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April 14, 2008

By Overnight and facsimile
Nancy Fong, AICP
Community Development Director
City of Diamond Bar
21825 Copley Drive
Diamond Bar, CA 91765-4178

RE: Notice of Preparation of Draft Program Environmental Impact Report for Aera Master Planned Community

Dear Ms. Fong:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Notice of Preparation ("NOP") of the Draft Environmental Impact Report ("DEIR") for the Aera Master Plan, dated May 2, 2007.¹

The Aera Master Planned Community (Project or Aera Project) is a residential and commercial development project, approximately 1,940 acres of which would be annexed to the City of Diamond Bar. The Diamond Bar portion of the Project will include 2,800 residential units with 200,000 square feet of commercial space, public parks and recreation uses, and public open spaces and related public facilities. Smaller portions of the project will be located in Los Angeles and Orange Counties.

It is our understanding that the land proposed for the Project constitutes 3,000 acres of ecologically sensitive open space that is now being used as an oil production field and for light cattle grazing. According to information submitted to the City by the Hillside Open Space Education Coalition ("HOSEC"), the project includes portions of the Puente-Chino Hills Wildlife Corridor, an area that has been designated as one of the world's 20 "Hot Spots of

¹The Attorney General provides these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Govt. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

Biodiversity.” The Project was originally proposed for permitting by Los Angeles County. Because a portion of the Project area is designated as a significant ecological area, in March 2006, the County Significant Ecological Area Technical Advisory Committee (“SEATAC”) recommended a substantial redesign of the Project to avoid harming the sensitive habitat, rather than relying on offsite mitigations:

SEATAC recommends substantial redesign of the Project that preserves as open space areas of the site that are currently most ecologically functional, rather than a design that proposes restoration and habitat creation as mitigation for the destruction of the site’s most valuable resources.

(Draft Minutes of SEATAC Meeting of March 27, 2006.)

Aera then withdrew the application and resubmitted the Project to the City of Diamond BAR, which has issued an initial study and NOP of an EIR.

While the NOP and Initial Study address air quality among the environmental impacts, they do not address emission of greenhouse gasses (GHG), which contribute to global warming. We understand, however, from discussion with you, that the DEIR will address GHG emissions and global warming. Any such discussion should inventory all of the sources of GHG emissions, both direct and indirect,² that will result from the project during all of its phases,³ as well as the cumulative effect of the Project’s emissions.

If the City determines that the impacts from GHG emissions are significant, it must impose requirements to mitigate the impacts of those emissions to the extent feasible.⁴ The mitigation measures must be enforceable and the benefits quantifiable.⁵ There are numerous sources for such mitigation measures.⁶

²Guidelines § 15358, subd. (a)(1), (2) (effects include direct or primary effects and indirect or secondary effects).

³Guidelines § 15125 (“All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation.”)

⁴CEQA requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code §§ 21002.1(b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

⁵See Publ. Res. Code § 21081.6(b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 [agency must take steps to ensure mitigation measures “are fully enforceable through permit conditions, agreements, or other measures.” (quoting Pub. Res. Code § 21081.6(b))].

⁶ See, e.g., <http://ag.ca.gov/globalwarming/ceqa.php> [list of mitigation measures on Attorney General’s website]; www.gosolarcalifornia.ga.gov/nshp [discussing the California

Further, the DEIR must discuss a “range of reasonable alternatives to the project or to the location of 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.”⁷ Because the SEATAC has reviewed the project and noted that it should be significantly redesigned in order to preserve as open space areas of the site that are currently most ecologically functional, rather than relying on restoration and habitat creation as mitigation for the destruction of the site’s resources, the redesigned project should be one of the alternatives considered in the EIR. All alternatives must be adequately described, and the environmental effects from each of the alternatives must be quantified and discussed in detail.

We would be happy to discuss these or any other issues with representatives of the City and look forward to working with you to ensure that the environmental review for the Aera Project fully complies with the requirements of the law.

Sincerely,

/S/

SUSAN S. FIERING
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

Energy Commissions’ New Solar Homes Partnership which provides rebates to developers of six units or more who offer solar power on 50% of the new units] www.energy.ca.gov/efficiency/lighting/outdoor_reduction.html and www.newbuildings.org/lighting.htm [energy efficient lighting]; www.energy.ca.gov/title24/2005standards/ [feasible green building measures identified by the California Energy Commission’s Compliance Manuals]; www.vtpi.org/park_man.pdf [discussion of parking management programs that provide environmental benefits].

⁷ Guidelines § 15126.6(a).