NFL, and reflects the dynamics of San Diego. The most important element – the financing plan – reflects a balanced and shared approach that works for the team, the City, the County and taxpayers. It also ensures a new level of financial competitiveness for the franchise without unduly burdening taxpayers.

Your leadership and our work created momentum that Chargers' fans have built upon. We believe San Diego's mega-region, home to more than 10 million people, is ready to support a new multi-use stadium where the Chargers can thrive, and San Diegans can enjoy a wide range of entertainment and event activities as suggested in our report.

# **CSAG** CITIZENS' STADIUM ADVISORY GROUP

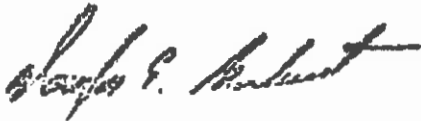
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Thank you for selecting us to serve you in addressing this critical civic matter. We wish you, the City Council, the County of San Diego, and the broader mega-region, the best of luck as you embark on the next phase of this effort. We stand ready to provide further assistance if needed.

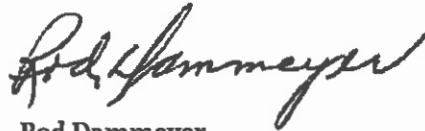
Sincerely,



**Adam Day**  
Chairman



**Doug Barnhart**



**Rod Dammeyer**



**Walt Ekard**



**Aimee Faucett**




**Jason Hughes**  
Co-Chairman



**Mary Lydon**



**Jessie Knight**



**Jim Steeg**

# **CSAG** CITIZENS' STADIUM ADVISORY GROUP

## Site Selection and Financing Plan for a New Multi-Use Stadium in San Diego



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# Executive Summary

San Diego Mayor Kevin L. Faulconer announced the formation of the Citizens' Stadium Advisory Group (CSAG) on January 30, 2015, to chart a workable path to building a new multi-use stadium in San Diego that protects taxpayers and creates a win-win solution for the Chargers and San Diego. The committee is composed of nine civic leaders with experience developing large-scale projects and financing plans.

## CSAG's Plan at a Glance:

- No tax increases.
- No increases to the City's General Fund.
- Does not rely on development to pay for the stadium, parking or stadium-related infrastructure.

## Mayor Faulconer asked the committee to do two things:

1. Select the existing Mission Valley site or the Downtown site for a new multi-use stadium.
2. Develop a financing plan to pay for the facility.

"It's time for us, as a community, to come together to decide the future of the Chargers in San Diego," Mayor Faulconer said at the time. "This independent group will give San Diegans the first real plan. These expert volunteers will explore all possibilities to finance the project, with the clear direction from me that it must be a good and fair deal for San Diego taxpayers."<sup>1</sup>

CSAG completed its work in 108 days, or four months before its original deadline, and two days ahead of the accelerated deadline the committee agreed to early in the process.

CSAG concluded a new multi-use stadium in Mission Valley is the most viable option, and would cost approximately \$1.1 billion, excluding land. To pay for the facility, CSAG outlines revenue streams that exceed \$1.4 billion without increasing taxes.

CSAG's plan lays out a clear and workable path to a new multi-use stadium in San Diego that is fair for everyone, including taxpayers.

In addition to breaking down costs and funding sources, this report explains how the Chargers, the City and County would recoup its investments.

CSAG's financing plan is the first of its kind in San Diego and represents an important break from the past. After years of little progress, due to the collapse of the real estate market, the Great Recession and other issues, CSAG's plan should immediately jump-start negotiations. The City, the County and the Chargers will need to work together to fill in the framework CSAG created.

When the Chargers met with CSAG this past February, the team outlined what it called "guiding principles" that CSAG's financing plan should meet.<sup>2</sup> The committee had made these assumptions prior to meeting with the Chargers and is confident its plan:

- Avoids a two-thirds vote of the electorate (because it does not include a tax increase).
- Will gain the support of the Mayor and a strong majority of the City Council.
- Recognizes the economic realities of our local marketplace and the NFL.
- Does not require "perfectly controlled laboratory conditions" to succeed.

The mega-region San Diego anchors includes more than 10 million people, many of whom have decided keeping the Chargers is a priority. This report should signal to the team that it is time to focus on remaining in San Diego.



For many reasons, including a commitment by the City and County to work with the team to resolve this issue, more progress has been made in the last 4 months than the last 12 years, when the Chargers first introduced plans for a new stadium.

**For the first time in a long time, a fair and workable plan is on the table, one that provides the Chargers with a clear path to remain in San Diego, which is what the team has repeatedly said it wants.**

Based on its research, experience, and meetings with numerous stadium builders and architects, the Citizens' Stadium Advisory Group has concluded a new multi-use stadium at the team's existing Mission Valley location would cost approximately \$1.3 billion including land. This estimate includes:

- \$950 million for the stadium.
- \$204 million for structured parking and stadium-related infrastructure.
- \$180 million (the value of 60 acres of land from the City).

The cost drops to \$1.1 billion when the land value is backed out, and is based on construction starting no later than 2018.

To pay for the proposed stadium, parking, stadium-related infrastructure and operations and maintenance, CSAG's financing plan includes 60 acres of land from the City of San Diego valued at \$180 million, and more than a dozen funding sources that exceed \$1.4 billion, including:

- \$300 million from the Chargers
- \$173 million in bondable construction capital from the team's rent.
- \$200 million from the NFL.
- \$121 million from the County of San Diego.
- \$121 million from the City of San Diego.
- \$225 million from the sale of 75 acres of land.
- More than \$100 million from fans, who would contribute through the purchase of Personal Seat Licenses (PSLs), and ticket and parking surcharges.

**CSAG's financing plan does not rely on tax revenues from development to pay for the stadium, structured parking or stadium-related infrastructure. Moreover, it does not include any new City general fund dollars.**

In addition to the stadium, structured parking and stadium-related infrastructure, CSAG's report outlines \$100 million in estimated future infrastructure costs that would be necessary for the housing, shops, restaurants, and related development that could be built near the stadium. To cover these costs, CSAG recommends revenue streams that include \$116 million from an Enhanced Infrastructure Financing District (EIFD), and \$40 million from Transient Occupancy Tax (TOT) gained from the construction of a new hotel.

CSAG recommends the following for the existing 166-acre Mission Valley site:

- 60 acres of City-owned land be used for the new stadium, parking and a fan plaza.
- 31 acres be carved out to expand a restored and enhanced San Diego River Park.
- 75 acres be sold to a developer.

CSAG recommends the tax revenue from the 75-acre development should pay for community benefits (including parks, additional parking, road and transit upgrades), and to help the City and County recoup its capital costs.

Under CSAG's stadium proposal, the Chargers would earn many millions of dollars more a year, and the City and the County also stand to benefit.

It has been an honor for CSAG to have played a role in jump-starting this process. The committee looks forward to a successful outcome that keeps the Chargers in San Diego, playing NFL football in a new state-of-the-art multi-use stadium that also hosts San Diego State University, the Holiday and Poinsettia Bowls, and numerous events that benefit our mega-region.

**CSAG's financing plan exceeds anticipated costs:**



*\*Not including land from the City valued at \$180 million.*

# Summary of CSAG's Work

Building a fair and workable financing plan to serve as the blueprint for negotiations began with research, and it was research that drove CSAG's decisions.



In less than four months, CSAG met with Chargers' representatives, NFL executives, fan groups (including Save Our Bolts, Bolt Pride, and the San Diego Stadium Coalition), Chargers alumni, and other stakeholders, including representatives with the County of San Diego, San Diego State University, and the San Diego Bowl Game Association.

The committee also met with labor groups and developers, as well as stadium architects, including New York-based MEIS and Dallas-based HKS Architects.

At CSAG's request, MEIS designed artist renderings of a new multi-use stadium in Mission Valley.

Stadium design veteran Dan Meis, FAIA, is the Founder and Managing Principal at MEIS. He was the lead designer for the Staples Center in Los Angeles and two existing NFL stadiums—Paul Brown Stadium in Cincinnati and Lincoln Financial Field in Philadelphia. MEIS currently is working on renovations at Paul Brown Stadium and designing a new 60,000-seat soccer stadium in Rome, Italy called “Stadio Della Roma” that includes a mixed-use entertainment village similar to “LA Live” at Staples Center.

HKS Architects designed AT&T Stadium in Dallas and Lucas Oil Stadium in Indianapolis. HKS also is designing the stadium under construction in Minneapolis, Minnesota for the Vikings, as well as the proposed NFL stadium planned for Inglewood, California.

CSAG also consulted with Clark Construction Group, one of three companies that built Petco Park, home of the San Diego Padres; AECOM, which designed numerous sports stadiums, including CenturyLink Field, home to the Seattle Seahawks; Turner Construction Company, which constructed Levi's Stadium, home to the San Francisco 49ers; and numerous investors interested in financing a new stadium in San Diego.

CSAG was self-funded. It received no contributions from outside the nine-member group and no funding from the City of San Diego. It paid for all of its expenses, including a public forum it hosted, and for the services of a communications professional. The committee did receive a tremendous amount of support and information, including new plans and designs, from San Diego's business community, which was instrumental to CSAG's work.

The City Attorney was the only individual who declined an invitation to meet privately with the committee, and recommended that CSAG not meet with the consultants the City and County retained to vet CSAG's financial report.



# Site Selection

Given the accelerated timeline the NFL and the Chargers established, the Mission Valley site emerged as the only option that leads to a ribbon cutting ceremony at a new stadium before the end of the decade.

The path to a new multi-use venue in San Diego exists largely because of Mission Valley.

## Mission Valley

The current Mission Valley site, home to Qualcomm Stadium, holds a great deal of appeal from a financial standpoint due to the fact that the City and the City's Water Department own the land.

The land, which is already zoned for a stadium, fast tracks the region's ability to retain the Chargers, with estimates the site could be shovel-ready by 2017 and built within 30 to 36 months.

The proposed stadium CSAG recommends includes a modern and efficient design and a smaller footprint than the existing stadium, and the area around it has tremendous potential.

It includes plans to restore and enhance the San Diego River Park. Improvements could include opening the river to walking and biking paths, transforming a grossly underutilized Mission Valley site into an iconic destination recognized around the world.

With an existing trolley stop at the stadium, the site is transit-friendly and offers better parking and tailgating opportunities than the Downtown location CSAG analyzed. It is two trolley stops away from San Diego State University, creating strong partnership opportunities with a university that hosts its football games at Qualcomm Stadium.

With 166 acres, the Mission Valley site is expected to become a year-round destination for fans, residents and tourists that could include a sports museum, an entertainment district, a river park, and other attractions people want to visit. There also is room to grow because the City owns 45 adjacent acres.

The site is expected to generate tax revenues to pay for public facilities that provide community benefits including, but not limited to, parking and transit facilities, parks and infrastructure upgrades. The revenues also would generate income for the City and County to help recoup its capital investments.

It is estimated the development would include a hotel, meaning TOT funds would be available.

Once all phases are complete, the developed property, excluding the stadium, could be worth \$3 to \$4 billion based on CSAG's research.



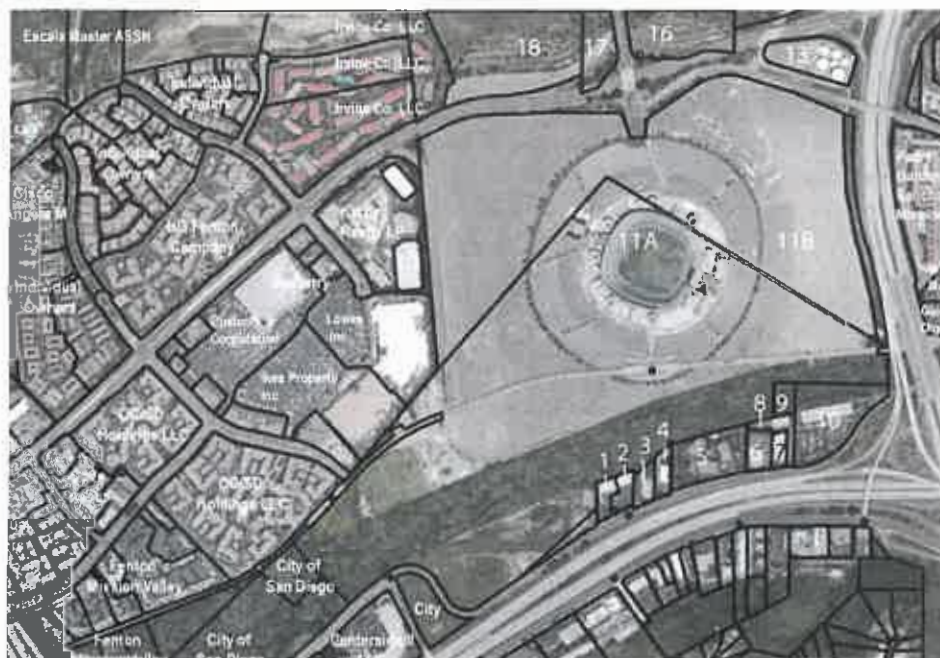
A proposed San Diego River Park sketch drafted by Rick Engineering.

## Support for Mission Valley

The potential of the existing Mission Valley location has not been lost on the Chargers. Over the years, the team has aggressively campaigned for the site.

“Redeveloping the site makes a lot of sense,” the Chargers wrote in 2003. “The site can be transformed from an empty parking lot into a unique and vibrant new community that rivals the best in the world.” The team added: “One hundred acres of asphalt surrounds Qualcomm stadium. For 350 days a year, this parking lot remains largely unused. The Chargers’ concept turns it into a vibrant village with parks, condominiums and shops. Putting homes on transportation corridors is a top priority for this region. The Chargers’ concept embraces that notion and envisions affordable and market rate homes with an easy walk to the trolley station, which, by the way, is built specifically to handle the large crowds generated by a stadium.”

In October 2013, U-T San Diego columnist Nick Canepa wrote: “The drawing board for a new stadium in Mission Valley never was taken down. So the Chargers are going back to it.”<sup>3</sup>



*The Mission Valley site is home to Qualcomm Stadium.*

The Chargers are quoted in Mr. Canepa’s column as saying: “The Qualcomm site drawing board always was there. Now that the economic and housing issues have improved, redeveloping the Qualcomm site is something we’re discussing with our development partner (Colony Capital) as something of interest. A major international company, which I can’t name now, also is interested in partnering with us for stadium naming rights. The site is perfect for private development, for building an urban village.”<sup>4</sup>

This past February, when the Chargers met with the CSAG, the team described its site preference as “agnostic” and said it would be happy with a workable plan for either Mission Valley or Downtown.

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In an interview last month, the Chargers said: “If you can finance the stadium in a way that is acceptable to the public and the Chargers, then it doesn’t matter where it is. People are going to come to the games, no matter where they are.”<sup>5</sup>

CSAG agrees financing a new multi-use stadium plays the most important role in the reality of its implementation, and Mission Valley is a key driver behind the fair and workable financing plan CSAG developed.



## Downtown

If one were to move the proposed Mission Valley stadium Downtown, where the City does not own any land for a stadium, it would increase hard costs by at least a quarter billion dollars. The City would have to buy multiple parcels of land and pay to relocate and clean a large bus yard, a process expected to take up to 7 years.

**CSAG recognizes Downtown, at first glance, is an appealing location for a new stadium, but a close examination of the site reveals numerous problems that make it unworkable.**

Multiple parcels would have to be purchased, which could lead to eminent domain issues and years of litigation, on top of uncertain real estate costs.

"It's hard to assemble even 20 acres downtown...and the land east of Petco is both expensive and already occupied," the Chargers said in 2009.<sup>6</sup>

Relocating the Metropolitan Transit System's (MTS) bus yard is one of the difficult and expensive steps that would be required to try and piece together enough land for a Downtown stadium. In a February 2015 letter to CSAG Chairman Adam Day, MTS CEO Paul Jablonski said the relocation would take five to seven years and cost up to \$150 million.<sup>7</sup>

For CSAG, the Downtown plan eventually became a non-starter because it relies on a tax increase of at least \$600 million<sup>8</sup> that would require support from two-thirds of the voters.

Numerous polls have shown San Diego voters would soundly reject such a tax increase.<sup>9</sup> The Chargers have proposed the City sell the Qualcomm and Sport Arena sites to a developer in order to raise money to purchase land Downtown.<sup>10</sup> The selloff would require a public vote, the outcome of which is far from certain.

Additionally, a SurveyUSA poll taken in January 2015 found San Diegans prefer the existing Mission Valley site over Downtown by a margin greater than 2 to 1.<sup>11</sup>

Other problems regarding the Downtown site include: lack of developable land; extremely limited tailgating options; issues with nearby residents; and complications surrounding the purchase of Tailgate Park land from the California Department of Finance.

In April 2014, the Chargers were quoted extensively in a U-T San Diego story about the team's renewed optimism for a stadium at either location—Mission Valley or Downtown...

That story is headlined: "Chargers eye 2016 ballot measure,"<sup>12</sup> and was published months after Rams owner Stan Kroenke purchased land for his proposed stadium in Los Angeles. The article says "a working scenario would see a roughly \$1 billion stadium proposal go before voters in the November 2016 Presidential General Election. The Spanos family and investment partners would put up roughly \$400 million and seek a \$200 million loan from the NFL."<sup>13</sup> The Chargers are quoted as saying: "We hope that our ongoing meetings with the Mayor's staff will result in another proposal that can work for the city, the Chargers, and ultimately, the voters."<sup>14</sup>

CSAG told the Chargers and the NFL that if the team was set on Downtown the committee would work to make it happen if the Chargers bought the land needed for a new stadium and extended its lease at Qualcomm Stadium.



# San Diego Stadium Assessment



The Chargers are supported by a fiercely loyal fan base, and the team has an organic reach that is easy to see, especially on gamedays. The Chargers bring San Diegans together.



Against the backdrop of the stadium tug-of-war with Los Angeles, ongoing contract issues with the team's franchise quarterback, one playoff appearance in the last five years, and a 2015 decision by the league to lift TV blackouts, one would not expect an uptick in season ticket sales. But fans are rallying around the Chargers. "Based on new season-ticket sales and season-ticket renewal numbers, we are approximately 4,500 season tickets ahead of last year's pace," the team said in early May.<sup>15</sup>

So why has a stadium solution not surfaced until now? Why is this time different?

The stadium issue in San Diego has been around for more than a decade. The Chargers first introduced a plan for a new stadium 12 years ago, following a letter the team sent to Mayor Dick Murphy in 2002 expressing concerns about its viability in the existing facility. The team's stadium pursuits included several concepts at numerous sites, including Mission Valley and Downtown.

It is not accurate to suggest any one person, group, or issue thwarted the team's efforts. Multiple factors played a role, including the infamous "ticket guarantee" between the City and the Chargers, which cost San Diego taxpayers tens of millions of dollars and was not lifted until the 2004 season. This adversely affected the political climate for a new stadium at City Hall.

City leaders then faced a \$2 billion pension deficit that nearly bankrupted the City.<sup>16</sup> The pension crisis was resolved, but the real estate collapse hit San Diego hard, as did the Great Recession.

## LA Threat Surfaces

In the latter half of 2014, speculation about the Chargers potentially moving to Los Angeles began.<sup>17</sup>

The rumors became reality in February 2015, less than a month after Mayor Faulconer announced the formation of CSAG and his pledge to resolve San Diego's stadium issue. The mayor shared these messages during his first State of the City. At the time, he was in office 10 months.

On February 20<sup>th</sup> of this year, the Chargers announced plans for a joint stadium with the Oakland Raiders in Carson, California. The news came as a surprise to everyone in San Diego.



According to NFL bylaws, any team that wants to relocate needs the support of two-thirds of the league's owners, or 24 of 32 NFL franchises.<sup>18</sup> The owners want to know what has been done to build a new stadium in the existing market, what's being planned, and whether that market can sustain a franchise well into the future.



Faced with multiple proposals by NFL teams interested in moving to Los Angeles, the league formed the "Committee on Los Angeles Opportunities" earlier this year. The committee is made up of six NFL owners tasked with analyzing stadium plans from existing markets and for L.A.

League executives have told CSAG that members of its group and City representatives would likely be invited to present to the Committee on Los Angeles Opportunities this summer.

The Chargers have not filed for relocation with the league, but the team has said it would be forced to do so if either the St. Louis Rams or the Oakland Raiders file for relocation.<sup>19</sup> Rams owner Stan Kroenke is proposing a privately funded stadium in Inglewood, California that would be capable of housing two home teams.



The Chargers have not released the financing plan for Carson but have said the stadium would be privately financed and based primarily on a record number of sales of PSLs. The team also has said its financing plan would remain viable if the Raiders work out a deal to remain in Oakland.<sup>20</sup>

## San Diego Responds

In San Diego, the Chargers met with CSAG in February, and joined an April meeting with members of CSAG and NFL Executive Vice President Eric Grubman. The Chargers also built a website for CSAG and stocked it primarily with public information.

While unsettling to many Chargers' fans, the efforts to bring NFL football back to L.A. galvanized San Diego.

The past became the past, San Diego dug in, and a massive regional effort surfaced. The hashtag #SaveOurBolts became ubiquitous. Rallies were held. Sports talk radio lit up. News coverage of the stadium issue moved from random to constant, and from the sports page to the front page.



San Diego is engaged, and the timing could not be better. The political will exists to see this project through, and the City and County are on solid financial footing. Those reasons, and others, make this time different.

Numerous people and organizations deserve credit, including former Chargers and fan groups who represent tens of thousands of people, many of whom have donated time and money to keep the Chargers in San Diego.

The team has been here for 54 years, and CSAG and many others want to ensure the San Diego Chargers are a member of the NFL family indefinitely.

One of CSAG's goals was to present a plan that would improve the Chargers' finances. The team has been open about its struggles to remain competitive with teams who earn more money largely because they play in newer stadiums that generate more revenue than Qualcomm Stadium, which was built 48 years ago.

The Chargers have said they want to share in the costs of a new municipally-owned stadium in San Diego. The team, however, does not want the public's share to rely on development because of the time it would take for those revenues to be realized. Mr. Grubman relayed a similar message when he met with CSAG, encouraging the committee to eliminate the risk if its financing plan included mixed-use development.

CSAG agrees there are better and faster approaches to financing a stadium, which is why its plan does not rely on tax revenues from development to pay for the stadium. The committee, however, was careful not to limit potential options while crafting its financing plan. It heard from numerous developers and private investors who want to fund all or part of the Mission Valley project. CSAG referred these requests to the City.

The landscape in San Diego is essentially risk-free. This is the team's home, and a plan now exists to keep them here—in a world-class region.

"The San Diego region is thriving and growing," according to an April 11 commentary in U-T San Diego written by members of the Strategic Roundtable, 32 retired executives and longtime San Diego civic leaders. "San Diego has the highest percentage of 18-35 year olds in the United States, and has three strong economic drivers – innovation, military, tourism – that are growing jobs across the county."

"Chargers fans come to San Diego from the surrounding mega-region, which includes Tijuana (population 3 million), south Orange County (population 3 million) and parts of Riverside (population 2 million). Combined, we draw fans from a population of more than 10 million people. We have an economically sustainable region that will continue to support the NFL, including future Super Bowls, as much as it has for the past 54 years."<sup>21</sup>

America's 8th largest city, San Diego is home to 1.3 million residents, and San Diego County is home to 3.3 million residents. The County's population grew by 41,000 in 2013; only three other counties across the United States added more residents that year.<sup>22</sup>





# Costs

## How much would the new municipally-owned stadium cost?

In determining the probable cost of a new stadium in Mission Valley, CSAG noted that since 2009 no NFL stadium project has cost less than \$1 billion. CSAG researched the cost of recently constructed stadiums and reviewed the following estimates for stadium construction:

- Two estimates from Clark Construction Group for construction of two Los Angeles stadiums that were not built.
- An estimate from Turner Construction Company for a stadium on the existing Mission Valley site.
- An estimate by CB Urban Development and Rider Levett Bucknall for a stadium on the existing Mission Valley site.<sup>23</sup>
- A stadium-only estimate prepared by Cumming Construction to evaluate the feasibility of a combined Convention Center/Stadium facility.
- The Mission Valley Stadium Private Financing Proposal prepared by the San Diego Stadium Cooperative Coalition.

In evaluating the above information, CSAG had to make adjustments for estimate inclusions and exclusions to determine the most likely probable cost for a new stadium, including parking and related stadium infrastructure costs.

Assuming the stadium will contain approximately 1,650,000 square-feet of gross area and 65,000 seats, with room for 72,000 seats for Super Bowls and College Football Championship Games, the probable cost of a new facility – including land, parking and stadium-related infrastructure – is estimated at \$1.33 billion. With the land backed out, the cost drops to \$1.15 billion and is based on a construction start no later than 2018.

It is worth noting that the six most recent NFL stadiums opened or under construction “would cost an average of \$1.5 billion dollars if constructed in Southern California,” according to a report released in April, 2015 by the National University System for Policy Research.<sup>24</sup> The average includes four extremely high-end stadiums in San

Francisco, Atlanta, New York and Dallas, each of which includes extravagant expenses covered by the team and not the public.

While the probable cost estimate of the proposed stadium in San Diego is lower than the \$1.5 billion average cost of the most recent premium NFL stadiums, a downward adjustment was made since the proposed stadium would be open air as opposed to covered. Additionally, transit facilities and other infrastructure that would be necessary to support a 65,000-seat stadium are already in place in Mission Valley.

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The proposed San Diego stadium MEIS designed CSAG at the Mission Valley site includes a “canopy, not a roof, to shade much of the seating bowl, and ensure a home field advantage by keeping crowd noise close to the field.

MEIS and other architects who have designed NFL stadiums told CSAG a stadium in Mission Valley would very likely be constructed to take advantage of San Diego’s wonderful year-round climate, meaning it would include ample design features that lower construction and operational costs, and let in natural breezes and sunlight.

There are roof options for the City, County and Chargers to consider, but CSAG recommends that a roof not be included because it would add roughly \$150 million to the project with negative returns anticipated for the investment.

The project as proposed would include land valued at \$180 million (\$3 million an acre for 60 acres) from the City of San Diego, \$204 million in stadium-related infrastructure and parking, and \$950 million for the stadium itself. The cost is all-inclusive and covers design, construction, permits, contingency, testing, inspection and financing – also uses a Design-Build delivery system to ensure reliability.

cost containment. CSAG recommends that the stadium be an open-air multi-use facility in comparable quality and amenities as other recent outdoor NFL.

The projected \$204 million of infrastructure includes \$144 million for a 12,000-vehicle parking structure and \$60 million in stadium-related infrastructure costs, including entry/exit improvements, and general site preparation such as utilities, earthwork and tailgate facilities.

CSAG received two estimates for infrastructure costs.<sup>25 26</sup> After accounting for structured parking and stadium-related infrastructure, which is paid for in the core financing plan, there was an additional \$144 million in future infrastructure costs for community amenities to support ancillary development, including general site preparation, utilities, earthwork, sidewalks, lighting, traffic enhancements, and parking. CSAG envisions these costs being paid by using an EIFD (a new statewide tool to help finance needed infrastructure and development projects) and TOT on a new 500-room hotel.

By using these tools, the value of the 75 acres of land to be sold by the City will be increased, providing additional revenues to fund the stadium and further minimizing the impact to the City's General Fund.



“The canopy would not only enhance the fan experience, but also would contribute to the stadium’s state-of-the-art TV broadcast capabilities by reducing glare and shadows and providing for optimal distribution of field lighting and stadium audio,” said stadium design veteran, Dan Meis.

*Conceptual renderings by MEIS showing the exterior (above) and interior (middle) of the new stadium.*



# Financing

## Paying for the new \$1.33 billion\* municipally-owned stadium and operations and maintenance

CSAG recommends the following funding sources to pay for the stadium (\$950M), structured parking, and stadium-related infrastructure (\$204M), or \$1.15 billion in costs.

CSAG assembled more than \$1.4 billion in funding recommendations. Determining the public-private split of the costs is one of the issues that will be resolved during upcoming negotiations between the Chargers, the City and the County.

Chargers	\$300M
NFL	\$200M
City Stadium Fund	\$121M** (\$7M/year over 30 years***)
County Stadium Fund	\$121M** (\$7M/year over 30 years***)
Personal Seat Licenses (PSLs)	\$60M (\$120M total split evenly with Chargers)
Chargers Rent	\$173M (\$10M per season) over 30 years***
SDSU Annual Rent	\$21.6M (\$1.25M/year) over 30 years***
Bowl Games Rent	\$21.6M (\$1.25M/year) over 30 years*
Developer Purchase (sale of 75 acres at \$3 million an acre)	\$225M
Ticket Surcharge	\$84.7M (\$4.75M/year) over 30 years***
Chargers Parking & Surcharge	\$26M (\$1.5M/year) over 30 years***
Additional funding sources stadium is expected to generate	\$50M over 30 years***
<b>Total Recommended Revenues</b>	<b>\$1.4 Billion</b>

\*Includes City land valued at \$180 million.

\*\*No new taxes.

\*\*\*Net Present Value based upon 4% discount rate over 30 years.

## Chargers/NFL

Twelve years ago, the Chargers offered to pay \$200 million, or half the cost of a new stadium in Mission Valley. Since that time, due to inflation and significant design changes, stadium costs have soared.

Based on CSAG's analysis and information from the Chargers, CSAG believes the Chargers can contribute \$300 million, backfilled by new and increased revenues explained on page 16 of this report.

The NFL has said the league would be willing to contribute \$200 million to build a new stadium in San Diego.

## City/County

CSAG discussed the recommended funding sources with City and County leaders.

The City currently pays approximately \$10 million a year to operate Qualcomm Stadium, including \$4.8 million in annual debt service for Qualcomm. The total remaining debt service is \$52 million and set to expire in 2026.<sup>27</sup>

CSAG has outlined more than \$1.4 billion in funding sources to pay for a new stadium costing roughly \$1.1 billion excluding land, and therefore recommends the City retire 100 percent of its Qualcomm stadium debt before the new stadium opens.

With proper third-party management, the expectation is the new stadium would break even, at a minimum, therefore the City would no longer be required to subsidize the operations of the stadium as it currently does.

Additionally, with the Qualcomm Stadium debt paid off, the City would not need to spend millions of dollars a year to retire that obligation. CSAG recommends that a portion (\$7 million a year) of the City's savings be used to contribute toward financing the new stadium.

The County's stadium sub-committee has assured CSAG it would partner with the City on financing, which is why CSAG recommends the County also contribute a minimum of \$7 million a year, or a lump sum payment of at least \$121 million.

## PSLs

While some have questioned San Diego's ability to sell a substantial amount of PSLs, the National University System Institute for Policy Research suggests that "San Diegans would likely support between \$100 and \$150 million in PSLs."<sup>28</sup>

In April, Mr. Grubman, the NFL's Executive Vice President, suggested to CSAG a figure of \$150 million for PSL sales in San Diego, with half going to the Chargers as part of the team's financial contribution for the new stadium.

CSAG estimates \$120 million in PSLs would be sold, half of which would help fund the public's share of the stadium. The other half would help the Chargers backfill its share of construction costs.

The Minnesota Vikings expect to sell \$125 million in PSLs for a new stadium scheduled to open next year.<sup>29</sup>

## Chargers Rent

The Chargers current rental agreement with the City of San Diego states that the team must pay "\$2.5 million for each Regular Football Season beginning with the 2004 Regular Football Season; \$3 million for each Regular Football Season beginning with the 2014 Regular Football Season through and including the 2016 Regular Football Season; and, \$4 million for each Regular Football Season through and including the 2020 Regular Football Season,"<sup>30</sup> when the lease is set to expire.

"The team's property taxes, some parking revenues, and the City's suite at Qualcomm" all count against what the Chargers pay, bringing the total to approximately \$1 million a year. Additionally, "the Chargers annual payment due to the City gets eaten away by a series of rent credits, which drastically reduces the team's bill. The City also pays the team each year as part of a settlement to a 2006 American with Disabilities Act lawsuit at Qualcomm."<sup>31</sup>

Rents across the league range and some are tied to concessions, parking and other revenue, so it is difficult to do an apples to apples comparison. The San Francisco 49ers are at the high end, paying \$24.5 million annually in rent.<sup>32</sup>

In Minneapolis, the Vikings will be responsible for \$13 million in annual stadium costs at the stadium under construction, with \$8.5 earmarked as rent, which climbs 3 percent a year until reaching \$20 million in Year 30.<sup>33</sup>

Based on comparable stadium costs and rent payments, CSAG recommends the Chargers pay rent of \$1 million a game, or \$10 million a year in Year One, with 3% annual increases for 30 years.

One million dollars per game is less than 10 percent of the expected gross revenues the team would earn on game days in the new stadium.

## Rent From SDSU & Bowl Games

San Diego State University's (SDSU) current contract with the City of San Diego expires after the last game of the 2018 season. Retaining SDSU as a tenant in the new facility would be both beneficial for the City, in helping to recoup costs, and for the University, providing SDSU's Division 1 football program with a premier state-of-the-art space to showcase its football team.

CSAG recommends that an annual rent of \$1.25 million for 30 years (\$21.6M) is charged to SDSU.

Similarly, CSAG recommends that an annual rent of \$1.25 million for 30 years (\$21.6M) is charged to the San Diego Bowl Game Association.

CSAG met with officials from SDSU and the San Diego Bowl Game Association on several occasions, and they assured CSAG they want to be a part of San Diego's stadium solution. Ultimately, contributions from SDSU and the San Diego Bowl Game Association will be based on negotiations or market rate lease agreements and cover access to signage, premium areas, suites, locker rooms, etc. during their games/events.

## Developer Purchase

The local development community supports CSAG's estimate that 75 acres of the stadium site could be sold for \$3 million an acre for a total of \$225 million.<sup>34</sup>

## Ticket Surcharge

CSAG recommends a surcharge of \$5 be placed on Chargers tickets (roughly 650,000 attendees a year). CSAG also recommends a ticket surcharge of \$2 for all other events at the stadium (roughly 750,000 attendees a year).

Other NFL stadiums, including AT&T Stadium, CenturyLink Field, and Lucas Oil Stadium, charge as much as 10 percent in ticket surcharges.

## Chargers Parking & Surcharge

Based on a 12,000 parking-space structure and 10 games a season, with an average of \$25 a spot, parking for Chargers games would generate \$3 million a year in addition to \$360,000 annually from a surcharge of \$3 per vehicle.

CSAG recommends \$1.5 million of this annual revenue be bonded against for construction costs.

## Additional Funding Sources

CSAG has identified other revenue opportunities that have been used to pay for the cost of new NFL stadiums. It anticipates these sources would be able to raise and/or contribute in excess of \$50 million over a 30-year period. Among these items are the sale of seats from Qualcomm Stadium; sales of bricks and/or other recognition elements in the new stadium; naming rights within the stadium (not including suite or club level seating); capital contributions from concession vendors; and infrastructure support from sponsor participation, including non-alcoholic pouring rights, alcohol vendor support, and telecommunication companies support of services including Wi-Fi.

CSAG also researched the option to pursue "crowd fund" and believes there is an ability to raise funds similar to approach the Green Bay Packers successfully used.<sup>35</sup>

# Non-Stadium Financing

Financing future infrastructure costs and creating revenue streams to help the City and County recoup capital costs and pay for operations and maintenance.

The committee settled on the following funding sources to cover future non-stadium related infrastructure costs (\$144 million), and provide long-term revenue streams for the City and County.

Enhanced Infrastructure Financing District (EIFD)	\$116M for 30 years or \$5.5M annually
Transient Occupancy Tax (TOT) – 500-room hotel	\$40M for 30 years or \$2.3M a year (10.5% TOT, 500-room hotel)
Non-Chargers event parking and surcharge	\$3M a year
Concessions from Non-Chargers events	\$1M a year

## Enhanced Infrastructure Financing District (EIFD)

Through the creation of an EIFD, CSAG believes the City and County, working with planners and developers, can ensure long-term revenue streams are opened from the 75 acres of land CSAG is recommending the City sell to a developer. These revenues would pay for public facilities that provide community benefits including, but not limited to, parking and transit facilities, parks, and infrastructure upgrades. The revenues also would generate income for the City and County to help recoup its capital investments.

Based on a low- to mid-rise mixed-use village concept consisting of 3,300 housing units, 1 million square feet of commercial space, 175,000 square feet of retail space, and a 500-room hotel, the tax increment available at market stabilization would conservatively yield \$5.5 million annually, resulting in roughly \$116 million in net present value based on a 30-year term and a 4% discount rate.<sup>36</sup>

Real estate markets change and CSAG realizes what makes sense today may not be what is best several years down the road when site development is in full swing. CSAG would encourage government leaders and planners to be flexible, in order to ensure the development maximizes land value, generates sufficient tax revenues to cover capital investments, and ensures the community's needs are met.

## Transient Occupancy Tax (TOT)

TOT is a fee accrued as a portion of the total booking cost from a hotel or motel room. It is estimated that a 500-room hotel could be built as part of a future mixed-use development adjacent to the stadium. Based on market comparisons of Mission Valley hotels with an Average Daily Rate of \$159, and assuming an occupancy rate of 75%, a 10.5% TOT rate would yield \$2.3 million per year, with a net present value over 30 years of roughly \$40 million.



# Revenue Opportunities: Chargers

## Revenue streams at the new stadium for the Chargers

Recouping the Chargers' construction costs through new and enhanced revenue streams.

Stadium naming rights	\$135M to \$165M (over 20 years)*
Naming rights at existing stadium while new stadium is under construction	\$15M (over 3 years)
Personal Seat Licenses (PSLs)	\$60M
Other	\$25M annually

*\*Net Present Value based upon 4% discount rate.*

Naming rights at the new stadium in Mission Valley are expected to range between \$10 million and \$12 million a year, according to CSAG's research.

In addition to naming rights and PSLs, CSAG identified approximately \$25 million in annual increases in team revenues from the use of a new stadium from the following sources:

- Increased general admission tickets pricing
- Increased concession sales at Chargers' games
- Increased premiums charged for club and special seating
- Increased premium charged for suite seating
- Ability to secure a premium suite waiver for 10 years
- Increased merchandise sales
- Increased signage and advertising
- Naming rights to club and suite levels
- Revenue from hosting a small number of events other than Chargers games

# Revenue Opportunities: City/County

## Opportunities at new stadium for the City and the County

Other than a small number of events hosted by the Chargers, the proposed multi-use stadium is expected to operate on a year-round basis and host in excess of 200 events, from Super Bowls to corporate events, generating revenue for the City and County for operations and maintenance costs.

It is acknowledged that the NFL is provided all revenue streams and a rent-free facility for a Super Bowl, and therefore no direct revenue can be attributed to that event.

The playing field at the new stadium should accommodate the needs of professional football as the home field for the San Diego Chargers and NFL events, including the Super Bowl and Pro Bowl. The field also should accommodate collegiate football as the home field for the San Diego State University Aztecs, as well as the Holiday Bowl and Poinsettia Bowl.

The facility also should accommodate the San Diego regional California Interscholastic Federation (CIF) High School football playoffs and championships. Additional field sport uses should be accommodated, including soccer, rugby, and lacrosse. The floor area should be able to accommodate large outdoor events, including motor sports, concerts, music festivals, and monster truck jams.

When HKS Architects met with CSAG, it said AT&T Stadium in suburban Dallas, which HKS designed, has become a revenue-generating machine. A little more than half of the stadium's revenues, HKS said, are generated from 3-day rodeos, rock concerts, and other events besides Dallas Cowboy games.



*MEIS rendering.*

## Revenue Streams

In San Diego, the stadium would be expected to host:

- College Football Championships
- International Soccer/MLS Expansion
- Opening kickoff game for NCAA/season
- Special in-season collegiate games
- Monster Truck Jams
- Motocross/Supercross
- Concerts
- Private events: Bar Mitzvahs; weddings; corporate events; proms; reunions
- Bars; breweries; restaurants open 365 days a year
- Music festivals
- RFP for rideshare company (Uber/Lyft) to have game-day pickup/drop off zone in front of the stadium.
- CIF championships
- Tours of facility
- Film showings
- Movie, TV and Commercial shoots
- Broadcast NFL draft and away games
- Religious events
- Rodeos/Bull riding
- Events held at San Diego River Park
  - » Rugby
  - » Rec Leagues
  - » Youth sports
  - » Concerts
  - » Bowling
- Mountain Dew Tour/X Games
- Dog Shows
- MMA, WWE, Boxing
- 5Ks, 10Ks
- NCAA Championship Lacrosse
- Fantasy sports drafts
- Graduation ceremonies



College Football Championships



Concerts



Other major sporting events like MLS soccer, Motocross, and boxing.



10k runs, graduations and other family events.



# Next Steps

Based on CSAG's extensive review process and thorough analysis of the issues at hand, it recommends negotiations between the City, County and the Chargers commence immediately.

In addition, the outside financial experts retained by the City and County should simultaneously begin vetting CSAG's financing recommendations; work to determine the best way to complete the financing and retire the \$52 million debt the City owes on Qualcomm Stadium before the new stadium opens; and take the City and County portion of the financing plan to the bond market once terms are agreed to. The City and County also should begin soliciting proposals from investors and developers to purchase the 75 acres at the Mission Valley site, as well as stadium architects and builders.

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Further, CSAG recommends that a Joint Powers Authority (JPA) be formed between the County and City to oversee development and ownership of the stadium.

The City and County also should open negotiations with San Diego State University and the San Diego Bowl Game Association with the goal of securing long-term lease agreements for each organization.

The City and County should request an opportunity to present San Diego's stadium plan to the Committee on Los Angeles Opportunities, and NFL Executive Vice President Eric Grubman. This meeting should be held well in advance of the NFL owners meeting in October 2015.

Following the negotiations, the Chargers should launch and fund a citizens' initiative, like the team did this year in Carson, with the goal of gathering enough verified signatures and securing a City Council vote prior to the NFL owners meeting.



# Final Recommendations

## Recommended terms for negotiations with the Chargers

1. The Chargers should sign a 30-year lease with the JPA, and enter into a non-relocation agreement with the JPA.
2. The City and County should create a capital improvement fund for future maintenance and facility upgrades.
3. The City, County and Chargers should share the costs of operations and maintenance. These costs will rise over time so payments should be indexed to inflation.
4. The Chargers should assume the financial risks for naming rights. The team should also cover all construction overages and premium add-ons.
5. The City, County and Chargers should agree to draft a cooperative parking agreement with the owners of office towers in Mission Valley with parking lots that are largely vacant on nights and weekends. The idea would be for fans to park in these large office lots and receive a shuttle ride to and from Chargers games and other events. This service could continue to operate after stadium parking is constructed. It would give fans ample tailgating opportunities and thin out traffic around the stadium.

## Recommendations for the JPA

1. Explore parking options on the south side of the San Diego River to create additional parking and tailgating opportunities.
2. Work with State lawmakers on any environmental compliance issues that surface while also working with regional, state and federal agencies to secure any and all grants for transit, road/freeway work, and parks.
3. Hire a private stadium management company with a proven track record to manage the facility.

For reasons outlined in this report, a path to a new multi-use stadium in San Diego exists. A collaborative effort is needed to build on the momentum San Diegans have created. CSAG would encourage everyone to put San Diego first. If we do, we will achieve greatness, and our new stadium will be a constant reminder of what we can achieve together.

*Special thanks to CSAG's spokesman, Tony Manolatos with Apex Strategies.*

**APEX**  
strategies  
apexstrat.com

*Additional special thanks to reproHAUS for printing the report and to MEIS for creating the stadium renderings. The printing and renderings were done pro-bono.*

**reproHAUS**  
reprohaus.net

**MEIS**  
meisarchitects.com

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# Appendix



# Citizens' Stadium Advisory Group – Bios

The Citizens' Stadium Advisory Group includes a Fortune 500 executive, a revered local government leader, a California State University Trustee, a former NFL and Chargers senior executive, and experts in the areas of finance, land use, real estate and construction of municipal stadiums.

Meet the members of this well-rounded group:



**Doug Barnhart**

*Chairman of Barnhart-Reese Construction*

Douglas E. Barnhart is a long-time resident of San Diego and civic and business leader. He is a San Diego County Planning Commissioner and a past member of the Qualcomm Stadium Advisory Board. He has served as a board member for the Greater San Diego Chamber of Commerce, San Diego International Sports Council and past San Diego Super Bowl Committees. Mr. Barnhart's construction companies built, or helped build, many San Diego landmarks, including Petco Park, San Diego Lindbergh Field Terminal 2, the Douglas and Nancy Barnhart Cancer Center at Sharp Chula Vista, Tony Gwynn Stadium at San Diego State University, the SDSU Gateway/KPBS, dozens of K-12 schools, and the San Diego Chargers Training Facility and Offices.



**Rod Dammeyer**

*Private Equity Investor*

Rod Dammeyer is chairman of CAC, a private company offering capital investment and management advisory services. He is a member of the boards of directors of Stericycle, Inc., and Quidel Corporation, in addition to being a trustee of Invesco Funds. A graduate of Kent State University, Mr. Dammeyer began his business career with Arthur Andersen & Co. where he became partner and chairman of its advisory council. He subsequently served as executive vice president and chief financial officer of two multi-billion dollar conglomerates, Northwest Industries, Inc. and Household International, Inc. From 1985 to 1995, he was CEO of Intel Corporation, which merged into Anixter International, a multi-billion dollar wiring products value added reseller, in addition to serving as managing partner of Equity Group Corporate Investments until 2000.





**Adam Day**  
*California State University Trustee  
& Assistant Tribal Manager of Sycuan*

Adam Day is a veteran public administration executive with extensive experience managing the efficient delivery of municipal services, government relations, community outreach, coalition development, and multi-million dollar charitable and media campaigns. Mr. Day is a California State University Trustee and directs government, public and community relations on behalf of the Sycuan Tribe and their affiliated business entities. Mr. Day brings nearly 12 years of experience at the County of San Diego as chief of staff and deputy chief of staff to various members of the Board of Supervisors. He played a significant role in shaping public policy at the local, state and federal levels on matters such as welfare reform, criminal justice, regional transportation planning and land use. He has served on dozens of boards and committees, including the Del Mar Fair Board appointed by Governors Arnold Schwarzenegger and Jerry Brown, the San Diego County Planning Commission and Century Club of San Diego.



**Walt Ekard**  
*Former San Diego County CAO & former  
City of San Diego COO*

Walter F. Ekard is the former Chief Administrative Officer for the County of San Diego and former Chief Operating Officer for the City of San Diego. As the chief executive for the fifth largest county in the United States, Mr. Ekard managed a workforce of over 16,000 employees and an annual budget of \$5 billion. Mr. Ekard was the Board of Supervisors' "first and only choice" for the job because of his experience and strong leadership skills. A native of San Diego County, Mr. Ekard received his Bachelor of Arts degree from San Diego State University and a Juris Doctor degree from the University of San Diego School of Law.



**Aimee Faucett**  
*COO of the San Diego Regional Chamber*

Aimee Faucett has served the communities of San Diego for 18 years while working in the legislative and executive branches of the City of San Diego and voluntarily serves on several nonprofit boards. Today she holds the position of Executive Vice President/Chief Operating Officer for the San Diego Regional Chamber. Prior to joining the San Diego Regional Chamber, Mrs. Faucett was the Deputy Chief of Staff to former Mayor Jerry Sanders and also served as Chief of Staff to former San Diego City

Councilmembers Kevin L. Faulconer and Jim Madaffer. Mrs. Faucett's community service includes serving on the board of directors for the Jacobs Cushman San Diego Food Bank, the American Red Cross San Diego/Imperial Counties Chapter and San Diego State Alumni Association. She is a graduate of San Diego State University and holds a bachelor's degree in Public Administration and is a recipient of the San Diego Business Journal's 2014 "Women Who Mean Business" Award.



**Jason Hughes**  
*President and CEO of Hughes Marino*

Jason Hughes is President and CEO of the largest tenant representation company in San Diego and one of the premier commercial real estate companies in Southern California. Mr. Hughes has been a fixture in San Diego's commercial real estate industry for 26 years, and was appointed as Special Assistant for Real Estate Services to the City of San Diego in 2013. Mr. Hughes represents approximately three quarters of all corporate tenants downtown, and has negotiated some of the largest tenant lease, purchase and development transactions in the region. Over the years, Mr. Hughes has transacted leases and purchases for tens of millions of square feet, including a dozen downtown high-rise office building purchase and sale transactions, two downtown high-rise residential tower purchases, a development of a new office tower and one large hotel transaction.



**Jessie Knight**  
*Executive Vice President of Sempra Energy,  
Chairman of the Board of SDG&E*

Jessie J. Knight is board chairman of San Diego Gas & Electric Co. (SDG&E); chairman of Southern California Gas Co. (SoCalGas), an affiliate of SDG&E; and executive vice president of external affairs for Sempra Energy. Before joining Sempra Energy in 2006, Mr. Knight served for seven years as president and chief executive officer of the San Diego Regional Chamber of Commerce.



**Mary Lydon**  
*Executive Director of the Urban Land Institute  
- San Diego-Tijuana*

Mary Lydon is an expert in smart growth, land-use planning, real estate markets, community and stakeholder participation and economic development strategies. She has worked with private-sector developers, public-sector agencies and nonprofit organizations. Ms. Lydon is a former Planning Commissioner for the City of San Diego and has held other

leadership roles on several nonprofit boards over her career. Ms. Lydon attended Harvard University's Kennedy School of Government and completed the Executive Leadership Program in 2010. She also holds a bachelor's degree from the University of Wisconsin, Madison. ULI is an international nonprofit organization focused on research and education. ULI's focus is in developing leaders in the responsible use of land and promoting the creation of sustainable thriving communities worldwide. ULI is a member-based organization with 35,000 members globally.



### **Jim Steeg**

*Former NFL Executive and Chargers Executive Vice President*

Jim Steeg is a former National Football League executive and Chargers Executive Vice President who is credited with

growing the Super Bowl from a championship football game into a four-day extravaganza. He has 36 years of experience with the NFL, 26 of those in charge of Super Bowls, where he worked in 70 major stadiums in the United States and around the world. Mr. Steeg's unique experience is marked by working successfully with the multiple constituencies involved in special events and sports management. He has developed a broad range of expertise in dealing with civic, financial and real estate leaders; business, government, college and professional sports, and entertainment; stadium architects; urban planners; traffic and transportation; police; security; and the media.



### **Tony Manolatos**

*CSAG's Spokesman*

Tony Manolatos is an experienced strategist specializing in media relations, crisis communications, community engagement, coalition building,

government affairs and public policy. Manolatos has more than 15 years' experience, including a unique blend of public policy, politics and journalism, which shapes the planning of effective and creative strategies. Manolatos owns and operates Apex Strategies, a San Diego-based public affairs firm that services public agencies and officials, businesses, non-profits, and others. Prior to starting Apex Strategies, Manolatos served as a deputy chief of staff and communications director to Councilman Kevin Faulconer. Before that he worked as an investigative reporter at the *San Diego Union-Tribune*, capping an award winning journalism career that spanned more than a decade.

# Key Dates

## **December 14, 2014:**

San Diego Mayor Kevin L. Faulconer writes NFL Commissioner Roger Goodell, requesting an opportunity to discuss the stadium issue in San Diego.

## **January 14, 2015:**

During State of the City, Mayor Faulconer announces stadium issue will be resolved on his watch.

## **January 30, 2015:**

Mayor Faulconer announces formation of Citizens' Stadium Advisory Group (CSAG).

## **February 22, 2015:**

Chargers owner Dean Spanos and Mayor Faulconer meet and agree to move up CSAG's deadline to 90 days.



## **March 2, 2015:**

CSAG holds public forum at Qualcomm Stadium that draws about 3,000 people.

## **March 12, 2015:**

CSAG selects Mission Valley site over Downtown.

## **March 19, 2015:**

CSAG chair Adam Day and member Aimee Faucett testify to the City Council's

Economic Development Committee about the committee's progress and next steps.

## **March 2015:**

Members of CSAG meet with the architects who designed AT&T stadium, Lucas Oil stadium, and are designing the stadium under construction in Minneapolis, as well as the one planned for Inglewood. CSAG members also meet with builder who built Levi's Stadium, and investors interested in funding a new stadium in San Diego.

## **March 2015:**

CSAG members Mary Lydon, Jim Steeg and Jessie Knight assemble a team of designers and land use experts to look deeper into the development of Mission Valley and a new Chargers Stadium. Representatives with the San Diego River Park Foundation and Mission Valley Planning Group are a part of this team.

## **March 2015 – April 2015:**

CSAG meets with fan groups, including Save Our Bolts and Bolt Pride, Chargers alumni, and other stakeholders, including representatives with the County of San Diego and San Diego State University. The committee also meets with developers interested in the 166-acre Mission Valley site.

## **March 26, 2015:**

Mayor Faulconer, City Attorney Jan Goldsmith, San Diego County Supervisors Dianne Jacob and Ron Roberts, and City Councilmembers Myrtle Cole and Scott Sherman announce a partnership between the City and County to work collaboratively and share consultant costs (up to \$500,000) for a potential new stadium for the Chargers. The County Board of Supervisors and City Council each have since unanimously approved this expense.

## **April 6, 2015:**

CSAG speaks with NFL Executive Vice President Eric Grubman in advance of his visit to San Diego on April 14.

## **April 14, 2015:**

Mr. Grubman and Mark Fabiani met with CSAG's Adam Day, Jason Hughes, Jessie Knight, Walt Ekard, and Tony Manolatos in downtown San Diego. Mr. Grubman said CSAG and/or the City will be given the opportunity to present to the "Committee on Los Angeles Opportunities" made up of six NFL owners. That meeting will likely occur sometime this summer.

## **April 20, 2015:**

City and County finalize contracts with investment firm, outside attorneys, and financial advisor to represent City/County during negotiations with Chargers.



# Design Narrative

## Stadium has a ‘California convertible’ feel



MEIS renderings.

By Dan Meis

San Diego's sunny and mild climate provided us with the opportunity to design a multi-purpose, state-of-the-art stadium that would be both unique in the NFL and a home field to the San Diego Chargers unmatched by any other stadium on the planet in its ability to be completely evocative of the environment of which it is born.

The temperate climate allowed us to design a building that is far more open in nature. Concourses, club areas, lobbies—areas that are traditionally enclosed and electronically heated or cooled—can in this climate often be open air, or significantly less weather protected than in a northern climate.

The ability to forego the facade wrapping that most stadiums of this size require reduces both the capital and operating cost of the venue, while enhancing the fan experience by providing a truly unique-to-San Diego venue.

The natural landscape of San Diego became a critical part of the architecture with the integration of native species of trees and flowers providing a natural tie to the site.

The defining design feature of the proposed stadium is a sun canopy we have dubbed “the Helios”. Helios, the personification of the sun in Greek mythology, here is a fabric canopy employed specifically to shade the seating bowl from the San Diego sun while maintaining an open-to-the-sky, “California convertible” feel. The form of the canopy is derived from a sophisticated computer simulation of the sun angles throughout the seasons at this specific geographic location. The canopy provides an added benefit in acoustical enhancement, capturing crowd noise, and allowing for sound and lighting distribution, ensuring a raucous home-field advantage and state-of-the-art broadcast conditions.

The steel, fabric, and cable structure MEIS designed are instantly evocative of the masts and rigging of the sailboats so identified with the San Diego lifestyle. The design is at once simple and instantly iconic. The shape of the seating bowl reflects the desired sideline orientation of the majority of seating and the best site lines in the NFL. Regular capacity of 65,000 seats is easily expanded to 72,000 for Super Bowls and other major events through the addition of temporary end zone seating sections.

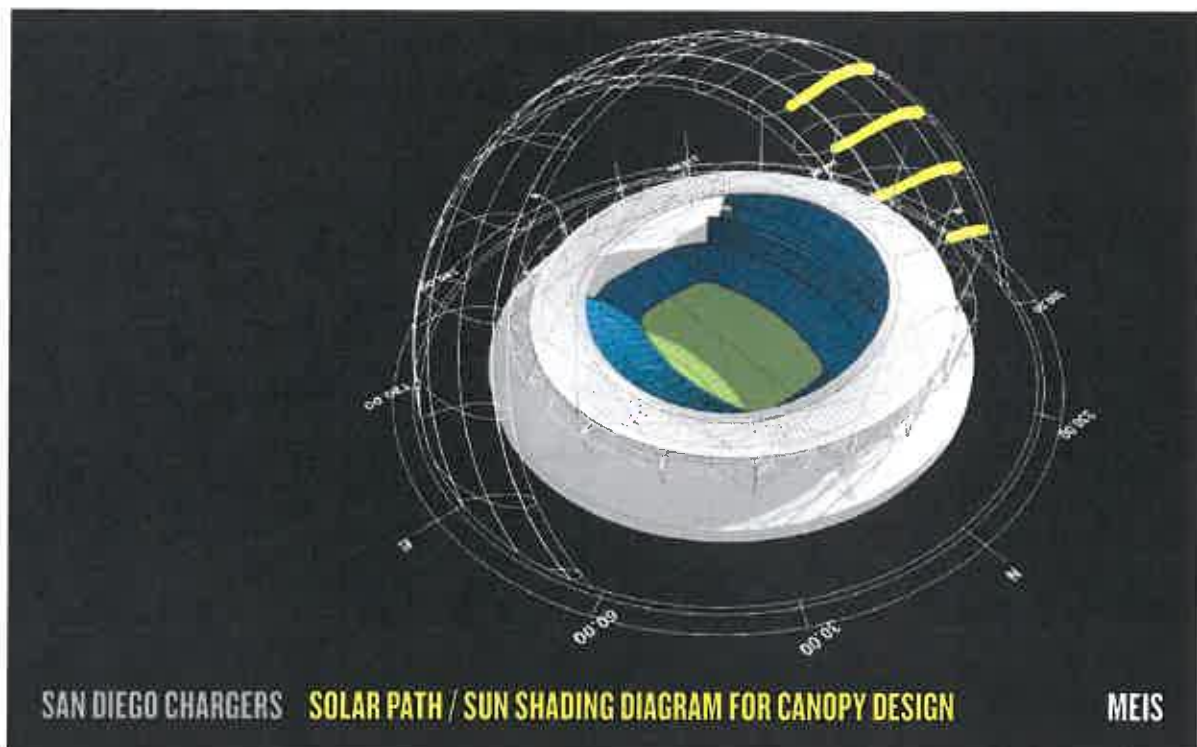
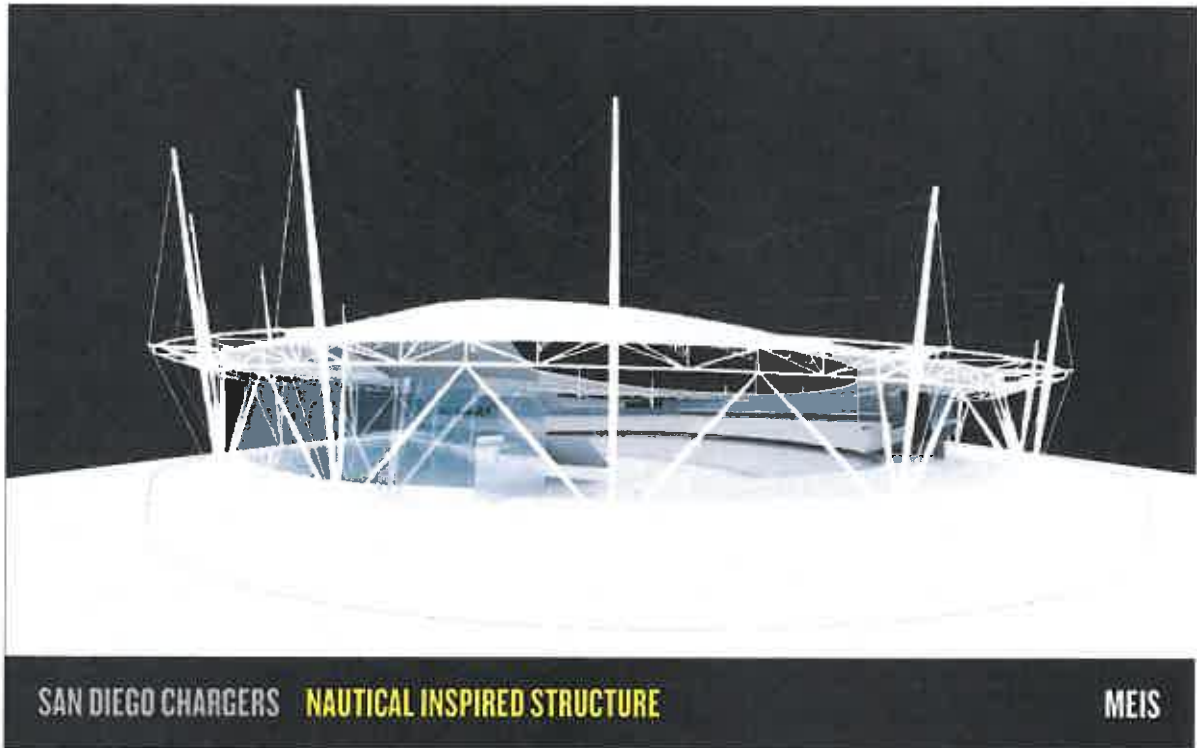
This design allows for one of the most cost-effective stadiums of its size in the world while providing a uniquely San Diego experience and an instantly recognizable, iconic addition to the region.

*Dan Meis is the founder and managing principal at MEIS, a New York-based stadium architecture and design firm.*

**PAGES FROM MEIS  
REFERENCE PRESENTATION:**



**PAGES FROM MEIS  
REFERENCE PRESENTATION:**

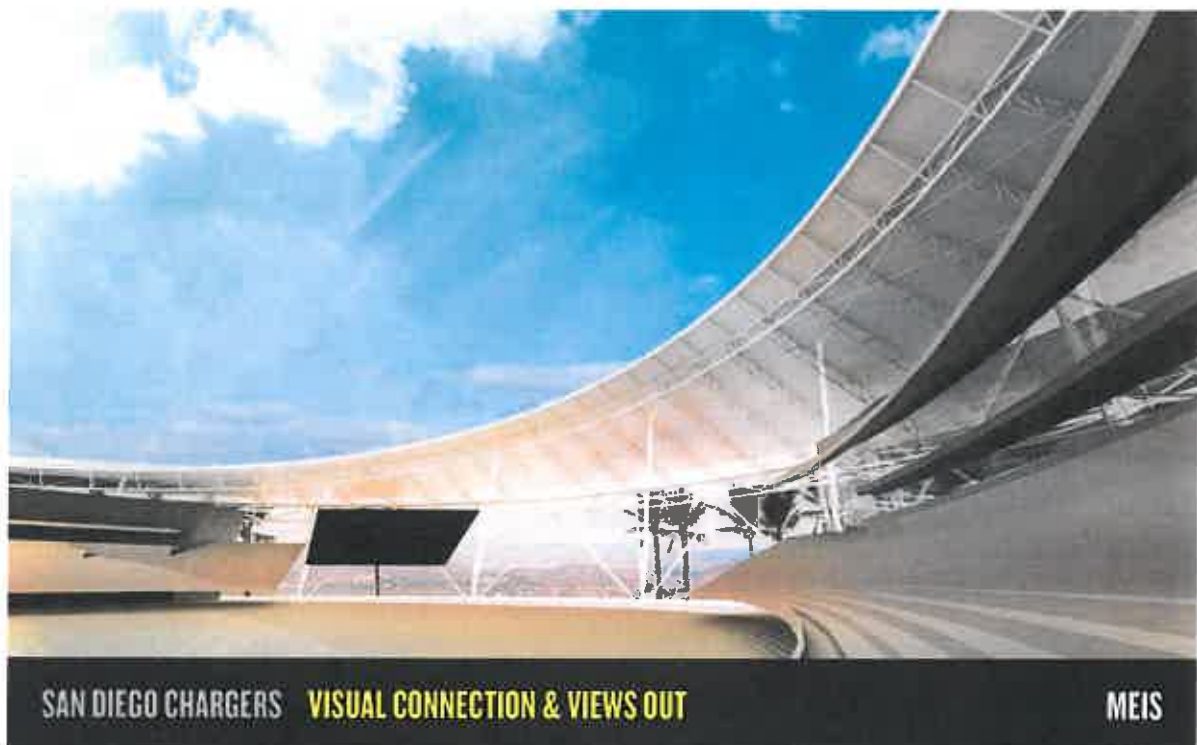
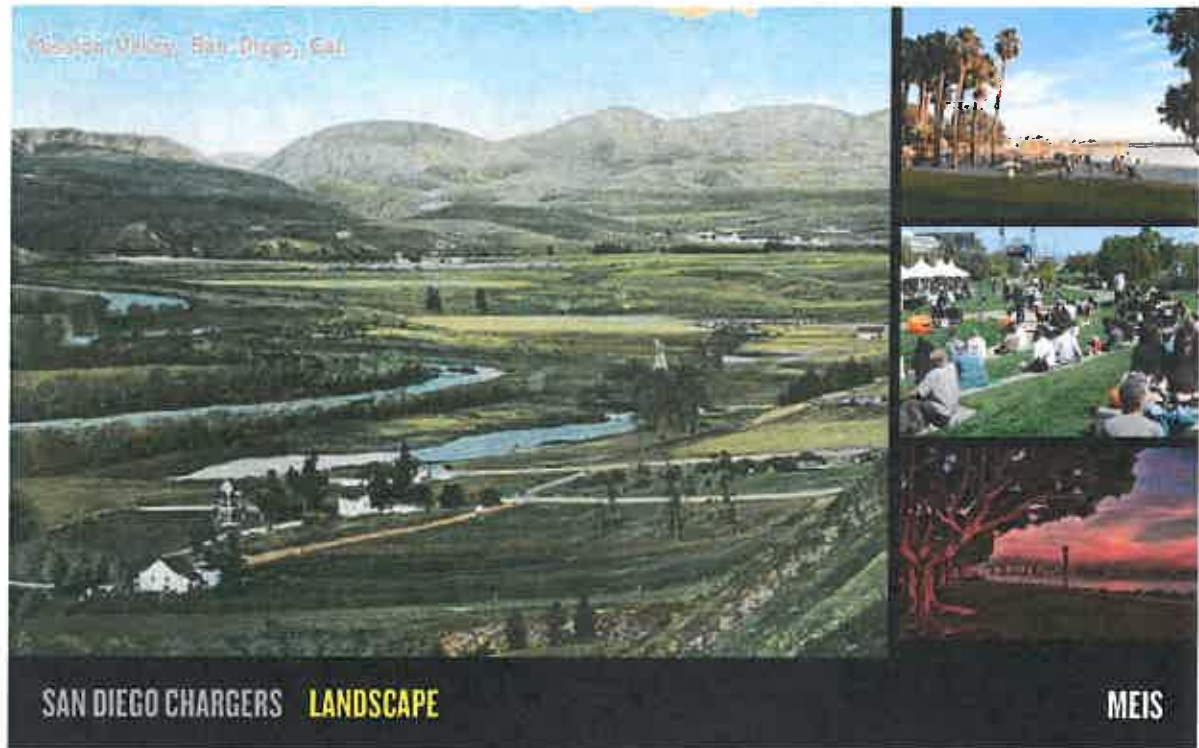




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REFERENCE PRESENTATION:



## PAGES FROM MEIS REFERENCE PRESENTATION:





**PAGES FROM MEIS  
REFERENCE PRESENTATION:**



**PAGES FROM MEIS  
REFERENCE PRESENTATION:**





# National Stadium Assessment

In developing a fair and workable financing plan to jump-start negotiations between the City, County and Chargers, CSAG examined financing plans for several NFL stadiums, zeroing in on seven projects for the purposes of this report.

Four of the seven stadiums opened within the last 10 years – Lucas Oil Stadium in Indianapolis, AT&T Stadium in Dallas, MetLife Stadium in New York, and Levi's Stadium in Santa Clara. Two others are under construction, one in Minnesota and the other in Atlanta. And one, in St. Louis, was recently proposed.

CSAG received cost assessments from the NFL in April 2015<sup>1</sup> for six of the stadiums, and relied on a recent news report<sup>2</sup> highlighting the proposed stadium in St. Louis.

Stadium	Year Opened	Total Cost (Stadium and Supporting Infrastructure)
Atlanta Proposed	Proposed: 2017	Estimated - \$1.4 Billion
Minnesota Stadium	Proposed: 2016	Estimated - \$1.07 Billion
Levi's Stadium	2014	\$1.3 Billion
MetLife Stadium	2010	\$1.6 Billion
AT&T Stadium	2009	\$1.3 Billion
Lucas Oil Stadium	2008	\$720 Million
St. Louis Proposed	n/a	Estimated - \$1 Billion

The financing models used to pay for the stadiums relied on a mix of public and privately financed bonds, paid back through revenue accrued from PSLs, tenant rental agreements, concessions, TOT, and naming rights, among other location-specific sources of revenue.

<sup>1</sup> "Publicly-available news articles."

<sup>2</sup> Young, Virginia. "Study: State would see payoff from building stadium for Rams." St. Louis Today. Web. March 9, 2015. <[http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article\\_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html](http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html)>.

## MINNESOTA

The Minnesota Vikings stadium will require a public contribution of approximately “\$498 million in State appropriation bonds backed by proceeds from State authorized non-sports charitable gaming (\$348 million) and City of Minneapolis Convention Center taxes (\$150 million).”<sup>3</sup> Private contribution is estimated to be approximately \$574 million.<sup>4</sup> Bonds are expected to be paid through PSLs, the license which entitles a season ticket holder to maintain exclusive rights over their seat(s), to average \$2,500.<sup>5</sup>

While the “Vikings will have the exclusive right to sell and profit from a pair of naming-rights deals for the new stadium and adjacent fan plaza,”<sup>6</sup> as well as revenue accrued from advertising and concessions, the team will be asked to pay rent starting at \$8.5 million. The team’s annual rent is expected to grow at a rate of “three percent a year until reaching \$20 million in the Year 30. Additionally, the team must put \$1.5 million into a capital improvement account in Year One; that gradually rises to \$3.5 million by the 30th year.”<sup>7</sup> During non-football days, the stadium is expected to be used for concerts, political conventions, fantasy football events and amateur sports games.

## ATLANTA

Atlanta’s stadium is expected to be backed by a public contribution of “\$200 million in City of Atlanta bonds backed by a 2.75% County hotel tax,”<sup>8</sup> and a private contribution of \$835 million.<sup>9</sup> “Additional hotel-motel tax money will go to the Falcons to help offset costs of maintaining and operating the stadium.”<sup>10</sup> The remaining \$1 billion will be paid through a combination of the team (\$800 million), the NFL (\$200 million) and PSLs. “The Falcons also intend to recoup some of their contribution through naming rights and other sponsorships.” All stadium revenue will be retained by the Falcons; however, the team must “pay the Georgia World Congress Center Authority \$2.5 million in annual rent, escalating 3 percent per year,” for 25 years.<sup>12</sup> It is important to note that the team must cover all operational costs and capital maintenance expenses, which can be offset by excess TOT revenue.

3 “Publicly-available news articles.”

4 “Publicly-available news articles.”

5 “8 Details You Need to Know About the New Vikings Stadium Agreement.” Associated Press. October 8, 2013. <<http://www.vikings.com/news/article-1/8-Details-You-Need-To-Know-About-The-New-Vikings-Stadium-Agreement/08cc31bc-3b4e-4955-8a26-e612d80f9b7f>>.

6 “8 Details You Need to Know About the New Vikings Stadium Agreement.” Associated Press. October 8, 2013. <<http://www.vikings.com/news/article-1/8-Details-You-Need-To-Know-About-The-New-Vikings-Stadium-Agreement/08cc31bc-3b4e-4955-8a26-e612d80f9b7f>>.

7 “8 Details You Need to Know About the New Vikings Stadium Agreement.” Associated Press. October 8, 2013. <<http://www.vikings.com/news/article-1/8-Details-You-Need-To-Know-About-The-New-Vikings-Stadium-Agreement/08cc31bc-3b4e-4955-8a26-e612d80f9b7f>>.

8 “Publicly-available news articles.”

9 “Publicly-available news articles.”

10 Tucker, Tim. “Comparing Braves, Falcons stadium deals.” The Atlanta Journal-Constitution. November 14, 2013. <<http://www.ajc.com/news/news/comparing-braves-falcons-stadium-deals/nbsX6/>>.

11 Tucker, Tim. “Comparing Braves, Falcons stadium deals.” The Atlanta Journal-Constitution. November 14, 2013. <<http://www.ajc.com/news/news/comparing-braves-falcons-stadium-deals/nbsX6/>>.

12 Tucker, Tim. “Comparing Braves, Falcons stadium deals.” The Atlanta Journal-Constitution. November 14, 2013. <<http://www.ajc.com/news/news/comparing-braves-falcons-stadium-deals/nbsX6/>>.

## DALLAS

AT&T Stadium, located in Arlington, a suburb approximately 20 miles outside of Dallas, incorporates a public contribution of \$465 million, \$325 million of which stems from "City of Arlington bonds; annual debt service backed by a 0.5% sales tax increase, 2% hotel tax increase, and 5% car rental tax increase."<sup>13</sup> Admission and parking taxes will make up \$115 million with an additional \$25 million County contribution. A private contribution from the Cowboys of \$835 million paid for the majority of the project.

## INDIANAPOLIS

Lucas Oil Stadium received a public contribution of "620 million in State bonds; annual debt service backed by increase in restaurant tax (1% to 2%), and other possible sources including hotel tax, car rental tax, admission tax, and ticket tax."<sup>14</sup> Private funding was provided at \$100 million.

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HKS Architects designed Lucas Oil stadium and met with CSAG members, sharing with the committee that among the NFL's 32 teams, the Indianapolis Colts ranked 27<sup>th</sup> in league-wide revenues prior to the construction of the new stadium. Following the construction of Lucas Oil Stadium, according to HKS, the team rose to 11<sup>th</sup>.

## NEW YORK

MetLife stadium is unique in that it is 100% privately financed, however some public funds were spent on infrastructure upgrades totaling \$250 million.<sup>15</sup> The Jets and Giants shared the \$1.6 billion stadium price tag<sup>16</sup>, and split the naming rights revenue for 25 years, worth \$17 million to \$20 million annually.<sup>17</sup>

## SANTA CLARA

Levi's Stadium, home to the San Francisco 49ers, was constructed with a public contribution of \$114 million, and private contribution of \$1.2 billion. Public funding came from a \$40 million Redevelopment Authority investment, \$35 million from a City of Santa Clara Community Facilities District (CFD) hotel tax, and \$37 million City of Santa Clara offsite project funding.<sup>18</sup> The 49ers will receive "\$220 million over 11 years for the naming rights to Levi's Stadium."<sup>19</sup>

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<sup>13</sup> "Publicly-available news articles."

<sup>14</sup> "Publicly-available news articles."

<sup>15</sup> "Publicly-available news articles."

<sup>16</sup> "NFL Teams Sold an Average of 48,200 Personal Seat Licenses Last Season." *Sports Business Daily*, September 8, 2011. <<http://www.sportsbusinessdaily.com/Daily/Issues/2011/09/08/NFL-Season-Preview/PSLs.aspx>>.

<sup>17</sup> Sandomir, Richard. "Giants-Jets Home Now MetLife Stadium." *The New York Times*, August 23, 2011. <[http://www.nytimes.com/2011/08/24/sports/football/metlife-signs-naming-rights-deal-with-jets-and-giants.html?\\_r=0](http://www.nytimes.com/2011/08/24/sports/football/metlife-signs-naming-rights-deal-with-jets-and-giants.html?_r=0)>.

<sup>18</sup> "Publicly-available news articles."

<sup>19</sup> Bien, Louis. "49ers' Levi Stadium the 3rd-biggest naming rights deal in American sports." *SB Nation*, May 8, 2013. <<http://www.sbnation.com/nfl/2013/5/8/4313344/49ers-levis-stadium-biggest-naming-rights-contracts>>.

## ST. LOUIS (PROPOSED STADIUM)

With efforts to move the Rams to Los Angeles, the St. Louis Stadium Task Force has proposed a 90-acre, 64,000-seat stadium, without a roof. While few details have been released, it is estimated that “the new stadium would cost nearly \$1 billion, with as much as \$405 million paid by taxpayers.”<sup>20</sup> These costs would largely “come from extending payments that now go to pay off debt on the Edward Jones Dome. Of that, the state pays \$12 million a year.”<sup>21</sup> Some expect the stadium to bring in approximately “\$50 million in tax credits from the Missouri Development Finance Board and the state’s Brownfield program, which covers the cost of cleaning up contaminated sites.”<sup>22</sup>

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20 Young, Virginia. “Study: State would see payoff from building stadium for Rams.” *St. Louis Today*. Web. March 9, 2015. <[http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article\\_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html](http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html)>.

21 Young, Virginia. “Study: State would see payoff from building stadium for Rams.” *St. Louis Today*. Web. March 9, 2015. <[http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article\\_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html](http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html)>.

22 Young, Virginia. “Study: State would see payoff from building stadium for Rams.” *St. Louis Today*. Web. March 9, 2015. <[http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article\\_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html](http://www.stltoday.com/news/local/govt-and-politics/study-state-would-see-payoff-from-building-stadium-for-rams/article_2edfa1b8-7025-5b4e-9078-bb1ddb554da1.html)>.



# Farmers Field DEIR

## Summary of Significant Air Quality, Noise and Transportation Impacts

### AIR QUALITY

SIGNIFICANT IMPACTS	CONSTRUCTION EMISSIONS IMPACT DESCRIPTION	OPERATIONAL EMISSIONS IMPACT DESCRIPTION
<i>Regional Daily Construction Emissions</i>		
VOC	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>75 pounds per day</u> during architectural coatings applications.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
CO	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>550 pounds per day</u> during heavy construction equipment use.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
NO <sub>x</sub>	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>100 pounds per day</u> during heavy construction equipment use.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
<i>Localized Construction Emissions Daily Overlapping Construction Activities</i>		
NO <sub>x</sub>	<ul style="list-style-type: none"> <li>Project will exceed the applicable screening-level LST of <u>66 pounds per day</u>.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
PM <sub>10</sub>	<ul style="list-style-type: none"> <li>Project will exceed the applicable screening-level LST of <u>53 pounds per day</u>.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
PM <sub>2.5</sub>	<ul style="list-style-type: none"> <li>Project will exceed the applicable screening-level LST of <u>15 pounds per day</u>.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCT EMISSIONS IMPACT DESCRIPTION	OPERATIONAL EMISSIONS IMPACT DESCRIPTION
<i>Regional Daily Operational Emissions</i>		
NO <sub>x</sub>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>55 pounds per day</u>.</li> </ul>
VOC	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>55 pounds per day</u>.</li> </ul>
CO	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>550 pounds per day</u>.</li> </ul>
PM <sub>10</sub>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>150 pounds per day</u>.</li> </ul>
PM <sub>2.5</sub>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project will exceed the SCAQMD daily significance threshold of <u>55 pounds per day</u>.</li> </ul>
<i>Localized Emissions from Operational Activities: Ambient Operation NO<sub>2</sub> Impacts</i>		
NO <sub>2</sub> – State Hourly Threshold	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project's maximum hourly state NO<sub>2</sub> incremental concentration of 245.6 µg /m<sup>3</sup> exceeds state hourly threshold.</li> </ul>
NO <sub>2</sub> – Federal Hourly Threshold	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project's maximum hourly federal NO<sub>2</sub> incremental concentration of 205.8 µg /m<sup>3</sup> exceeds federal hourly threshold.</li> </ul>

**Event Day:** An event with an attendance level of 72,000 at the Event Center combined with an attendance level of 19,500 at the Los Angeles Convention Center, which may occur up to 37 times per year.



# NOISE

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<i>Construction Noise and Vibration Impacts: On-Site Construction Noise Sources</i>		
<p><b>New Hall Construction</b></p>	<ul style="list-style-type: none"> <li>• Receptor R6               <ul style="list-style-type: none"> <li>○ 625 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 1.5 dBA (during the interior/exterior phase).</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 1.7 dBA (during the interior/exterior phase).</li> </ul> </li> <li>• Receptor R26               <ul style="list-style-type: none"> <li>○ 690 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 6.7 dBA (during the interior/exterior phase).</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 3.2 dBA (during the interior/exterior phase).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>
<p><b>L.A. Live Way Garage</b></p>	<ul style="list-style-type: none"> <li>• Receptor R6               <ul style="list-style-type: none"> <li>○ 275 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 1.5 dBA.</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 5.4 dBA (during the concrete/steel/precast frame phase).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
Event Center	<ul style="list-style-type: none"> <li>• Receptor R1               <ul style="list-style-type: none"> <li>○ 465 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 7.9 dBA (during the foundation phase).</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 6.4 dBA (during the interior/exterior phase).</li> </ul> </li> <li>• Receptor R6               <ul style="list-style-type: none"> <li>○ 610 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 1.7 dBA (during the foundation phase).</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 1.7 dBA (during the interior/exterior phase).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>
Overlapping Construction Activities	<ul style="list-style-type: none"> <li>• Receptors R1, R3, R4, R5, R6, R7, and R26               <ul style="list-style-type: none"> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold from 0.2 dBA (at R4) to 10.3 dBA (at R1).</li> </ul> </li> <li>• Receptors R1, R4, R5, R6, R7, R23, and R26               <ul style="list-style-type: none"> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold from 1.9 dBA (at R23) to 9.6 dBA (at R1).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>
Construction Noise and Vibration Impacts: Off-Site Construction Noise Sources		

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Pico Station Second Platform</b>	<ul style="list-style-type: none"> <li>• Receptor R2               <ul style="list-style-type: none"> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 3.7 dBA (<math>L_{eq}</math>).</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 10.5 dBA (<math>L_{eq}</math>).</li> </ul> </li> <li>• Receptor R3               <ul style="list-style-type: none"> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 1.4 dBA (<math>L_{eq}</math>).</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold by 3.4 dBA.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>
<i>Construction Noise and Vibration Impacts: Composite Noise Levels from Project Construction</i>		
<b>Bond Street Garage</b>	<ul style="list-style-type: none"> <li>• Receptor R26               <ul style="list-style-type: none"> <li>○ 640 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will exceed the significance threshold by 5.6 dBA (<math>L_{eq}</math>).</li> </ul> </li> <li>• Receptors R4, R5, R6, and R26               <ul style="list-style-type: none"> <li>○ The receptors are, respectively, 525 ft., 900 ft., 590 ft., and 640 ft. to the nearest construction site boundary.</li> <li>○ <u>Late Evening Hours</u> - Project will exceed the significance threshold from 3.4 dBA (at R4) to 5.6 dBA (at R6).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
New Hall	<ul style="list-style-type: none"> <li>• Receptors R1, R3, R5, R6, and R26               <ul style="list-style-type: none"> <li>○ The receptors are, respectively, 1247 ft., 880 ft., 1090 ft., 625 ft., and 690 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will increase ambient noise levels by 5.2 dBA and 12.0 dBA, which will exceed the 5 dBA significance threshold.</li> </ul> </li> <li>• Receptors R1, R3, R4, R5, R6, R7, R21, R23, R25, and R26               <ul style="list-style-type: none"> <li>○ The receptors are, respectively, 1247 ft., 880 ft., 755 ft., 1090 ft., 625 ft., 1065 ft., 2595 ft., 1720 ft., 1590 ft., and 690 ft. to the nearest construction site boundary.</li> <li>○ <u>Late Evening Hours</u> - Project will increase ambient noise levels by 3.4 dBA (at R25) to 10.4 dBA (at R26), which will exceed the 3 dBA significance threshold.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>
L.A. Live Way Garage	<ul style="list-style-type: none"> <li>• Receptor R6               <ul style="list-style-type: none"> <li>○ 275 ft. to the nearest construction site boundary.</li> <li>○ <u>Daytime Hours</u> - Project will increase ambient noise levels by a maximum of 7.7 dBA (<math>L_{eq}</math>), which will exceed the 5 dBA significance threshold.</li> </ul> </li> <li>• Receptors R5, R6, R7               <ul style="list-style-type: none"> <li>○ The receptors are, respectively, 810 ft., 275 ft., and 250 ft. to the nearest construction site boundary.</li> <li>○ <u>Late Evening Hours</u> - Project will increase ambient noise levels by 4.3 to 9.4 dBA (<math>L_{eq}</math>), which will exceed the 3 dBA significance threshold.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
Event Center	<ul style="list-style-type: none"> <li>Receptors R1, R5, R6, and R7               <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1215 ft., 610 ft., and 420 ft. to the nearest construction site boundary.</li> <li><u>Daytime Hours</u> - Project will increase ambient noise levels by 5.0 to 13.1 dBA (<math>L_{eq}</math>), which will exceed the 5 dBA (<math>L_{eq}</math>) significance threshold.</li> </ul> </li> <li>Receptors R1, R3 through R8, R21, R23, and R25               <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1215 ft., 1220 ft., 1251 ft., 610 ft., 420 ft., 1385 ft., 3155 ft., 1905 ft., and 1530 ft. to the nearest construction site boundary.</li> <li><u>Late Evening Hours</u> - Project will increase ambient noise levels by 3.1 to 13.5 dBA (<math>L_{eq}</math>), which will exceed the 3 dBA (<math>L_{eq}</math>) significance threshold.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
Overlapping Construction Activities	<ul style="list-style-type: none"> <li>Receptors R1, R3, R4, R5, R6, R7, R9, and R26               <ul style="list-style-type: none"> <li><u>Daytime Hours</u> - Project will increase ambient noise levels by 0.3 dBA (at R9) to 10.4 dBA (R1), which will exceed the 5 dBA (<math>L_{eq}</math>) significance threshold.</li> </ul> </li> <li>Receptors R1 through R8, R16, R20, R21, R22, R23, R25, and R26               <ul style="list-style-type: none"> <li><u>Late Evening Hours</u> - Project will increase ambient noise levels by 0.5 dBA (at R20) to 11.3 dBA (at R6), which will exceed the 3 dBA (<math>L_{eq}</math>) significance threshold.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
Construction Noise and Vibration Impacts: Construction Vibration		
Impact Pile Driver Nokia Theater	<ul style="list-style-type: none"> <li><u>Impact Pile Driver Vibration</u>- Project will generate vibration levels from 74 VdB (at L.A. Live Garage 250 ft. away) to 86 VdB (at Event Center 100 ft. away), which will exceed the 72 VdB significance threshold.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<i>Operation Impacts:</i> <i>On-Site Noise Sources</i>		
<b>Parking Garages</b> <i>(Bond Street Garage &amp; L.A. Live Way Garage)</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Receptor R5               <ul style="list-style-type: none"> <li><u>Daytime Hours</u> - Project will exceed the significance threshold by 1.8 dBA.</li> </ul> </li> <li>Receptor R6               <ul style="list-style-type: none"> <li><u>Daytime Hours</u> - Project will exceed the significance threshold by 6.7 dBA.</li> </ul> </li> <li>Receptors R4, R5, R6, R7, R23, and R25               <ul style="list-style-type: none"> <li><u>Late Evening Hours</u> - Project will exceed the significance threshold by 1.3 dBA to 8.6 dBA.</li> </ul> </li> </ul>
<b>Outdoor Plazas</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Receptors R1, R2, R3, and R13               <ul style="list-style-type: none"> <li><u>Daytime Hours</u> - Project will exceed the significance threshold by 7.4 dBA (at R13) to 13.7 dBA (at R1).</li> </ul> </li> <li>Receptors R1, R2, R3, R13, and R14               <ul style="list-style-type: none"> <li><u>Nighttime Hours</u> - Project will exceed the significance threshold by 6.5 dBA (at R14) to 16.1 dBA (at R2).</li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
Event Center – Sport Event	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<p><b><i>In-House Sound System</i></b></p> <ul style="list-style-type: none"> <li>Receptors R1, R3, R5, and R6 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1125 ft., 1215 ft., and 610 ft. to the nearest construction site boundary.</li> <li><u>Daytime Hours</u> – Project will exceed significance thresholds by up to 3.2 dBA (<math>L_{max}</math>).</li> </ul> </li> <li>Receptors R1, R3, R5 through R9, R14, R21, R23, and R25 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1125 ft., 1215 ft., 610 ft., 420 ft., 1385 ft., 1270 ft., 1730 ft., 3155 ft., 1905 ft., and 1530 ft. to the nearest construction site boundary.</li> <li><u>Late Evening Hours</u> – Project will exceed significance thresholds by up to 6.9 dBA (<math>L_{max}</math>).</li> </ul> </li> </ul> <p><b><i>Crowd Cheering:</i></b></p> <ul style="list-style-type: none"> <li>Receptors R1, R5, R6, R7, and R8 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1215 ft., 610 ft., 420 ft., and 1385 ft. to the nearest construction site boundary.</li> <li><u>Daytime Hours</u> – Project will exceed significance thresholds by up to 7.7 dBA (<math>L_{max}</math>).</li> </ul> </li> <li>Receptors R1, R5 through R9, R13, R23, R24, and R25 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1215 ft., 610 ft., 420 ft., 1385 ft., 1270 ft., 1245 ft., 1905 ft., 1590 ft., and 1530 ft. to the nearest construction site boundary.</li> <li><u>Late Evening Hours</u> – Project will exceed significance thresholds by up to 8.1 dBA (<math>L_{max}</math>).</li> </ul> </li> </ul>



SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
Event Center – Concert Event	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<p><b>Concert Touring Sound System</b></p> <ul style="list-style-type: none"> <li>Receptors R1, R3 through R9, R17, R21, R23, R25, and R26 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1125 ft., 1220 ft., 1215 ft., 610 ft., 420 ft., 1385 ft., 1270 ft., 2965 ft., 3155 ft., 1905 ft., 1630 ft., and 1250 ft. to the nearest construction site boundary.</li> <li><u>Daytime Hours</u> – Project will exceed significance thresholds by 0.4 dBA (at R22) to 10.5 dBA (at R9).</li> </ul> </li> <li>Receptors R1 through R10, R14, R15, R17, and R21 through R26 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 680 ft., 1125 ft., 1220 ft., 1215 ft., 610 ft., 420 ft., 1385 ft., 1270 ft., 1300 ft., 1730 ft., 1575 ft., 2965 ft., 3155 ft., 2555 ft., 1905 ft., 1590 ft., 1530 ft., and 1250 ft. to the nearest construction site boundary.</li> <li><u>Late Evening Hours</u> – Project will exceed significance thresholds by 0.5 dBA (at R25 and R25) to 13.0 dBA (at R9).</li> </ul> </li> </ul> <p><b>Crowd Cheering:</b></p> <ul style="list-style-type: none"> <li>Receptors R1, R5, R6, R7, and R8 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1215 ft., 610 ft., 420 ft., and 1385 ft. to the nearest construction site boundary.</li> <li><u>Daytime Hours</u> – Project will exceed significance thresholds by up to 7.7 dBA (<math>L_{max}</math>).</li> </ul> </li> <li>Receptors R1, R5 through R9, R13, R23, R24, and R25 <ul style="list-style-type: none"> <li>The receptors are, respectively, 465 ft., 1215 ft., 610 ft., 420 ft., 1385 ft., 1270 ft., 1245 ft., 1905 ft., 1590 ft., and 1530 ft. to the nearest construction site boundary.</li> <li><u>Late Evening Hours</u> – Project will exceed significance thresholds by up to 8.1 dBA (<math>L_{max}</math>).</li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Event Center - Fireworks</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>All Receptors               <ul style="list-style-type: none"> <li>Project will exceed the significance threshold by 8.9 dBA (at R12) to 45.4 dBA (at R5).</li> </ul> </li> <li><u>Note</u>: Fireworks will be 15 ft. to 200 ft. high.</li> </ul>
<i>Operation Impacts:</i> <i>Off-Site Mobile Noise Sources</i>		
<b>Motor Vehicle Travel</b>  <i>Grand Avenue – between 17<sup>th</sup> St. and Washington Ave.</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li><u>Sunday Event Day (Post-Event Hour)</u> –Project and Project with Convention Center Dark will cause up to 5.0 dBA increase.</li> <li><u>Weekday Event Day (Post-Event Day)</u> –Project and Project with Convention Center Dark will cause up to 5.8 dBA increase.</li> </ul>
<b>Motor Vehicle Travel</b>  <i>West 11<sup>th</sup> St. – between Blaine St. and L.A. Live Way</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li><u>Weekday Event Day (Post-Event Day)</u> –Project and Project with Convention Center Dark will cause up to 6.1 dBA increase.</li> </ul>
<b>Motor Vehicle Travel</b>  <i>West 18<sup>th</sup> St. – West of Flower St.</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li><u>Sunday Event Day (Post-Event Hour)</u> –Project will cause up to 6.8 dBA increase and Project with Convention Center Dark will cause up to 7.6 dBA increase.</li> </ul>
<b>Motor Vehicle Travel</b>  <i>West 18<sup>th</sup> St. – West of Grand Ave.</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li><u>Sunday Event Day (Post-Event Hour)</u> –Project and Project with Convention Center Dark will cause up to 7.0 dBA increase.</li> </ul>
<b>Motor Vehicle Travel</b>  <i>West 39<sup>th</sup> St. – East of I-110 Freeway.</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li><u>Weekday Event Day (Post-Event Day)</u> –Project and Project with Convention Center Dark will cause up to 5.5 dBA increase.</li> </ul>
<b>Public Transit</b>  <i>Blue Line</i>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Project will result in of 6.0 dBA (hourly <math>L_{eq}</math>) and exceed the significance threshold.</li> </ul>
<b>Helicopters</b>	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li>Project's ambient noise will exceed significance threshold by 5.0 dBA (<math>L_{eq}</math>).</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<i>Operation Impacts:</i> <i>Composite Noise Level Impacts</i>		
<b>Typical Event Days without Fireworks</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Receptor R1               <ul style="list-style-type: none"> <li>Project will result in an increase of 8.1 dBA CNEL, which exceeds the 3 dBA CNEL significance threshold.</li> </ul> </li> <li>Receptor R2               <ul style="list-style-type: none"> <li>Project will result in an increase of 8.2 dBA CNEL, which exceeds the 3 dBA CNEL significance threshold.</li> </ul> </li> <li>Receptor R3               <ul style="list-style-type: none"> <li>Project will result in an increase of 7.8 dBA CNEL, which exceeds the 3 dBA CNEL significance threshold.</li> </ul> </li> <li>Receptor R13               <ul style="list-style-type: none"> <li>Project will result in an increase of 4.0 dBA CNEL, which exceeds the 3 dBA CNEL significance threshold.</li> </ul> </li> </ul>
<b>Typical Event Days with Fireworks</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Receptor R1 through R9, R11, R13, R14, R16, R17, and R19 through R26               <ul style="list-style-type: none"> <li>Project's ambient noise will range from 4.5 dBA CNEL (at R11) to 17.9 dBA CNEL (at R3).</li> </ul> </li> </ul>
<i>Cumulative Impacts</i>		
<b>Construction Noise</b>	<ul style="list-style-type: none"> <li>Project together with the related projects could increase ambient noise levels at receptors that are located within 500 feet from the construction sites by 5 dBA or more.</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
Operation Noise	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li><u>Sunday scenario</u> - At 11 analyzed roadway segments, the Project may produce a maximum increase of up to 9.9 dBA along 18th Street (west of Grand Avenue).</li> <li><u>Sunday scenario</u> - At 8 analyzed roadway segments, the Project may produce a maximum increase of up to 8.5 dBA along 11th Street (west of Grand Avenue).</li> <li><u>Sunday scenario</u> - At 12 analyzed roadway segments, the Project may produce a maximum increase of up to 8.8 dBA along Grand Avenue (between 17th Street and Washington Avenue).</li> </ul>

# TRANSPORTATION

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<i>Roadway Intersections</i>		
<b>Sunday Day Event</b> <b>Pre-Event Hour (12:00-1:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at Intersections:               <ul style="list-style-type: none"> <li>Blaine St. &amp; 11<sup>th</sup> St.; Figueroa St. &amp; 8<sup>th</sup> St.; Vermont Ave. &amp; Pico Blvd.; Vermont Ave. &amp; I-10 EB; Hill St. &amp; 17<sup>th</sup> St.; Broadway &amp; 17<sup>th</sup> St.; Main St. &amp; 17<sup>th</sup> St.; Los Angeles St. &amp; 17<sup>th</sup> St.; Alvarado St. &amp; Pico Blvd.; Olive St. &amp; 17 St.; Vermont Ave. &amp; Olympic Blvd.                   <ul style="list-style-type: none"> <li>Of the 11 impacted intersection, 9 will continue to operate at level of service ("LOS") D or better, and 2 will operate at LOS E.</li> </ul> </li> </ul> </li> </ul>
<b>Sunday Day Event</b> <b>Post-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at Intersections:               <ul style="list-style-type: none"> <li>Broadway &amp; 18<sup>th</sup> St.; Figueroa St. &amp; Martin Luther King Jr. Blvd.; I-110 SB &amp; Martin Luther King Jr. Blvd.; Grand Ave. &amp; 1<sup>st</sup> St.; Vermont Ave. &amp; Pico Blvd.; Hoover St. &amp; Venice Blvd.; I-10 WB &amp; 20<sup>th</sup> St.; Main St. &amp; 18<sup>th</sup> St.; Grand Ave. &amp; US-101 NB; Western Ave. &amp; Olympic Blvd.; Union Ave. &amp; Pico Blvd.; Hill St. &amp; 17<sup>th</sup> St.; Hill St. &amp; 16<sup>th</sup> St.; Blaine St. &amp; 11<sup>th</sup> St.; Hill St. &amp; 18<sup>th</sup> St.; Los Angeles St. &amp; 18<sup>th</sup> St.                   <ul style="list-style-type: none"> <li>Of the 18 impacted intersection, 13 will continue to operate at LOS D or better, 2 will operate at LOS E, and 3 will operate at LOS F.</li> </ul> </li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<p><b>Saturday Day Event</b>  <b>Pre-Event Hour (12:00-1:00 PM)</b></p>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at Intersections: <ul style="list-style-type: none"> <li>Olive Ave. &amp; Olympic Blvd.; Blaine St. &amp; 11th St.; Hill St. &amp; Adams Blvd.; Flower St. &amp; 8th St.; Lucas Ave. &amp; 6th St.; Spring St. &amp; Cesar Chavez Ave.; Glendale Blvd. &amp; Temple St.; Western Ave. &amp; Wilshire Blvd.; Union Ave. &amp; Olympic Blvd.; Vermont Ave. &amp; Pico Blvd.; Vermont Ave. &amp; Venice Blvd.; Hoover St. &amp; Venice Blvd.; Hoover St. &amp; Washington Blvd.; Hill St. &amp; 16th St.; Figueroa St. &amp; Olympic Blvd.; I-110 NB Off-Ramp &amp; Adams Blvd.; Alvarado St. &amp; Olympic Blvd.; Vermont Ave. &amp; Washington Blvd.; Hoover St. &amp; I-10 EB ; San Pedro St. &amp; 16th St.; Flower St. &amp; Olympic Blvd.; Blaine St. &amp; Olympic Blvd.; Figueroa St. &amp; 8th St.; Alvarado St. &amp; Pico Blvd.; Vermont Ave. &amp; I-10 EB Ramps; Olive St. &amp; 17th St.; Hill St. &amp; 17th St.; Broadway &amp; 17th St.; Main St. &amp; 17th St.; Los Angeles St. &amp; 17th St.; Vermont Ave. &amp; Olympic Blvd. <ul style="list-style-type: none"> <li>Of the 31 impacted intersections, 20 will operate at LOS D, 5 will operate at LOS E, and 6 will operate at LOS F.</li> </ul> </li> </ul> </li> </ul>
<p><b>Saturday Day Event</b>  <b>Post-Event Hour (4:30-5:30 PM)</b></p>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at Intersections: <ul style="list-style-type: none"> <li>Hill St. &amp; Pico Blvd.; Flower St. &amp; Venice Blvd.; Grand Ave. &amp; 17th St.; Figueroa St. &amp; Washington Blvd.; Figueroa St. &amp; Martin Luther King Jr. Blvd.; I-110 SB Ramp &amp; Martin Luther King Jr. Blvd.; Georgia St. &amp; 9th St.; Figueroa St. &amp; 8th St.; Hill St. &amp; College Ave.; Western Ave. &amp; Olympic Blvd. Vermont Ave. &amp; Pico Blvd.; Union Ave. &amp; Pico Blvd.; San Pedro St. &amp; 16th St.; Arlington Ave. &amp; Venice Blvd.; Georgia St. &amp; Olympic Blvd.; Figueroa St. &amp; Olympic Blvd.; Flower St. &amp; Olympic Blvd.; Blaine St. &amp; Olympic Blvd.; Figueroa St. &amp; Wilshire Blvd.; Grand Ave. &amp; 1st St.; Glendale Blvd. &amp; Temple St.; Alvarado St. &amp; Olympic Blvd.; Hoover St. &amp; Venice Blvd.; Hoover St. &amp; Washington Blvd.; I-10 WB Ramps &amp; 20th St.; Figueroa St. &amp; Venice Blvd.; Alvarado St. &amp; Pico Blvd.; Blaine St. &amp; 11th St.; Hill St. &amp; 17th St.; Hill St. &amp; 18th St.; Broadway &amp; 18th St.; Main St. &amp; 18th St.; Los Angeles St. &amp; 18th St.; Grand Ave. &amp; US-101 NB Ramps; Hill St. &amp; 16th St. <ul style="list-style-type: none"> <li>Of the 36 impacted intersection, 25 will operate at LOS D or better, 3 will operate at LOS E, and 8 will operate at LOS F.</li> </ul> </li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<p><b>Weekday Evening Event</b>  <b>Pre-Event Hour (4:30-5:30 PM)</b></p>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at Intersections: <ul style="list-style-type: none"> <li>Georgia St. &amp; Olympic Blvd.; Olive St. &amp; Olympic Blvd.; Grand Ave. &amp; 11th St.; Flower St. &amp; Pico Blvd.; Hill St. &amp; Pico Blvd.; Grand Ave. &amp; Washington Blvd.; Olive St. &amp; Washington Blvd.; Hill St. &amp; Washington Blvd.; Georgia St. &amp; 9th St.; Figueroa St. &amp; 9th St.; Olive St. &amp; 5th St.; Normandie Ave. &amp; Olympic Blvd.; Western Ave. &amp; Venice Blvd.; Normandie Ave. &amp; Venice Blvd.; Hill St. &amp; 16th St.; Arlington Ave. &amp; Olympic Blvd.; Arlington Ave. &amp; Washington Blvd.; Flower St. &amp; Olympic Blvd.; Broadway &amp; Olympic Blvd.; Blaine St. &amp; Olympic Blvd.; Blaine St. &amp; SR-110 SB; Grand Ave. &amp; 17th St.; Figueroa St. &amp; Washington Blvd.; Broadway &amp; Washington Blvd.; Grand Ave. &amp; Adams Blvd.; I-110 NB Ramps &amp; Martin Luther King Jr. Blvd.; Bixel St. &amp; 6th St.; Hope St. &amp; 1st St.; Hope St. &amp; Temple St.; Western Ave. &amp; Wilshire Blvd.; Union Ave. &amp; Olympic Blvd.; Vermont Ave. &amp; Pico Blvd.; Union Ave. &amp; Pico Blvd.; Vermont Ave. &amp; Venice Blvd.; Vermont Ave. &amp; I-10 EB; Hoover St. &amp; I-10 EB; San Pedro St. &amp; 16th St.; Central Ave. &amp; Washington Blvd.; La Brea Ave. &amp; Olympic Blvd.; Figueroa St. &amp; Pico Blvd.; Figueroa St. &amp; Venice Blvd.; Olive Street &amp; 17th St.; Flower St. &amp; Adams Blvd.; I-110 NB Off-Ramp &amp; Adams Blvd.; Hill St. &amp; Blvd.; Spring St. &amp; Cesar Chavez Ave.; Normandie Ave. &amp; Wilshire Blvd.; Alvarado Str. &amp; Wilshire Blvd.; Alvarado St. &amp; Olympic Blvd.; Alvarado St. &amp; Pico Blvd.; Hoover St. &amp; Venice Blvd.; Hoover St. &amp; Blvd.; Main St. &amp; 16th St.; Arlington Ave. &amp; Venice Blvd.; Crenshaw Blvd. &amp; Olympic Blvd.; Crenshaw Blvd. &amp; Venice Blvd.; Crenshaw Blvd. &amp; Washington Blvd.; Figueroa St. &amp; Olympic Blvd.; Main St. &amp; Olympic Blvd.; Main St. &amp; Pico Blvd.; Blaine St. &amp; 11th St.; Hill St. &amp; 17th St.; Broadway &amp; 17th St.; Main St. &amp; 17th St.; Los Angeles St. &amp; 17th St.; Figueroa St. &amp; Adams Blvd.; Bixel St. &amp; 8th St.; Figueroa St. &amp; 8th St.; Figueroa St. &amp; Wilshire Blvd.; Lucas Ave. &amp; 6th St.; Figueroa St. &amp; 6th St.; Figueroa St. &amp; 5th St.; Grand Ave. &amp; 1st St.; Vermont Ave. &amp; Wilshire Blvd.; Western Ave. &amp; Olympic Blvd.; Vermont Ave. &amp; Olympic Blvd.; Vermont Ave. &amp; Washington Blvd.</li> <li>Of the 77 impacted intersections, 39 will operate at LOS D or better, 18 will operate at LOS E, and 20 will operate at LOS F.</li> </ul> </li> </ul>



SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Weekday Evening Event</b> <b>Post-Event Hour (9:00-10:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at Intersections:               <ul style="list-style-type: none"> <li>Hill St. &amp; 17<sup>th</sup> St.; Vermont Ave. &amp; Olympic Blvd.; Broadway &amp; 18<sup>th</sup> St.; Main &amp; 18<sup>th</sup> St.; Grand Ave. &amp; US-101 NB; Hill St. &amp; 16<sup>th</sup> St.; Blaine St. &amp; 11<sup>th</sup> St.; Hill St. &amp; 18<sup>th</sup> St.; Los Angeles St. &amp; 18<sup>th</sup> St.                   <ul style="list-style-type: none"> <li>Of the 9 impacted intersections, 4 will operate at LOS D or better, 2 will operate at LOS E, and 3 will operate at LOS F.</li> </ul> </li> </ul> </li> </ul>
<i>Transit Facilities</i>		
<b>Sunday Day Event</b> <b>Pre-Event Hour (12:00-1:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Policy Load Capacities Exceeded at:               <ul style="list-style-type: none"> <li>Metro Blue Line</li> <li>Metrolink</li> <li>Metro Silver Line (South &amp; North)</li> <li>Express Buses</li> </ul> </li> </ul>
<b>Sunday Day Event</b> <b>Post-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Policy Load Capacities Exceeded at:               <ul style="list-style-type: none"> <li>Metro Red Line</li> <li>Metro Blue Line</li> <li>Expo Line</li> <li>Metrolink</li> <li>Metro Silver Line (South &amp; North)</li> <li>Rapid Bus</li> <li>Express Buses</li> </ul> </li> </ul>
<b>Saturday Day Event</b> <b>Pre-Event Hour (12:00-1:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Policy Load Capacities Exceeded at:               <ul style="list-style-type: none"> <li>Metro Red Line</li> <li>Metro Blue Line</li> <li>Metro Silver Line (South &amp; North)</li> <li>Rapid Bus</li> <li>Express Buses</li> </ul> </li> </ul>
<b>Saturday Day Event</b> <b>Post-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Policy Load Capacities Exceeded at:               <ul style="list-style-type: none"> <li>Metro Red Line</li> <li>Metro Blue Line</li> <li>Expo Line</li> <li>Metrolink</li> <li>Metro Silver Line (South &amp; North)</li> <li>Express Buses</li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Weekday Evening Event</b> <b>Post-Event Hour (9:00-10:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Overall ridership will exceed available capacity.               <ul style="list-style-type: none"> <li>Passenger-carrying capacity: 9,225 riders</li> <li>Total projected ridership at this time: 14,992 riders</li> </ul> </li> <li>Policy Load Capacities Exceeded at:               <ul style="list-style-type: none"> <li>Metro Red Line</li> <li>Metro Red/Purple Line</li> <li>Metro Blue Line</li> <li>Green Line (East &amp; west)</li> <li>Gold Line (Pasadena &amp; East L.A.)</li> <li>Metro Silver Line (South &amp; North)</li> <li>Rapid Bus</li> <li>Express Buses</li> </ul> </li> </ul>
<i>Freeway Segments</i>		
<b>Sunday Day Event</b> <b>Pre-Event Hour (12:00-1:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at:               <ul style="list-style-type: none"> <li>SR-110 N of Alpine St.; I-5 S of Stadium Way; US-101 at Glendale Blvd.; US-101 S of Vermont Ave.                   <ul style="list-style-type: none"> <li>The demand/capacity ("D/C") ratio would be less than 1.10 at 3 of the 4 impacted freeway locations, and would be between 1.10 and 1.20 at the other location.</li> </ul> </li> </ul> </li> </ul>
<b>Sunday Day Event</b> <b>Post-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at:               <ul style="list-style-type: none"> <li>I-110 at Vernon Ave.; I-5 South of Stadium Way; SR-110 Between James M. Wood Blvd. &amp; Olympic Blvd.; I-10 West of Vermont Ave.; US-101 South of Vermont Ave.; US-101 North of Vignes St.; I-5 West of Indiana St.; US-101 at Glendale Blvd.; SR-110 South of US-101.                   <ul style="list-style-type: none"> <li>The D/C ratio would be less than 1.10 at 6 impacted freeway locations, between 1.10 and 1.20 at 2 locations, and greater than 1.2 at 1 location.</li> </ul> </li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<p><b>Saturday Day Event</b>  <b>Pre-Event Hour (12:00-1:00 PM)</b></p>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-5 S of Stadium Way; I-110 North of Martin Luther King Jr. Blvd.; US-101 at Glendale Blvd.; US-101 North of Vignes St.; US-101 S of Vermont Ave.; I-110 at Slauson Ave. <ul style="list-style-type: none"> <li>8 freeway segments would operate at LOS D or better, 6 locations would operate at LOS E, 5 locations would operate at LOS F(0), and 1 would operate at LOS F(1).</li> <li>The majority of D/C ratios at LOS F locations would be less than 1.10. At 1 location, the D/C ratio would be between 1.10 and 1.20, and at 1 location it would be greater than 1.20.</li> </ul> </li> </ul> </li> </ul>
<p><b>Saturday Day Event</b>  <b>Post-Event Hour (4:30-5:30 PM)</b></p>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-10 West of Vermont Ave.; I-5 South of Stadium Way; US-101 South of Vermont Ave.; I-10 East of San Pedro St.; I-110 at Vernon Ave.; I-110 North of Martin Luther King Jr. Blvd.; I-5 West of Indiana St.; I-110 at Slauson Ave.; SR-110 North of Alpine St.; US-101 at Glendale Blvd.; SR-110 Between James Wood Blvd. &amp; Olympic Blvd.; US-101 North of Vignes St.; SR-110 South of US-101. <ul style="list-style-type: none"> <li>7 of the freeway segments would operate at LOS D or better and 13 would operate at LOS F(0).</li> <li>The D/C ratio would be less than 1.10 at 6 of the impacted locations, between 1.10 and 1.20 at 6 locations, and greater than 1.20 at the 1 location.</li> </ul> </li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Weekday Evening Event</b> <b>Pre-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-110 South of Martin Luther King Jr. Blvd.; I-5 South of Stadium Way; SR-110 Between James Wood Blvd. and Olympic Blvd.; US-101 at Glendale Blvd.; I-5 West of Indiana St.; I-110 at Vernon Ave.; US-101 North of Vignes St.; US-101 South of Vermont Ave.; SR-110 North of Alpine St.; I-10 East of San Pedro St.; I-10 West of Vermont Ave.; SR-110 South of US-101; I-10 East of Crenshaw Blvd. <ul style="list-style-type: none"> <li>6 locations will operate at LOS D or better 14 will operate at LOS F.</li> <li>The D/C ratio will be less than 1.10 at 2 locations, between 1.10 and 1.20 at 5 locations, between 1.20 and 1.30 at 3 locations and greater than 1.30 at the 3 location. D/C ratio increase would be less than 10% at 6 locations, and in the 15-25% range at 4 locations.</li> </ul> </li> </ul> </li> </ul>
<b>Weekday Evening Event</b> <b>Post-Event Hour (9:00-10:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>US-101 at Glendale Blvd.; SR-110 South of US-101; I-5 West of Indiana St. <ul style="list-style-type: none"> <li>3 locations would operate at LOS F(0).</li> <li>All 3 locations will have a D/C ratio less than 1.02.</li> </ul> </li> </ul> </li> </ul>
<i>Freeway Ramps</i>		
<b>Freeway Off-Ramps</b> <b>Sunday Day Event</b> <b>Pre-Event Hour (12:00-1:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-10: Los Angeles St. WB Off-Ramp</li> <li>US 101: Grand Ave. NB Off-Ramp</li> <li>SR 110: 9<sup>th</sup> St. NB Off-Ramp</li> <li>I-10: Hoover St. EB Off-Ramp <ul style="list-style-type: none"> <li>At 3 locations, the 85th percentile queue would exceed the storage capacity of an individual lane and at 1 location it would exceed the overall ramp capacity.</li> </ul> </li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Freeway On-Ramps</b> <b>Sunday Day Event</b> <b>Post-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-10: Los Angeles St. EB On-Ramp</li> <li>I-10: Washington Blvd. SB On-Ramp</li> <li>SR 110: Blaine St. SB On-Ramp</li> <li>SR 110: 8<sup>th</sup> St. SB On-Ramp</li> <li>SR 110: 5<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 8<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 11<sup>th</sup> St. NB On-Ramp <ul style="list-style-type: none"> <li>At 3 locations, volumes would exceed ramp capacities by less than 10%.</li> </ul> </li> </ul> </li> </ul>
<b>Freeway Off-Ramps</b> <b>Saturday Day Event</b> <b>Pre-Event Hour (12:00-1:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-10: Los Angeles St. WB Off-Ramp</li> <li>I-10: Hoover St. EB Off-Ramp</li> <li>US 101: Grand Ave. NB Off-Ramp</li> <li>I-110: Adams Blvd. NB Off-Ramp</li> <li>SR 110: 9<sup>th</sup> St. NB Off-Ramp</li> </ul> </li> </ul>
<b>Freeway On-Ramps</b> <b>Saturday Day Event</b> <b>Post-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>US 101: Los Angeles St. EB On-Ramp</li> <li>I-10: Los Angeles St. EB On-Ramp</li> <li>I-10: Washington Blvd. SB On-Ramp</li> <li>SR 110: Blaine St. SB On-Ramp</li> <li>SR 110: 8<sup>th</sup> St. SB On-Ramp</li> <li>I-10: Grand Ave. WB On-Ramp</li> <li>US 101: Glendale Blvd. On-Ramp</li> <li>SR 110: 5<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 8<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 9<sup>th</sup> Street NB On-Ramp</li> <li>SR 110: 11<sup>th</sup> St. NB On-Ramp <ul style="list-style-type: none"> <li>At 3 of these locations volumes would exceed ramp capacities by less than 10%.</li> </ul> </li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<b>Freeway Off-Ramps</b> <b>Weekday Evening Event</b> <b>Pre-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>US 101: Grand Ave. NB Off-Ramp</li> <li>I-10: Los Angeles St. WB Off-Ramp</li> <li>SR 110: 9<sup>th</sup> St. NB Off-Ramp</li> <li>I-10: Hoover St. EB Off-Ramp</li> <li>SR 110: 6<sup>th</sup> St. SB Off-Ramp</li> <li>SR 110: Olympic Blvd. SB Off-Ramp</li> <li>I-110: Martin Luther King Jr. Blvd. NB Off-Ramp</li> <li>I-110: Adams Blvd. NB Off-Ramp <ul style="list-style-type: none"> <li>At 2 locations it will only be lane impacts, and at 6 locations it will be overall ramp impacts.</li> </ul> </li> </ul> </li> </ul>
<b>Freeway On-Ramps</b> <b>Weekday Evening Event</b> <b>Post-Event Hour (9:00-10:00 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant Traffic Impact at: <ul style="list-style-type: none"> <li>I-10: Los Angeles St. EB On-Ramp</li> <li>SR 110: Blaine St. SB On-Ramp</li> <li>SR 110: 5<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 8<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 9<sup>th</sup> St. NB On-Ramp</li> <li>SR 110: 11 St. NB On-Ramp</li> </ul> </li> </ul>
<i>Congestion Management Plan</i>		
<b>Freeway Analysis</b> <b>Weekday Evening Event</b> <b>Pre-Event Hour (4:30-5:30 PM)</b>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>Significant impact at the following CMP freeway monitoring locations that would exceed eh 150 trip threshold: <ul style="list-style-type: none"> <li>I-5 at Lemoran Ave. (NB); I-5 at Ferris Ave. (NB); I-5 at Stadium Way (SB); I-5 south of Colorado Blvd. (SB); I-5 at Burbank Blvd. (SB); I-10 east of Overland Ave. (EB); I-10 east of La Brea Ave. (EB); I-10 at Budlong Ave. (EB); I-10 east of Puente Ave. (WB); I-10 at Grand Ave. (WB); US-101 North of Vignes St. (NB); US-101 south of Santa Monica Blvd. (SB); US-101 at Coldwater Canyon Ave. (SB); US-101 at Winnetka Ave. (SB); I-110 at Manchester Blvd. (NB); I-110 at Slauson Ave. (NB); SR-110 south of US-101 (SB); SR-110 north of Alpine St. (SB); I-405 south of I-110 at Carson Scales.</li> </ul> </li> </ul>

SIGNIFICANT IMPACTS	CONSTRUCTION IMPACT DESCRIPTION	OPERATIONAL IMPACT DESCRIPTION
<i>Roadway Lane Closures:</i>		
<b>Pico Blvd. Closure Traffic Impact</b>  <i>(Where 3 Northerly/Southerly Lanes Closed)</i>	<ul style="list-style-type: none"> <li>Reduces overall capacity of Pico, which may result in increased travel time and delays or decreased level of service that is significant               <ul style="list-style-type: none"> <li>May lead to traffic shifting to East-West roadways (Olympic Blvd., Venice Blvd., Washington Blvd. 9<sup>th</sup> St., or 8<sup>th</sup> St.)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
<b>Pico-Union Neighborhood Impact</b>  <i>(Between L.A. Live &amp; Concourse Hall Bridge)</i>	<ul style="list-style-type: none"> <li>Reduced roadway capacity could lead to some traffic diverting to east-west arterial roadways and substantial diversions in Pico-Union to reach parallel arterials which may cause significant impacts.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

\*LADOT guidelines indicate that local residential streets can potentially be impacted through increased vehicle trips if traffic is diverted to local residential streets as cut-through routes to bypass congested arterial roads. LOS E and F are considered congested arterial conditions.







## SAVE OUR HERITAGE ORGANISATION

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### Qualcomm Stadium



San Diego Stadium, (the original name) is one of the few remaining mid-century designed multi-purpose stadiums left in the United States. It was opened in 1967 as home to the San Diego Chargers, the San Diego Padres and the San Diego State University Aztecs football team. Frank L. Hope Associates architect Gary Allen, who spent his formative years in the office of Philip Johnson, designed the stadium for the city.

With its innovative design features which included pre-cast concrete, pre-wired light towers, and spiral concrete pedestrian ramps, the stadium received an American Institute of Architects Honor award in 1989 for outstanding design, the first time an architecture firm in San Diego had received a national honor award. The City of San Diego must find a way to preserve this modern monument.

#### LISTS FROM PAST YEARS

[2014](#) | [2013](#) | [2012](#) | [2011](#)

[2010](#) | [2009](#) | [2008](#)

[2007](#)

#### Newly Added

- Rancho Guejito
- Salk Institute
- Serra Cross
- Casa de Carrillo
- Whalen Ranch
- Tijuana Bullring

#### Remaining from past years

- Villa Montezuma
- San Pasqual Valley Old Adobe School House & the Clevenger House/Homestead
- Warner-Carrillo Ranch House
- Border Field State Park
- Qualcomm Stadium
- Red Roost and Red Rest cottages

[2006](#)

[2005](#) | [2004](#) | [2003](#) | [2002](#) | [2001](#)

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# My project San Diego County, California

OVERVIEW

RESOURCES

IMPACT ANALYSIS

REGULATORY DOCUMENTS



This project potentially impacts **50 resources** managed or regulated by the U.S. Fish & Wildlife Service

## Tasks



### **Review** potentially impacted resources

To see endangered species, migratory birds, wetlands or refuges which may be impacted by this project

This project could impact:

- 20 endangered species
- 29 migratory birds
- 90 acres of wetland

View the complete [resource list](#) to see more

## Local office

Carlsbad Fish And  
Wildlife Office

☎ (760) 431-9440

🔗 <http://www.fws.gov/>

information.



**Request an official species list**

To receive an official document from the Carlsbad Fish  
And Wildlife Office

An official species list obtained from IPaC is  
considered a U.S. Fish & Wildlife Service official  
response.

An official species list has not been requested  
for this project.



**Analyze the impacts of your project**

Provide additional details and get recommended  
conservation measures for your project

There are no species in your project area with  
conservation measure recommendations  
available. Please contact the local U.S. Fish &  
Wildlife office to review impacts for this project.

# My project San Diego County, California

OVERVIEW

RESOURCES

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This project potentially impacts **50 resources** managed or regulated by the U.S. Fish & Wildlife Service

## Endangered species

Proposed, candidate, threatened, and endangered species that are managed by the Endangered Species Program and should be considered as part of an effect analysis for this project.

### Birds



**California Least Tern** *Sterna antillarum browni*

**Endangered** (A species in danger of extinction throughout all or a significant portion of its range)



**Coastal California Gnatcatcher** *Polioptila californica californica*

**Threatened** (A species likely to become endangered within the foreseeable future throughout all or a significant portion of its range)



**Least Bell's Vireo** *Vireo bellii pusillus*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**Light-footed Clapper Rail** *Rallus longirostris levipes*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**Southwestern Willow Flycatcher** *Empidonax traillii extimus*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)

**Western Snowy Plover** *Charadrius alexandrinus nivosus*

Threatened (A species likely to become endangered within the foreseeable future throughout all or a significant portion of its range)

## Crustaceans



**Riverside Fairy Shrimp** *Streptocephalus woottoni*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**San Diego Fairy Shrimp** *Branchinecta sandiegonensis*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)

## Flowering Plants



**California Orcutt Grass** *Orcuttia californica*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)





**Del Mar Manzanita** *Arctostaphylos glandulosa* ssp. *crassifolia*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**Salt Marsh Bird's-beak** *Cordylanthus maritimus* ssp. *maritimus*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**San Diego Ambrosia** *Ambrosia pumila*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**San Diego Button-celery** *Eryngium aristulatum* var. *parishii*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**San Diego Mesa-mint** *Pogogyne abramsii*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)



**San Diego Thornmint** *Acanthomintha ilicifolia*

Threatened (A species likely to become endangered within the foreseeable future throughout all or a significant portion of its range)



**Spreading Navarretia** *Navarretia fossalis*

Threatened (A species likely to become endangered within the foreseeable future throughout all or a significant portion of its range)



**Thread-leaved Brodiaea** *Brodiaea filifolia*

Threatened (A species likely to become endangered within the foreseeable future throughout all or a significant portion of its range)



**Willow Monardella** *Monardella viminea*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)

## Insects



**Quino Checkerspot Butterfly** *Euphydryas editha quino* (=E. e. wrighti)

Endangered (A species in danger of extinction throughout all or a significant portion of its range)

## Mammals



**Pacific Pocket Mouse** *Perognathus longimembris pacificus*

Endangered (A species in danger of extinction throughout all or a significant portion of its range)

## Critical habitats

Potential effects to critical habitat(s) within the project area must be analyzed along with the endangered species themselves.

THERE IS NO CRITICAL HABITAT WITHIN THIS PROJECT AREA

## Migratory birds

Birds are protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

Any activity which results in the take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of migratory birds or eagles is prohibited unless authorized by the U.S. Fish and Wildlife Service (1).

There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured.

You are responsible for complying with the appropriate regulations for the protection of birds as part of this project. This involves analyzing potential impacts and implementing appropriate conservation measures for all project activities.

**Bald Eagle** *Haliaeetus leucocephalus*

Season: Wintering

**Bell's Sparrow** *Amphispiza belli*

Year-round



**Black Oystercatcher** *Haematopus bachmani*

Year-round



**Black-chinned Sparrow** *Spizella atrogularis*

Season: Breeding

**Brewer's Sparrow** *Spizella breweri*

Year-round



**Burrowing Owl** *Athene cunicularia*

Year-round

**Cactus Wren** *Campylorhynchus brunneicapillus*

Year-round



**Costa's Hummingbird** *Calypte costae*

Season: Breeding



**Fox Sparrow** *Passerella iliaca*

Season: Wintering



**Green-tailed Towhee** *Pipilo chlorurus*

Season: Breeding



**Gull-billed Tern** *Gelochelidon nilotica*

Season: Breeding



**Lawrence's Goldfinch** *Carduelis lawrencei*

Year-round



**Least Bittern** *Ixobrychus exilis*

Year-round



**Lesser Yellowlegs** *Tringa flavipes*  
Season: Wintering



**Lewis's Woodpecker** *Melanerpes lewis*  
Season: Wintering



**Loggerhead Shrike** *Lanius ludovicianus*  
Season: Wintering

**Long-billed Curlew** *Numenius americanus*  
Season: Wintering



**Marbled Godwit** *Limosa fedoa*  
Season: Wintering

**Mountain Plover** *Charadrius montanus*  
Season: Wintering



**Nuttall's Woodpecker** *Picoides nuttallii*  
Year-round



**Oak Titmouse** *Baeolophus inornatus*  
Year-round

**Peregrine Falcon** *Falco peregrinus*

Season: Wintering



**Red-crowned Parrot** *Amazona viridigenalis*

Year-round



**Short-billed Dowitcher** *Limnodromus griseus*

Season: Wintering

**Short-eared Owl** *Asio flammeus*

Season: Wintering

**Tricolored Blackbird** *Agelaius tricolor*

Year-round



**Whimbrel** *Numenius phaeopus*

Season: Wintering



**Yellow Warbler** *dendroica petechia* ssp. *brewsteri*

Season: Breeding

**Red Knot** *Calidris canutus* ssp. *roselaari*

Season: Wintering

# Wildlife refuges

Any activity proposed on National Wildlife Refuge lands must undergo a 'Compatibility Determination' conducted by the Refuge. If your project overlaps or otherwise impacts a Refuge, please contact that Refuge to discuss the authorization process.

THERE ARE NO REFUGES WITHIN THIS PROJECT AREA

# Wetlands in the National Wetlands Inventory

Impacts to NWI wetlands and other aquatic habitats from your project may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal Statutes.

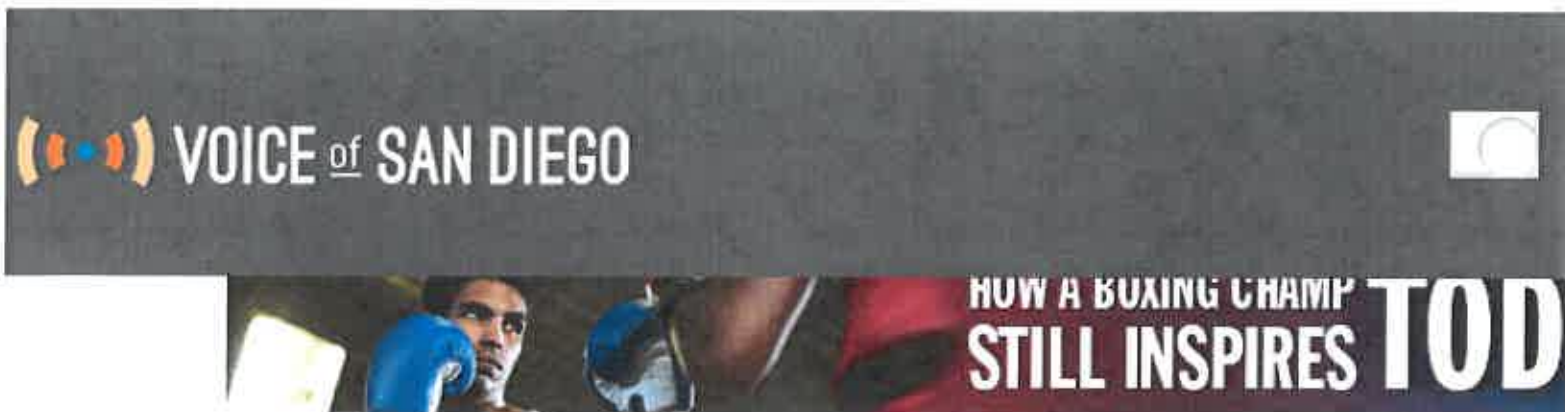
Project proponents should discuss the relationship of these requirements to their project with the Regulatory Program of the appropriate U.S. Army Corps of Engineers District.

## Freshwater Forested/shrub Wetland

PFO/SSC	90.1 acres
PSSAx	0.131 acre







# Mission Valley Keeps Getting More Roads – and More Traffic

[Matthew Hose](#) | December 15, 2014

□ □ □ □ □ □ □



Photo by Dustin Michelson

The intersection of Friars Road and Frazee Road.

Any San Diegan knows Mission Valley at rush hour is a gridlocked mess.

At the intersection of Friars Road and Frazee Road, eight lanes of cars wait at red lights, backed up hundreds of feet waiting to get on the freeway.

Bicyclists make the choice to either merge into the gridlock or hop onto a sidewalk as the bike lane disappears and cars zip from SR-163 onto local streets. The few pedestrians who cross the street must scamper to make it to the other side before the light turns red.

For decades, Mission Valley infrastructure has mainly been developed to keep traffic moving. This has meant one thing: roads, roads and more roads.

Mission Valley becomes synonymous with massive residential development and people begin to call it home, it faces a crossroads: Will it become a livable neighborhood and another piece to San Diego's City of Villages puzzle, or will it continue to be a throughway between the

sprawled-out areas in San Diego?

Right now, it is firmly planted in the latter.



With a huge influx of residential development coming in the near future, Mission Valley is going road-crazy.

Like many other neighborhoods in San Diego, Mission Valley has a wish-list for community projects that need funding.

[The plan](#) details over 30 of the community planning group's top-priority transportation projects for the area. All but one of the projects improves roadway conditions for cars. Projects range from restriping areas of Hotel Circle, creating new lanes on Friars Road and creating entirely new stretches of road on Camino de la Reina.

The one project that didn't involve cars: a proposed pedestrian crossing that would go over the traffic-frenzied, eight-lane Friars Road at the intersection of Frazee Road.

But that had to be deleted from the plans. It conflicted with a project to improve the vehicle intersection of the 163 and Friars Road.



Pedestrians cross near the intersection of Friars Road and Frazee Road.

This presents a problem. Research now shows that building new roads isn't the answer to traffic – in fact, it's the *cause* of increased traffic.

Expanding the capacity of roadways leads to something called “induced demand.” That means it isn't demand that ends up driving the supply, but the **supply that ends up bringing more demand for the roadways.**

So more lanes on a road actually incentivizes more people to drive down that road, and it ends up having the same or worse traffic after improvements. Compounding the problem: building and widening roads also discourages bikers and pedestrians from using the roads and makes it difficult to implement good transit systems.

For Mission Valley, the logic of extending roads comes from the huge influx in residential development that's happened for the past several decades. There's the Civita development of **over 5,000 new homes** on the northern side of Friars Road. There's Doug Manchester's **planned development** of 200 more apartments at the U-T headquarters. And there's a long-idling plan to redevelop the Riverwalk Golf Course into **4,000 homes.**

The idea is that the throng of new residents in Mission Valley will bring more demand for road

use, which means that the city needs to increase the supply of roads in order to match the demand. But if the research holds true, that means more roads in Mission Valley will just mean more traffic in Mission Valley.

## Level of Service

In San Diego and in cities across the country, traffic engineers in the 1960s began using a concept known as “level of service” to measure roadway success and to decide when to improve streets.

It’s a standard operating procedure among traffic engineers and planners that gives a report card-style letter grade to a section of road based on how long cars are delayed due to congestion. Typically, if cars are waiting anywhere above a minute to get through a red light or a section of highway, then that road needs improvements.



Photo courtesy of Pea Hicks

The arrival of highways and interstates in the 1960s helped turn Mission Valley car-centric.

It was a concept that led to bigger and bigger streets and helped to shape the interstate system.

But as cities grow, and more people move in, level of service on streets tends to keep getting worse unless planners add lanes of traffic to the streets.



There's a domino effect at work here: The more lanes of road, the harder it is to put in bike lanes. The more lanes of road, the faster cars can drive down city roads, which makes the roads re dangerous for pedestrians. And the faster cars can go, the farther people can drive to get to work, which creates more sprawl.

Further complicating things, the concept of level of service is couched within California's Environmental Quality Act, or CEQA, the state's landmark environmental law. Among other things, the law can hold developers liable if a project increases traffic on a certain road.

If a developer or community planner doesn't want to be sued for increasing traffic, the easiest thing to do is build more lanes.

But Joe LaCava, chair of San Diego's Community Planners Committee, said that won't help.

"You can't physically do anything about the traffic anymore," LaCava said. "The road system is the road system."

## A Mindset Shift

Mission Valley is at the middle of a major culture shift, said Brian Schoenfisch, a senior planner for the city.

It's a change in mindset happening in neighborhoods, cities, the county and the state all at once.

In the next three years, Mission Valley planners and engineers will be drafting the first major update to its 1985 community plan. Schoenfisch said he expects public transportation, parks and alternative forms of transportation will be vital pieces of the plan.

He also expects full implementation of the San Diego River Park Master Plan, a project to create a continuous, 17-mile-long park along the banks of the San Diego River. The park would include pedestrian and bike paths from Ocean Beach through Mission Valley and up to Santee.

Schoenfisch's vision falls under the city's established plan for how it should grow and absorb



more residents, called its general plan. The general plan envisions San Diego as a “city of villages” that emphasizes dense housing near transit centers, with walkable streets and stores nearby. It’s a concept that goes against the roads-first mindset.

Changes to state law could also facilitate that shift.

This year, lawmakers passed a bill that will change the way CEQA measures environmental impacts on traffic, shying away from the level of service metric. Under the new bill, the Office of Planning and Research is drafting revisions to CEQA which will not allow developers to use “traffic congestion” as a basis for an environmental impact.

State officials will likely swap in a new measure called “vehicle miles traveled.” This looks at how many extra miles cars will drive as a result of the road changes, instead of congestion. It gives points to public transit, biking and walking, and it eschews more cars on the road.

Kip Lipper, a state staffer who helped draft the new legislation, said the switch is going to have a profound impact on development and traffic in California.

“This change gets away from the giant thoroughfares that you see all over Southern California,” Lipper said.

LaCava also said that the change will give planners in neighborhoods like Mission Valley more leeway to implement crosswalks, bike lanes and bus lanes.

## Too Far Gone?

The concept of building out roads through Mission Valley worked when it was just a waypoint to get from outlying neighborhoods to the center of San Diego, or to get to the beach from the east.

But now, Mission Valley is quickly becoming a bustling neighborhood in itself.

Mission Valley is in a tough spot geographically though, Schoenfisch said, because it serves a dual role: It’s both a neighborhood with a rapidly booming residential sector, and the geographic

center of the city that serves as a vital connection to other areas.

“It’s a big challenge because many of the major freeways that are in the San Diego region cross through Mission Valley ... but at the same time, it has that neighborhood component. This is where people live, this is where people shop and this is where people work,” Schoenfisch said.

But if history is any example, residents have reason to be skeptical. The valley has been noted for its haphazard planning, with the community not adopting a development blueprint until 1985 despite big hotel developments there since the 1950s. It doesn’t have any schools, was slow to bring in a library, and doesn’t have any big parks.

And, despite all of the big ideas, the roads keep getting built.

This article relates to: [Community Plans](#), [Growth and Housing](#), [Infrastructure](#), [Land Use](#), [Neighborhood Growth](#), [News](#), [Public Transportation](#), [Share](#)

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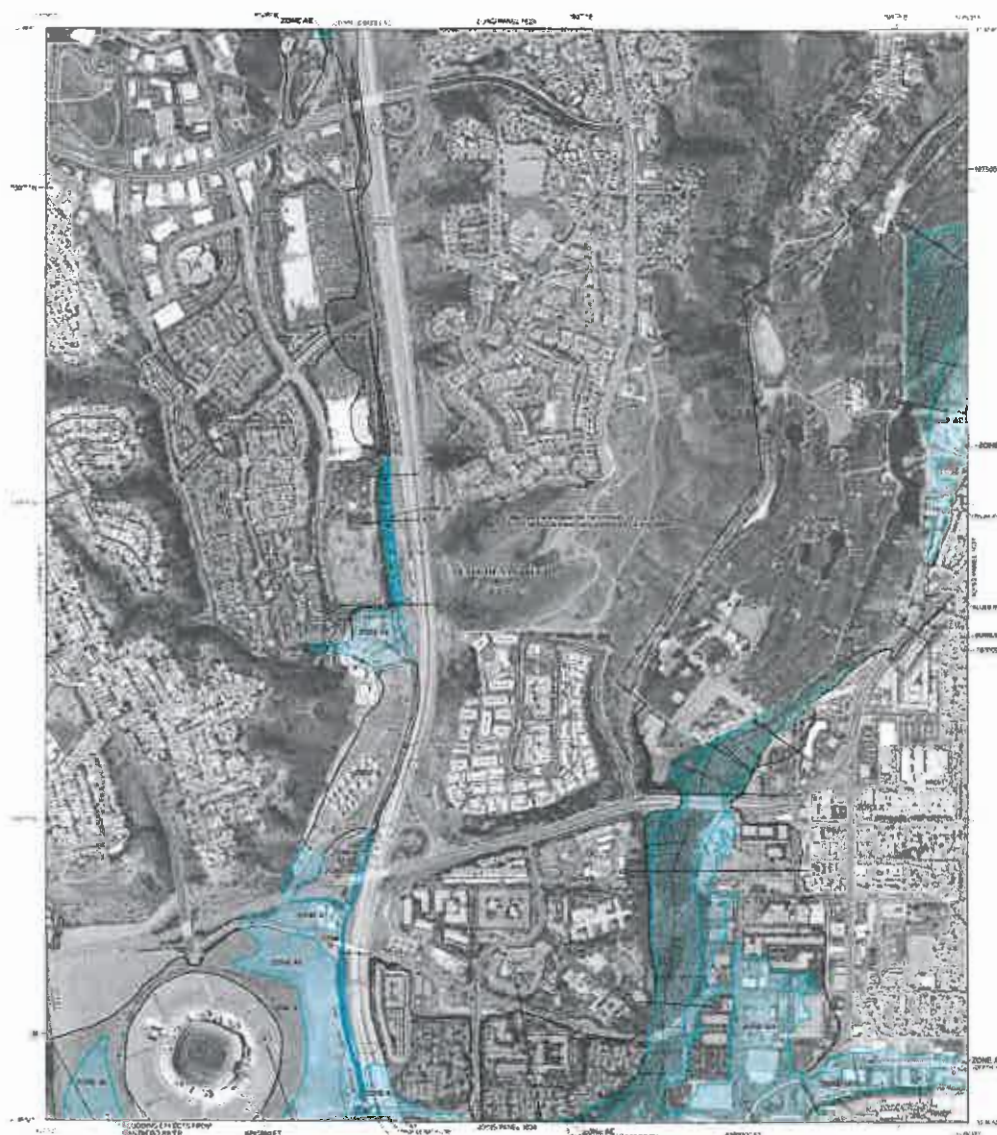


Written by Matthew Hose

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 PARTNER VOICES



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**MAF**  
**ANNUAL FLOOD INSURANCE PROGRAM**

**PANEL 123019**

**FIRM**  
**FLOOD INSURANCE RATE MAP**  
**SAN DIEGO COUNTY,**  
**CALIFORNIA**  
**AND INCORPORATED AREA**

**PANEL 1636 OF 2375**

**1976 MAP INDEX FOR PUMP-RESISTANT LOTS**  
**000713**

**000612**      **000613**      **000614**      **000615**  
**000616**      **000617**      **000618**      **000619**  
**000620**      **000621**      **000622**      **000623**

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**MAP NUMBER**  
**00073C1636**

**MAP REVISION**  
**MAY 16, 1976**

**Federal Emergency Management Agency**

*City of San Diego*  
***SEISMIC SAFETY STUDY***  
***Geologic Hazards and Faults***

Updated 2008



**Development Services Department**

**Disclaimer**

The information presented on these maps is primarily intended for planning purposes and should not be construed as definitive data for a specific site. The information presented is a collection of the most readily available data at the time of compilation. As much of the information was transferred from maps of differing scales, the accuracy is limited.

Every reasonable effort has been made to ensure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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# SAN DIEGO SEISMIC SAFETY STUDY

## Introduction

The first edition of the San Diego Seismic Safety Study (SDSSS) was completed and adopted by City Council (Resolution 211594) on September 19, 1974 to comply with California regulations requiring cities to adopt a Seismic Safety Element within their General Plan.

The original maps, issued in 1974 and updated in 1983, have been revised and upgraded to reflect the latest interpretation of the geologic features and to streamline the site review process. The new maps are produced at a larger scale (1 inch = 800 ft.) and in full color, incorporating the most advanced GIS computer mapping capabilities. The GIS computer-based system provides easy public access to the latest version of the maps, quick evaluation for permit processing, and timely maintenance and upgrading of data.

The SDSSS can be used to determine what geologic conditions are likely to underlie your site. The study consists of a series of maps showing locations of faults and other geologic hazards which are suspected or known to exist within the city of San Diego. This information is necessary for determining which level of geotechnical review will be required by the city when applying for planning, development or building permits.

The new edition contains several important changes that will shorten the review process. Geologic Hazard Categories and Fault Zones are now shown on a single sheet instead of two separate sheets, and the Geotechnical Land-Use Capability sheet has been eliminated. A revision and expansion of the Geologic Hazard Categories, a larger map format and scale, and the precision of GIS computer software has allowed the elimination of two-thirds of the old maps. This edition simplifies and consolidates the review process for all city departments by utilizing the same criteria (Geologic Hazard Categories) for site evaluation.

## How To Use the SDSSS

The procedure for determining which level of geotechnical study is required by the various city departments for planning, development or building permits differs slightly, based upon the type of permit sought. For permits dealing with land-planning and land-development (i.e., grading, public improvements), refer to the procedure described in "PLANNING AND DEVELOPMENT PERMITS" on sheet 2. For building permits, refer to the procedure described in "BUILDING PERMITS" on sheet 3.

## Disclaimer

The information presented on these maps is primarily intended for planning purposes and should not be construed as definitive data for a specific site. The information presented is a collection of the most readily available data at the time of compilation. As much of the information was transferred from maps of differing scales, the accuracy is limited.

## Legend

### FAULT ZONES

- 11 Active, Alquist-Priolo Earthquake Fault Zone
- 12 Potentially Active, Inactive, Presumed Inactive, or Activity Unknown
- 13 Downtown special fault zone

### FAULTS

- Fault
- Inferred Fault
- Concealed Fault
- Shear Zone
- U/D Relative vertical fault movement

Fault Zones represent possible limits within which faults could be located. Area concept required due to possible plotting error from different scale of source maps and accuracy of plots and overlay.

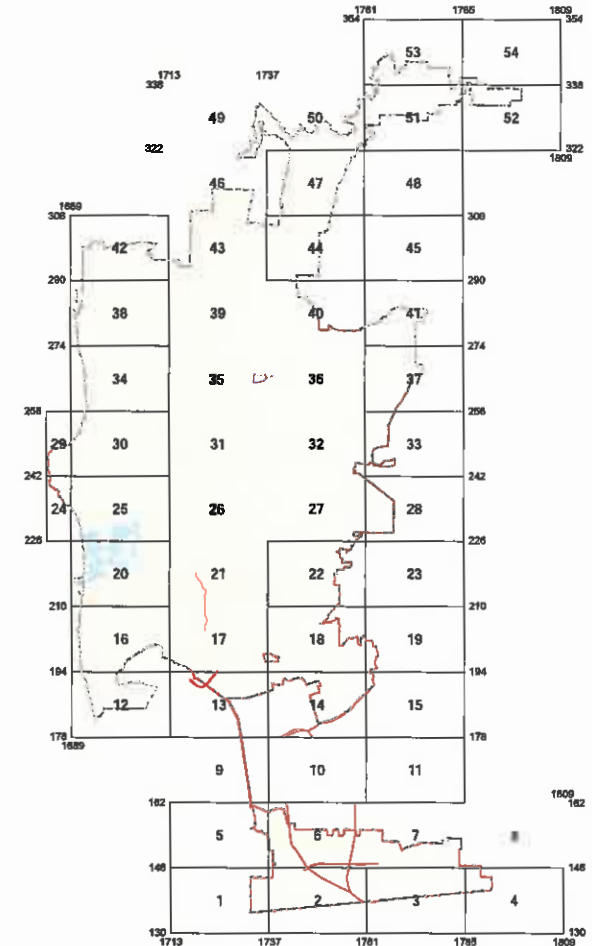
All fault locations are based on the best interpretation of available data at the time of compilation. Often, due to the extreme differences in scale between the data source and this map, interpretation of the fault, inferred fault, and concealed fault was required.

NOTE: There is a high degree of probability that the fault location will lie within the limits shown. Limits are isolated to indicate suggested areas for exploration in order to accurately locate the fault.



Small copyright notice and disclaimer text at the bottom of the seal area.

## Index Map (NAD 27)





# SAN DIEGO SEISMIC SAFETY STUDY: PLANNING & DEVELOPMENT PERMITS

**Table 2-A**

Type of Hazard		Geologic Hazard Categories	Relative Risk			
			Nominal	Low	Moderate	High
Ground Rupture	Faults	11 Active, Alquist-Priolo Earthquake Fault Zone				●
		12 Potentially Active Inactive, Presumed Inactive, or Activity Unknown		●	●	
		13 Downstream special fault zone			●	●
Potential Slope Instability	Landslides	21 Confirmed, known, or highly suspected				●
		22 Possible or conjectured			●	
	Slide-Prone Formations	23 Fric: neutral or favorable geologic structure		●	●	
		24 Fric: unfavorable geologic structure			●	
		25 Ardic: neutral or favorable geologic structure		●	●	
		26 Ardic: unfavorable geologic structure			●	
		27 Ory: Swastwater, and others		●	●	
Potential Ground Failure	Liquefaction	31 High Potential - shallow groundwater major drainages, hydraulic fills			●	●
		32 Low Potential - fluctuating groundwater minor drainages		●		
Coastal Bluff Stability	Generally Unstable	41 Generally unstable; Numerous landslides, high steep bluffs, severe erosion, unfavorable geologic structure				●
		42 Generally unstable Unfavorable bedding planes, high erosion			●	●
		43 Generally unstable Unfavorable jointing, local high erosion			●	
	Moderately Stable	44 Moderately stable Mostly stable formations, local high erosion		●	●	
		45 Moderately stable Some minor landslides, minor erosion		●		
		46 Moderately stable Some unfavorable geologic structure, minor or no erosion		●		
	Generally Stable	47 Generally stable Favorable geologic structure, minor or no erosion, no landslides		●		
		48 Generally stable Broad beach areas, developed harbor	●	●		
All Other Conditions	Variable Stability	51 Level mezes - underlain by terrace deposits and bedrock nominal risk	●			
		52 Other level areas, gently sloping to steep terrain, favorable geologic structure, Low risk		●		
		53 Level or sloping terrain, unfavorable geologic structure, Low to moderate risk		●	●	
		54 Steeply sloping terrain, unfavorable or fault controlled geologic structure, Moderate risk			●	
		55 Modified terrain (graded sites) Nominal risk	●			

**Table 2-B**

Building Type/Land Use Group	
Group I	Nuclear Facilities, Large Dams and Regional Electrical Power Generation Plants
II	Hospitals; Fire, Police, Emergency Communication Facilities; Critical Transportation Elements, such as Bridges, Overpasses; Smaller Dams; Important Utility Centers
III	Schools, Churches, Large or Highrise Buildings, or Other Places Normally Attracting Large Concentrations of People, such as Civic Buildings, Large Commercial Structures, Most Roads, Other Utilities, Grading
IV	Residential (Single-Family Residences, Apartments, etc.) Most Commercial and Minor Public Structures
V	Most Industrial, Other Minor Commercial (Warehouses, Wharves, Docks, Marinas)
VI	Agriculture, Parks, Open Space

**Follow this procedure to determine which level of geotechnical study is required by the City for Land-Planning and Land-Development permits:**

1. Referring to the Index (Sheet 1), find the map sheet number containing your site. Turn to the proper map sheet and locate your site.
2. From the map, determine the Hazard Category for your site. The Hazard Category is identified by a specific number (11 thru 55) and color code. Refer to Table 2-A for a description of the Hazard Category and the relative risk assigned to the suspected type of Hazard.
3. Determine the Building Type/Land Use Group for your project per Table 2-B.
4. Referring to Table 2-C, determine the required geotechnical study for the Building Type/Land Use Group and Hazard Category at your site.

**Table 2-C Required Geotechnical Study**

RELATIVE RISK	HAZARD CATEGORY	SOIL INVESTIGATION	GEOLOGIC RECONNAISSANCE	GEOLOGIC INVESTIGATION
MODERATE TO HIGH	11, 13, 21, 31, 41	I-V	-	I-VI
LOW TO MODERATE	12, 22-27, 32, 42-48, 53, 54	I-V	VI	I-V
NOMINAL TO LOW	51, 52, 55	I-V	IV	I-III



**NOTICE**  
 Every contractor who has been notified to prepare the geotechnical study shall, before submitting the study, prepare and submit to the City Engineer a copy of the study and a copy of the study to the City Engineer. The study shall be submitted to the City Engineer within the time specified in the notice. The study shall be submitted to the City Engineer within the time specified in the notice. The study shall be submitted to the City Engineer within the time specified in the notice.



# SAN DIEGO SEISMIC SAFETY STUDY: BUILDING PERMITS

## FOOTNOTES TO TABLE 145.1802

1. Hazard Category. The Hazard Category describes the geologic feature or condition suspected at the site. The Hazard Category is determined by reference to the current City of San Diego Seismic Safety Study (SDSSS) maps.

2. Building, structure, and facility classes A, B, C, and D.

A. Class A includes the following:

- 1) Essential facilities as defined in Section 1804.5 of the California Building Code.
- 2) Any building, structure, or facility where, in the opinion of the Building Official, significant generations or storage of toxic, hazardous, or flammable materials will occur. Quantities of these materials will be assessed in accordance with the risks they present.

B. Class B includes the following developments, occupancy groups, and structures provided they are not included in Class A:

- 1) All developments consisting of four or more structures.
- 2) All new structures requiring deep foundations (piers or pilings).
- 3) All buildings over three stories in height.
- 4) All buildings containing the following occupancies (Refer to 2007 California Building Code, Chapter 3):
  - a. Group A, Divisions 1, 2, 3 and 4.
  - b. Group E.
  - c. Group H, Divisions 1, 2 and 3.
  - d. Group I, Divisions 1, 2 and 3.
- 5) All buildings with an occupant load of more than three hundred (300) persons as determined by Table 10-A of the California Building Code.
- 6) Tanks, bins, hoppers, silos, and other storage structures of more than twenty thousand (20,000) gallons capacity intended to store toxic, hazardous, or flammable contents that are not associated with a building, structure, or facility in Class A.

7) Tanks, bins, hoppers, silos, and similar structures over thirty-five (35) feet high.

8) Towers over thirty-five (35) feet high.

9) Retaining walls (height is measured from the top of the footing to the top of the wall):

- a. Retaining walls over 12 feet in height.
- b. Retaining walls over 8 feet in height supporting a surcharge or retaining toxic, hazardous, or flammable contents.
- c. Retaining walls associated with structures included in footnotes 1.B.4.

C. Class C includes the following occupancy groups and structures provided they are not included in Classes A or B:

- 1) All buildings containing the following occupancies (Refer to California Building Code, Chapter 3):
  - a. Group A, Divisions 2, 3 and 5.
  - b. Group B.
  - c. Group E.
  - d. Group F, Divisions 1 and 2.
  - e. Group H, Divisions 4 and 5.
  - f. Group I, Division 1.
  - g. Group M.
  - h. Group R, Divisions 1 and 2.
  - i. Group S, Division 1.
- 2) Retaining walls (height is measured from the top of the footing to the top of the wall):
  - a. Retaining walls over 8 feet in height.
  - b. Retaining walls of any height supporting a surcharge or retaining toxic, hazardous, or flammable contents.
- 3) Tanks, bins, hoppers, silos, and other storage structures intended to store toxic, hazardous, or flammable contents.
- 4) Tanks, bins, hoppers, silos, and similar structures over twenty (20) feet high.
- 5) Towers over 25 feet high.

D. Class D includes the following occupancy groups and structures provided they are not included in Classes A, B, or C:

- 1) All buildings containing the following occupancies (Refer to California Building Code, Chapter 3):
  - a. Group R, Divisions 3 and 4.

Note: No geologic investigations are required for occupancy Group U or any other structure of a similar minor nature.

3. Faults and Fault Zones – Hazard Category 11, 12, and 13.

Active and potentially active faults are defined in the most recent edition of "Fault-Rupture Hazard Zones in California," Special Publication 42, California Department of Conservation, Division of Mines and Geology, a copy of which is on file at the office of the City Clerk as Document No. 06-17773-4.

Fault zones define the limits within which faults are suspected. Fault zones include the Alquist-Priolo Earthquake Fault Zones, the Downtown Special Fault Zone, as well as the area 100 feet on both sides of the fault lines indicated on the current San Diego Seismic Safety Study (SDSSS) maps. Refer to SDSSS maps for location of faults and fault zones.

The Downtown Special Fault Zone consists of an area beginning at the intersection of the centerline of Laurel Street and the centerline of Highway 163, thence in a general westerly and southeasterly direction along the centerline of Laurel Street to the intersection of the centerline of Harbor Drive, thence westerly to the intersection of the U.S. 6 Boulevard line of San Diego Bay, thence in a general southerly and southeasterly direction along said Boulevard line to an intersection of the southeasterly prolongation of the centerline of 26th Street, thence northerly along the centerline of 26th Street to the intersection of the centerline of Ocean View Boulevard, thence northerly along the centerline of Ocean View Boulevard to the intersection of the centerline of 25th Street to the intersection of the centerline of Ross Boulevard, thence westerly along the prolongation of the centerline of Ross Boulevard to the intersection of the centerline of Highway I-5, thence in a general northerly and westerly direction along the centerline of Highway I-5 to the intersection of the centerline of Highway 163, thence generally northerly along the centerline of Highway 163 to the point of place of beginning.

4. Liquefaction Potential – Hazard Category 31 and 32.

When an investigation is required, adhere to Section 1802 of the 2007 California Building Code for minimum requirements.

5. Geotechnical Report. A report of the geotechnical condition is required for sites where geologic hazards are suspected, prior to obtaining a Building Permit. The report will either consist of a preliminary study, a geologic reconnaissance, or an in-depth study including field work and analysis, a geologic investigation. The geologic reconnaissance report and the geologic investigation report shall include all pertinent requirements as established by the Building Official. All reports shall be prepared in accordance with the most recent edition of the City of San Diego "Technical Guidelines for Geotechnical Reports," on file with the City Clerk as Document No. 06-17773-5. These minimum requirements shall be augmented by geologic evaluations pertinent to the type of proposed project and anticipated method of construction, which should be described in the report. For buildings located in both a fault zone and a hazard category zone, the most restrictive requirement shall govern.

Regardless of the requirements of Table 145.1802, the Building Official may require a geologic reconnaissance report or a geologic investigation report for any site if the Building Official has reason to believe that a geologic hazard may exist at the site.

Follow this procedure to determine which level of geotechnical study is required by the City for building permits:

1. Referring to the Index (Sheet 1), find the map sheet number containing your site. Turn to the proper map sheet and locate your site.
2. From the map, determine the Hazard Category for your site. The Hazard Category is identified by a specific number (11 thru 55) and is color coded.
3. Referring to Table 145.1802, determine the required geologic study for the Hazard Category and the proposed Building, Structure, or Facility Class (A, B, C, or D). The footnotes to the table are provided to further clarify the procedure.

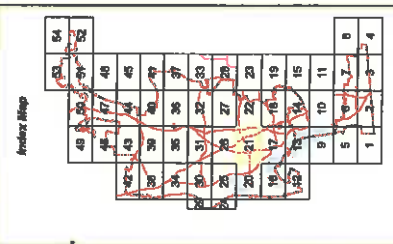
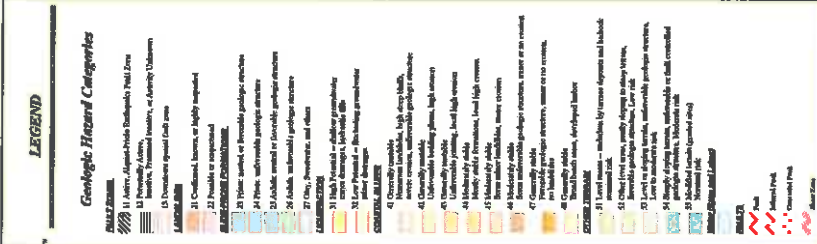
Table 145.1802 Required Geotechnical Investigation <sup>5</sup>

Hazard Category <sup>1</sup>	Building, Structure, and Facility Class <sup>2</sup>
11 <sup>3</sup> , 13 <sup>3</sup> , 21, 31 <sup>4</sup> , 41	A, B, C, D
12 <sup>4</sup> , 22, 42-48, 54	A, B, C, D
23-27, 32 <sup>4</sup>	A, B, C
51, 52, 53, 55	A, B

NOTE: Refer to Municipal Code section 145.1802 for complete foundation investigation requirements.







GRID TILE: 21  
GRID SCALE: 800  
DATE: 4/3/2008

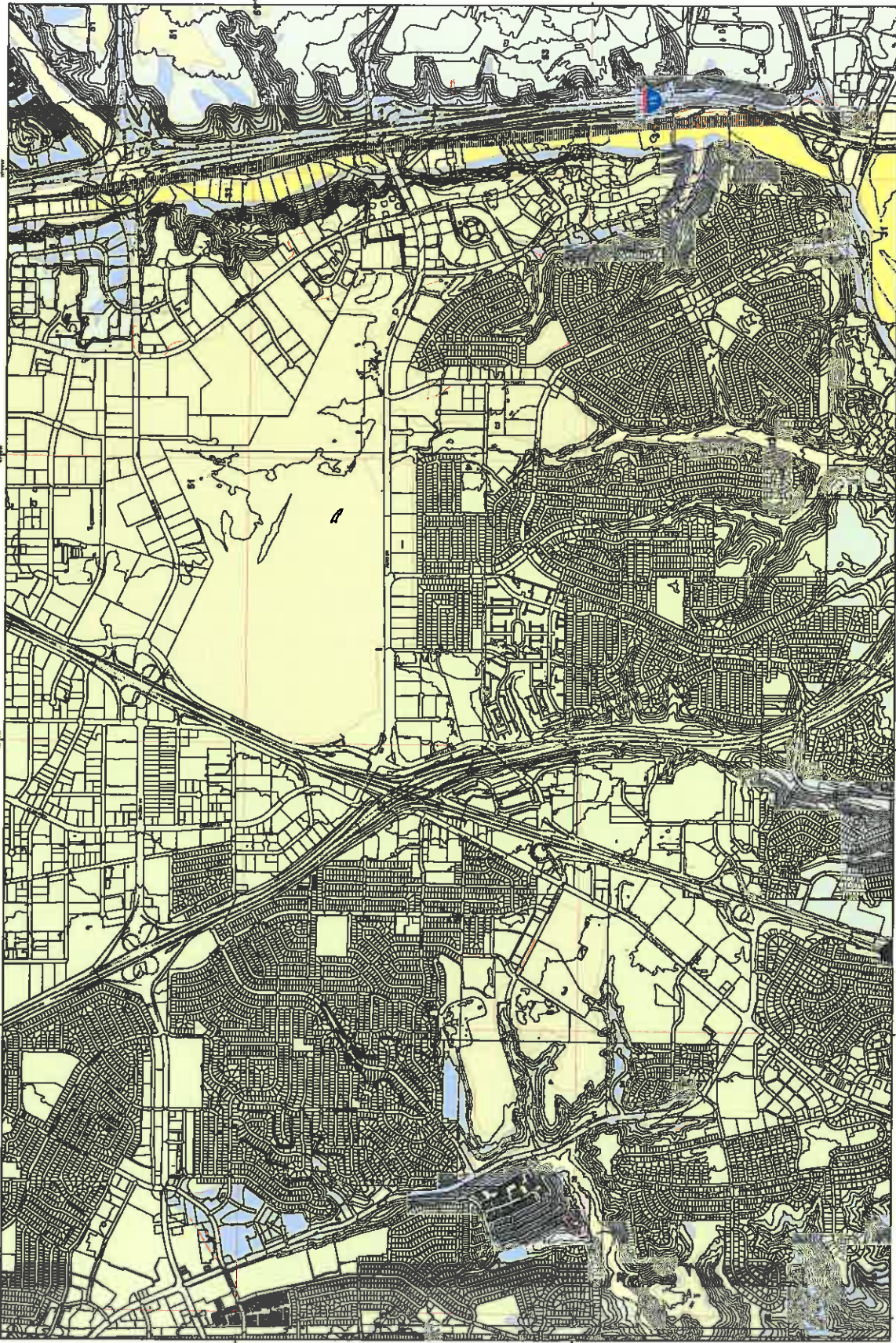
**Development Services Department**

**City of San Diego  
SEISMIC SAFETY STUDY  
Geologic Hazards and Faults**

[illegible]

**Special Handling Necessary**  
 Inside East Coast business area for the City of New York (about 25%  
 estimated recovery) of the 2004, 2005 and 2006.  
 The city made the 2004-2006 estimated for Class 1 (not including a waste of  
 1.5 to 2.0 million).  
 The estimated recovery, although 10% of the city's waste, is a significant loss. It would  
 also mean that the city would have to pay the recovery with some in excess of 10% profit.

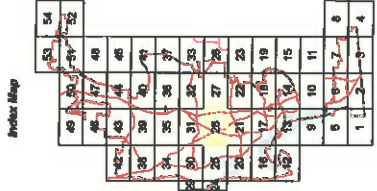




**LEGEND**

**Geologic Hazard Categories**

- BOUNDARY**
- 1. City of San Diego boundary
  - 2. County boundary
  - 3. Interstate boundary
  - 4. State boundary
  - 5. County boundary
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  - 100. Alluvial fan deposits



GRID TILE: 26  
GRID SCALE: 800  
DATE: 4/3/2008



**City of San Diego**  
**SEISMIC SAFETY STUDY**  
**Geologic Hazards and Faults**



Prepared by: [Name]  
Reviewed by: [Name]  
Approved by: [Name]  
Date: [Date]

This map is a representation of the data as of the date of the map. It is not a warranty or a guarantee of the accuracy of the data. The City of San Diego is not responsible for any errors or omissions in this map. The user of this map is advised to consult the original data for more information.

ENCLOSURE 2

# ENDANGERED HABITATS LEAGUE

DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE



July 19, 2015

Martha Blake  
Senior Planner  
City of San Diego Development Services Department  
1222 First Avenue, MS 501  
San Diego, CA 92101

## Re: Notice of Preparation, Qualcomm Stadium Reconstruction Project

Dear Ms. Blake,

The Endangered Habitats League (EHL) would like to offer the following comments on the subject project. For your reference, EHL is a regional conservation organization focused on biodiversity conservation and land use. We have been engaged on City of San Diego land use and MSCP issues since 1991. For this project NOP we highlight the following topic areas and concerns.

1. **Process, impact and alternatives analysis.** It is our opinion that the project must be processed under an Environmental Impact Report. (The NOP seems to indicate that an EIR may not be necessary pending review of technical documents.) Among other products, an EIR will provide an important analysis of alternatives and cumulative impacts, critical for a project of this scope and location. Important issues such as the Mission Valley community park deficit and integration with the San Diego River Park should be analyzed. This issue was not identified in the NOP Notice as needing additional study, as it clearly does.
2. **Financing and scope.** The question of whether a stadium is even a viable land use is a matter of public record. Not only have the Chargers signaled that they are not interested in this location, it seems clear that a stadium project cannot proceed without outside financing. Since early April, at least some City of San Diego elected officials have opined that financing a stadium reconstruction would require potentially thousands of residential and mixed-use units to be developed on this City owned site. It is important that the public is aware that a financing plan for the proposed stadium project would include significant impacts across the entire suite of CEQA impact issues. Failure to analyze the whole of the project is in violation of CEQA Guideline Section 15378: ***"The term project refers to the whole of an action that has the potential, directly or ultimately, to result in a physical change to the environment. This includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the project."***

We appreciate your consideration of our comments.

Michael Beck  
San Diego Director

**Leighton, Lynette**

---

**Subject:** FW: Stadium Reconstruction Project

**From:** [rhutsel@sandiegoriver.org](mailto:rhutsel@sandiegoriver.org) <[rhutsel@sandiegoriver.org](mailto:rhutsel@sandiegoriver.org)>

**Sent:** Tuesday, July 21, 2015 6:05 PM

**To:** DSD EAS

**Cc:** [rob@sandiegoriver.org](mailto:rob@sandiegoriver.org)

**Subject:** Stadium Reconstruction Project

Dear Ms. Blake,

Thank you for the opportunity to respond to the Notice of Preparation of a DEIR for the Stadium Reconstruction Project.

We appreciate that many items will be required to be studied as a DEIR is prepared. We appreciate that the City staff has most likely already identified many potential significant impacts to be included.

We request that we receive all notices of meetings being held or materials be distributed. As a stakeholder with an interest in the health and condition of the San Diego River as well as the provision of park and other public facilities along the San Diego River and its tributaries, we are very interested in this project.

We will limited our comments at this time to:

1. We believe that in the DEIR it is essential that the project be defined more completely.

- Will the contour of the land be altered? If so, what are the impacts to the floodway, 100 year floodplain, wetlands, required buffers for wetlands, and multiple habitat planning area?
- We believe that it is essential that if the land contours are proposed to be altered in any of the potential project designs or alternatives, that the impact of these on the before mentioned items must be studied and included in the analysis
- What are the project boundaries? Is all 166 acres included or is it a smaller or larger project?
- Does this project include the proposed "Purple" mass transit line and if so, this should be included in the analysis of this project
- Will the proposed park and trail improvements be separated out as a different project which could proceed before, during or after the stadium reconstruction project
- Is Murphy Canyon Creek drainage which runs along the eastern edge of the site included in the analysis and as part of this project?



2. The aquifer under the site is an important asset for the directly and indirectly associated ecosystems, including the San Diego River. The impacts of contouring the site, including removal of any dirt to create the new stadium, on groundwater and the surface waters of the San Diego River should be studied.

3. We request that a Wetlands Delineation should be conducted as part of the analysis.

4. The City of San Diego has explored restoration of the San Diego River adjacent to the Stadium site. An analysis should be done to determine how this work would impact the project. Especially if recontouring of the land is proposed wo alter the 100 year floodplain.

5. It is our understanding that a major sewer line traverses the south (river) side of the parking lot. Will this pipe be removed or re-aligned as part of this project. If so, what are the potential impacts and opportunities to expand the floodway and riparian habitat.

6. Sediment has been a concern within Murphy Canyon Creek. This impacts of any proposed project design should address how it will reduce sedimentation.

7. The San Diego River is a 303d listed impaired water body. How will this project impact the constituents of concern?

8. Flooding has been a significant issue within the Stadium parking lot. The DEIR should address this issue and offer alternatives which improve this public safety and environmental issue.

9. The community of Mission Valley is significantly below national and city standards for providing public parks. The Mission Valley Community Plan identifies this site as one of two opportunities to address this issue. Any project design should explore alternatives which maximize the potential to address this concern. The DEIR should also explore whether some of this park land could be located outside of the Floodway and Wetland Buffer areas but within the 100 year Floodplain. The DEIR should also include an analysis of when these public park areas would be closed or impacted by events at the new Stadium or associated areas including the parking lot.

10. The San Diego River is an ecologically significant area. While fragile, it is also resileant. The DEIR should include an analysis of the impacts of the project on the ecosystem, including the aquatic ecosystem.



11. The placement of the stadium should be analyzed to provide alternatives which minimize the noise, visual, hydrologic, and biologic impact to the San Diego River ecosystem and the San Diego River Park system as identified in the City of San Diego River Park Master Plan and other documents.

Thank you for the opportunity to comment on this important project for our San Diego River, our City and our Region.

Rob Hutsel  
Executive Director  
The San Diego River Park Foundation

Engaging people to create a better future for the San Diego River. Learn more at  
[www.sandiegoriver.org](http://www.sandiegoriver.org)

**Leighton, Lynette**

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**From:** Cindy [<mailto:C.a.moore@sbcglobal.net>]

**Sent:** Sunday, July 19, 2015 6:23 AM

**To:** DSD EAS

**Subject:** Stadium Reconstruction Project

The Serra Mesa Planning Group on July 16, 2015 approved a "Motion to request to include the Serra Mesa Community (excluding the Birdland area) to the EIR." Since the Qualcomm Stadium site is located adjacent to Serra Mesa the draft EIR should include a study of any and all impacts to Serra Mesa.

Cindy Moore

Chair, Serra Mesa Planning Group

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ENCLOSURE 3



July 14, 2015

Ms. Martha Blake, Senior Planner  
Development Services Center  
City of San Diego  
1222 First Avenue, MS 501  
San Diego, CA 92101

Via email: [DSDEAS@sandiego.gov](mailto:DSDEAS@sandiego.gov)

Dear Ms. Blake:

**SUBJECT: STADIUM RECONSTRUCTION PROJECT, COMMENTS ON NOTICE OF PREPARATION**

The San Diego Audubon Society works to protect birds, other wildlife, and their habitats. As such, we are concerned with potential impacts of the Stadium Reconstruction Project that may not be addressed in the EIR. The June 22, 2015, Notice of Preparation (NOP) lists the issue areas that will be covered in the EIR. Biological Resources were not included in this list, though this project is very likely to have significant impacts on biological resources. The July 13, 2015, Scope of Work for the EIR does address Biological Resources. We urge that the latter apply and that the potential biological impacts be identified and measures to avoid them be included in the DEIR when it is completed. We are also concerned that this document does not address the full impacts of the actual project. This piecemealing might make a casual observer less likely to appreciate the potential biological impacts of the project. We will address these issues in the following paragraphs.

**BIOLOGICAL RESOURCES (WILDLIFE CORRIDOR)**

Murphy Canyon and its tributary canyons are north of the stadium site. They include a few thousand acres of open space habitat covered with native and other vegetation. That habitat is occupied by a broad range of local wildlife. The San Diego River is immediately south of the project area and connects many thousands of acres of habitat along its path both to the east and west of the stadium. The stadium site stands between those two wildlife rich areas. Wildlife movement between the two is degraded because of the fragmentation from development and infrastructure but is still very important. The value of providing connectivity among habitat areas has become better and better appreciated in recent decades.

Some obvious reasons for maintaining connectivity among habitat areas is to increase genetic diversity in populations in the connected areas, to allow appropriate predator/prey relationships, allow young animals to move into their own territories, allow for recovery of populations after setbacks such as disease or fires, allow for relocation to avoid threats to survival, and for seasonal movements to take advantage of seasonal seeds, prey animals, water, etc. Currently the choke point in the corridor from Murphy Canyon to the River is a 35-foot wide stormwater channel that runs north to south and is between the off-ramp from I-15 southbound to I-8 westbound and the east edge of the stadium parking lot. The channel is down to about 35 feet wide in at least one place, but it probably provides for some corridor value

for a broad range of animals. Since the parking lot is unused most days and almost all nights, the adjacent activity would not discourage use of that narrow corridor. The parking lot itself is probably also heavily used by wildlife at night, though smaller animals would be vulnerable to nocturnal predators such as owls and foxes, coyotes, etc. So, there is currently a usable, though less than ideal, corridor for movement from the habitat areas of Murphy Canyon to those of the SD River.

If the stadium is closer to the east side of the parking lot, it will substantially reduce the value of this corridor. The drawing on the invitation for the EIR scoping letter shows the replacement stadium immediately adjacent to the previously mentioned off-ramp which would dramatically reduce the usability of that wildlife corridor and increase the fragmentation between those two habitat complexes. We urge that the EIR acknowledge the impact of the location of the replacement stadium on that corridor and provide mitigation measures that will preserve or improve its usability for wildlife.

A drawing by Rick Engineering on page 4 of the Chargers Stadium Advisory Group Report shows a concept for the San Diego River Park area at the stadium site. It also shows a broad vegetated space running along the east side of the parking lot. A natural area in that location could be designed to add scenic value and passive recreational value as well as providing a very useful corridor for wildlife movement between the habitat areas of Murphy Canyon and the River. We urge that the DEIR identify a broader flood control channel that is wide enough that it can accommodate flood flows while supporting a reasonable amount of vegetation in the channel as well as a buffer area as mentioned above to provide a secure wildlife corridor in spite of the new and heavily lighted stadium.

The EIR should also provide tracking and monitoring data to show what species are present in Murphy Canyon and in the San Diego River that might use the wildlife corridor in the vicinity of the stadium. It should also provide analysis to show what type, width, light levels, disturbance, etc. measures are needed to allow safe wildlife movement through this corridor for the species that will potentially use it.

#### **BIOLOGICAL RESOURCES (BIRD STRIKES)**

The drawings of the stadium that have been released by the City show it to have a light and transparent look as opposed to the fortress look of the current stadium. It is not clear if this transparent look is to be done with large openings or with large window areas. If the new stadium will have large glass areas, through which a bird can see the sky on the other side, it is very likely that a large number of birds will try to fly through and be injured, killed, or disabled. We urge that the EIR fully address the potential bird strike impact of the new stadium and identify measures that will fully offset those impacts. This analysis should include at-risk, threatened, endangered species, species that are unique to the area, and any others that are listed as "covered" by the City's MSCP.

#### **HYDROLOGY AND WATER QUALITY**

The current stormwater channel on the east side of the stadium parking lot is not adequate in capacity or stability. It has occasionally overflowed into the stadium parking lot losing parking revenue for the City, requiring reimbursement for property damage, and requiring costly maintenance and reconstruction. The City and future development on the stadium site would benefit substantially from widening this channel to increase its capacity and to allow vegetation remain in the channel to slow water velocities in the channel. Doing so would also reduce its vulnerability and increase its wildlife corridor value and its scenic value for the redevelopment.

However, other concept drawings have appeared in the media that show either the new stadium or dense urban development that appears to be very close to the off-ramp mentioned above, leaving no room for a wildlife corridor. We assume these concepts must anticipate that the storm flows will be placed in underground pipes with streets or buildings over it. Doing so would have substantial negative water quality on the San Diego River and wildlife habitat and movement value. We urge that the EIR not include such alternatives.

#### GLOBAL CLIMATE CHANGE

The Statement of Work proposes considering the guidance from the CAPCOA analysis of January 2008 as a threshold to determine if analysis and mitigation relating to climate change is required in the EIR. We urge that the CAPCOA analysis not be used. The data on which it is based is not relevant to this project. And it is also completely out of date since much has been learned about the impacts of Green House Gasses on our environment and on our future since the analysis was done for that study. The Greenhouse Gas analysis for this project should be oriented toward helping implement the Goals of the City's Climate Action Plan.

#### DEFINITION OF THE PROJECT

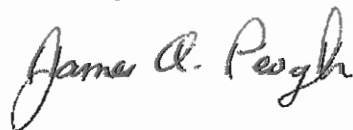
The NOP states that the elements of this project are Stadium Construction and Stadium Demolition. However, it is very clear that a considerable amount of other development will be constructed on the stadium site to help fund the Construction and Demolition of the stadium. This appears to be a clear example of Piecemealing and a violation of CEQA. Since the stadium cannot be built without the additional development, we urge that the EIR analyze and provide mitigation for the impacts of the environmental impacts of the additional development on the site that will contribute funding to the project as well as the Stadium Construction and Demolition. This additional development on the site will substantially increase the degradation of the wildlife linkage from Murphy Canyon to the San Diego River and require a larger and better protected and buffered area, on the south or east side of the project site.

#### CUMULATIVE IMPACTS

If, for some reason, the City decides to risk the Piecemealing mentioned in the previous paragraph, we urge that the City at least analyze the impacts and identify mitigation for the environmental impacts of the additional development on the stadium site that will help fund it as an anticipated Cumulative Impact. Those impacts would include at least the wildlife corridor and bird strike impacts of those additional developments in conjunction with those of the Construction and Demolition of the stadium itself.

Please include the San Diego Audubon Society when distributing information on this development, including presentations, public hearings, zoning changes, environmental review, decisions points, etc. In case of questions or for follow up discussions, I can be reached at [peugh@cox.net](mailto:peugh@cox.net) or 619-224-4591.

Sincerely,



James A. Peugh  
Conservation Committee Chair  
San Diego Audubon Society

## **SD Stadium EIR**

Jim Peugh – San Diego Audubon Society, Conservation Chair

Transcription of Comments from audio recordings, provided by Kerry Santoro (City of SD) on 21 July 2015

Transcribed by Lynette Leighton (AECOM) on 23 July 2015

### **Audio Recording 1 of 2:**

I'm Jim Peugh from the San Diego Audubon Society; I'm the Conservation Chair for the [San Diego] chapter.

I have 3 concerns.

1. The wildlife corridor between Murphy Canyon and SD River.

Right now it's just down a narrow storm drain. It's about 35 ft wide.

If the stadium is – well first, the whole stadium is sort of below budget [in the] wildlife corridor, or the stadium parking lot now; it's not good, but it's the best we have.

One of the photogra- one of the drawings showed the stadium being right up against the freeway, which would mean that the effective corridor would be cut off completely, and so I noticed that the NOP said that the biological resources would not be analyzed – that there was no possible biological impact.

But, that's not true, because the wildlife corridor could be shut off.

So, I think you desperately need to analyze the wildlife corridor value, and you desperately need to make some measurements to see what kind of wildlife uses it, and then get a good biologist to determine what kind of wildlife might be using it, and then specifically put in mitigation for it – figure out how much of a corridor you should put in so the wildlife can effectively use it.

2. And, the other thing is, the storm drain channel that's over next to the freeway on the east side of the project blows out all the time, and so the City's going to have to fix that sometime.

And, I'm sure you're not going to move the stadium toward that, and then allow that to blow out and flood the stadium like it floods the parking lot now.

So, they're going to have to do something about that channel, and so as part of doing something about that channel, I would really encourage that they widen it enough so that it helps as a wildlife corridor, and so that it'll be wide enough so that they won't have to clear it completely to get it to flow, so then that would improve the corridor value of it.

And, then there needs to be a buffer between the parking lot and that linkage,...



ENCLOSURE 4

PAUL E. COOPER  
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA  
ASSISTANT CITY ATTORNEY

THOMAS C. ZELENY  
CHIEF DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO  
  
**JAN I. GOLDSMITH**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1100  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

**MEMORANDUM OF LAW**

DATE: November 26, 2014  
TO: Honorable Mayor and City Council  
FROM: City Attorney  
SUBJECT: Appraisal of Water Utility Property at Qualcomm Stadium

**INTRODUCTION**

In 1966, the City and the County of San Diego executed a joint powers agreement creating the San Diego Stadium Authority, whose purpose was to finance and construct the stadium now known as Qualcomm Stadium. Later that year, the San Diego Stadium Authority executed a ground lease with the City (attached) to pay the water utility \$15,000 per year for the use of its land. The water utility owns about half of the 160 acres occupied by Qualcomm Stadium and its parking lot. The term of the ground lease was tied to the term of the joint powers agreement, which was for 40 years or until the revenue bonds were retired, whichever occurred first.

The San Diego City Council authorized terminating the ground lease in 1995 in anticipation of issuing new bonds the following year to renovate Qualcomm Stadium. San Diego Resolution R-286606 (Nov. 21, 1995). The original stadium bonds were retired in 1998, at which point the San Diego Stadium Authority was dissolved. There were no holdover provisions in the ground lease, but the City continued to pay the \$15,000 annual rent to the water utility that the San Diego Stadium Authority had been paying. The City made the rental payments until 2005, the balance of the originally anticipated 40-year term of the ground lease.

Earlier this year, the Public Utilities Department was conducting a review of its rental properties and discovered the water utility is not receiving any rent for the use of its property at Qualcomm Stadium. This Office has advised that the water utility must receive fair market value for the use of its property. 2005 City Att'y MOL 87 (2005-10; May 13, 2005). According to a 2005 Memorandum from former City Manager Lamont Ewell (attached), because the \$15,000 annual rental rate was not anticipated to extend beyond 40 years, a new appraisal would be done and presented to the Natural Resources & Culture Committee to determine the rent to be paid to the water utility in the future. It does not appear the appraisal was ever presented to a Council Committee or City Council, or that a new lease arrangement with the water utility was ever memorialized in writing.

The appraisal was completed by an outside consultant and submitted to the City in June 2007. The appraisal concluded that the fair market rent owed the water utility is \$0, or free. The key assumption underlying this appraisal is that the water utility has an "approximate 50% ownership interest in Qualcomm Stadium and the 166 acres on which it is situated" and that the General Fund is "the other co-owner of Qualcomm" managing the stadium while the water utility "acted as a passive investor." Appraisal cover letter from Desmond, Marcello & Amster (Jun. 20, 2007). The appraisal then evaluates the value of Qualcomm Stadium as an ongoing operation and determines that because the stadium is losing money, the return on the water utility's investment in the stadium is zero. The water utility has not received any rent for the use of its property at Qualcomm Stadium since 2005.

### QUESTIONS PRESENTED

1. Can the City rely on the 2007 appraisal where the water utility was characterized as a co-owner and passive investor in Qualcomm Stadium?
2. Would an "oral agreement" for use of water utility property at no cost pursuant to the 2007 appraisal be enforceable?
3. Should a new appraisal be done?

### SHORT ANSWER

1. No. The Water Fund may only be used for construction, operation, and maintenance of the water system. The water utility may not support or subsidize the operation of Qualcomm Stadium because there is no nexus between the stadium and providing water service to City customers.
2. To the extent there may be some "oral agreement" for the use of water utility property at no cost, it is of no force or effect because it was not approved by the City Council as required by the Master Installment Purchase Agreement nor approved by the City Attorney.
3. A new appraisal must be completed to determine the fair market value for the sale or use of the water utility property.

### ANALYSIS

The Water Fund is held in trust to guarantee sufficient revenue to provide water service through self-sustaining, financially independent utility. 2006 City Att'y MOL 54 (2006-6; Mar. 16, 2006). Water funds may only be used for purposes related to the construction, operation, and maintenance of the City's water system. San Diego Charter § 53; 2010 City Att'y Report 489 (2010-6; Feb. 24, 2010). To help ensure the water utility has sufficient revenue to accomplish its mission, the water utility must receive fair market value for the use or sale of its property, even if the property is being used or purchased by another City department. 2005 City Att'y MOL 87 (2005-10; May 13, 2005). Water funds may not be diverted to pay for services or projects unrelated to providing water service. 2013 City Att'y MOL 8 (2013-01; Jan. 14, 2013).

This Office has issued many opinions over the years explaining that there must be a nexus between expenditures from the Water and Sewer Funds and the provision of water and wastewater services. 2010 City Att'y Report 489 (2010-6; Feb. 24, 2010) (rejecting the use of water funds to pay for operating and maintaining a public park); 2001 City Att'y MOL 161 (2001-12; July 12, 2001) (rejecting the use of wastewater funds for a permanent sound wall to block noise from rush-hour traffic); 1993 City Att'y MOL 137 (93-22; Feb. 22, 1993) (rejecting the use of wastewater funds for improvements to Sunset Cliffs Park); 1995 City Att'y MOL 329 (95-07; Jan. 24, 1995) (cautioning against the use of wastewater funds to pay for street repaving beyond that portion impacted by sewer pipe replacement); 2002 City Att'y MS 316 (2002-01; Jan. 28, 2002) (concurring with the use of wastewater funds as a reward for the capture and conviction of those vandalizing the wastewater system); 1991 City Att'y Report 1580 (91-53; Nov. 13, 1991) (agreeing with the use of water funds to maintain fences, roads, and restrooms open to the public when such facilities are also necessary for water utility purposes). 2013 City Att'y MOL 8 (2013-01; Jan. 14, 2013) (supporting the use of water funds for litigation where the water utility receives a proportionate benefit if the City prevails).

There is no nexus between Qualcomm Stadium and the provision of water service that allows water utility funds or assets to be used to support or subsidize stadium operations. The City's water utility purchased the property in 1904 for the underlying aquifer which could be developed as a source of water or used for water storage. Qualcomm Stadium does not support that effort. Furthermore, we have not been able to find any documentary evidence suggesting the water utility owns part of the Qualcomm Stadium structure, ever financially invested in Qualcomm Stadium, or ever received a return on such an investment. To the contrary, the expired ground lease established a landlord-tenant relationship for the use of water utility property. Our understanding is that the Comptroller's records do not identify the Qualcomm Stadium structure as an asset or investment of the water utility either. The only record we have found characterizing the water utility as a co-owner and investor in the stadium is the 2007 appraisal itself.

The City's water bond covenants, conditions of obtaining public financing of capital improvements to the water system, indicate fair market value must be determined upon the sale, lease, or other disposition of water utility property, through an arms-length transaction:

[T]he City in its discretion may carry out such a disposition if the City receives from the acquiring party an amount equal to the fair market value of the portion of the Water System disposed of. As used in this clause (2), "fair market value" means the most probable price that the portion being disposed of should bring in a competitive and open market under all conditions requisite to a fair sale, the willing buyer and willing seller each acting prudently and knowledgeably, and assuming that the price is not affected by coercion or undue stimulus.

*Amended and Restated Master Installment Purchase Agreement*, (MIPA) § 6.04(b)(2) (Jan. 1, 2009). The terms of the sale or lease must be approved by the City Council. MIPA § 6.04(b).

A new appraisal of the water utility property at Qualcomm Stadium needs to be performed to determine the fair market value payable to the water utility in accordance with the MIPA. The 2007 appraisal which assumes the water utility is a co-owner and investor in Qualcomm Stadium is flawed because it is premised on the City misusing water ratepayer funds or assets, and therefore cannot be used to determine fair market value. To the extent there may be some "oral agreement" for the use of water utility property at no cost, it is of no force or effect because it was not approved by the City Council as required by the MIPA nor approved by the City Attorney.

We understand and acknowledge the City has already initiated the process to perform a new appraisal, and is transferring \$150,000 to the Water Fund as a "good faith" deposit for rent from 2005 to present. The \$150,000 is based on the original rent of \$15,000 per year for ten years, but we understand the final amount will be adjusted later based on the results of the new appraisal.

We also highlight the importance of conducting an arms-length transaction as required by the MIPA for this and other real property transactions involving the water utility. One possible way to comply is to form two negotiating teams consisting of equivalent management level employees. Any assumptions constraining the parameters of appraisals should be memorialized in writing. Each team should have access to professional consultants should either team determine such assistance is necessary. Negotiations may also include the sale or exchange of properties instead of a lease as suggested in former City Manager Ewell's 2005 Memorandum, if the teams determine it is beneficial to their respective departments. Once the negotiations are complete, the terms of the sale or lease must be memorialized in writing, reviewed by this Office and submitted to the City Council for approval. This Office is available to assist with any legal issues.

## CONCLUSION

The 2007 appraisal of water utility property at Qualcomm Stadium is flawed because it assumes the water utility is a co-owner and investor in the stadium, an assumption without a factual or legal basis. A new appraisal must be done to determine the fair market value due the water utility for the sale or use of its property. To the extent there may be some "oral agreement" for the use of water utility property at no cost, it is of no force or effect because it was not approved by the City Council as required by the MIPA nor approved by the City Attorney. The water utility must be fairly compensated for use of the property since 2005 and for future use through an arms-length transaction.

JAN I. GOLDSMITH, City Attorney

By /s/ Thomas C. Zeleny  
Thomas C. Zeleny  
Chief Deputy City Attorney

JIG:TCZ:mt

cc: Andrea Tevlin, Independent Budget Analyst  
Eduardo Luna, City Auditor

ML-2014-14

Attachment(s): 1966 San Diego Ground Lease  
2005 Memorandum from P. Lamont Ewell, former City Manager

City of San Diego  
MEMORANDUM

DATE: November 21, 2005  
TO: Honorable Deputy Mayor and City Council  
FROM: P. Lamont Ewell, City Manager  
SUBJECT: Water Department Property at Qualcomm Stadium

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In January of 1966 the City of San Diego and the County of San Diego entered into a Joint Powers Agreement ("Agreement") to create the San Diego Stadium Authority ("Authority") for the purposes of acquiring a site, constructing, maintaining, operating a stadium for sporting events, exhibitions and other public meetings. The resultant stadium, now called Qualcomm Stadium ("Qualcomm"), was financed through an Authority issuance of revenue bonds. The City, as agent for the Authority, constructed Qualcomm. The term of the Agreement was to be 40 years and would not be terminated prior to the retirement of the revenue bonds. As part of the transaction, a ground lease was created whereby the City leased to the Authority, at an annual rent of \$15,000, the stadium premises consisting of approximately 160 acres. Approximately 80 acres of the premises had been purchased in the early 1900's by the City's Water Department with the remainder being general City property (General Fund). The term of the Ground Lease was to correspond with the term of the Agreement.

The \$15,000 in lease revenue associated with the stadium property has been received by the Water Department since approximately 1966. In 1998, following the retirement of the revenue bonds, the execution of the "Assignment and Assumption Agreement By and Between the San Diego Stadium Authority and the City of San Diego" essentially provided for the early termination of the Stadium Authority Agreement and Ground Lease, allowing the "City" to assume the Stadium Authority's obligations.

In specific regard to the Ground Lease, it is understood that with the City's assumption of the Stadium Authority's obligations, it rendered the Ground Lease an ineffective document, in that the rental obligation was to the "City" itself. Regardless of the termination of the contractual relationship between the City and the Stadium Authority, there remains an obligation to the Water Department for the use of the Water Department property occupied by the stadium facilities. As outlined in previous legal opinions and memoranda of law by the City Attorney, the City Charter and bond covenants preclude an uncompensated use of Water Department property.

Accordingly, in the absence of a formal agreement to replace the original ground lease, an effective property lease situation has ensued for which the Water Department has received ongoing rental payments at the same level as outlined in 1966. It has been the assumption that this ongoing rental rate would not extend beyond the term of the original ground lease which would have otherwise ended in January 2006.



At this juncture, a revised appraisal of the stadium property is necessary to determine the appropriate rental value for its current or any alternative use.

Real Estate Assets has initiated the appraisal process to determine the fair market value of the current use of the property as a stadium facility for a lease of those lands owned by the Water Utilities Department. To determine this value, READ has contracted with an MAI appraiser to conduct this work. We anticipate this process will take 90 days to complete. Once a report is developed we will have this item brought before NR&C for discussion. Any alternative use of the site would warrant a "highest and best use" valuation of the property. Should an alternative use of the site be pursued, the Water Department would need to be compensated accordingly.

Given that the Water Department requires a fair market return on their assets, two solutions for compensation to the Water Department are: 1) the General Fund to begin making lease payments at the fair market value, or 2) identify General Fund held properties that have matching values and transfer ownership of those properties to the Water Department's holdings in return for the Water Department Qualcomm holdings being transferred to the General Fund.

Real Estate Assets is also in the process of identifying those General Fund properties that would be a valuation match to the Qualcomm Stadium site.



P. Lamont Ewell

cc: Deputy City Managers:

2/18/66

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DOCUMENT NO. 697348

FILED MAR 22 1966

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

### SAN DIEGO STADIUM GROUND LEASE

THIS LEASE, dated for convenience as of 2.24. 1966 (herein called the "Ground Lease"), by and between THE CITY OF SAN DIEGO, a municipal corporation duly organized and existing under a Charter adopted under the Constitution of the State of California (herein called the "City"), and the SAN DIEGO STADIUM AUTHORITY (herein called the "Authority"), a public entity and agency, duly organized and existing pursuant to an Agreement entitled "Joint Exercise of Powers Agreement Between The City of San Diego and the County of San Diego Creating the San Diego Stadium Authority", dated *January 24, 1965* 1966 (herein called the "Agreement");

#### WITNESSETH:

That in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

#### SECTION 1. Demised Premises.

The City hereby leases to the Authority the premises described in Exhibit A attached hereto and made a part hereof, subject to the terms hereof and subject to conditions, reservations, exceptions, and rights of way which are of record. All of the premises described in this Section 1 are herein called the "Demised Premises." There is hereby reserved to City the following rights and easements which are necessary or convenient for the purposes for which the Demised Premises are owned by City:

"The right to take water or extract minerals, hydrocarbons or oil from any portion of the Demised Premises, except that portion thereof upon which a permanent structure has been erected. Said taking or extraction may be done by any acts necessary thereto such as drilling wells, installing pumps, pipelines, utility lines and appurtenances. Provided that costs incurred by the City by reason of doing those acts necessary to the taking shall be borne by City, except that the City shall be reimbursed by the Authority for those extra costs to which the City is put by reason of the use of the Demised Premises for stadium purposes including, but not limited to (a) removal and

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replacement of pavement, sidewalks, or landscaping, (b) undergrounding of pipelines, power lines or equipment and (c) construction of underground vaults or other subsurface structures to house pumps, motors, or equipment."

*SECTION 2. Ownership.*

The City covenants that it is the owner of the Demised Premises described in Exhibit A hereof.

*SECTION 3. Term.*

This Ground Lease shall commence on the date hereof and end at the same time as the Agreement.

*SECTION 4. Rent.*

The Authority shall pay to the City rent of \$15,000 per annum, payable annually in advance for each fiscal year on or before the end of the month which starts the fiscal year (such date is presently July 31). In the event that the liability of Authority for rent at said annual rate does not commence on the first day of City's fiscal year (presently July 1), the rent to be paid for the remaining portion of the fiscal year in which such liability commences shall be prorated and shall be paid in no event later than the end of the fiscal year involved (presently June 30). During the remainder of the term of the lease to Authority said rental shall be paid as in this Section first provided for the use of the premises during each of the succeeding fiscal years. Authority shall, as part of rent, reimburse City for any additional expense to City in the exercise of its reserved rights under Section 1 hereof caused by repair and replacement of permanent structures and the like.

*SECTION 5. Purpose.*

The Authority shall use the Demised Premises for the purpose of constructing thereon a portion of the Stadium described in the Agreement and for such purposes as may be incidental thereto.

*SECTION 6. Assignments and Subleases.*

The Authority shall not assign or sublet the Demised Premises, except as provided in the San Diego Stadium Lease.

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SECTION 7. *Right of Entry.*

The City reserves the right for any of its duly authorized representatives to enter upon the Demised Premises at any reasonable time in exercise of the rights and easements reserved in Section 1; provided, however, that any damage to the Demised Premises shall be replaced and repaired so that the same shall as nearly as practicable be restored to their former condition.

SECTION 8. *Expiration.*

The Authority agrees, upon the expiration of this Ground Lease, to quit and surrender the Demised Premises in good order and condition, reasonable wear and tear excepted; provided, that any permanent structures existing upon the Demised Premises at the time of the termination of this Ground Lease shall remain thereon and title thereto shall vest in the City.

SECTION 9. *Quiet Enjoyment.*

The Authority at all times during the term of this Ground Lease shall peaceably and quietly have, hold and enjoy all of the Demised Premises.

SECTION 10. *Taxes.*

The City covenants and agrees to pay any and all taxes and assessments levied or assessed upon the Demised Premises (including both land and improvements) that are not paid by County under the terms of the Agreement.

SECTION 11. *Eminent Domain.*

By a lease entitled San Diego Stadium Lease executed by the parties hereto contemporaneously with the execution of this Ground Lease, the Authority is leasing to the City certain land, including the Demised Premises, and the Stadium to be constructed thereon as described in the Agreement. If the whole or any part of the Demised Premises shall be taken under the power of eminent domain, the effect of such taking upon this Ground Lease shall be in accord with the provisions of said San Diego Stadium Lease relating to eminent do-

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main, and the rental payable hereunder by the Authority to City shall be abated in the same ratio as the part of the Demised Premises taken bears to the whole of the Demised Premises.

SECTION 12. *Notices.*

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

City — City Clerk, Administration Building, 202 "C" Street, San Diego.

Authority — Secretary — At such address as Authority shall designate for such purpose.

SECTION 13. *Partial Invalidity.*

If any one or more of the terms, provisions, promises, covenants or conditions of this Ground Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction each and all of the remaining terms, provisions, promises, covenants and conditions of this Ground Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

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IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE CITY OF SAN DIEGO

By

Frank Curran  
Mayor

Attest:

Paul Dean  
City Clerk

(Seal)

SAN DIEGO STADIUM AUTHORITY

By

Albert T. Hamilton  
Chairman of the Governing Board

Attest:

W. Burt Butcher  
Secretary

(Seal)

I HEREBY APPROVE the form and legality of the foregoing Agreement this 24<sup>th</sup> day of February, 1966.

EDWARD T. BUTLER

City Attorney and ex officio Attorney  
for the San Diego Stadium Authority

By

A. M. Fitzpatrick  
Deputy

2/18/66

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

ss.

On this 21 day of March, in the year 1966, before me,  
LA VERNE E. MILLER, a Notary Public, State of California, duly  
commissioned and sworn, personally appeared Frank Carter, known  
to me to be the Mayor, and Phillip Debes, known to me to be the  
City Clerk, respectively, of THE CITY OF SAN DIEGO, a municipal corpo-  
ration, that executed the within instrument, and known to me to be the  
persons who executed the within instrument on behalf of said municipal  
corporation therein named, and acknowledged to me that such muni-  
cipal corporation executed the within instrument pursuant to a reso-  
lution of the Council of said City of San Diego.

IN WITNESS WHEREOF, I have hereunto subscribed my name and  
affixed my official seal on the day and year in this certificate first above  
written.

La Verne E. Miller  
Notary Public, State of California

[Notarial Seal]

My commission expires:



LA VERNE E. MILLER  
MY COMMISSION EXPIRES MARCH 30, 1968



*Presently*

2/18/66

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STATE OF CALIFORNIA }  
COUNTY OF SAN DIEGO } ss.

On this 21 day of March, in the year 1966, before me,  
LA VERNE E. MILLER, a Notary Public, State of California, duly  
commissioned and sworn, personally appeared Robert T. Hamilton, known  
to me to be the Chairman of the Governing Board, and W. Earl Kitchey  
known to me to be the Secretary, respectively, of SAN DIEGO STADIUM  
AUTHORITY, a public corporation, that executed the within instrument,  
and known to me to be the persons who executed the within instrument  
on behalf of said public corporation therein named, and acknowledged  
to me that such public corporation executed the within instrument  
pursuant to a resolution of its governing board.

IN WITNESS WHEREOF, I have hereunto subscribed my name and  
affixed my official seal on the day and year in this certificate first above  
written.

La Verne E. Miller  
Notary Public, State of California

[Notarial Seal]

My commission expires:



LA VERNE E. MILLER  
MY COMMISSION EXPIRES MARCH 31, 1966

UTILITY DEPARTMENT LAND FOR LEASE  
PARCEL NO. 1

DESCRIPTION OF GROSS PARCEL:

All that portion of Lot 35 of Rancho Mission of San Diego, in the City of San Diego, County of San Diego, State of California, according to the Partition Map thereof on file in Case No. 348 of Superior Court in San Diego County entitled "Juan M. Luco, et al., vs. The Commercial Bank of San Diego, et al." described as follows:

Beginning at the most Northerly corner of said Lot 35; thence along the Northwesterly line thereof, South 40°17'08" West 1866.48 feet; thence South 05°14'33" East 862.81 feet; thence North 67°24'27" East 845.03 feet to the beginning of a tangent 9259.03 foot radius curve concave Southeasterly; thence Northeasterly along the arc of said curve through a central angle of 08°15'56" a distance of 1335.72 feet to a point to which a radial line of said 9259.03 foot radius curve bears North 14°19'37" West; thence leaving said curve North 47°42'09" East a distance of 78.44 feet; thence South 88°48'15" East a distance of 146.48 feet to a point of intersection on the last described 9259.03 foot radius curve to which a radial line bears North 13°01'29" West; thence continuing Northeasterly, along said curve, through a central angle of 06°13'11" an arc distance of 1005.11 feet to the Northeasterly line of said Lot 35; thence along said North-easterly line North 58°07'54" West 2487.03 feet to the Point of Beginning.

EXCEPTING THEREFROM, THE FOLLOWING DESCRIBED PARCELS:

PARCEL NO. 1A:

Commencing at the most Northerly corner of said Lot 35; thence South 58°07'54" East, 2487.03 feet to the TRUE POINT OF BEGINNING, being also a point in the arc of a 9259.03 foot radius curve, concave Southeasterly, a radial bears North 06°48'18" West to said point; thence Southwesterly, along the arc of said curve, through a central angle of 00°32'43", an arc length of 88.12 feet to a point to which a radial of a 4141.50 foot radius curve, concave Southwesterly, bears North 85°05'09" East; thence Northwesterly, along the arc of said curve, through a central angle of 00°57'46" an arc length of 69.59 feet; thence South 58°07'54" East, 110.65 feet returning to said TRUE POINT OF BEGINNING.

Containing .070 Acres ±

PARCEL NO. 1B:

Commencing at the most Northerly corner of said Lot 35; thence South 58°07'54" East, 2288.39 feet to the TRUE POINT OF BEGINNING; thence South 58°07'54" East, 87.99 feet to a point to which a radial of a 4141.50 foot radius curve, concave Southwesterly, bears North 84°07'23" East; thence Southeasterly, along the arc of said curve through a central angle of 00°57'46", an arc length of 69.59 feet to a point of intersection with the arc of a 9259.03 foot radius curve, concave Southeasterly, a radial bears North 07°21'01" West to said point; thence Northwesterly, along the arc of said curve, through a central angle of 00°26'01", an arc length of 70.06 feet to the beginning of a 4071.50 foot radius curve, concave Westerly, a radial bears North 85°07'53" East to said point; thence Northerly, along the arc of said curve, through a central angle of 01°46'30", an arc length of 126.13 feet, returning to said TRUE POINT OF BEGINNING.

Containing 0.116 Acres

EXHIBIT A

RESERVING FROM THE ABOVE DESCRIBED PARCEL NO. 1, THE FOLLOWING DESCRIBED EASEMENTS:

PARCEL NO. 1C (Public Sewer)

Reserving unto the Grantor herein, its successors or assigns, a permanent easement for a right of way for the construction, operation and maintenance of a public sewer or sewers, together with the right of conveyance, through, over, under, along and across:

All that portion of Lots 35 and 43 of Rancho Mission of San Diego partly in the City of San Diego and all in the County of San Diego, State of California, according to Partition Map on file in the office of the County Clerk of San Diego County in Action No. 348 in Superior Court of said County entitled "Juan M. Luco, et al. vs. The Commercial Bank of San Diego, et al." being more particularly described as follows:

Commencing at the most Northerly corner of Lot 35, Rancho Mission; thence South  $40^{\circ}17'08''$  West, 1866.48 feet; thence South  $05^{\circ}14'33''$  East, 836.62 feet to the TRUE POINT OF BEGINNING; thence North  $67^{\circ}24'27''$  East, 837.22 feet to a point to which a radial of a 9284.03 foot radius curve, concave Southeasterly, bears North  $22^{\circ}35'33''$  West; thence Northeasterly along the arc of said 9284.03 foot radius curve, through a central angle of  $16^{\circ}14'49''$  an arc length of 2632.60 feet; thence North  $15^{\circ}38'54''$  West, 55.7 feet to a point to which a radial of a 9339.03 foot radius curve, concave Southerly, bears North  $06^{\circ}24'03''$  West; thence Southwesterly, along the arc of said curve, through a central angle of  $16^{\circ}11'30''$ , a distance of 2639.19 feet; thence South  $67^{\circ}24'27''$  West, a distance of 820.04 feet; thence South  $05^{\circ}14'33''$  East, 57.32 feet, returning to said TRUE POINT OF BEGINNING.

PARCEL NO. 1D (Sewer and Water)

Reserving unto the Grantor herein, its successors or assigns, a permanent easement for a right of way for the construction, operation and maintenance of a public sewer or sewers and water main or mains, together with the right of conveyance, through, over, under, along and across:

All that portion of Lots 35 and 43 of Rancho Mission of San Diego partly in the City of San Diego and all in the County of San Diego, State of California, according to Partition Map on file in the office of the County Clerk of San Diego County in Action No. 348 in Superior Court of said County entitled "Juan M. Luco, et al. vs. The Commercial Bank of San Diego, et al." being more particularly described as follows:

Commencing at the most Northerly corner of said Lot 35; thence South  $58^{\circ}07'54''$  East, 2256.38 feet to a point to which a radial of a 4046.50 foot radius curve, concave Southwesterly, bears North  $83^{\circ}04'27''$  East, said point being also the TRUE POINT OF BEGINNING; thence Southerly, along the arc of said 4046.50 foot radius curve, through a central angle of  $02^{\circ}04'33''$  an arc distance of 146.61 feet to a point in the arc of a 9259.03 foot radius curve, concave Southeasterly; thence Northeasterly, along the arc of said curve, through a central angle of  $00^{\circ}09'17''$ , an arc length of 25.01 feet to a point to which a radial of a 4071.50 foot radius curve, concave Southeasterly, bears North  $85^{\circ}07'53''$  East; thence Northwesterly, along the arc of said curve, through a central angle of  $01^{\circ}46'30''$ , an arc length of 126.13 feet to a point to which a radial of a 4071.50 foot radius curve, bears North  $83^{\circ}21'23''$  East; thence Northwesterly along the arc of last said curve, through a central angle of  $09^{\circ}00'17''$ , a distance of 639.89 feet; thence North  $15^{\circ}38'54''$  West, a distance of 101.74 feet to a point to which a radial of a 2570.00 foot radius curve, concave Easterly, bears South  $74^{\circ}21'06''$  West; thence Northwesterly and Northerly, along the arc of said curve, through a central angle of  $18^{\circ}07'37''$  an arc length of 813.08 feet; thence North  $02^{\circ}28'43''$  East, 128.39 feet; thence North  $67^{\circ}09'59''$  West to an intersection with a line which is parallel with and distant 25.00 feet Westerly, measured at right angles from the above described line bearing North  $02^{\circ}28'43''$  East; thence South  $02^{\circ}28'43''$  West, along said parallel

line, 137.67 feet to a point to which a radial of a 2595.00 foot radius curve, concave Northeasterly, bears North 87°31'17" West; thence Southerly and Southeasterly along the arc of said curve, through a central angle of 18°07'37", an arc length of 820.99 feet; thence South 15°38'54" East, 101.74 feet to a point to which a radial of a 4046.50 foot radius curve, concave Southwesterly, bears North 74°21'06" East; thence Southeasterly, along the arc of said curve, through a central angle of 08°43'21", an arc length of 616.02 feet to a terminus.

PARCEL NO. 1E (Sewer)

Reserving unto the Grantor herein, its successors or assigns, a permanent easement for a right of way for the construction, operation and maintenance of a public sewer or sewers, together with the right of conveyance, through, over, under, along and across:

All that portion of Lot 35 of Rancho Mission of San Diego in the City of San Diego, County of San Diego, State of California, together with portions of Lots 36, 42 and 43, in the County of San Diego, according to Partition Map on file in the office of the County Clerk of San Diego County in Action No. 348 in Superior Court of said County entitled "Juan M. Lucio, et al. vs. The Commercial Bank of San Diego, et al." being more particularly described as a strip of land 25.00 feet in width lying 15.00 feet Southerly, Southeasterly and Southwesterly and lying 10.00 feet Northerly, Northwesterly and Northeasterly, each as to the following described line:

Commencing at the most Northerly corner of said Lot 35; thence South 40°17'08" West a distance of 1866.48 feet; thence North 05°14'33" West, a distance of 152.91 feet to the TRUE POINT OF BEGINNING; thence North 57°16'33" East, 488.68 feet to a point to which a radial of a 360.00 foot radius curve, concave Northwesterly, bears South 32°43'27" East; thence Northeasterly, along the arc of said curve, through a central angle of 12°30'00", an arc length of 78.54 feet; thence North 44°36'33" East, 498.71 feet; thence North 40°20'16" East, 552.00 feet to a point to which a radial of a 500.00 foot radius curve, concave Southerly (having a central angle of 102°46'12" and a length of 896.84 feet) bears North 40°39'44" West; thence Northeasterly, Easterly and Southeasterly, along the arc of said curve, a distance of 896.84 feet to a point to which a radial of last said curve bears North 53°06'28" East; thence South 36°53'32" East, 530.16 feet to a point to which a radial of a 135.00 foot radius curve, concave Northeasterly, bears South 53°06'28" West; thence Southeasterly along the arc of said curve, through a central angle of 22°28'05" an arc length of 52.94 feet; thence South 57°21'37" East, a distance of 20.00 feet; thence South 58°07'54" East, 902.20 feet to a point to which a radial of a 360.00 foot radius curve, concave Northeasterly, bears South 31°52'06" West; thence Southeasterly and Easterly, along the arc of said curve, through a central angle of 32°04'35" a distance of 201.55 feet; thence North 89°47'31" East, 89.58 feet to a terminus in a line bearing North 15°38'54" West, through said terminus.

The sidelines of the above described strip of land shall terminate Westerly in a line bearing South 05°14'33" East through the TRUE POINT OF BEGINNING, and shall terminate Easterly in a line bearing North 15°38'54" West through the above described terminus.

PARCEL NO. 1F (Water Main or Mains)

Reserving unto the Grantor herein, its successors or assigns, a permanent easement for a right of way for the construction, operation and maintenance of a public water main or mains, together with the right of conveyance, through, over, under, along and across:

All that portion of Lots 35 and 43 of Rancho Mission of San Diego in the City of San Diego, County of San Diego, State of California, according to Partition Map on file in the office of the County Clerk of San Diego County in Action No. 348 in Superior Court of said County entitled "Juan M. Luco, et al. vs. The Commercial Bank of San Diego, et al." being more particularly described as follows:

PARCEL NO. 1F-1

A strip of land 15.00 feet in width, lying 5.00 feet Westerly and 10.00 feet Easterly of the following described line:

Commencing at the most Northerly corner of Lot 35; thence South  $40^{\circ}17'08''$  West, 1866.48 feet; thence South  $05^{\circ}14'33''$  East, 862.81 feet; thence North  $67^{\circ}24'27''$  East, 845.03 feet to a point to which a radial of a 9259.03 foot radius curve, concave Southeasterly, bears North  $22^{\circ}35'33''$  West; thence Northeasterly, along the arc of said curve, through a central angle of  $11^{\circ}15'43''$ , a distance of 1819.94 feet to the TRUE POINT OF BEGINNING; thence NORTH, a distance of 207.30 feet; thence North  $11^{\circ}07'45''$  East, 515.00 feet to a point for purposes of this description being designated as "Point A"; thence continuing North  $11^{\circ}07'45''$  East, 804.49 feet to a point to which a radial of a 2625.00 foot radius curve, concave Easterly bears South  $87^{\circ}00'32''$  East; thence Northwesterly, along the arc of said curve, through a central angle of  $05^{\circ}28'11''$ , an arc length of 250.60 feet; thence North  $02^{\circ}28'43''$  East, 148.79 feet to a terminus.

The sidelines of the above strip of land shall terminate Southerly in the arc of the 9259.03 foot radius curve, intersecting the TRUE POINT OF BEGINNING and shall terminate Northerly in said line bearing North  $67^{\circ}09'56''$  West through the terminus.

PARCEL NO. 1F-2

Being a strip of land 20.00 feet in width lying 10.00 feet on each side of the following described centerline:

Beginning at "Point A" as described and established in Parcel No. 1F-1, above; thence Northwesterly at right angles to said line described above as North  $11^{\circ}07'45''$  East, a distance of 20.00 feet to a terminus.

PARCEL NO. 1G (Fuel Line)

Reserving unto the Grantor herein, its successors or assigns, a permanent easement for a right of way for the construction, operation and maintenance of a fuel line or lines together with the right of conveyance, through, over, under, along and across:

All that portion of Lots 35, 42 and 43, Rancho Mission of San Diego, partly in the City of San Diego and all in the County of San Diego, State of California, according to Partition Map on file in the office of the County Clerk of San Diego County in Action No. 348 in Superior Court of said County entitled "Juan M. Luco, et al. vs. The Commercial Bank of San Diego, et al." being more particularly described as follows:

Commencing at the most Northerly corner of said Lot 35; thence South 58° 07'54" East, a distance of 2256.38 feet to the TRUE POINT OF BEGINNING, being also a point to which a radial of a 4046.50 foot radius curve, concave Southwesterly, bears North 83°04'27" East; thence Northwesterly, along the arc of said curve, through a central angle of 08°43'21", a distance of 616.02 feet; thence North 15°38'54" West, 101.74 feet to a point to which a radial of a 2595.00 foot radius curve, concave Easterly, bears South 74°21'06" West; thence Northwesterly and Northerly, along the arc of said 2595.00 foot radius curve, concave Easterly, through a central angle of 18°07'37", an arc length of 820.99 feet; thence North 02°28'43" East, a distance of 137.67 feet; thence North 67°09'56" West, 20.00 feet more or less to an intersection with a line which is parallel with and distant 20.00 feet Westerly, measured at right angles from the previously described line bearing North 02°28'43" East, having a length of 137.67 feet; thence South 02°28'43" West, 145.08 feet to a point to which a radial of a 2615.00 foot radius curve concave Easterly, bears North 87°31'17" West; thence Southerly and Southeasterly, along the arc of said curve, through a central angle of 18°07'37" an arc length of 827.32 feet; thence South 15°38'54" East, 101.74 feet to a point to which a radial of a 4026.50 foot radius curve, concave Southwesterly, bears North 74°21'06" East; thence Southeasterly along the arc of said 4026.50 foot curve, through a central angle of 08°29'36", an arc length of 596.88 feet to an intersection with the Northeasterly line of said Lot 35, distant thereon South 58°07'54" East, 2230.68 feet from the most Northerly corner of said Lot 35, a radial bears North 82°50'42" East to said point; thence continuing along the arc of said 4026.50 foot radius curve, through a central angle of 02°19'12", an arc length of 163.04 feet, a radial bears North 85°09'54" East to said point; thence continuing along the arc of said 4026.50 foot radius curve, through a central angle of 00°37'08" a distance of 20.07 feet to a point to which a radial of a 9239.03 foot radius curve, concave Southeasterly, bears North 08°04'12" West; thence Northeasterly along the arc of said 9239.03 foot radius curve, through a central angle of 00°42'51", a length of 115.16 feet; thence Northwesterly, along the arc of a 4071.50 foot radius curve, through a central angle of 00°29'05", an arc length of 20.02 feet to a point to which a radial line bears North 71°21'21" West; thence Southwesterly along the arc of a 9259.03 foot radius curve, through a central angle of 00°35'18", an arc distance of 95.07 feet to a point to which a radial of a 4046.50 foot radius curve, concave Westerly, bears North 89°09'00" East; thence Northwesterly, along the arc of said 4046.50 foot radius curve, through a central angle of 02°04'33", a distance of 146.61 feet returning to the TRUE POINT OF BEGINNING.

RESOLUTION No. 186446

ADOPTED ON FEB 24 1966

BE IT RESOLVED by the Council of The City of San Diego as follows:

That the Mayor and City Clerk be, and they are hereby authorized and empowered to execute, for and on behalf of said City a ground Lease Agreement with San Diego Stadium Authority, as lessee, leasing certain portions of Lot 35 of Rancho Mission of San Diego, for the purpose of constructing thereon a portion of the multipurpose sports stadium, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 696503.

BE IT FURTHER RESOLVED, that the City Clerk of said City is hereby authorized and directed to file in the office of the County Recorder said ground lease agreement.

Presented by \_\_\_\_\_

APPROVED: EDWARD T. BUTLER, City Attorney

By \_\_\_\_\_  
G. M. Fitzpatrick, Deputy

K/2/23/66



Passed and adopted by the Council of The City of San Diego  
on February 24, 1966, by the following vote:

YEAS -- Councilmen: Cobb, deKirby, Scheidle, Hom, Morrow,  
Walsh, Hitch, Schaefer, Mayor Curran.

NAYS -- Councilmen: None.

ABSENT -- Councilmen: None.

AUTHENTICATED BY:

FRANK R. CURRAN,  
Mayor of The City of San Diego, California.

PHILLIP ACKER,  
City Clerk of The City of San Diego, California.

(SEAL)

By EVELYN L. WORRELL, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full, true  
and correct copy of RESOLUTION NO. 186446 passed and adopted  
by the Council of The City of San Diego, California, on February 24, 1966.

PHILLIP ACKER,  
City Clerk of The City of San Diego, California.

(SEAL)

By Evelyn L Worrell, Deputy.

ENCLOSURE 5

OFFICE OF  
**THE CITY ATTORNEY**  
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**MEMORANDUM OF LAW**

**DATE:** May 13, 2005

**TO:** Madison Wiggins, Supervising Property Agent, Real Estate Assets Department

**FROM:** City Attorney

**SUBJECT:** Lease and Potential Sale of Sikes Adobe Property

**INTRODUCTION**

The Real Estate Assets Department [READ] is currently negotiating with the San Dieguito River Valley Regional Open Space Park Joint Powers Authority [JPA] for the lease and/or potential sale of the Sikes Adobe and the surrounding 5-acre site [Sikes Property]. The JPA has questioned whether it must pay fair market value for the lease and/or purchase of the Sikes Property.

**QUESTION PRESENTED**

Must the JPA must pay the City fair market value for the lease and/or purchase of the Sikes Property?

**SHORT ANSWER**

Yes. Because the Sikes Property was purchased for water utilities purposes, its disposition is subject to Charter section 53 and bond covenant restrictions. Charter section 53 requires that any lease or sale of water utilities property be at fair market value. In addition, current bond covenants require, among other things, the payment of fair market value for the lease or purchase of the Sikes Property if it is material to the operation of the City's water system.

## BACKGROUND

The JPA was formed in 1989 in accordance with a joint exercise of powers agreement between the City of San Diego, the County of San Diego, and the cities of Del Mar, Escondido, Poway, and Solana Beach [JPA Agreement]. San Diego Resolution No. 273718; San Diego Document No. RR-273718. Under the terms of the JPA Agreement, (June 12, 1989) the JPA was formed as a public entity separate from the parties to the JPA Agreement. JPA Agreement § 3; Cal. Gov't Code § 6507. The purpose of the JPA is to acquire, plan, design, improve, manage, operate, and maintain the San Dieguito River Valley Regional Open Space Park [Park]. JPA Agreement § 1.

The Sikes Property was acquired by the City for water utilities purposes as part of the acquisition of the Lake Hodges Reservoir. *See* Attachment A, Property Department Land Acquisition Record. The Lake Hodges Reservoir is part of the City's water system. The Sikes Property is located in the San Pasqual Valley and is within the boundaries of the Park. *See* Attachment B, Acquisition Map for Hodges Reservoir, and Attachment C, San Dieguito River Park Focused Planning Area. The JPA desires to lease and/or purchase the Sikes Property for use as an interpretive historical site and eventually as a visitor's center for the Park.

## ANALYSIS

There are two primary documents that control the use and disposition of revenues and property acquired for water utilities purposes. The principal document is the San Diego Charter [Charter], which is essentially the City's constitution. *See Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 170 (1994). The second is a financing agreement entered into by the City in order to improve its water system infrastructure.

### **A. The Charter Requires the Sikes Property to be Leased or Sold at Fair Market Value.**

Historically, the Charter has reflected a serious concern that the provision of water and water services to City residents is of primary importance. 1980 Op. City Att'y 69, 70. The Charter contains rather unique provisions designed to guarantee, to the extent possible, the availability of funds for water and water utility services. *Id.* Thus, although the City's Water Department is an administrative branch of the City, it is considered to be a "separate utility." San Diego Charter § 53. As such, all revenues of the Water Department must be deposited in a Water Utility Fund and used for Water Department purposes. *Id.*

Although Charter section 53 does not specifically address the lease or sale of property acquired for water utility purposes [Water Property], this office has consistently opined that Section 53 requires any lease or sale of Water Property to be at fair market value. *See* Attachment D, 1980 Op. City Att'y 83, and Attachment E, 1992 City Att'y MOL 493. Fair market value must be obtained even if the City was to transfer "ownership" of real property from the Water Department to another City department. *See* Attachment F, Memorandum from City

Attorney to Council District 2 (August 14, 1989) (discussing court holding that City must receive fair market value for exchange of water utility property with general fund property).

Thus, if Water Property is to be leased or sold to any non-Water Department entity, the City must obtain fair market value for that lease or sale. As such, despite the fact that the City is a member of the JPA, the Charter requires the City to lease or sell the Sikes Property to the JPA at fair market value.<sup>1</sup>

**B. The MIPA Requires Payment of Fair Market Value for the Lease or Sale of Water Property.**

In addition to the Charter restrictions, the disposition of the Sikes Property is restricted by bond covenants. In order to enable the City to continue improving its water system, the City and the San Diego Facilities and Equipment Leasing Corporation [Corporation] entered into a Master Installment Purchase Agreement dated August 1, 1998 [MIPA].<sup>2</sup> In addition to restricting the use of Water Department revenues in a manner consistent with the Charter, the MIPA restricts the disposition of Water Property (both real and personal). Specifically, the MIPA provides:

(a) The City will not sell, lease or otherwise dispose of the Water System or any part thereof essential to the proper operation of the Water System or to the maintenance of the System Revenues, except as provided in Sections 6.04(b) and Section 6.19 hereof.<sup>3</sup> Further, the City will not, except as otherwise provided herein, enter into any agreement or lease which impairs the operation of the Water System or any part thereof necessary to secure adequate Net System Revenues for the payment of the Parity Obligations or which would otherwise impair the rights of

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<sup>1</sup> See also Council Policy 700-14 (payment of fair market value required for lease or sale of property held in trust for water utilities purposes that is located within the planning area of the San Dieguito River Park).

<sup>2</sup> The MIPA was entered into as the means of providing for the acquisition of Water Department capital improvements financed by \$385 million of certificates of participation. The terms and conditions of the MIPA control with respect to all bonds and securities secured by revenues of the Water Utility Fund, including the water revenue bonds issued in 2002 by the Public Facilities Financing Authority of the City of San Diego.

<sup>3</sup> The term "Water System" includes all properties owned by the City as part of the public utility system of the City for water purposes. MIPA § 1.01. (Section 6.19 of the MIPA authorizes the City to delegate the power to operate some or all of the Water System, but requires an opinion of Bond Counsel concluding that the delegation will not adversely affect the tax exempt status of interest earned on the bonds).

the Corporation with respect to the System Revenues or the operation of the Water System.<sup>4</sup>

(b) The City may dispose of any of the works, plant properties, facilities or other parts of the Water System, or any real or personal property comprising a part of the Water System, only upon the approval of the City Council and consistent with one or more of the following:

(1) the City in its discretion may carry out such a disposition if the facilities or property being disposed of are not material to the operation of the Water System, or shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Water System or are no longer necessary, material or useful to the operation of the Water System, and if such disposition will not materially reduce the Net System Revenues and if the proceeds of such disposition are deposited in the Water Utility Fund;

(2) the City in its discretion may carry out such a disposition *if the City receives from the acquiror an amount equal to the fair market value of the portion of the Water System disposed of*. As used in this subparagraph (2), “fair market value” means the most probable price that the portion being disposed of should bring in a competitive and open market under all conditions requisite to a fair sale, the willing buyer and willing seller each acting prudently and knowledgeably and assuming that the price is not affected by coercion or undue stimulus. The proceeds of the disposition shall be used (A) to promptly redeem, or irrevocably set aside for the redemption of, Parity Obligations, and/or (B) to provide for a part of the cost of additions to and betterments and extensions of the Water System; provided, however, that before any such disposition under this subparagraph (2), the City must obtain (i) a certificate of an Independent Engineer to the effect that upon such disposition and the use of the proceeds of the disposition as proposed by the City, the

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<sup>4</sup> The term Net System Revenues means the System Revenues less the maintenance and operation costs of the Water System for a fiscal year. MIPA §1.01. The term System Revenues includes all rents and proceeds derived by the City directly or indirectly from the lease of a part of the Water System. *Id.*

remaining portion of the Water System will retain its operational integrity and the Net System Revenues will be at least equal to 1.20 times the Adjusted Debt Service on all Outstanding Parity Obligations during the five fiscal years following the Fiscal Year in which the disposition is to occur, taking into account (aa) the reduction in revenue resulting from the disposition, (bb) the use of any proceeds of the disposition for the redemption of Parity Obligations, (cc) the Independent Engineer's estimate of revenue from customers anticipated to be served by any additions to and betterments and extensions of the Water System financed in part by the proceeds of the disposition, and (dd) any other adjustment permitted in the preparation of a certificate under Section 5.03(c)(2)(B) of this Installment Purchase Agreement, and (ii) confirmation from the Rating Agencies to the effect that the rating then in effect on any Outstanding Parity Obligations will not be reduced or withdrawn upon such disposition.

(c) The City will operate the Water System in an efficient and economical manner, provided that the City may remove from service on a temporary or permanent basis such part or parts of the Water System as the City shall determine, so long as (a) Net System Revenues are equal to 120% of Adjusted Debt Service for the then current Fiscal Year, after giving effect to any defeasance of Parity Obligations occurring incident to such removal, and for each Fiscal Year thereafter to and including the Fiscal Year during which the last Installment Payment is due, after giving effect to such defeasance, as evidenced by (1) an Engineer's Report on file with the City, or (2) a Certificate of the City, if the value of the parts of the Water System to be so removed, as shown in the most recently published financial statements of the Water Utility Fund for which there is an accountant's report, is less than 5% of the total Water System Plant assets, as shown on such financial statements, and (b) the City shall have filed with the Trustee an opinion of Bond Counsel to the effect that the removal of such part or parts of the Water System will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on Tax-Exempt Installment Payment Obligations.

MIPA § 6.04 (emphasis added).



Thus, subject to approval of the City Council, the MIPA allows the City to lease or sell Water Property if the lease or sale complies with subsection (b)(1) or (b)(2).<sup>5</sup> For example, the City may lease or sell Water Property if: (i) the property is not material to the operation of the Water System; (ii) the lease or sale will not materially reduce the Net System Revenues; and (iii) the proceeds from the lease or sale are deposited in the Water Utility Fund. The City may also lease or sell Water Property if the City receives: (i) fair market value for the property; (ii) an Independent Engineer's certificate making certain findings with respect to operational integrity and Net System Revenues; and (iii) a rating confirmation.<sup>6</sup>

Although Section 6.04(b)(1) appears to allow a lease or sale at less than fair market value if the Sikes Property is not material and provided the other enumerated conditions are met, Charter section 53 would nevertheless require payment of fair market value.<sup>7</sup> On the other hand, regardless of the materiality of the Sikes Property to the Water System's operation, Section 6.04(b)(2) requires the payment of fair market value as well as an Independent Engineer's certificate and rating confirmation.<sup>8</sup>

Further, if the City removes a part of the Water System from service, the City must comply with the conditions in Section 6.04(c). These conditions do not appear to apply when a lease or sale is involved because the subsection (b) provisions specific to leases and sales should control over the subsection (c) provisions generally addressing removal from service.<sup>9</sup> If, however, subsection (c) does apply to a lease or sale, in addition to the subsection (b) requirements, the City must also obtain an Engineer's Report or a Certificate of the City with respect to Net System Revenues, and file an opinion of Bond Counsel that the removal will not adversely affect the tax-exempt status of the interest on the Water Revenue Bonds.

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<sup>5</sup> The MIPA impliedly defines "dispose" as including leases and sales. *See* MIPA § 6.04(a) ("The City will not sell, lease or *otherwise dispose of* the Water System or any part thereof") (emphasis added). This definition is consistent with the water revenue bond provisions of the Charter which authorize a "prohibition against or limitations upon *the sale, lease or other disposition* or transfer of the waterworks of the City...." San Diego Charter § 90.1(6)(i) (emphasis added).

<sup>6</sup> We note that the MIPA makes no exceptions to the lease or sale restrictions. Thus, in our opinion the City must abide by the covenants regardless of the nature of the entity desiring to lease or purchase Water Property.

<sup>7</sup> Even if the Charter did not require the payment of fair market value, the MIPA would require at a minimum an economically reasonable price that does not materially reduce the Net System Revenues. *See* MIPA §§ 6.04(b)(1); 6.07 (covenant to operate the Water System in an efficient and economical manner); and 6.15 (covenant prohibiting free use of Water System).

<sup>8</sup> The City's bond counsel has indicated that any City Council approval of a lease or sale under subsection (b)(1) must determine that the conditions of that subsection have been met. In our opinion, the determinations could be established by including all relevant supporting information in the backup material provided to the Council.

<sup>9</sup> We have inquired with bond counsel on this point but have not yet received the response.

## CONCLUSION

The Sikes Property is Water Property and is part of the City's Water System. As such, any sale or lease of the Sikes Property must comply with both Charter section 53 and the MIPA. Section 53 requires that any lease or sale of Water Property be at fair market value.

Under the MIPA, if the Water Property is not material to the operation of the Water System, the City could lease or sell the Water Property for an economically reasonable price if all of the other enumerated conditions are met. The Charter section 53 restriction, however, would nevertheless require the reasonable price to be fair market value. On the other hand, regardless of the materiality of the property to the Water System, under the MIPA the City could lease or sell the Water Property for fair market value if all of the other enumerated conditions are met. Finally, if the service removal provisions apply, the City would have to comply with the additional enumerated conditions.

Based on the above, if the City desires to lease or sell the Sikes Property to the JPA, the City must obtain fair market value for the property. The City must also comply with the applicable additional MIPA conditions.<sup>10</sup>

MICHAEL J. AGUIRRE, City Attorney

By

Lori W. Girard  
Deputy City Attorney

LWG:cla

Attachments

cc: Charles Yackly, Assistant Director, Water Department  
Jack Farris, Deputy Director, Real Estate Assets Department

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<sup>10</sup> Upon request, we would be happy to address whether a specific proposal would comply with the Charter and MIPA restrictions.