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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

COALITION FOR PRESERVATION OF THE ARROYO, an unincorporated association; EAST ARROYO NEIGHBORHOOD PROTECTION COMMITTEE, an unincorporated association; LINDA VISTA-ANNANDALE ASSOCIATION, a California non-profit corporation; SAN RAFAEL NEIGHBORHOODS ASSOCIATION, an unincorporated association; and DOES 1 to 5;

Petitioners;

v.

CITY OF PASADENA and PASADENA CITY COUNCIL;

Respondents.
_____/

Case No. BS141038

Opening Brief
in support of
Petition for Writ of Mandamus

California Environmental Quality Act

Hearing Date: December 11, 2013
Time: 9:30 a.m.
Dept.: P

Honorable Allan Goodman

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Introduction

> **…[T]he city [should] not be swayed by the offer to temporarily host the National Football League … such an effort would be detrimental to the ultimate goal of making the Central Arroyo Seco a sustainable part of the Pasadena community.** (Administrative Record (AR) 4499 [*Urban Land Institute* Governor's Advisory Panel].)

Four Pasadena neighborhood groups representing thousands of residents (collectively, the Coalition) seek a peremptory writ in the public interest. They ask the Court to compel the City of Pasadena to comply with the citizen-enforced California Environmental Quality Act.

The City violated CEQA in amending the Arroyo Seco Public Lands Ordinance to allow a five-year lease of the historic Rose Bowl by the National Football League (NFL). The NFL/Rose Bowl project would more than double the number of large sporting events allowed in the famed stadium, with up to 13 additional football games to be attended by up to 75,000 people while an anticipated permanent NFL stadium is being built in the Los Angeles area.

Expanded, intensive use of the Rose Bowl by the NFL would result in significant adverse impacts to the Arroyo Seco habitat and surrounding residential neighborhoods, with City-wide ripple effects. That is undisputed. The Coalition, *supported by the City Planning Commission*, contends that the project EIR failed to address the "whole of the action."

The amendment of the Arroyo Seco Public Lands Ordinance also created bureaucratic and financial momentum effecting the City's unlawful pre-commitment to an NFL lease. While the City claimed not to be in communication with NFL representatives and insisted that it could not anticipate the likely scope of a lease, the record proves otherwise. Deferral of environmental study is both unjustified and of devastating import, and net project benefits cannot be calculated.

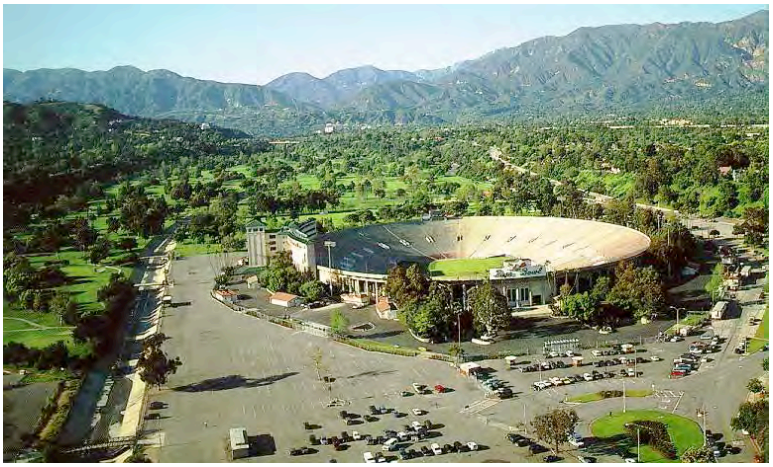
The Coalition respectfully requests this Court's peremptory writ in the public interest to require the City's compliance with state law in its consideration of the NFL/Rose Bowl project.

Statement of Facts

> **I am concerned that not all aspects of the NFL's use of the Rose Bowl are fully understood and therefore will not be evaluated … In order to fully understand the impacts, … the NFL-related discussions, draft lease proposals, [and] deal points … [should] be reviewed. Not knowing deal points … make[s] adequate environmental evaluation impossible.** (AR 583 [April 14, 2012].)

Environmental Setting. The 1922 Rose Bowl Stadium, honored with listing as a National Historic Landmark, is most famous for hosting the New Year's Day Rose Bowl Game. (AR 198, 328, 2394.) The Rose Bowl has also hosted NFL Super Bowl Games, an Olympic soccer match, both the Men's and Women's World Cup, and National College Football Championship Games. It is the home stadium of the UCLA Bruins. (AR 329.) Major multi-million dollar renovation of the Stadium has been in progress since 2011. (AR 196, 329.)

The Rose Bowl is located in the Arroyo Seco, within a deeply-cut canyon that links the San Gabriel Mountains and the Los Angeles River. The Arroyo Seco is referenced in three sections known as the Upper, Central, and Lower Arroyos. (AR 171.) The Rose Bowl sits in the Central Arroyo. Single-family hillside residential neighborhoods lie to the east and west. (*Ibid*.) The Brookside Golf Course is to the north and Brookside Park lies south. Both the Central and Lower Arroyo are historic districts listed in the National Register of Historic Places. (*Ibid*.)



(AR 4487)

Since 1995, the Rose Bowl Stadium, Brookside Golf Course, and clubhouse have been operated by the Rose Bowl Operating Company (RBOC), a non-profit corporation formed by

the City. Board members are appointed by the City Council. Brookside Park is managed through the City's Public Works Department. The Rose Bowl Stadium and surrounding uses are designated as open space. (AR 206.) The four edge streets adjacent to the Stadium and the Brookside Golf Course are heavily used by thousands of pedestrians and cyclists as a three-mile "Recreation Loop." (AR 202.) Among other popular public amenities in the complex are the Kidspace Children's Museum and the Aquatics Center. (AR 203-206.)

The NFL Lease Project. In 2005, following the preparation of an EIR, the Pasadena voters resoundingly rejected a ballot measure proposing to renovate the 92,500 seat Rose Bowl to allow its permanent use by an NFL team. (AR 303, 517, 563, 564, 621, 730-732, 752, 2454, 2932, 4243, 4761, 5156, 5217, 5375.) A multi-million dollar "Plan B" was implemented in 2011 to renovate the Rose Bowl without NFL funding. It remains in progress. (AR 196, 329, 621.)

Despite the defeat of the NFL ballot measure in 2005, in early 2012 the City initiated an amendment to its Municipal Code to permit the use of the Rose Bowl by the NFL for five years while a new stadium is constructed in the Los Angeles area. (AR 2, 511.) No more than 12 displacement events, defined as allowing more than 20,000 attendees, are currently allowed per year. (AR 173.) The amendment proposed 13 additional events for up to 75,000 attendees, to accommodate the NFL without further physical alteration of the Rose Bowl. (AR 173-174, 512.)

In February 2012, the Governors Advisory Panel of the Urban Land Institute (ULI), in full cooperation with the City, published a report entitled "*The Rose Bowl and the Central Arroyo Seco — Strategies for an Iconic Landmark and its Surrounding Area*." (AR 4479-4538.) The report concluded that the Central Arroyo Seco was being overused and recommended that actions be taken to preserve the resource, *not* including NFL use. (*Ibid*., AR 4499; *ante*, p. 1.)

In March 2012 the City nonetheless released an Initial Study for the ordinance amendment, referencing its potentially significant impacts to air quality, land use and planning, noise, parks and recreation, transportation, parking, and traffic. (AR 513, 510-553.)

In August 2012 the City published and circulated a Draft EIR for the "Temporary Use of the Rose Bowl Stadium by the NFL." (AR 165.) The EIR described the project being studied as the amendment of the Arroyo Seco Public Lands Ordinance. (AR 195.) It explained that the

"intended use of this EIR" was to inform "approvals from the City of Pasadena [that] will be requested as part of the proposed project," including an exclusive December – January use agreement with the Tournament of Roses Association and "contracts with the NFL, including a lease, franchise commitment agreement, and financing agreement(s)." (AR 213.)

The Draft EIR public review period ran from August to October 2012. (AR 193.) Among commentors critical of the project were the South Coast Air Quality Management District, the Metropolitan Transportation Authority, Pasadena Heritage, the West Pasadena Residents Association, the Linda Vista-Annandale Association, the San Rafael Neighborhoods Association, public officials including appointed City commissioners, and many passionately-opposed Pasadena residents. (AR 2384 *et seq*.) In November 2012 the City released the Final EIR. (AR 2346.) It identified significant and unavoidable project impacts to air quality, noise, recreation, and transportation/circulation/parking. (AR 2358-2370.)

The Planning Commission requested that the City Council allow its review of the EIR and project, due to significant environmental impacts and the implementation of City plans and policies, but the request was declined. (AR 5289-5291.) City Councilmember Victor Gordo, who also serves as Chair of the Rose Bowl Operating Committee (AR 4139), worried that otherwise the Planning Commission's expected critical review might prove "legally problematic" to the City Council's position if the project was challenged in court. (AR 4454, 4471.)

On November 19, 2012, the City Council held a public hearing and decided that the NFL/Rose Bowl project's economic benefits outweighed its many significant environmental effects. (AR 61.) City staff prepared Councilmember Gordo's remarks advocating the approval. (AR 4467.) The Council certified the EIR and adopted the proposed ordinance amendment to allow use of the Stadium by the NFL. (AR 9, 61, 131-134, 4300-4370 [Council transcript].)

Statement of the Case

We already voted this down once. Why are we doing it again? (AR 5353.)

Coalition members, representing thousands of City residents, filed this case in January 2013. The status quo remains in place as the City has not proposed an NFL lease agreement.

Standard of Review

> **The Arroyo was a quiet place, perhaps a tail for the Rose Bowl dog in 1950. Not today. Recreation in the Arroyo has doubled since 2005, we added Kidspace, and the Urban Land Institute says that it is overused. The Rose Bowl is a wonderful old stadium in a lovely setting, bolstered by the annual Rose Parade … a beautiful antique. It can survive as long as it has UCLA and the Rose Parade. It can't be made into a professional stadium.** (AR 5264-5265.)

In deciding whether to issue a peremptory writ for violations of CEQA, this Court will decide whether the City prejudicially abused its discretion in certifying the EIR and approving the amendment of the Arroyo Seco Public Lands Ordinance. Such abuse is established if the City did not proceed in the manner required by law or if its findings are not supported by substantial evidence in the record. (Pub. Resources Code, § 21168.5.)

CEQA has dual standards of review. The Supreme Court's ruling in *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412 resolved longstanding inconsistencies in appellate decisions addressing the two standards. The Court held that most questions relating to EIR adequacy are reviewed for failure to proceed in the manner required by law. (*Id*., p. 435.)

Interpretation of the environmental mandates of the Public Resources Code and the CEQA Guidelines is a matter of statutory construction and requires judicial consideration of the intent of the legislature and the Resources Agency. (*E.g*., *Friends of Sierra Madre v. City of Sierra Mad*re (2001) 24 Cal.4th 165, pp.188-189.) Leaving to the discretion of a lead agency whether it has adequately complied with CEQA's EIR requirements is comparable to judging its own conduct in complying with any other state law. These issues of statutory construction are instead subject to *de novo* judicial review. Statutory and regulatory authorities provide a detailed road map for EIR adequacy, and legislative intent is manifest in the policies of the Act. (Public Resources Code, §§ 21000-21006, 21061, 21061.1; CEQA Guidelines [14 Cal.Code Regs], §§ 15002-15003, 15020-15021, 15064-15064.5, 15082, 15084, 15120-15131.)

Only after an EIR is certified are an agency's conclusions and findings regarding significant impacts, feasible alternatives and mitigations, and overriding considerations subject to deferential review for supportive substantial evidence. This makes sense. Our elected officials

have broad discretion to make land use decisions, but only *after* being informed by an objective environmental document compliant with CEQA's salutary directives.

The Supreme Court reiterated the distinction between CEQA's dual standards of review in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, p. 131, quoting from *Vineyard*:

> Judicial review of … [CEQA's] two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' [citation] we accord greater deference to the agency's substantive factual conclusions.' [Citation.]

Vineyard thus copiously reviewed an EIR's discussion of water supply for a proposed development project, and held that its inadequate analysis constituted a failure to proceed in the manner required by law. (*Vineyard, supra*, 40 Cal.4th 412, *passim.*)

The City prepared an EIR to review the ordinance amendment for the NFL/Rose Bowl project. A primary issue before the Court is whether the EIR deferred analysis of the 'real' project and did not consider the 'whole of the action' — the lease of the Rose Bowl by the NFL. Whether deferral of environmental review occurred or was unlawful is a matter of CEQA process: an issue of law to be reviewed without deference to the findings of the City Council. (*Save Tara, supra,* 45 Cal.4th 116, p. 627.)

Consistently, the adequacy of the scope of the environmental review that *did* occur is also a question of law, as applied in *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214 when a city segmented environmental review for a home improvement center. (*Id.*, p. 1222.) As also recently held in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, "[t]he question of which acts constitute the 'whole of an action' for purposes of CEQA is one of law, which we review de novo based on the undisputed facts in the record." (*Id*., p. 98.)

Here, the standard of review for the City's alleged CEQA violations will be failure to proceed in the manner required by law, with the sole exception of the findings supporting the Statement of Overriding Considerations, which are reviewed for substantial evidence.

Discussion

> **The entire project would include the deal, the contracts, the franchise agreement, and the finance agreement with the NFL *so the benefits could be judged as compared to the impacts that cannot be mitigated*. What is the … net economic benefit to the City? … To jump to the conclusion that we can have these overriding considerations has problems on both ends and the middle.** (AR 4654, italics added.)

CEQA requires agencies to prepare an EIR when pursuing a discretionary project that may have a significant environmental impact. (Pub. Resources Code, § 21080.) The role of the EIR cannot be overstated. "CEQA compels process. It is a meticulous process designed to ensure that the environment is protected … the EIR is the heart and soul of CEQA." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, p. 911.) The EIR "protects not only the environment but also informed self-government." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, p. 564.) "CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (Guidelines, § 15003, subd. (f).)

The record reflects passionate public outcry regarding the NFL/Rose Bowl project's impacts on the vulnerable Arroyo Seco. The Coalition will quote a few eloquent objections, but must necessarily focus on the City's multiple legal errors: its segmentation of the "whole of the action," its pre-commitment to an undefined project, its inadequate EIR analysis of environmental impacts, its improper deferral of mitigation, and its unsupported findings.

A. Timing and Scope of Environmental Review

> **Clearly, the Rose Bowl renovation was necessary and the progress thus far is an excellent improvement to the historic stadium. However, the financing plan … for the renovation did not contain any mention of the NFL as part of the financing scheme … I have to agree with the Urban Land Institute, that temporary use of the Rose Bowl by the NFL is a bad idea.** (AR 4448.)

Under the unique circumstances of this case, the City failed to consider the "whole of the action" of the NFL/Rose Bowl project before certifying an EIR and amending the Arroyo Seco

Public Lands Ordinance, and thus both segmented the environmental review process and created bureaucratic and financial momentum unlawfully pre-committing to an NFL lease.

Statutory Authority and Case Law. The purpose of CEQA is to inform the public and officials of environmental consequences *before decisions are made*. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.App.3d 553, p. 564, italics added.) EIRs "should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet *late enough* to provide meaningful information for environmental assessment." (Guidelines, § 15004, italics added.)

The question of whether environmental review must be conducted before something *less* than a binding project commitment occurs has received much judicial scrutiny over CEQA's forty-year history, but pre-2008 cases are no longer relevant since the California Supreme Court provided definitive direction in *Save Tara, supra,* 45 Cal.4th 116. *Save Tara* involved a housing project impacting a cultural resource known as Tara. A development agreement — contingent on future CEQA review — was challenged by a public-interest group claiming that EIR review must inform the agreement at the outset. (*Save Tara, supra,* 45 Cal.4th 116, pp. 123-124.)

The Supreme Court agreed. The Court explained that the timing of environmental review must not be "so late that such review loses its power to influence key public decisions." (*Save Tara, supra,* 45 Cal.4th 116, p. 131.) Significant city action in furtherance of a project with potentially significant environmental impacts, such as the Tara development, equates to commitment to a project "as a practical matter." (*Id*., p. 132.)

A number of decisions have already followed *Save Tara*, but none are directly relevant to the facts before this Court. Here, pre-commitment under the *Save Tara* rubric is a CEQA cousin to a further legal problem relating to the timing of environmental review: the segmentation/ piecemealing of the "whole of the action." *All phases* of a project approval must be considered in a project EIR, so that "environmental considerations do not become submerged by chopping a large project into many little ones ..." (*Burbank-Glendale Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, p. 592; *Bozung v. LAFCO* (1975) 13 Cal.3d 263, pp.283-284; Guidelines, § 15126.) Thus, in *Santiago County Water District v. County of Orange* (1981) 118

Cal.App.3d. 818, pp. 829-830, an EIR for a mining operation was inadequate because it ignored the waterlines needed to serve the mine. In *NRDC v. City of Los Angeles* (2002) 103 Cal.App.4th 268, pp. 284-285, a 3-tier EIR was required for a phased shipping container terminal.[1]

To avoid segmentation/piecemealing, an EIR's project description must include related, reasonably foreseeable activities. (*Laurel Heights Improvement Association v. UC Regents* (1988) 47 Cal.3d 376, p. 396.) *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, pp. 1454-1455, thus required environmental analysis of the extended duration of temporary facilities. Only future activities that are not currently proposed for approval *and* not reasonably foreseeable need neither be included in the EIR project description nor analyzed. (*E.g.*, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, p. 77, n. 5; *National Parks and Conservation Association v. County of Riverside* (1996) 42 Cal.App.4th 1505, p. 1520.)

NFL Involvement in EIR Process. The City contends that its amendment of the Arroyo Seco Public Lands Ordinance was necessary simply to position it for future negotiations with the NFL regarding the temporary use of the Rose Bowl. As referenced throughout the record and reiterated by Mayor Bill Bogaard at the final public hearing on the ordinance amendment "*There are no (NFL) discussions underway* … I think that's clear to everybody." (AR 4149, italics added; *see* AR 2437, 2653, 3413, 3414 [City Manager Michael Beck: "Currently there are no negotiations with the NFL …"], 4151, 4155, 4325, 4443, 4458.)

The EIR readily admits that the "intended use of this EIR" is to develop information to

[1] Post *Save Tara* cases include *Riverwatch v. Olivehain Municipal Water District* (2009) 170 Cal.App.4th 1186,when a water district violated CEQA with a contract to supply recycled water to a landfill. In *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009) 179 Cal.App.4th 113, a sales tax placed on a ballot was "funding" and not a CEQA project. *Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, held a municipal services agreement for a tribal casino not a CEQA project since the City had no land use authority. In *City of Santee v. County of San Diego* (2010) 186 Cal.App.4th 55, an agreement to identify prison sites was not a CEQA project. *Cedar Fair v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, p. 1168, held that a project termsheet for a football stadium was not precommitment, albeit a close case. And in *Neighbors for Fair Planning v. City and County of San Francisco* (2013) 217 Cal.App.4th 540, actions of a sole elected official promoting affordable housing did not pre-commit to the project.

inform the "approvals from the City of Pasadena [that] will be requested as part of the proposed project," including not only the amendment of the Arroyo Seco Public Lands Ordinance but the amendment of the agreement with the Tournament of Roses Association and development of required "contracts with the NFL, including a lease, franchise commitment agreement, and financing agreement(s)." (AR 213.) City staff's assurances to the public and to the City Council that there was no communication with the NFL relating to parameters of a lease agreement were fiction. High-level staffmembers were — of course! — in communication with and sought direction from the NFL, even though no formal draft lease documents were (apparently) extant:

- City Manager Michael Beck directed City Planning Director Vince Bertoni to '*make sure NFL is ok with answers*' to five questions that the Director posed in November 2011 regarding the pending Draft EIR project description, '*especially the attendance cap*' and including (1) the number of additional displacement events; (2) the maximum attendance allowed; (3) the months during which NFL events were expected to occur each year; (4) the temporary or permanent nature of the activities; and (5) "If the activities are going to be permanent, how long will they last?" (AR 4385, 5431, italics added.)

- In February 2012, Assistant City Manager Steve Mermell sent an email to Vince Bertoni regarding "discussions with the NFL" about funding the EIR:

  Discussions with the NFL regarding paying for the EIR are progressing well. However, there is one item that I need your help on … they (NFL) have asked for a costflow (kinda like a cashflow) of expenses that will be incurred over the first 30, 60, 90, 120, etc. days of the EIR. Is this something you can put together presently? (AR 4582, italics added.)[2]

  A few weeks earlier, a citizen's request that planning staff clarify "something" about the EIR prompted a City planner to ask Vince Bertoni about status: "whether we are on hold, we are preparing to get moving again, it is a secret, it is not a secret, etc." (AR 5430.)

- In June 2012, Darryl Dunn, General Manager of the Rose Bowl, directed Charles Thompson, his Corporate Communications/HR Manager, 'to ask the NFL to review,' 'provide input,' and 'confirm' specifics of the Draft EIR Project Description. (AR 5434.)

- The Project Description section in the administrative draft of the NFL/Rose Bowl EIR as of June 2012 reflected staff's consultation with the NFL: '*negotiations with the NFL are*

[2] The Coalition does not yet know if the NFL paid for any or all of the EIR. One resident stated in an email to the City in March 2012: "Rose Bowl EIR. Where is this $400,000 coming from? The City is in debt. We do not want the NFL. Can you explain this to me?" (AR 631.)

ongoing;' the 'NFL *would not prefer* to have its games scheduled on the same weekend as UCLA games due to the need for optimum turf conditions for NFL games;' and the 'NFL *would use* the Rose Bowl on non-event days for media events …' (AR 5450, italics added.) The Project Description section in the Draft EIR as published in August 2012 had deleted these references to the NFL's input and preferences. (AR 209.)

Despite the City's refusal to provide copies of all communications between the City and the NFL relating to the Rose Bowl project (*see* Declaration of Susan Brandt-Hawley) signs of ongoing City/NFL communications regarding the project are manifest.

Project Description. An EIR must describe the "project" — the underlying activity being approved. (Guidelines, §§ 15124, 15378, subd. (c).) "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, p. 193.)

The NFL/Rose Bowl project is easy to define: the use of the Rose Bowl Stadium by an NFL team for a five-year period while awaiting completion of a permanent home stadium. The title page for the EIR introduces the "Temporary Use of the Rose Bowl Stadium by the National Football League." (AR:166, 2346.) But the EIR itself repeatedly defines the project solely as *the amendment of the Municipal Code* to allow 25 events of over 20,000 people a year instead of the 12 events currently allowed. (*E.g.*, AR 9 [findings], 195 [project description].)

While the EIR addresses many facets of the proposed actual use by the NFL (*e.g.*, AR 208-211 and *passim*), critical specifics are left out, including the content of a prospective lease agreement, franchise commitment, and financing — basically, what project parameters the NFL will require and can be expected to mitigate. (AR 213.) The City is not proposing this project in a vacuum; its logical intention is to meet the NFL's needs for a temporary stadium. As with any project involving a private party sponsor, the NFL's involvement in defining its proposed future use is essential for the EIR consultants' use in addressing project impacts, formulating feasible mitigation measures, and *assessing project costs and benefits*.

In response to criticism of its overly-narrow project description, the Final EIR explained that there was currently no draft lease or other agreement with the NFL and the City thus could not provide details of either. (AR 2392.) The Final EIR (inaccurately) stated that the Draft EIR

had described the project as the temporary use of the Rose Bowl Stadium by the NFL, which required an ordinance amendment. (*Ibid.*) The EIR then (inconsistently) stated that "implementation of the project" (rather than the project itself) required the amendment and "one or more agreements…" (*Ibid*.) The City tossed off concerns about agreement parameters because the "specific terms of those agreements are not known to the City." (*Ibid*.)

Of course, formal agreements implementing a project that is subject to discretionary environmental review and agency approval are never completed and executed at a draft EIR stage. The point of environmental review is to consider a *proposed* project's impacts and mitigations and alternatives, and final prior action by a lead agency would violate CEQA. That being said, a draft term sheet or development agreement or proposed lease would provide the basic project parameters to inform review.

The NFL/Rose Bowl project is driven by economics, specifically the costs of the ongoing renovation of the Stadium. The primary EIR project objectives are to "generate revenue to fund City services and offset the costs associated with the Rose Bowl renovation project" and to "promote economic development" through "increased event activity and tourism." (AR 2354.) The City failed to proceed in the manner required by law by certifying an EIR that did not describe "the whole" of that action in its project description and the related analysis. Both should openly and transparently involve the NFL in defining expected project parameters.

Statement of Overriding Considerations. Consistent with CEQA's codified legislative policies for environmental protection, the City may not approve or carry out a project for which an EIR identifies one or more significant effects on the environment unless (1) all of the adverse environmental effects have been mitigated to a level of insignificance — not the case here — ***or*** (2) feasible mitigations and alternatives have been adopted ***and*** "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (Pub. Resources Code, § 21081.)

The City cannot merely adopt a statement of overriding considerations and approve a project with significant impacts; it must *first* adopt feasible alternatives and mitigation measures. (*Friends of Sierra Madre v. City of Sierra Madre, supra,* 25 Cal.4th 165, p. 185; *City of Marina*

v. Board of Trustees of the California State University (2006) 39 Cal.4th 341, pp. 368-369 (["CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible."].) As the Coalition will discuss, the City did not adequately study or adopt feasible alternatives and mitigation. Regardless, in light of concededly significant impacts (AR 2358-2370) the City could not approve the NFL/Rose Bowl project without finding overriding public benefit.

The City indeed did adopt a statement of overriding considerations, but it was not supported by substantial evidence. While deference is due to City Council findings, a statement of overriding considerations is legally inadequate if it does not accurately disclose project impacts or if it mischaracterizes project benefits. (*Woodward Park Homeowners Association v. City of Fresno* (20007) 150 Cal.App.4th 683, p. 717.) A writ should therefore issue setting aside project approval. (AR 61-130; *see Sierra Club v. County of Contra Costa* (1992) 10 Cal.App.4th 1212, p. 1223; *Woodward Park Homeowners, supra,* 150 Cal.App.4th 683, p. 706.)

The City's segmentation of analysis of the "whole of the action," including the NFL lease and financing agreements, precluded its ability to assess the project's net economics and find overriding benefit. For example, the EIR responded to a comment letter regarding funding for mitigation by stating that "[t]he ultimate financial responsibility for implementing the mitigation measures will be an item for negotiation between the City and the NFL." (AR 2653.) In other words, the allocation of financial responsibility — and cost to the City — is still unknown.

Planning Commissioner Mic Hansen expressed concern:

> …we don't know what [the NFL] will dictate or require … it's a bit like driving with a windshield covered or obscured because … we still don't know what we're responding to because we don't know what's being asked … and if we don't know the deal points, how are we responding to them and what are the mitigations?

(AR 3930.) Recreation and Parks Vice Chair Rita Moreno agreed: "I have no idea how much revenue we're talking about, *but there's also a lot of costs* … and I'm not sure at what point

that's discussed, whether that happens once there's an actual negotiation with a team … what do we get for … coming in and disrupting our lives for five years?" (AR 4119, italics added.)

The statement of overriding considerations adopted by the City Council was *solely* based on an economic analysis provided by the Barrett Sports Group after the publication of the Final EIR and just two weeks before the City Council's approval of the project. (AR 61-121.) The Barrett report hedged its generalized economic projections, because "it is difficult to estimate" and "revenue generating potential will depend on numerous factors, including competition and interest from other regional stadium alternatives, the specific NFL team, and the NFL permanent location/developers," among other "*numerous unknowns*." (AR 65, italics added.)

Report author Dan Barrett testified to the City Council that he "would recommend in a situation like this" that the City negotiate for game day expenses to be paid by the lessee NFL team and "*also negotiate* to have the team cover any municipal services; expenses related to police, fire, EMT, and traffic." (AR 4183-4184, italics added.) He conceded that none of the "comparables" reviewed in his report were stadiums located in a residential area. (AR 4189.)

The City nonetheless concluded, based on the Barrett report, that an NFL lease would net 5 to 10 million dollars "depending on circumstances surrounding [NFL] negotiations" and would "play a significant role in bridging the funding gap associated with the Rose Bowl renovation project." (AR 62.) On that sole basis, the Council found the project's "economic benefits" outweighed its many admittedly significant environmental impacts. (*Ibid*.)

City Councilmember Terry Tornek, a member of the City's Finance and Municipal Services Committees (AR 4131-4132), urged that the Council *not* rely upon the Barrett report for economic-based decisions, and voted against the NFL/Rose Bowl project approval based in part on the report's unequivocal disclaimers. (AR 4300-4308, 4368-4369.) He pointed out:

> And why are we considering [the project] if we have significant unmitigable impacts? We're considering it because there's the expectation for a big payday …And yet the basis of that analysis, *the only basis for the statement of overriding considerations is a report that's been pointed out [to be] highly speculative, not well documented, and loaded with disclaimers*.

> I mean, … and this is no disrespect to the Barrett organization, but if you look at the disclaimers at the end of what's called the limiting conditions and assumptions … the report is not to be construed as predictions of the analysis; accuracy is in no way guaranteed; other parties should not rely on the findings for any purpose and should perform their own due diligence.

(AR 121, 4301- 4303.) Councilmember Tornek noted that the report also failed to quantify off-setting economic factors such as significant lost revenue and increased expenses of local businesses, along with projected reductions in residential property values affected by NFL-related environmental impacts and the lost week-end use of the Arroyo Seco for recreation during three additional months/twelve weeks a year. (AR 4303-4307.)

These unstudied costs were pointed out by the Linda Vista-Annandale Association in a detailed 5-page letter illustrating the lack of foundation for the Barrett report's assumptions and conclusions. (AR 3700-3704.) The Association pointed out that the report did not address negative effects on net income from "increased costs of police and fire protection, trash removal, golf courses/turf repair and replacement, lost revenue from the golf courses and club house, etc." (AR 3701-3702.) These points were reinforced in testimony before the City Council. (AR 4145 *et seq*.) Other costs not considered by the Barrett report include increased Metro service and the City's promised study and improvement of recreation. (*Post,* pp. 21-24.)

The Barrett report does not provide substantial evidence to support a statement of overriding considerations. A writ should issue setting aside the project approval on that basis. The Rose Bowl renovations can be completed without an NFL lease, as confirmed by Mayor Bill Bogaard. While voting to approve the lease, the mayor assured the public that the City would complete the Rose Bowl Stadium renovations with or without financial contribution by the NFL: "[W]e're still going to complete the project." (AR 4358.)

Environmental Analysis and Mitigation were Improperly Deferred. The relevance of the City's undisclosed ongoing relationship with the NFL is that it belies arguments that consideration of the parameters of lease and financing agreements was premature before the

City conducted environmental review and approved the amendment to the Arroyo Seco Public Lands Ordinance. The "whole of the action" *could and should* have been studied in the EIR rather than segmented. The City's mantra that the amendment of the Arroyo Seco Public Lands Ordinance is required in order to open discussions with the NFL regarding a possible lease is nowhere explained or justified. It appears that the NFL wants environmental review and agency approval to occur before proposing a project, but that is not how business is done in California — absent statutory exemption from CEQA that some stadium projects have indeed secured.

The City's approval of the ordinance amendment is inseparable from the NFL lease, despite City representations to the contrary. (*E.g*., AR 4153.) The result of amending the ordinance and adopting a statement of overriding considerations is that bureaucratic and financial momentum has effectively pre-approved the actual, not-yet-negotiated lease. The City contends that the statement of overriding considerations will not be revisited. (AR 4359-4361.)

Approval of the ordinance amendment equated to project approval as a practical matter, with deferred lease parameters and financing agreements leaving open the identification, effectiveness, and enforceability of feasible alternatives and mitigation. Approval of the amendment based on an EIR that failed to address the "whole of the action" pre-committed the City to the NFL/Rose Bowl project, violating the rubric of *Save Tara* and warranting the issuance of a peremptory writ.

B. The EIR is Inadequate

> **The Rose Bowl already accepts an excessive number of automobiles and people to its various functions, but those would simply be dwarfed by any NFL event … not to mention the noise …the garbage as well as damage to the surrounding neighborhoods by people freely urinating on our gardens, discarding liquor bottles, beer cans, condoms, partially eaten fruit as well as castoff clothing and shoes, all of which we have found or seen happening during these events. To tell us that our streets are blocked off is quite meaningless as everything described above happens anyway!** (AR 3554.)

While an EIR need not be perfect, it must provide an adequate, complete, good faith effort at the full disclosure of environmental impacts. (Guidelines, § 15151.) Analysis must be

sufficient to enable a decision that "intelligently takes account of environmental consequences." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, p. 712.) An EIR must "consider and resolve every fair argument that can be made about the possible significant effects of a project." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, p. 1109.)

Environmental Setting/Historic Resources. CEQA's required analysis of environmental impacts begins with an understanding of the project's environmental setting, including physical environmental conditions "in the vicinity." (Guidelines, § 15125 subd. (a).) Relevant to historic resources, "special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." (*Id*., subd. (c).) In *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, an EIR failed to consider the importance of viticulture in the vicinity of a new dam proposed on the Carmel River: "Due to the inadequate description of the environmental setting for the project, a proper analysis of project impacts was impossible." (*Id*., p. 1122.)

Here, the relevant constraints of the environmental setting include historic resources recognized at local, state, and national levels. (*E.g*., AR 2394.) Pasadena Heritage provided copious comments on the Initial Study and Draft EIR's lack of consideration and analysis of project impacts to the significant historic districts and contributing cultural resources in the Arroyo Seco. (AR 628-630, 2423-2425; *see* 4081, 4106.)

When members of the Planning Commission expressed the same concern, they were told by City staff that analysis of cultural resources had been "scoped out" of the EIR. (AR 3830-3831.) Planning Commissioners uniformly urged that the EIR be revised to correct the error:

- *Commissioner Vince Farhat*: "I was surprised that there's no discussion whatsoever of cultural resources in the EIR. Just punting the question, saying the Rose Bowl won't be reconstructed, misses the whole point. It's sited in an entire area that's listed in the National Register and surrounded by historic districts and surrounded by contributing features. This appears to be an egregious omission. (AR 3894; *see* 3891-3894.)

- *Commissioner Richard Quirk*: "Cultural resources, we need to study those impacts… I'm going to agree with that." (AR 3920-3921.)

- *Commissioner Louisa Nelson*: "You know, the cultural resources thing goes without saying." (AR 3924.)

- *Commissioner Mic Hansen*: "As far as historic and cultural resources, … I agree with the other Commissioners … [the] EIR [should] analyze the effect of garbage, the chemical waste, pollutants, etc., for the Central and Lower Arroyo …And Orange Grove is considered one of the 50 most beautiful avenues in the United States … what would be the impact of heaping yet more traffic on a street that is revered [like] that? … and the ULI study called the Central Arroyo and the Rose Bowl a national treasure … we need to be very careful to have a thorough NFL EIR … (AR 3931-3933.)

- *Chairman Dante Hall*: "I'm not convinced that there are no impacts to cultural resources. I really do think that that is an area that should be studied." (AR 3934.)

In response to the comments of the public and the Planning Commission, the City engaged an historic resources consultant and included a short cultural resources analysis in the Final EIR. (AR 2426.) "Topical Response 2" did not survey or fully describe the historic environmental setting but acknowledged CEQA's requirement to consider possible impacts to the "immediate surroundings" of an historic resource that may materially impair significance. (AR 2384; Guidelines, § 15064.5 subd.(b) subd.(1).) However, it then failed to address *any* NFL *use*-related impacts to the "immediate surroundings" in the Arroyo Seco's historic districts, instead solely considering [the lack of] *construction*-related impacts. (AR 2395-2396.)

Topical Response 2 did not correct the EIR deficiency. The City failed to proceed in the manner required by law in certifying and relying upon an EIR without a cultural resources section describing impacted resources, considering direct and indirect project impacts, and formulating appropriate alternatives and mitigation measures. This is no small thing. As explained by the California Supreme Court in *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, p. 124, "Under CEQA, a public agency must . . . consider measures that might mitigate a project's adverse environmental impact and adopt them if feasible. (§§ 21002, 21081.)" The Court reiterated "CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation

measures." (*Id.,* p.134; see *Vineyard Area Citizens, supra,* 40 Cal.4th 412, p. 447; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, p. 1350.)

The peremptory writ should direct the City to comply with CEQA in revising the EIR to adequately analyze and feasibly mitigate project impacts to historic and cultural resources.

Environmental Impact Analysis. In addition to an overarching failure to address the "whole of the action' as a baseline for studying environmental impacts and identifying feasible alternatives and enforceable mitigations, the EIR was inadequate in many other respects. The administrative record contains voluminous thoughtful comments from area residents as well as technical expert analyses and the studied opinions of each City Planning Commissioner and other appointed officials, regarding the EIR's inadequately-addressed and inadequately-mitigated environmental impacts. (*E.g*., AR 2397-2994 [EIR comments]; 3543- 3618 [miscellaneous individual letters]; 3788-4144 [public hearing minutes and transcripts of the Planning Commission, Recreation and Parks Commission, and City Council]; 5400-5414 [extensive individual comments of Planning Commissioner Vince Farhat].) The sheer volume of the comments is overwhelming. A few key issues are summarized below:

1. Air Quality/Traffic. Air quality, public safety, and fire response services are interrelated, they generally relate to the significant traffic impacts of an NFL/Rose Bowl lease.

In October 2012, the South Coast Air Quality Management District (AQMD) provided copious comments on the Draft EIR, requesting additional analysis and mitigation for project-related and cumulative air quality impacts. (AR 2403-2407.) The AQMD noted that significant impacts would attend the "high traffic volumes" resulting from NFL games at the Rose Bowl Stadium. (AR 2403.) "Particularly noteworthy is that the project's NOx emissions are at least 22 times higher than threshold." (AR 2405.)

The AQMD pointedly directed that the City impose comprehensive mitigation measures already formulated for the Farmer's Field project in Los Angeles. (AR 2403-2407.) The City declined. Following publication of the Final EIR with responses to comments, in November 2012 the AQMD again wrote to the City and objected to its "commitment to only nominal

mitigation measures" and failure to adopt additional feasible mitigation. (AR 3780-3782.)

The AQMD also queried about the potential use of fireworks, which would require study and mitigation for air quality impacts. (AR 2407.) The EIR response was that there was currently no plan to allow or include fireworks at the NFL events and so there were no air quality impacts requiring study. (AR 2412.) This circles back to the EIR's failure to address the "whole of the action" in conjunction with NFL representatives. The NFL did not even comment on the EIR, much less address this specific point; the Court may take judicial notice that fireworks at large sporting events nation-wide are not unusual or unexpected. And the City knows that fireworks are already occurring (and are often controversial) at major Rose Bowl events. Yet the EIR declined to address fireworks; the City thus failed to respond adequately to comments. (*See post*, pp. 24-25.)

The AQMD also requested that the EIR provide further technical analysis of assumptions regarding the projected travel distances of event visitors, which directly affect air quality impacts. (AR 2307.) The EIR response was that it believed its data was reasonable, that since there was not currently an NFL team in Los Angeles there was no available data, and that since air quality impacts were already concededly to be significant and unavoidable there was no need to expand the analysis. (AR 2413.) This was error. As held in *Santiago County Water District v. County of Orange, supra,* 118 Cal.App.3d. 818, an agency must evaluate "how adverse the adverse impact will be." (*Id*., p. 831.) The technical analysis requested by AQMD is required.

The Metropolitan Transportation Authority (Metro) also criticized the EIR air quality analysis, stating in part that since additional metro rail/bus service will be required to meet project transportation needs, the "project sponsor" should fund such service. (AR 2415.) The EIR's inadequate response was that Metro's comments would be forwarded to the City Council and that, further, Metro needed to increase its service outside of Pasadena's jurisdiction. (AR 2418.) The analysis and response was inadequate, once again reflecting the lack of open NFL involvement in the project analysis and mitigation. Since the project objectives were based on economics, the unknown costs of mitigation are relevant and affect its required enforceability as well as the project's net impacts and net economic benefits.

Among other comments relating to traffic and related environmental issues, Caltech

professors Dianne Newman, John Seinfeld, and Jonas Peters addressed the Draft EIR air quality analysis in Letters 43, 47, 48, 49. (AR 2385, 2386, 2671-2677, 2682-2711.) After the responses to comments were published, Dr. Peters provided further technical analysis, agreeing with the comments provided by the AQMD and demonstrating that the EIR did not use appropriate methodology or determine baseline pollutants in the Rose Bowl Stadium area and surrounding neighborhoods in the Arroyo Seco. (AR 3546.) "We need … specifically measured data close to the project site, instead of models that play with the numbers." Dr. Peters explained that Caltech experts were willing to assist in providing data and analysis. (AR 3546-3547.)

Similarly, in in *Berkeley Keep Jets Over the Bay Committee v. Port of Oakland* (2001) 91 Cal.App.4th 1344, up-to-date assessment and mitigation of air pollutants using available technology was required to comply with CEQA. (*Id.,* pp.1364-1367.) The California Supreme Court recently underscored the importance of adequate baseline analysis in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

The EIR's air quality and traffic analysis should be revised and recirculated for public comment in order to comply with CEQA.

2. Recreation and Aesthetics. The "displacement events" proposed at the Rose Bowl to accommodate the NFL lease with crowds of tens of thousands are actually "displacing" other users of the Arroyo Seco, including residents and recreational visitors. As noted by the Linda Vista-Annandale Association, however, the EIR failed to provide a baseline study of "actual recreational users" of the Arroyo Seco. (AR 4763-4764.) As discussed above, environmental impacts must be calculated, and mitigated, from a documented baseline. The City knows that many thousands of residents and visitors enjoy the recreational amenities of the Arroyo, but no analysis was done to determine the numbers or to reasonably calculate where else those recreation-bound users will go. The EIR is inadequate and requires revision.

A related point concerns mitigation for recreational and aesthetic impacts. Visitors attending NFL games at the Rose Bowl Stadium park and have tailgate parties on the Brookside Golf Course, and pedestrians use the greens. The Court will note that the administrative record is full of complaints and photographs of extensive litter and trash known to attend major Rose

Bowl events. (*E.g*., AR 3563-3585, 3588-3605, 3609-3612.) The City thus committed to repair of any damage and removal of all trash and toxic substances within 24 hours. (AR 2372.) But as the Linda Vista-Annandale Association explained, a 24-hour timetable to repair NFL-related damage is not realistic and costs have not been assessed; golf course greens are now barely repaired months after the UCLA football season ends. (AR 4765-4766.) Mitigation under CEQA does not include study; the EIR itself must study and adopt mitigation for repair of physical impacts to the Arroyo along with analysis and mitigation of impacts of displaced recreation.

3. Public Services. Project-related impacts to police and fire protection are subject to CEQA review. (*E.g*,. *Mani Brothers v. City of Los Angeles* (2007) 153 Cal.App.4th 1385.) The San Rafael Neighborhood Association underscored serious fire protection issues, in particular, in its comments on the Draft EIR, noting that while City staff had acknowledged that there would be an increased demand for emergency services upon approval of an NFL/Rose Bowl no analysis occurred other than anecdotal reporting from the Pasadena Fire Department. (AR 2501-2505.) The EIR provided no response to queries about fire protection services, but asserted that no increase in services would be required. (AR 287, 2506.)

As to project impacts relating to police protection , the EIR stated that no increase in personnel would be needed. (AR 287, 327.) The EIR acknowledged that current Rose Bowl Stadium events require police helicopters to assist in traffic control, as well as police-manned traffic barricades and control measures, crowd control, and crime responses. (AR 211, 239, 271, 305, 307, 310, 317, 319-327, 372, 403-404, 543.) But public concerns about the need for increased police services focused not only on traffic but on alcohol-related issues: "NFL fans can be rowdy and engage in drinking and fighting. We will need additional police to protect the Bowl area and our residential area." (AR 556.) Further, large numbers of people attending NFL events increase demand for police and fire personnel, and police response to emergency events would reduce response times in other parts of the City. (AR 561, 567, 579, 587, 617-619 [baseline study of public service needs requested by Linda Vista-Annandale Association], 2468-2478, 2600, 2627, 2639, 3599 [documenting crime associated with alcohol abuse by fans].)

In response to comments, the EIR stated that the City police and fire departments have

sufficient resources to handle the proposed NFL events, *but* that if increases in staffing turn out to be necessary to accommodate the NFL at the Rose Bowl "the City could use funding associated with the project" to meet that need. (AR 2489-2490, 2493.)

The City's reliance on conclusory statements by its police department that it has "adequate services to serve the proposed project" was unwarranted. (AR 2578, 3842 [City staff concedes there was "no analysis at all"].) It is belied by Arroyo residents' experience with gridlock in the Rose Bowl Stadium environs during major events. (AR 3921-3922.) Of note is that in December 2012, one month after the City approved the NFL/Rose Bowl project, the City Council approved a contract for up to $200,000 a year for "supplemental traffic control services at special events within the City," including Rose Bowl Stadium events, based on a categorical exemption from CEQA. (Request for Judicial Notice.) The City was necessarily aware of this pending contract, and was certainly aware of the need for additional traffic control for major Rose Bowl Stadium events, when it certified the EIR and approved the NFL project.

The EIR analysis of police and emergency services and mitigation requires revision.

4. Inconsistencies with General Plan and Specific Plans. The EIR also inadequately analyzed project inconsistencies with Pasadena's general and specific plans.

In relevant part, the EIR found the project to be consistent with objectives to "conserve and enhance" the preservation and protection of the Arroyo Seco and adjacent open space, because it would "promote Pasadena" and "provide funding for successful completion of the Rose Bowl renovation project." (AR 2376.) The project was also proclaimed consistent with the objective to balance recreational and open space needs because the increase in large events at the Rose Bowl would not be permanent. (AR 2377.) The project was similarly found consistent with the policy to preserve, restore, and maintain recreation options because restriction of recreational uses at the Rose Bowl would be temporary and the site will continue to provide open space. (AR 2378.)

The City provided an additional mitigation measure in the Final EIR, requiring development of a plan to monitor park use during event days and to "develop a strategy for repairing or improving parks and recreational areas as necessary to address potential increased

usage on event days." (AR 2379.) The City would fund any repairs or improvements. (*Ibid*.)

Members of the Planning Commission were among those who disagreed with the findings of plan consistency, and were adamant in their professional opinions that the EIR had not adequately analyzed or mitigated material plan inconsistencies, particularly related to significant impacts on recreation and public services in the Arroyo Seco. (*E.g*., AR 3840-3841, 3895-3896, 3910-3011, 3925, 3933-3944, 4091, 5407.) A writ should issue on that basis.

Responses to Comments. Every lead agency is required to provide a "good faith, reasoned analysis" in response to comments on the EIR; "[c]onclusory statements unsupported by factual information will not suffice." (Guidelines, § 15088, subd. (b); *see Laurel Heights Improvement Association. v. Regents of the University of California* (1993) 6 Cal.4th 1112, p. 1124.) When a comment raises a significant environmental issue, the lead agency must address the comment "in detail giving reasons " why the comment was not accepted.

Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813 explains that detailed EIR responses "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug." (*Id*., p. 820.) And last year, *Flanders Foundation v. City of Carmel-by-the Sea* (2012) 202 Cal.App.4th 603 affirmed a trial court's issuance of a peremptory writ when an EIR failed to respond to a comment proposing a reduced-size parcel for an environmentally damaging project. (*Id*., pp. 616-617, italics in original.)

The Coalition has already discussed many of the EIR's inadequate responses to comments relative to analysis of historic resource impacts (*ante*, pp. 18-19), air quality and traffic (*ante*, pp. 19-21), police and fire services (*ante*, pp. 21-22), and inconsistencies with adopted plans (*ante*, p. 22). The Linda Vista-Annandale Association provided the City with a list of the inadequate responses to its own EIR comments. (AR 3606.) In addition to underscoring the inadequate analysis in the Draft EIR, the EIR's failure to respond to comments is its own separate CEQA violation, as explained above, and warrants issuance of a peremptory writ.

C. Planning Commission Authority

Finally, the Coalition contends that the City failed to act in the manner required by law because it refused to allow the Planning Commission to review and make recommendations on the NFL EIR and project as the Commission requested. (*Ante*, p. 4.) Commissioners made only individual comments. As detailed by Commissioner Richard Norton, the duties of a Planning Commission under local and state law include advising decisionmakers regarding adoption, implementation, and carrying out the general plan. (Government Code, § 65103; Pasadena Municipal Code, § 2.105.110 B; AR 3910, 5289-5291.)

The Commission must be allowed to perform its statutory duties.

Conclusion

The Coalition frankly intended to narrow the issues presented to the Court, but the NFL/Rose Bowl project presents a truly unusual panoply of serious and wide-ranging environmental violations that warrant judicial review.

A peremptory writ is respectfully requested in the public interest to set aside the City's approvals in furtherance of the NFL/Rose Bowl project. The City should be ordered to refrain from further consideration of the project pending certification of an adequate EIR — addressing the whole of the action — and to thereafter fully comply with CEQA in taking action based on findings supported by substantial evidence.

November 11, 2013

Respectfully submitted,

BRANDT-HAWLEY LAW GROUP

Susan Brandt-Hawley
Attorney for Petitioners

Coalition for Preservation of the Arroyo, et al. v. City of Pasadena, et al.
Los Angeles County Superior Court Case No. BS141038

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to this action. My business address is P.O. Box 1659, Glen Ellen, California 95442.

On November 12, 2013, I served one true copy of:

Opening Brief in Support of Petition for Writ of Mandamus

_____By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Glen Ellen, California addressed to the persons listed below.

_____By placing a true copy enclosed in a sealed envelope with prepaid postage by overnight mail in Sonoma, California addressed to the persons listed below.

___✓___By emailing a copy to counsel as listed below.

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I declare under penalty of perjury that the foregoing is true and correct and is executed on November 12, 2013, at Glen Ellen, California.

Jeanie Stapleton