Appendix Q
Responses to Comments

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DEIR CIRCULATED: March 30, 2009, through May 14, 2009
RECIRCULATED DEIR CIRCULATED: December 23, 2009, through February 5, 2009
FINAL EIR CERTIFIED:

RESPONSES TO COMMENTS

ENVIRONMENTAL IMPACT REPORT FOR IRVINE BUSINESS COMPLEX VISION PLAN AND MIXED USE OVERLAY ZONING CODE

prepared for:

CITY OF IRVINE

Contact:
Bill Jacobs, AICP
Principal Planner

prepared by:

THE PLANNING CENTER

Contact:
William Halligan, Esq.
Vice President,
Environmental Services

DECEMBER 2009

RESPONSES TO COMMENTS

ENVIRONMENTAL IMPACT REPORT FOR IRVINE BUSINESS COMPLEX VISION PLAN AND MIXED USE OVERLAY ZONING CODE

prepared for:

CITY OF IRVINE

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COI-21.0E

DECEMBER 2009

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1. Introduction

1.1 INTRODUCTION

The Draft Environmental Impact Report (DEIR) for the IBC Vision Plan and Mixed Use Overlay Zoning Code was first circulated for a 45-day public review period from March 30, 2009 to May 14, 2009. On December 22, 2009, the City released the DEIR for an additional 45-day public review. The Recirculated DEIR contains minor revisions to the Project Description and a new traffic study based on discussions with various stakeholders with an interest in the IBC. Other revisions to the DEIR have been made based on comments received on the previously circulated DEIR. This document includes responses to comments on the previous Draft EIR.

In accordance with Section 15088.5(f)(1) of the CEQA Guidelines, the entire document is being Recirculated, and as a result, the City of Irvine requests that agencies and interested parties submit new comments on the Recirculated DEIR. However, the previous comments are part of the administrative record, and the responses contained herein direct the commenter to the section of the Recirculated DEIR where they can find additional information regarding their comment. The following responses to comments also contain clarifications and additional information as part of a formal response. Consistent with Section 15088.5(f)(1), the City of Irvine need only respond to those comments submitted in response to the Recirculated DEIR.

1.2 FORMAT OF THE RESPONSE TO COMMENTS

This document is organized as follows:

Section 1, Introduction. This section describes CEQA requirements and the content of this Response to Comments.

Section 2, Response to Comments. This section provides a list of agencies and interested persons commenting on the DEIR; copies of comment letters received during the public review period, and individual responses to written comments. To facilitate review of the responses, each comment letter has been reproduced and assigned a number (A-1 through A-18 for letters received from agencies and O-1 through O-8 for letters received from organizations). Individual comments have been numbered for each letter and the letter is followed by responses with references to the corresponding comment number.

Section 3. Responses to Public Hearing Comments. This section contains responses to oral comments made at various public hearings held on the project.

1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204(a) outlines parameters for submitting comments, and reminds persons and public agencies that the focus of review and comment of DEIRs should be "on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. …CEQA does not require a

lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR."

CEQA Guidelines Section 15204(c) further advises, "Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence." Section 15204 (d) also states, "Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility." Section 15204(e) states, "This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section."

2. Response to Comments

Section 15088 of the CEQA Guidelines requires the Lead Agency (City of Irvine) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the DEIR and prepare written responses.

This section provides all written responses received on the DEIR and the City of Irvine's responses to each comment.

Comment letters and specific comments are given letters and numbers for reference purposes. Where sections of the DEIR are excerpted in this document, the sections are shown indented. Where changes to the DEIR text have been made, the response directs the commenter to the appropriate section of the Recirculated DEIR.

The following is a list of agencies and persons that submitted comments on the DEIR during the public review period.

Number Reference	*Commenting Person/Agency*	*Date of Comment*	*Page No.*
Agencies			
A1	Airport Land Commission for Orange County	May 13, 2009	2-3
A2	City of Costa Mesa, Development Services Department	May 14, 2009	2-11
A3	Department of Toxic Substances Control	April 29, 2009	2-15
A4	Irvine Unified School District Construction and Facilities	May 12, 2009	2-21
A5	Irvine Ranch Water District	May 13, 2009	2-27
A6	John Wayne Airport	May 14, 2009	2-31
A7	Orange County Public Works	May 14, 2009	2-35
A8	Orange County Transit Authority	May 13, 2009	2-41
A9	Remy, Thomas, Moose and Mandley, LLP	April 15, 2009	2-45
A10	Remy, Thomas, Moose and Manley, LLP	May 5, 2009	2-49
A11	Remy, Thomas, Moose and Manley, LLP	May 14, 2009	2-149
A12	City of Santa Ana	May 14, 2009	2-265
A13	Santa Ana Unified School District	May 13, 2009	2-269
A14	Southern California Association of Governments	May 14, 2009	2-273
A15	Southern California Gas Company	April 3, 2009	2-281
A16	State of California Department of Transportation	May 12, 2009	2-285
A17	State Clearinghouse	May 18, 2009	2-291
A18	University of California Irvine	May 14, 2009	2-295
Individuals			
I1	William Treseau	May 14, 2009	2-301
Organizations			
O1	Gabrielino~Tongva Tribe	April 6, 2009	2-305
O2	Industrial Environmental Association	May 11, 2009	2-313
O3	Law Offices of Robert C. Hawkins	May 14, 2009	2-355
O4	Sheppard Mullin	April 15, 2009	2-421
O5	Sheppard Mullin	April 16, 2009	2-431

Number Reference	Commenting Person/Agency	Date of Comment	Page No.
O6	Sheppard Mullin	April 30, 2009	2-439
O7	Sheppard Mullin	May 14, 2009	2-469
O8	Sapetto Group, Inc.	May 14, 2009	2-603
09	Sheppard Mullin	April 21, 2009	2-609

LETTER A1 – Airport Land Commission for Orange County (3 pages)

AIRPORT LAND USE COMMISSION
FOR ORANGE COUNTY
3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

May 13, 2009

Mr. Bill Jacobs, Principal Planner
City of Irvine/Community Development
P.O. Box 19575
Irvine, CA 92623

Subject: Comments on DEIR for Irvine Business Complex (IBC) Vision Plan and Mixed-Use Overlay Zoning Code (SCH #2007011024)

Dear Mr. Jacobs:

The Airport Land Use Commission (ALUC) for Orange County has reviewed the Draft Environmental Impact Report (DEIR) for the IBC Vision Plan and Mixed-Use Overlay Zoning Code and respectfully requests that the following comments be addressed as part of the Final EIR:

1. Section 5.6, Hazards and Hazardous Materials, should include discussion of potential impacts to the Federal Aviation Regulation Part 77 notification and obstruction imaginary surfaces associated with John Wayne Airport (JWA), and impacts of structures that may penetrate the airspace above these surfaces. To mitigate any impact related to these imaginary surfaces, the ALUC, at its meeting of April 30, 2009 recommended, and City of Irvine staff agreed, that additional language would be added to Zoning Code Section 5-8-4.C as follows: A1-1

   "Building heights shall not penetrate Federal Aviation Regulation (FAR) Part 77 Imaginary Surfaces for John Wayne Airport. Additionally, in accordance with FAR Part 77, structures penetrating the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alteration with FAA."

   We recommend that identical language be added as Project Design Feature (PDF) 6-3 in the EIR.

2. Section 5.6, Hazards and Hazardous Materials, should include discussion of potential impacts related to IBC uses within JWA Safety Zones 2, 3 and 4. The EIR should specifically identify that residential uses within Safety Zone 3 are not compatible and that a portion of the Urban Neighborhood District falls within Safety Zone 3. To mitigate impacts related to Safety Zone 3, the ALUC, at its meeting of April 30, 2009 recommended, and City of Irvine staff agreed, that additional language would be added to Zoning Code Section 5-8-4.C as follows: A1-2

   "Residential uses are not permitted within JWA Safety Zone 3."

   We recommend that identical language be added as Project Design Feature (PDF) 6-4 in the EIR.

3. Information related to Heliports, which are a permitted use within the City, should be addressed in DEIR Chapter 5.6. On April 30, 2009, as a result of ALUC comments related to Heliports, City staff agreed to include language as part of revised Zoning Code Section 9-36-21 which addresses Heliport permitting procedures as follows:

   "Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics." A1-3

4. Section 5.9.1, Environmental Setting/Aircraft Noise, should clarify the source of information on Figure 5.9-1. The "source" for the noise contours depicted in this Figure is not the *Airport Environs Land Use Plan for JWA,* but rather the *John Wayne Airport Access and Noise Report Annual Contours for 2008.* Additionally, because the noise contours vary from year to year, the EIR should state that the 1985 JWA Master Plan noise contours, as adopted by the County of Orange, and as included in the *Airport Environs Land Use Plan for JWA,* are the contours to be used for identifying noise impacts relative to JWA. Therefore, EIR noise impact identification and analysis for IBC must be based upon these JWA Master Plan contours. Figure 5.9-2 in the DEIR accurately depicts the 1985 JWA Master Plan noise contours. A1-4

5. The DEIR Noise Impact Section 5.9-6 discussion related to John Wayne Airport states that, "As shown in Figure 5.9-2, the Multi-Use and Urban Neighborhood District would not fall within the 65 dBA CNEL noise contour for the John Wayne Airport." This statement appears to be inaccurate. As shown in Figure 5.9-2, there is a small portion of the Urban Neighborhood District that does fall within the JWA Master Plan 65 dBA CNEL contour and would expose residential uses proposed within this district to significant noise impacts. It should be noted in the DEIR noise impact analysis that residential uses are not considered compatible uses within the JWA 65 CNEL Master Plan noise contour. The ALUC, at its meeting of April 30, 2009 recommended, and City of Irvine staff agreed, that additional language would be added to Zoning Code Section 5-8-4.C as follows: A1-5

   "Residential uses are not permitted within the 1985 John Wayne Airport Master Plan 65 CNEL contour."

   We recommend that identical language be added as Project Design Feature (PDF) 9-5 in the EIR.

6. At its meeting of April 30, 2009, the ALUC recommended, and City of Irvine staff agreed, that additional language would be added to Zoning Code Section 5-8-4.C as follows:

   "Sound Attenuation: For all residential dwelling units within the 60 CNEL contour of John Wayne Airport, the maximum interior noise levels shall not exceed 45 CNEL with windows closed, and shall not exceed the single event noise criteria outlined in the Noise Element of the City's General Plan."

   Project Design Feature (PDF) 9-4 should be modified to clarify that both the 45 dBA CNEL and Lmax noise standards will be utilized. The modified PDF 9-4 language is proposed as follows: A1-6

   "As described in the proposed zoning for the project, prior to issuance of building permits, the project applicant for any project within the 1985 John Wayne Airport Master Plan 60 dBA CNEL contour ~~of the John Wayne Airport~~ shall retain an acoustical engineer to prepare an acoustic analysis which identifies required building acoustical improvements (e.g., sound transmission class rated windows, doors, and attic baffling). The acoustic analysis shall be submitted to the

Director of Community Development to ensure compliance with the City's interior noise standards of 45 dBA CNEL, and 55 dBA Lmax(10) for single-event noise generated by the loudest 10 percent of aircraft overflights at the John Wayne Airport." A1-6 cont't.

7. The noise section of the DEIR should address noise impacts to any park areas proposed within the 60 dBA CNEL Master Plan contour of John Wayne Airport. Should park areas be developed within this contour, the ALUC has recommended outdoor signage be required notifying the users of aircraft overflight. At its meeting of April 30, 2009, the ALUC recommended, and City of Irvine staff agreed, that additional language would be added to Zoning Code Section 5-8-4.C as follows: A1-7

   "Parks located within the John Wayne Airport 60 CNEL contour shall include signage indicating proximity to John Wayne Airport and related overflight and noise."

   We recommend that identical language be added as Project Design Feature (PDF) 9-6 in the EIR.

Thank you for the opportunity to comment on the proposed IBC Vision Plan and Zoning documents. Please contact me at (949) 252-5170 or via email at krigoni@ocair.com if you require additional information or have questions regarding these comments.

Sincerely,

Kari A. Rigoni
Executive Officer

cc: Airport Land Use Commissioners
Alan L. Murphy, Director, John Wayne Airport

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A1. Response to Comments from Kari A. Ragoni, Executive Officer, Airport Land Commission for Orange County, dated May 13, 2009.

A1-1 Building Height limitations, recordation of avigation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided as required by the Federal Aviation Administration (FAA), Caltrans Division of Aeronautics, and the Orange County Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA). Building heights in the IBC shall not penetrate Federal Aviation Regulation (FAR) Part 77 Imaginary Surfaces for JWA.

At the request of the commenter, the Recirculated DEIR has been revised to include additional language in Zoning Code Section 5-8-4.C (see Appendix D) and in Project Design Feature (PDF) 6-1, which requires that building heights not exceed Imaginary Surfaces height limitation of FAR 77 and structures that do penetrate the 100:1 *Notification Surface* shall file a *Form 7460-1 Notice of Proposed Construction or Alternation* with FAA.

A1-2 At the request of the commenter, the Recirculated DEIR has been revised to include additional discussion on the land use compatibility for proposed land uses within JWA's Safety Zones. Additionally, at the request of the commenter, all residential land uses would be restricted within the JWA Safety Zone 3. This requirement has been incorporated into Zoning Code Section 5.8-4.C, as shown in Appendix D, and in PDF 6-4 of the Recirculated DEIR.

A1-3 No heliports or helistops are currently proposed as part of the IBC Vision Plan. However, at the request of the commenter, Zoning Code Section 5.8-4.C (see Appendix D) and PDF 6-4 of the recirculated DEIR have be amended to include requirements for new helistops/heliports in conformance with existing state, FAA, Airport Land Use Commission (ALUC) of Orange County, and Caltrans Division of Aeronautics regulations.

A1-4 Section 5-9, *Noise*, has been revised as part of the Recirculated DEIR for the proposed project. As part of the revised section, Figure 5.9-1 now includes the correct source for the noise contours, which is *John Wayne Airport (JWA) Access and Noise Report Annual contours for 2008*. In addition, the Recirculated DEIR Section 5.9 includes a discussion on the difference between this figure and Figure 5.9-2, which is based on the 1985 JWA Master Plan. These contours are the contours that were used for identifying airport-related noise impacts for the proposed project in the previously circulated DEIR and the Recirculated DEIR.

A1-5 Noise-sensitive residential and recreational areas are considered to be significantly impacted when noise levels exceed 65 dBA CNEL, not 60 dBA CNEL. In the previously circulated DEIR, a very small area of the IBC was within the 65 dBA CNEL contour of JWA, located directly across from the entrance to the airport. The commenter is correct that the statement in Impact 5.9-6 is inaccurate. The previously circulated DEIR incorrectly indentified that all residential areas within the IBC are located outside the 65 dBA CNEL noise contour of the JWA. The Recirculated DEIR has been revised based on this comment. At the request of the commenter, language has been incorporated in Zoning Code Section 5-8-4.C (see Appendix D) that would prohibit residential uses and active recreational areas within the 65 dBA

CNEL contour of the JWA (see Section 5-8-4.C. *Airport Restriction*, and Policy "B" of the City of Irvine General Plan Noise Element). This has also been included as PDF 9-4 in the Recirculated DEIR. Consequently, impacts would remain less than significant.

A1-6 While no significant JWA related exterior noise impacts were identified in the DEIR, there is the potential for roadway and aircraft noise levels to result in elevated interior noise levels that could potentially exceed the 45 dBA CNEL interior noise standard of the California Building Code (Title 21 and Title 24). However, this potential impact is mitigated with existing plans, policies, and procedures. Pursuant to the City's existing standard condition of approval (Standard Condition B.1), prior to the issuance of building permits for each structure or tenant improvement other than a parking structure, the applicant will need to provide an acoustic report detailing noise attenuation features integrated into the project design to ensure interior noise levels will not exceed 45 dBA CNEL (see EIR page 5.9-12, PPP 9-2). Because the entire IBC area is exposed to a multitude of transportation and stationary noise sources, this standard condition is required for all new noise-sensitive development. Consequently, residential land uses within the 60 dBA CNEL contour of the JWA would need to provide this report to ensure compliance with Title 21 and Title 24 of the California Building Code. In accordance with this standard condition and the requirements of the California Building Code, new development would be required to be sound insulated to achieve the 45 dBA CNEL interior noise standard.

In addition to the 24-hour average noise level interior noise standard of 45 dBA CNEL required by Title 21 and the AELUP, the City of Irvine requires residential uses constructed within the 60 dBA CNEL noise contour to also mitigate to achieve reduced interior noise levels generated by the loudest 10 percent of aircraft overflights to 55 dBA (i.e., 55 $L_{max}(10)$) through Policy "g" of the City of Irvine General Plan Noise Element. The City's single-event noise standard is in addition to the 45 dBA CNEL interior noise standard. The difference between the two standards is that the single-event noise standard is based on the loudest noise level generated by an aircraft overflight whereas the 45 dBA CNEL interior noise standard of the California Building Code averages noise levels over a 24-hour period.

At the request of the commenter, PDF 9-4 has been clarified in the Recirculated DEIR to identify that noise compatibility is required for both the 45 dBA CNEL and City of Irvine L_{max} single-event noise criteria. Additional language has also been added to Zoning Code Section 5-8-4.C, as shown in Appendix D.

A1-7 While the project would allow residential and recreational uses within the 60 dBA CNEL noise contour of the JWA, this does not represent a significant exterior noise impact. This is because the City's exterior noise standard is 65 dBA CNEL. The City of Irvine General Plan Noise Element is the basis for determining the noise compatibility criteria for the City. Table F-2, Land Use Noise Compatibility, of the City's General Plan identifies residential land uses to be normally compatible in a noise environment between 60 to 65 dBA CNEL and parks to be normally compatible in a noise environment of 65 dBA CNEL. In addition, Table F-1, Interior and Exterior Noise Standards, clearly identifies that 65 dBA CNEL is the noise compatibility standard of the City for residential and park land uses. Consequently, no exterior noise impacts would occur from aircraft noise from JWA. In addition, the

City of Irvine, Title 21, and Title 24 of the California Building Code require that interior noise levels in habitable rooms achieve noise levels of 45 dBA CNEL when noise-sensitive uses are within the 60 dBA CNEL.

At the request of the commenter, the noise compatibility discussion has been revised in the Recirculated DEIR to clearly identify noise-sensitive park areas. In addition, at the recommendation of ALUC, the City of Irvine has incorporated language in Zoning Code Section 5-8-4.C (see Appendix D) that parks would include signage indicating their proximity to JWA and related airport noise. This language has also been incorporated in PDF 9-4 in the Recirculated DEIR.

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LETTER A2 – City of Costa Mesa, Development Services Department (2 pages)

CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

May 14, 2009

Bill Jacobs, AICP
Principal Planner
City of Irvine
P.O. Box 19575
Irvine, CA 92623-9575

Subject: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT – IRVINE BUSINESS COMPLEX (IBC)

Dear Mr. Jacobs,

Thank you for the opportunity to provide comments on the Notice of Preparation of the Draft Environmental Impact Report related to IBC Vision Plan. The City of Costa Mesa has the following comments related to traffic impacts:

The traffic study identified three locations in Costa Mesa that are significantly impacted with the proposed project. These locations are specified as follows:

- SR-55 Frontage Road at Baker Street;
- Red Hill Avenue at Paularino Avenue; and
- Bristol Street at Anton Boulevard.

The study also determined certain mitigation measures at these locations and calculated a fair-share cost for these improvements.

The City of Costa Mesa is concerned about the impacts caused, mitigations determined and the fair share calculation. This is especially relative to SR-55 Frontage Road at Baker Street and Bristol Street at Anton Boulevard intersections, where the proposed mitigations exceed General Plan levels and there is no mechanism for the City to fund the remaining portion of the improvement. While the IBC project impact may need benefit from only a portion of the improvement, this benefit cannot be realized without the implementation of the entire improvement. Therefore, the City conducted a detailed review of the proposed improvements and determined some alternative improvements that would mitigate the intersections at a potentially lesser cost. However, the City will require that the City of Irvine accept full responsibility for these reduced improvement strategies. Each of the intersection is discussed individually below: A2-1

Building Division (714) 754-5273 • Code Enforcement (714) 754-5623 • Planning Division (714) 754-5245
FAX (714) 754-4856 • TDD (714) 754-5244 • www.ci.costa-mesa.ca.us

May 14, 2009
Mr. Jacobs
Page 2 of 2

SR-55 Frontage Road at Baker Street:

The proposed mitigation at this location is for the southbound direction. With the mitigation, this direction would be widened to provide one free-flow right-turn lane, two through lanes and two left-turn lanes. Based on review of the 2030 analysis with the project, the City of Costa Mesa determined the following alternative mitigation would result in acceptable level of service:

- Widen southbound approach to provide one right-turn lane, one through lane, one optional through/left-turn lane and one left-turn lane.

This reduces the project's mitigation to just adding one left-turn lane instead of two left-turn lanes.

A2-2

Red Hill Avenue at Paularino Avenue:

The City concurs with the Alternative 2 strategy presented by the EIR.

A2-3

Bristol Street at Anton Boulevard:

The proposed mitigation at this location includes addition of a 5th northbound through lane on Bristol Street and a 2nd eastbound right-turn lane. Both of these mitigations require acquiring significant right-of-way from adjacent properties and result in parking impacts. Following review of the intersection calculations, the City of Costa Mesa determined the following alternative mitigation that would result in acceptable level of service:

- Widen eastbound approach to provide 2nd right-turn lane; and
- Install overlap phasing for eastbound right-turn movement concurrent with the northbound left-turn movement.

It is likely that impacts to parking may be avoided during design process.

A2-4

If you have any questions, please contact Raja Sethuraman, Transportation Svs. Manager at (714)754-5032.

Sincerely,

Kimberly Brandt

KIMBERLY BRANDT AICP
Acting Development Svs. Director

cc: Raja Sethuraman, Transportation Svs. Manager
Claire Flynn, Principal Planner
Minoo Ashabi, Senior Planner

A2. Response to Comments Kimberly Brandt AICP, Acting Development Svs. Director, City of Costa Mesa, Development Services Department, dated May 14, 2009.

A2-1 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A2-2 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A2-3 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A2-4 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

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LETTER A3– Department of Toxic Substances Control (2 pages)

Department of Toxic Substances Control

Maziar Movassaghi, Acting Director
5796 Corporate Avenue
Cypress, California 90630

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

April 29, 2009

Mr. Bill Jacobs, AICP
Principal Planner
City of Irvine Community Development Department
PO Box 19575
Irvine, California 92604
bjacobs@ci.irvine.ca.us

NOTICE OF COMPLETION AND AVAILABILITY OF AN ENVIRONMENTAL IMPACT REPORT FOR IRVINE BUSINESS COMPLEX (PLANNING AREA 36) PROJECT,(SCH # 2007011024), CITY OF IRVINE, ORANGE COUNTY

Dear Mr. Jacobs:

The Department of Toxic Substances Control (DTSC) has received your submitted Notice of Preparation of a draft Environmental Impact Report (EIR) No. 471 for the above referenced project. Your document states: "The 2,800 acres Irvine Business Complex (IBC) comprises Planning Area 36 in the City of Irvine, in south/central Orange County. The IBC Vision Plan and Mixed Use Overlay Zoning Code (proposed project) would allow for an increase in total units in the IBC (Planning Area 36) from 9,401 units to 15,000 units. The IBC is generally bounded by the former Tustin Corps Air Station (MCAS) to the north, the San Diego Creek channel to the east, John Wayne Airport and Campus Drive to the south and State Route 55 (SR-55) to the west. The IBC is bordered by the cities of Newport Beach to the south, Santa Ana and Costa Mesa to the west, and Tustin to the north. A 40-acre parcel of the IBC is detached and to the south of the main IBC boundary area, which is bounded by Jamboree Road, Fairchild Road, MacArthur Boulevard, and the San Joaquin Marsh and is adjacent to the City of Newport Beach. The IBC consists of a range of industrial, office, commercial, and residential uses." DTSC has the following comments:

1) DTSC provided comments on the project Notice of Preparation (NOP) on February 6, 2006 and October 21, 2008. The draft EIR does not address those comments; please address those comments in the EIR for the proposed project. A3-1

2) If necessary, DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. A3-2

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For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

A3-2 cont'd.

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov or by phone at (714) 484-5491.

Sincerely,

Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program - Cypress Office

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
1001 I Street, 22nd Floor, M.S. 22-2
Sacramento, California 95814
nritter@dtsc.ca.gov

CEQA#2523

A3. Response to Comments from Greg Holmes, Unit Chief, Department of Toxic Substances Control, dated April 29, 2009.

A3-1 The California Department of Toxic Substances Control (DTSC) prepared a comment letter on the second Notice of Preparation on October 21, 2008. Pursuant to this letter, DTSC requested the following;

- Environmental investigations be conducted under an approved Workplan and findings of any environmental assessments (closure, certification, or remediation approvals) be included in the environmental document for development projects in the IBC Vision Plan.

  Based upon a review of available databases, the project area includes properties with hazardous substance releases that are classified as "open" (i.e. undergoing investigation or remediation). Project implementation may result in the development of new residential and commercial land uses on or nearby contaminated sites. As stated in PDF 6-4 of the DEIR, the Proposed Overlay Zoning Code (Section 5-8-4, Special Development Requirements) would require that proponents submit sufficient data, as determined by the Director of Community Development for the City, so that the City may evaluate compatibility with soil/groundwater contamination. Sufficient data may include Phase I and II Environmental Site Assessment Reports, etc. Given the number of "open" cases and the fact that very few specific developments have been proposed at this time, it would be exhaustive to present such data in the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR. In addition, evidence of soil and/or groundwater contamination on the property under evaluation would result in notification of the oversight agency (DTSC, Orange County Health Care Agency, or Regional Water Quality Control Board [RWQCB]) who would determine the appropriate actions to be taken.

- If development projects within the IBC Vision Plan proposed to demolish buildings or other structures, that an investigation of hazardous chemicals, lead-based paints (LBP), mercury, and asbestos containing materials (ACM) be conducted as part of the environmental review. If the investigation uncovers the presence of such materials, than contaminants be required to be remediated in compliance with existing regulations.

  PPP 6-1 addresses the issue of underground storage tanks (USTs) and aboveground storage tanks (ASTs) identified during construction. PDF 6-3 states that the demolition of facilities, such as transformers and clarifiers, may present hazardous waste issues. Consequently the Director of Community Development, in conjunction with Orange County Health Care Agency (OCHCA), would issue project specific conditions as a condition of approval. PPPs 6-2 and 6-4 refer to compliance with lead-based paint regulations. The proper removal and disposal of asbestos-containing materials are discussed in PPP 6-4.

- If future development projects within the IBC Vision Plan require soil excavation or fill in an area with contaminated soil, that such soil be disposed of or remediated in accordance with existing regulations. In addition, if future

development requires import soil to backfill, soil sampling be conducted to ensure that soil is free of contamination.

As outlined in PPP 6-8, the appropriate oversight agency (i.e., DTSC, OCHCA, or RWQCB) would be notified if soil and/or groundwater contamination is encountered during the site investigation. Remedial efforts would be overseen by that regulatory agency. No construction would be permitted to occur at such locations until a "no further action" clearance letter or similar determination is issued by that agency, or until a land use covenant is implemented.

- If future development projects generate hazardous waste, such activities would be required to adhere to existing regulations including authorization from the local Certified Unified Program Agency (CUPA).

  The comment regarding excavation and filling with contaminated soil and the potential for Land Disposal Restrictions is noted. PPP 6-6 refers to compliance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5).

- Contact information for future environmental analyses under CEQA provide DTSC with contact information.

  Comment noted. No further response necessary.

In regards to the comments provided in the February 6, 2007 letter, the following responses are provided:

- As stated above, according to PDF 6-4, the Proposed Overlay Zoning Code would require that proponents submit sufficient data, as determined by the Director of Community Development, so that the City may evaluate compatibility with soil/groundwater contamination. Sufficient data would include a review of the agency databases mentioned, the identification of Border Zone Properties, and a hazard assessment for sensitive receptors. Given the number of "open" cases and the fact that very few specific developments have been proposed at this time, it would be exhaustive to present such data in the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR. In addition, evidence of soil and/or groundwater contamination on the property under evaluation would result in notification of the oversight agency (OCHCA, DTSC, or RWQCB) who would determine the appropriate actions to be taken.

- The appropriate oversight agency (i.e. OCHCA, DTSC, or RWQCB) would be notified if soil and/or groundwater contamination or hazardous waste and materials are encountered during site investigations on the subject property.

- The comment regarding excavation and filling with contaminated soil and the potential for Land Disposal Restrictions is noted. No further response necessary.

- The comment regarding contamination from historical agricultural uses and weed abatement is noted. No further response necessary.

- PPP 6-1 addresses the issue of ASTs and USTs encountered during site development. PDF 6-3 addresses the discovery of other facilities that may present hazardous waste issues, such as transformers and clarifiers. PPP 6-8 has been added to the Recirculated DEIR to address the discovery of potential soil and/or groundwater contamination, not associated with facilities.

  As stated above, the Proposed Overlay Zoning Code would ensure that sufficient data are provided to evaluate compatibility with the identified soil/groundwater contamination. No construction would be permitted to occur at such locations until a "no further action" clearance letter or similar determination is issued by that agency, or until a land use covenant is implemented.

The comment has been addressed in Section 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

A3-2 If DTSC has jurisdiction, the project proponent will prepare an Environmental Oversight Agreement or a Voluntary Cleanup Agreement and coordinate cleanup activities with DTSC.

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LETTER A4 – Irvine Unified School District Construction and Facilities (3 pages)

Irvine Unified School District
CONSTRUCTION AND FACILITIES
100 Nightmist, Irvine, CA 92618, 949/936-5306, FAX 949/936-5329, www.iusd.org

May 12, 2009

Mr. Bill Jacobs, AICP
Principal Planner
City of Irvine
Community Development Department
PO Box 19575
Irvine, CA 92623-0575

SUBJECT: NOTICE OF COMPLETION AND AVAILABILITY OF AN IMPACT REPORT FOR THE IRVINE BUSINESS COMPLEX
Project Title: Irvine Business Complex (IBC) Residential/Mixed Use Vision Plan and Overlay Zone (Planning Area 36) (State Clearinghouse No. SCH# 2007011024)

Dear Bill,

Thank you for the opportunity to respond to the impacts of this project on the Irvine Unified School District (District). Below is our response on the impacts this project development will have on our district:

1. This project lies within the attendance boundary for the following schools:

SCHOOL	DISTANCE FROM PROJECT	CURRENT CAPACITY	CURRENT ENROLL-MENT	AVAILABLE SEATS
Culverdale Elementary	1.6 Miles	652	620	32
Westpark Elementary	1.2 Miles	640	583	57
South Lake Middle	2.5 Miles	690	567	123
University High	2.9 Miles	2360	2356	4

A4-1

2. The District is currently short of elementary, middle and high school classrooms to serve the cumulative proposed development in the Irvine Business Complex. A4-2

BOARD OF EDUCATION
GAVIN HUNTLEY-FENNER, Ph.D. / SUE KUWABARA / CAROLYN McINERNEY / MIKE PARHAM / SHARON WALLIN
GWEN E. GROSS, Ph.D., Superintendent of Schools
LISA HOWELL, Assistant Superintendent, Business Services / CASSIE PARHAM, Assistant Superintendent, Education Services / TERRY WALKER, Assistant Superintendent, Human Resources
IUSD . . . providing the highest quality educational experience we can envision.

3. Since the Irvine Business Complex may contain a mix of single family attached and multi-family units, the district-wide student generation rates would apply for this project and are as follows:

GRADE LEVEL	DISTRICT-WIDE RATE
K-6	0.575
7-8	0.325
9-12	0.228
TOTAL	0.388

A4-3

4. The District currently charges Level 2 Developer Fees as required by law and a result of the Board adopted Developer Fee Justification Study approved on March 17, 2009. The amount required is $5.32 per residential square foot and $0.47 per commercial / industrial square foot.

A4-4

5. The District will need to place relocatable classrooms at each of the schools within this projects assigned attendance area. Our current elementary, middle and high schools are severely impacted. Additional development may require the district to study boundary changes and the need for new facilities to accommodate this development.

A4-5

6. The District is concerned that this project and others proposed in the Irvine Business Complex will have severe impacts on our schools and support facilities. The cumulative impact of this development may warrant the need for new school facilities to serve these students. Per our developer fee justification study, the true cost of mitigation to house students is $12.83 for all unit types (Single Family Detached, Single Family Attached and Multi-Family; therefore the developer fee required by law does not provide adequate facilities for District's needs.

A4-6

Mr. Bill Jacobs
May 12, 2009
Page 3

In addition, would you please make the following corrections within:

Item 5. Environmental Analysis/Public Services

Table 5.11-2: Please correct Woodbridge High School to read: ***University High School***
In addition, the current enrollment is listed on Page 1 of this letter.

Table 5.11-5: ***Level 2 Developer Fees = $5.32*** per square foot for residential development

Table 5.11-6 Tustin Unified School District

The proposed project would generate ***409*** additional students

If you need additional information or have any questions, please call me at (949) 936-5308.

A4-7

Sincerely,

Lorrie Ruiz
Assistant Director, Facilities Planning

C: Gwen Gross, Superintendent, IUSD
Lisa Howell, Assistant Superintendent/CFO, IUSD
Lloyd Linton, Director, Facilities & Construction Services, IUSD

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A4. Response to Comments from Lorrie Ruiz, Assistant Director, Planning Facilities, Irvine Unified School District, Construction and Facilities, dated May 12, 2009.

A4-1 Per this comment, Table 5.11-2 has been revised in the Recirculated DEIR to reflect the 2009 enrollment.

A4-2 Cumulative impacts of the proposed project on the Irvine Unified School District, were identified in Section 5.11.3.4 of the previously circulated DEIR, and are discussed in Section 5-11, *Public Services,* of the Recirculated DEIR.

A4-3 Per this comment, Section 5-11, *Public Services,* has been updated in the Recirculated DEIR to reflect the current Level 2 Developer Fees approved by the Board on March 17, 2009.

A4-4 Per this comment, Table 5.11-5 has been revised in the Recirculated DEIR to reflect the 2009 district-wide student generation rates.

A4-5 This issue is addressed in Section 5-11, *Public Services,* of the Recirculated DEIR.

A4-6 This issue is addressed in Section 5-11, *Public Services,* of the Recirculated DEIR.

A4-7 Per this comment, Section 5-11, *Public Services,* has been revised in the Recirculated DEIR.

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LETTER A5 – Irvine Ranch Water District (2 pages)

IRVINE RANCH WATER DISTRICT
15600 Sand Canyon Avenue • P.O. Box 57000 • Irvine, California 92619-7000 • (949) 453-5300 • www.irwd.com

May 13, 2009

William D. Jacobs, AICP, Principal Planner
City of Irvine
One Civic Center Drive
Irvine, CA 92713-9575

SUBJECT: ***IBC DRAFT ENVIRONMENTAL IMPACT REPORT***

Dear Mr. Jacobs:

The Irvine Ranch Water District (IRWD) has completed a review of the Draft Environmental Impact Report (EIR) for the Irvine Business Complex (IBC) dated March 2009. Please address the following comments:

- Pursuant to our previous Notice of Preparation comment letters (1/20/07 and 10/20/08) we acknowledge that the conceptual location for a community park has been removed from the IRWD property at the southeast corner of Michelson Drive and Carlson Avenue. However, we point out that Figure 3-4 (Vision Plan Framework) and other exhibits in the DEIR do not depict the future high-density residential development areas at this location. The exhibit gives the impression that these areas are planned for permanent open space. Please revise Figure 3-4 to depict the development areas. A5-1
- The description of the surrounding land uses (Page 4-8, first paragraph) should acknowledge that a significant portion of the San Joaquin Marsh is owned by the Irvine Ranch Water District. This narrative should also point out that IRWD operates a major water treatment facility at this location and that the southeast corner of Michelson and Carlson includes two areas designated as high-density residential development in the City's General Plan. Moreover, the IRWD property includes significant passive recreational areas and educational facilities directly adjacent to the IBC that are available to the public. These public facilities include several miles of walking trails, interpretive exhibits, the Audubon House, the Duck Club and public restrooms. A5-2
- Figure 5.13-2 (IBC Study Area Traffic Analysis Zones) in the body of the DEIR and Figure 1.2 of the Traffic Study (Appendix N-1) depict Traffic Analysis Zones (TAZ) for the IBC Study Area. TAZ 294 appears to include most of Planning Area 23 (San Joaquin Marsh), however, a TAZ polygon at the southeast corner of Michelson and Carlson does not include a TAZ identifier. This area is important since it is designated in the General Plan as High Density Residential. Please provide the correct TAZ reference number for this area and confirm that the Traffic Study included the correct land use attributes for this area. A5-3
- It is unclear in the Transportation and Traffic section of the DEIR or Appendix N-1 (Traffic Study) what assumptions were made regarding TAZ areas within the Study A5-4

Area, but outside the IBC boundaries. Please provide an explanation of the general assumptions for non-IBC TAZs. For example, what assumptions were used for the future development potential in Planning Area 23 (San Joaquin Marsh)? Please confirm that the traffic study assumed the General Plan buildout of 112,300 square feet of public facilities, 1,040 high-density residential units and open space (recreation and preservation). A5-4 cont'd.

- The Transportation and Traffic section of the DEIR concludes that the IBC project would result in deficiencies on various road segments and at certain intersections within the study area. Some traffic impacts are considered to be *significant unavoidable adverse impacts*, which will require adoption of a Statement of Overriding Considerations at the time of certification. IRWD requests that the Final EIR include language that the proposed changes to the IBC will not adversely impact the ability of IRWD to entitle and implement buildout of Planning Area 23 (San Joaquin Marsh), including institutional uses and future high-density residential pursuant to the General Plan. A5-5
- Figures N-8 (Regional Open Space) and N-9 (Local Open Space System) of Appendix C (Draft General Plan Amendment) do not depict the future residential development area designated in the General Plan for Planning Area 23 (San Joaquin Mash). Please revise. A5-6

Thank you for the opportunity to comment on the Draft EIR for the IBC Vision Plan

Respectfully,

Robert Jacobson, Treasurer

A5. Response to Comments from Robert Jacobson, Treasurer, Irvine Ranch Water District, dated May 13, 2009.

A5-1 Figure 3-4, *Vision Plan Framework*, has been updated accordingly in the Recirculated DEIR.

A5-2 This comment has been addressed in Chapter 4, *Environmental Setting*, of the Recirculated DEIR.

A5-3 This comment has been addressed in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A5-4 This comment has been addressed in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A5-5 The commenter requests that the EIR include language that the proposed changes to the IBC will not adversely impact the ability of IRWD to entitle and implement buildout of PA 23. IRWD supply and facilities planning is consistent with the general plans of the land use jurisdictions overlying IRWD. Consequently, presuming future development is generally consistent with existing general plans; IRWD does not anticipate any problems supplying water to any current or future development in the City of Irvine. This is discussed further in Section 5.14, *Utilities and Service Systems*.

A5-6 Figures N-8 and N-9 of the Draft General Plan Amendment have been modified to depict the future residential development area designated for Planning Area 23 in the General Plan (see Appendix C).

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LETTER A6 – John Wayne Airport (2 pages)

JOHN WAYNE AIRPORT
Orange County, California

Alan L. Murphy
Airport Director

May 14, 2009

Mr. Bill Jacobs, Principal Planner
City of Irvine/Community Development
P.O. Box 19575
Irvine, CA 92623

Subject: JWA Comments on DEIR for Irvine Business Complex (IBC) Vision Plan and Mixed-Use Overlay Zoning Code (SCH #2007011024)

Dear Mr. Jacobs:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) for the IBC Vision Plan and Mixed-Use Overlay Zoning Code. John Wayne Airport (JWA) requests that the following comments be addressed and included in the Final EIR for the project:

1. **Section 5.6, Hazards and Hazardous Materials:** Potential impacts of structures that may penetrate the Federal Aviation Regulation Part 77 notification and obstruction imaginary surfaces associated with John Wayne Airport (JWA) should be identified and analyzed. The airport believes that any buildings which penetrate the Federal Aviation Regulation (FAR) Part 77 imaginary surfaces (approach, horizontal or conical surfaces) should be considered a potentially significant impact and development above this imaginary surface is discouraged. It is unclear in the DEIR what the permitted building elevations (above mean sea level) would be in each of the Vision Plan/Zoning Overlay districts relative to these imaginary surfaces. We recommend mitigating any potential impacts by including a Project Design Feature (PDF) or mitigation measure stating that within the IBC area, building heights shall not penetrate Federal Aviation Regulation (FAR) Part 77 Imaginary Surfaces for John Wayne Airport. Additionally, in accordance with FAR Part 77, structures penetrating the FAA 100:1 Notification Surface shall file a Form 7460-1 "Notice of Proposed Construction or Alteration" with the FAA. A6-1

2. **Section 5.6, Hazards and Hazardous Materials**: The DEIR should specifically address Safety Zones for John Wayne Airport. Specifically, the DEIR should include discussion of potential impacts related to IBC uses within JWA Safety Zones 2, 3 and 4 and that residential uses within these Safety Zones are not compatible. A portion of the Urban Neighborhood District falls within Safety Zone 3. To mitigate any impacts within the Safety Zones, it is recommended that a PDF or mitigation measure be added specifying that residential uses are not permitted within JWA Safety Zones 2, 3 and 4 within the IBC. A6-2

3160 Airway Avenue
Costa Mesa, CA
92626-4608
949.252.5171
949.252.5178 fax
www.ocair.com

3. **Section 5.9-6 Noise:** John Wayne Airport does not support residential uses within the 1985 JWA Master Plan 65 dBA CNEL noise contour. A small portion of the Urban Neighborhood District appears to fall within this 65 dBA CNEL contour and would expose residential uses proposed within this area of the district to significant noise impacts. The DEIR noise impact analysis should note this potential impact. We recommend a PDF or mitigation measure be added that specifies that residential uses are not permitted within the JWA Master Plan 65 dBA CNEL noise contour. A6-3

4. **Section 5.9.1, Environmental Setting/Aircraft Noise, Figure 5.9-1:** The source information noted at the bottom of Figure 5.9-1 is noted as the *Airport Environs Land Use Plan for JWA*. This is incorrect. The source for this figure is the *John Wayne Airport Access and Noise Report Annual Contours for 2008*. The JWA noise impact analysis in the IBC EIR should not be based upon the 2008 contours, but rather upon the 1985 JWA Master Plan noise contours, as adopted by the County of Orange. Figure 5.9-2 in the DEIR accurately depicts the 1985 JWA Master Plan noise contours and should be used for analysis purposes. A6-4

Thank you for the opportunity to comment on the proposed IBC Vision Plan and Overlay Zoning Code Draft EIR. Please contact Kari Rigoni at (949) 252-5284, or via email at krigoni@ocair.com, if you require additional information or have questions regarding these comments.

Sincerely,

L.G. Serafini, P.E.
Deputy Airport Director, Facilities

cc: Alan L. Murphy, Director
Kari Rigoni, Planning Manager
Airport Land Use Commission for Orange County

2

A6. Response to Comments from L.G. Serafini, P.E., Deputy Airport Director, Facilities, John Wayne Airport, dated May 14, 2009.

A6-1 See response to Comment A1-1. Building Height limitations, recordation of avigation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided as required by the FAA, Caltrans Division of Aeronautics, and the Orange County AELUP for JWA. Building heights in the IBC shall not penetrate FAR Part 77 Imaginary Surfaces for JWA.

At the request of the commenter, the Recirculated DEIR has been revised to include additional language in Zoning Code Section 5-8-4.C (see Appendix D) and in PDF 6-1, which requires that building heights not exceed Imaginary Surfaces height limitation of FAR 77 and structures that do penetrate the *100:1 Notification Surface* shall file a *Form 7460-1 Notice of Proposed Construction or Alternation* with FAA.

A6-2 See response to Comment A1-2. At the request of the commenter, the Recirculated DEIR has been revised to include additional discussion on the land use compatibility for proposed land uses within JWA's Safety Zones. Additionally, at the request of the commenter, all residential land uses would be restricted within the JWA Safety Zone 3. This requirement has been incorporated into Zoning Code Section 5-8-4.C, as shown in Appendix D, and in PDF 6-4 of the Recirculated DEIR.

A6-3 See response to Comment A1-5. At the recommendation of ALUC, language has been incorporated in Zoning Code Section 5-8-4.C (see Appendix D) that would prohibit residential uses within the 65 dBA CNEL contour of the JWA (see Section 5-8-4.C. *Airport Restriction*, and Policy "B" of the City of Irvine General Plan Noise Element). This has also been included as PDF 9-4 in the Recirculated DEIR.

A6-4 See response to Comment A1-4. The 1985 JWA Master Plan noise contours are the contours that were used for identifying airport-related noise impacts for the proposed project in the previously circulated DEIR and the Recirculated DEIR. Section 5-9, *Noise*, has been revised as part of the Recirculated DEIR for the proposed project.

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LETTER A7 – Orange County Public Works (3 pages)

ORANGE COUNTY
OC Public Works
Our Community. Our Commitment.

Bryan Speegle, Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 834-2300
Fax: (714) 834-5188

NCL 09-014

May 14, 2009

Mr. Bill Jacobs
City of Irvine
Community Development Department
P. O. Box 19575
Irvine, CA 92623-0575

SUBJECT: Irvine Business Complex - Vision Plan and Mixed Use Overlay Zoning Code Environmental Impact Report

Dear Mr. Jacobs:

The above mentioned item is a Draft Environmental Impact Report (DEIR) for the Irvine Business Complex located in the City of Irvine.

The County of Orange has reviewed the DEIR and offers the following comments regarding flood and water quality concerns:

Flood

1. The proposed 2,800 acre IBC development may impact regional flood control facilities owned, operated, and maintained by OCFCD, including but not limited to: Lane Channel (F08), Barranca Channel (Fog), and Armstrong Channel (FO8SO1) that are located within San Diego Creek watershed. The Draft EIR does not contain the technical analyses needed to assess impacts to these facilities and support the EIR's conclusions and proposed mitigation measures. Prior to finalizing the EIR, these analyses need to be provided for our review and comment. We will forward comments in addition to the following after we have had an opportunity to review the technical analyses as a part of this EIR process. A7-1

2. The subject Draft EIR, Section 5, Environmental Analysis, makes extensive reference to and uses the research, findings, results of analyses and recommendations contained in the BC Master Drainage Study Update, by VA Consulting. This report needs to be included in the EIR. A7-2

3. The Draft EIR states on page 5.7-1 that Appendix K contains a study that evaluates the potential impacts to hydrology from implementation of the proposed project. The technical report in Appendix K deals only with water quality issues and does not include required discussion and analyses of the surface water hydrology and impacts to drainage systems, as also stated in Comment No. 1 above. These analyses need to be included for review and comment to ensure that existing hydraulic conditions of OCFCD drainage facilities are not worsened as a result of the project. A7-3

4. The Draft EIR, under Applicable Plans and Policies, lists the previous studies and reports, which among others, includes the hydrology report San Diego Creek through Newport Highway, dated 1974. It should be noted that only post-1986 hydrology reports that conform to our current criteria as specified in the 1986 Orange County Hydrology Manual (OCHM), its Addendum No. 1, and the Orange County Flood Control Design Manual are applicable. A7-4

5. We compared the numerical values in Table 5.7-1 on page 5.7-5 with County's approved hydrology reports for the Lane Channel (FOB) and Barranca Channel (F09). There are small discrepancies in tributary areas and peak discharges between the above table and the approved reports. The table also indicates that for Barranca Channel (F09), 100-year Expected Value discharges are approved. Please note that Expected Value discharges are only approved for Lane Channel (F08), not for Barranca (F09). Please check this table, and any other table included in the EIR, and revise as appropriate to accurately reflect the information contained in approved reports. A7-5

6. The City of Irvine should review and evaluate the proposed mitigation measures in order to ensure that the proposed improvements do not result in any existing flooding problem being shifted or transferred elsewhere. A7-6

7. In Sections, Flood Hazards, page 5.7-7, in the third paragraph which begins with 'These conditions may change ...", the reference to OCFCD needs to be deleted. The City of Irvine, as the floodplain administrator for areas within its boundaries, is responsible to ensure that all FEMA requirements applicable to the IBC project are met. Therefore, the City and not OCFCD will need to pursue any resulting map revisions with FEMA. A7-7

Water Quality

1. A map diagramming the locations of the projects within the IBC (Site Plans are presented in Chapter 3), along with locations of anticipated BMPs and impervious areas should be included in the EIR. A7-8

2. Please see Table 5.7-8 (Page 5.7-29). Table should be limited to categories applicable for the IBC projects, or particular categories linked to IBC projects need to be called out. A7-9

3. In addition to the general list of pollutants and BMPs provided, there should be a clear commitment that program level information will be linked to anticipated specific projects and incorporated into future project level EIRs. A7-10

If you have any questions, please contact Chris Uzo-Diribe at (714)834-2542.

Sincerely,

Laree Brommer, Manager
Land Use Planning

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A7. Response to Comments from Laree Brommer, Manager, Land Use Planning, Orange County Public Works, dated May 14, 2009.

A7-1 The Recirculated DEIR includes an evaluation of regional flood control facilities owned, operated, and maintained by the Orange County Flood Control District (OCFCD) that would potentially be impacted as a result of additional development in the IBC Vision Plan Area, including the Lane Chanel (F08), Barranca Chanel (F09), and Armstrong Channel (F08S01). A Master Drainage Study Update was prepared by VA Consulting (April 2009) for the Irvine Business Complex development area, which calculated the existing 100-year High Confidence and Expected Value flow rates as appropriate for the major drainage channels within the IBC and determined existing flood capacities. Mitigation measures were included in the EIR section to ensure individual project approvals will not worsen or exacerbate existing flood control conditions. A summary of the results have been included in the Recirculated DEIR, and the full study is included as a technical appendix (see Appendix K). This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

A7-2 This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. Additionally, the IBC Complex Master Drainage Study Update prepared by VA Consulting has been incorporated in Appendix K of the Recirculated DEIR.

A7-3 See response to Comment A7-2.

A7-4 The reviewer noted that only reports post 1986 should be referenced in the report. The VA Consulting study (see Appendix K of the Recirculated DEIR) provides justification for their use of the various hydrology reports including ones prior to 1986.

A7-5 The draft VA Consulting Study referenced in the DEIR was finalized in April 2009 and addresses comments regarding discrepancies of tributary areas and peak discharges between previously approved County reports and the report. In addition, the tables have been updated to reflect EC values for Lane Channel and HC values for Barranca Channel. This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

A7-6 This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. Mitigation measures have been provided to ensure individual projects do not worsen or exacerbate any existing flood control conditions.

A7-7 This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. Mitigation measures have been provided to ensure individual projects do not worsen or exacerbate any existing flood control conditions.

A7-8 Specific locations of BMPs cannot be determined at this EIR-level of analysis. A menu of applicable BMPs has been provided in the Water Quality Technical Report based on proposed land uses, in addition to a discussion of regional BMPs that may be utilized, based on future approvals. Specific locations of BMPs as well as

impervious areas will be documented in future, project-specific WQMPs prepared for individual projects within the IBC development area.

A7-9 This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. Table 5.7-8 is sourced directly from the County of Orange Model Water Quality Management Plan template. Text has been added to describe and link the most comment types of projects that will occur within the IBC with the project categories in the table. It is unclear at this time if any other project features (i.e., automotive repair shops) should be removed, as they could be incorporated into the individual projects depending on future lease agreements.

A7-10 See response to Comment A7-8.

LETTER A8 – Orange County Transit Authority (2 pages)

OCTA

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James S. Kenan
Interim
Chief Executive Officer

May 13, 2009

Bill Jacobs, AICP
Principal Planner
City of Irvine
Community Development Department
PO Box 19575
Irvine, CA 92623-0575

Subject: Notice of Completion and Availability of an Environmental Impact Report for the Irvine Business Complex

Dear Mr. Jacobs:

The Orange County Transportation Authority (OCTA) has reviewed the above referenced document. The following comments are provided for your consideration:

- Please clarify which arterial segments are being proposed to be downgraded as part of this project. The three arterial segments listed on Page 3-20, Section 3.3.2.8, include:

  - Red Hill Avenue between Barranca Parkway and Main Street
  - MacArthur Blvd between SR-55 and Jamboree Road
  - MacArthur Blvd between SR-55 and Campus Drive

  This listing is not consistent with the arterial segments described on Page VI, Section ES.1.6 of the Traffic Study. A8-1

- Please modify the language in Section 3.3.2.8 to indicate that the City's current General Plan, with its higher arterial designation, is consistent with the Orange County Master Plan of Arterial Highways (MPAH). MPAH consistency is achieved by having classification of facilities at or above the level designated on the MPAH. These MPAH facilities are classified at such levels in the City's current General Plan. A8-2

- Page VI, Section ES.1.6 of the Traffic Study indicates that a potential amendment to the MPAH on Von Karman Avenue may be pursued by the City. Please note that as matter of procedure, the MPAH would need to be amended and approved by the OCTA Board, prior to amendment of the City General Plan—in order for the City to maintain eligibility for Measure M funding. Until such time as the Cooperative Study process has been completed, OCTA will not make a determination in regard to downgrading Von Karman Avenue on the MPAH. Please modify the language in this paragraph, as it implies that OCTA approval of the proposed reclassification is a foregone conclusion. A8-3

Orange County Transportation Authority
550 South Main Street / P.O. Box 14184 / Orange / California 92863-1584 / (714) 560-OCTA (6282)

OCTA

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This is not necessarily the case, especially given that it appears that modeling analyses developed in support of this DEIR do not include the proposed I-405 HOV drop ramps at Von Karman Avenue. Modeling analyses developed in support of a potential MPAH amendment would need to include an assessment of the potential impacts associated with construction of I-405 HOV drop ramps at Von Karman Avenue.

Further, it appears that analyses of post-2030 buildout scenarios, included several roadway classifications that are modeled below the facilities' existing MPAH classifications. These facilities include the following, which are listed by their ID numbers in the Traffic Study as 776, 778, 133, 814, 98, 100, 102, 103, 104, 107, 157, 159, 1777, 1774, and 587. Please note, that for traffic analyses in support of a potential MPAH amendment, the facilities specified above will need to be consistent with existing MPAH classifications. Also, as stated previously, City General Plan classifications must meet or exceed MPAH classifications in order to maintain eligibility for Measure M funding. A8-3 cont'd.

- Please verify that intersections #42, #44, and #136 are under the control of the City of Irvine. If they are not, level of service standards for these intersections must be consistent with the controlling jurisdiction's General Plan Level of Service Standards. A8-4

- On Page 51, Section 3.15 it is incorrectly stated that the most recently adopted CMP is the 2005 Orange County CMP. The most recent CMP was adopted in 2007. A8-5

- On Pg 5.13-1, Section 5.13.1.1 Transportation Setting, it is stated that *several* Metrolink trains pass through the Tustin and Irvine stations. Please indicate that there are many or a substantial amount of trains. Furthermore, it is incorrectly stated that the Metrolink expansion program will reduce headways to 30-minute service. It should be stated that the program will provide high-frequency service, without specification of 30-minute service. A8-6

If you have any questions or comments, please contact Hal McCutchan of my staff by phone at (714) 560-5759 or by email at hmccutchan@octa.net.

Sincerely,

Charles Larwood
Manager, Transportation Planning

c: Joseph Alcock, OCTA
Megan Taylor, OCTA

Orange County Transportation Authority
550 South Main Street / P.O. Box 14184 / Orange / California 92863-1584 / (714) 560-OCTA (6282)

A8. Response to Comments from Charles Larwood, Manager, Transportation Planning, Orange County Transit Authority, dated May 13, 2009.

A8-1 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A8-2 Comment noted. Section 3.3.2.8 has been revised accordingly in the Recirculated DEIR.

A8-3 Comment noted. Section 3.3.2.8 has been revised accordingly in the Recirculated DEIR. The Recirculated DEIR indicates that the City of Irvine will initiate an MPAH Amendment by entering into a cooperative study with OCTA and the affected local agencies to determine the feasibility of removing these interchange improvements from the MPAH.

A8-4 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A8-5 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A8-6 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

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LETTER A9 – Remy, Thomas, Moose and Mandley, LLP (2 pages)

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OF COUNSEL

April 15, 2009

VIA E-MAIL AND U.S. MAIL

Bill Jacobs, Principal Planner
City of Irvine
Community Development Department
P.O. Box 19575
Irvine, CA 92623-0575

Re: Community Services Commission Meeting Regarding Park-Related Components of the Vision Plan Project

Dear Mr. Jacobs:

On behalf of the City of Newport Beach and the City of Tustin (collectively, the "Cities"), we are writing to comment on the substantial inconsistencies between the staff report's description of the proposed regulatory changes concerning Irvine Business Complex ("IBC") parks and recreation facilities associated with the pending Vision Plan project, on the one hand, and the description of the same contained in the Vision Plan Draft Environmental Impact Report ("Vision Plan DEIR"), on the other. Please include this letter in the administrative record for the Vision Plan DEIR and please present it to the Community Services Commission prior to the commission's meeting this evening. A9-1

First, I have a preliminary request regarding notice. I received a copy of the staff report this afternoon. As of 4:00 p.m. today, Sharon Wood, Assistant City Manager for the City of Newport Beach, had not received the agenda, despite being listed on the "cc" list. The short notice regarding this meeting is inadequate because it limits the Cities' ability to comment on the proposed actions and participate in the administrative process. This violates the spirit, if not the letter, of both the Brown Act and CEQA. I reiterate my request for *all* agendas concerning *all* proposed actions by the City of Irvine ("Irvine") that bear directly or indirectly on the IBC, including but not limited to actions concerning individual development projects as well as any regulatory changes. I also request delivery of agendas as soon as possible in advance of the subject meetings, but such A9-2

notice should be provided no less than two business days before the subject meetings. Please deliver the agendas via e-mail if that is convenient. A9-2 cont'd.

Addressing the substance of the staff report, I have the following comments. First, the Recreation chapter of the Vision Plan DEIR does not describe the open space aspect of the General Plan amendment, the proposed Design Criteria for IBC parks, the Zoning Ordinance amendment, the Municipal Code amendment, and the amendments to Irvine's Parks Standards Manual. The Recreation chapter also fails to analyze the potentially significant impacts that may result from these significant regulatory changes. A9-3

Second, the Recreation chapter's description of new neighborhood parks is also inconsistent with the description of the same issue included in the staff report. For example, the Vision Plan DEIR states that "The City is currently seeking *an* adequate site within the IBC for construction of *a* public neighborhood park." (Vision Plan DEIR, p. 5.12-5, italics added.) This suggests that only one public neighborhood park will be constructed in the IBC as part of the Vision Plan. The staff report, in contrast, acknowledges that Irvine will need to construct "At least six new Neighborhood Parks open to the public. . . ." (Staff Report, p. 7.) A9-4

Therefore, the Vision Plan DEIR's Recreation chapter must be revised to include both an accurate and complete description of the parks-related regulatory changes and a description of the required 6+ public neighborhood parks for the IBC. Furthermore, the Vision Plan DEIR must include the requirement for 6+ neighborhood parks as a mandatory mitigation measure. Finally, the Vision Plan DEIR must include an analysis demonstrating that, with the implementation of this and other mitigation measures, the potentially significant impacts to parks and recreation facilities will be reduced to less-than-significant. The revised analysis must them be recirculated for public review. A9-5

Currently, we are reviewing the Vision Plan DEIR and preparing comments. We will provide additional comments concerning the Recreation chapter. We appreciate the Community Services Commissions consideration of these comments. Please feel free to contact me directly if you have any questions regarding these comments. A9-6

Very truly yours,

Jason W. Holder

cc: (via e-mail):
David Hunt, Newport Beach City Attorney
Sharon Wood, Newport Beach Assistant City Manager
Douglas Holland, Tustin City Attorney
Elizabeth Binsack, Tustin Community Development Director

A9. Response to Comments from Jason W. Holder, Remy, Thomas, Moose and Mandley, LLP, dated April 15, 2009.

A9-1 The letter was presented to the Community Services Commission and is included as part of the Administrative Record for the IBC Vision Plan DEIR.

A9-2 Comment noted. Agendas and staff reports for this project will be distributed by email as soon as they become available.

A9-3 Section 5.12, *Recreation*, of the Recirculated DEIR has been modified to address this comment.

A9-4 Section 5.12, *Recreation*, of the Recirculated DEIR has been modified to correct the inconsistency of the Staff Report and the DEIR, as stated in this comment.

A9-5 This issue is clarified in Section 5.12, *Recreation,* of the Recirculated DEIR.

A9-6 Comment noted. No further response necessary.

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LETTER A10 – Remy, Thomas, Moose and Manley, LLP (100 pages)

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OF COUNSEL

May 5, 2009

VIA E-MAIL (W/OUT ATTACHMENTS)
ORIGINAL (W/ ATTACHMENTS) TO FOLLOW VIA FEDEX

City of Irvine
Department of Community Development
Attn: Bill Jacobs, Principal Planner
P. O. Box 19575
Irvine, CA 92623-5975

Re: Draft Program EIR for the Vision Plan and Overlay Zone

Dear Mr. Jacobs:

On behalf of the Cities of Newport Beach and Tustin ("Cities"), I am writing to: 1) express concern over continued piecemeal environmental review and approval of projects that are inextricably related to the proposed Vision Plan for the Irvine Business Complex ("IBC"), and 2) provide preliminary comments concerning general inadequacies in the Vision Plan Draft Environmental Impact Report ("DEIR"). Please forward these comments to the Planning Commission, for consideration at the meeting concerning the DEIR scheduled for May 7, 2009.

1. Piecemeal Environmental Review Concerning Projects Connected with the Vision Plan.

The Cities recently objected to a zone change that created an Accessory Retail Business designation and the ***i*** Shuttle Revised Service Plan because these projects should have been considered as part of the Vision Plan and analyzed in the Vision Plan DEIR. [1] A10-1

[1] / The staff reports to the City Council for the City of Irvine ("City Council") are attached hereto (Attachment 1), along with our previous comment letters concerning these two approvals (Attachment 2). Please include these materials, and all other attachments to this letter, in the administrative record of decision concerning the Vision Plan.

Despite the Cities' objections, the City of Irvine ("Irvine") approved these projects on March 24, 2009 and April 28, 2009, respectively.

Irvine improperly concluded that both projects were exempt from CEQA. The ARB designation is not exempt because there is substantial evidence that Accessory Retail Businesses will not result in 100% "trip capture." (Attachment 3: *ITE Trip Generation Handbook* (June 2004), excerpt regarding ITE Recommended Practice for Calculating Trip Capture [indicating trip capture rates for multi-use developments are generally much lower].) The *i* Shuttle is not exempt because it has long been considered part of the Vision Plan and it will also have environmental impacts. (Attachment 4: excerpt from Draft Vision Plan [indicating that the *i* Shuttle was indeed an early implementation measure for the Vision Plan]; see also Appendix C to Vision Plan DEIR: General Plan Amendments, pp. N-5, N-17, N-22 [the Vision Plan Project includes amendments to Irvine's General Plan that pertain to the *i* Shutlle].)

The Vision Plan DEIR is defective because it failed to consider these two projects as part of the Vision Plan project ("Project"). Documents concerning Irvine's prior meetings concerning the Vision Plan and the *i* Shuttle reveal that these two projects have, until only recently, been considered as an integral part of the Vision Plan. (See Attachment 5: Excerpts from Transcript of October 23, 2007, Vision Plan Task Force Meeting; see also Attachment 6: Letter from Counsel for Allergan to City Council dated November 27, 2007.) Consequently, the two approvals must be rescinded and the Vision Plan DEIR must be revised to consider these subprojects as aspects of the "whole of the Project" and recirculated for further public review.

A10-1 cont'd.

We are informed that at least one memorandum was prepared to address our concerns. This memorandum was presented to the City Council at the April 28 meeting. Pursuant to the Public Records Act (Gov. Code, § 6250, et seq.), please send us this document and any and all other non-privileged memoranda prepared by Irvine staff or legal counsel addressing our comments regarding the two projects identified above and regarding the appropriate scope and method of analysis for the Vision Plan DEIR.

2. Preliminary Comments Concerning General Inadequacies of the Vision Plan DEIR.

On April 29, 2008, we submitted two court rulings as attachments to a letter concerning the Vision Plan Project. We believed the then pending Draft EIR might repeat some of the same problems as the EIRs prepared for the 2851 Alton and Martin Street projects (the subjects of the pending litigation). Now that the DEIR for the Vision Plan has been released, we observe that the analysis indeed repeats a number of the same mistakes identified by Judge Sundvold.

A10-2

For example, the Draft EIR for the Project repeats the mistake of failing to disclose and resolve the significant and unavoidable impacts that were identified in the program EIR prepared for the rezone of the IBC (the "1992 IBC EIR"). As we have maintained in all of our comments concerning numerous projects in the IBC, the previously identified significant and unavoidable traffic impacts implicate Irvine's TDR program, which Irvine continues to apply to individual projects. The fact that Irvine previously acknowledged these impacts but more recently has swept them under the rug raises serious doubts about the methodology employed for impact analyses and the accuracy of any conclusion that a project's impacts will be less-than-significant. The Vision Plan DEIR only makes passing references to the 1992 IBC PEIR and fails to address the identified significant and unavoidable impacts identified in that document.

We also note that the Vision Plan DEIR does not adequately analyze the impacts that have been caused by the transformation of the IBC. The DEIR thus repeats a problem identified by the court in the two pending case. In order to place the Vision Plan in its appropriate context, we are enclosing four (4) CDs that contain electronic copies of documents previously produced by Irvine concerning the 1992 IBC Rezone and numerous residential projects that have been approved with limited environmental review since 1992 (Attachment 7). The CDs do not contain documents concerning the 170-unit 2851 Alton project or the 82-unit Martin Street project, nor have we included documents concerning the numerous pending projects that the Vision Plan DEIR purports to consider as part of its comprehensive analysis. The Vision Plan should include a more detailed description of all the IBC residential projects that have been approved since 1992, and should provide, in each cumulative impact analysis, an analysis of the cumulative impacts caused by these past projects.

A10-2 cont'd.

Furthermore, we note that Irvine staff presented information at the most recent IBC Task Force meeting regarding meetings of staff from the three cities regarding the traffic study for the Vision Plan DEIR and the early release of this study to the Cities' staff. While these representations are true, and the Cities' appreciate the opportunity to consult with Irvine concerning its traffic study methodology, we note that this consultation does not necessarily mean that the Cities are in agreement with the methods and assumptions used in the traffic study.

A10-3

Our review of the Vision Plan DEIR is not yet complete. We will submit a comprehensive comment letter addressing the DEIR prior to the close of the comment period on May 14, 2009. The Cities continue to believe that the comprehensive environmental review for the proposed Vision Plan offers a unique opportunity to finally address and solve numerous substantial and persistent problems caused by the IBC transformation. The Cities look forward to continuing to consult with the City of Irvine so that the region-wide impacts caused by further development activities within the IBC

A10-4

are analyzed accurately and that the associated impacts are avoided or mitigated to the maximum extent feasible.

A10-4 cont'd.

Please feel free to contact me if you have any questions or concerns regarding these additional comments or the attached minute orders.

Very truly yours,

Jason W. Holder

Attachments

cc: (via e-mail w/out attachments)
Jeff Melching, Irvine Assistant City Attorney
David Hunt, Newport Beach City Attorney
Sharon Wood, Newport Beach Assistant City Manager
Douglas Holland, Tustin City Attorney
Elizabeth Binsack, Tustin Community Development Director

ATTACHMENT 1

Staff Reports to the City Council for the City of Irvine

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: April 28, 2009

TITLE: TRANSIT PROGRAMS UPDATE

Director of Public Works

City Manager

RECOMMENDED ACTION:

1. Replace prior *i* Shuttle approval with revised service plan for The *i* Shuttle and authorize the City Manager to execute an amendment to the contract with MV Transportation, Inc. for the operation and maintenance of the revised service plan.
2. Authorize the City Manager to execute a Cooperative Agreement with the Orange County Transportation Authority (OCTA) for accepting up to 16 clean, natural gas fuel vehicles for The *i* Shuttle operation.
3. Determine that The *i* Shuttle program is exempt from environmental analysis under the California Environmental Quality Act (CEQA) and direct staff to file a Notice of Exemption (NOE) with respect to all *i* Shuttle approvals to date.
4. Approve the Citywide Transit Vision recommendations and incorporate the recommendations into the City's Go Local, Step 1, Report.
5. Approve the submittal of the City's Revised Go Local, Step 1, Report to the Orange County Transportation Authority.
6. Direct staff to initiate the public hearing notification process needed for revisions to Resolution No. 90-84 which established the Bake/I-5 fee program to change the description of the work and make the fund balance available for the Spectrum shuttle and modify Resolution No. 431 which establishes City policy regarding developer contributions for capital improvements.

EXECUTIVE SUMMARY:

Staff has developed a series of recommendations in support of the City's transit programs. Council approval is required for the following items:

- Replace prior *i* Shuttle approval with The *i* Shuttle Revised Service Plan;
- Amend the Maintenance and Operations Contract with MV Transportation, Inc.;
- Agreement with OCTA for clean, natural gas fuel vehicles;
- Citywide Transit Vision Multi-Phased Plan;
- Submittal of the revised Go Local, Step 1, Report;
- Initiate public hearing process for Bake/I-5 Fee District to incorporate Spectrum Shuttle as an eligible improvement.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION:

Not applicable.

ATTACHMENT 1

STATEMENT OF THE ISSUE:

Issue 1: The *i* Shuttle Service

History:

On November 27, 2007 the City Council approved an Operating and Capital Plan for implementation of a fixed-route shuttle system within the Irvine Business Complex (IBC) and directed staff to launch the shuttle service known as The *i* Shuttle in 2008. At that time, the City concluded that The *i* Shuttle was CEQA exempt and that The *i* Shuttle would not result in any significant, adverse environmental impacts.

The first route of the program (lunch time service, Route C) began service on March 31, 2008. Two additional commuter routes, A and B, began service on June 9, 2008. These routes are scheduled to meet every train at the Tustin Metrolink Station in the a.m. and p.m. peak periods and run every 30 minutes in the middle of the day. Weekend service was also offered on Routes A and B. A map of the existing routes and stop locations is included in Attachment 1.

Analysis/Discussion:

The *i* Shuttle was designed with the goal of reducing traffic congestion and enhancing air quality by providing convenient, safe, and environment friendly direct connections to key locations such as the John Wayne Airport, major employment centers, retail, and residences within the IBC from Tustin Metrolink Station. Initial service levels were based on existing Metrolink service and the anticipated service needs on weekends and midday during the week. The *i* Shuttle ridership reached its highest levels in July 2008 with the price of gasoline reaching $4.20 per gallon. Boarding data for all routes is presented in the attached Ridership Report (Attachment 2).

While the program has seen a decline in ridership when gas prices dropped and the economy declined, the commuter routes continue to provide significant congestion and air quality benefits to the IBC. The commuter route ridership will result in annual reductions of 1.7 million vehicles miles traveled, 78 tons of Nitrogen Oxide (NOX), 7,800 tons of Carbon Monoxide (CO), and 156,000 tons of Carbon Dioxide (CO2).

Over the last five months, City staff and outreach consultants met with the IBC hotels, apartments, and office building stakeholders to promote The *i* Shuttle and discuss future partnership opportunities to increase ridership. The marketing team conducted a targeted, comprehensive outreach and marketing program to build awareness of lunch time service, holding three to four events per week at large employers, retail, and employment centers to inform the public about the lunch time service. Staff also conducted a market analysis to better understand the lunch time and off-peak needs and markets in the IBC. A lunch time survey was collected from over 150 employees in the IBC to determine employee lunch time trip characteristics.

The outreach interview, along with the survey results, clearly indicated that while most of the employees surveyed in the IBC knew about the service, they were not using the service due to time and distance barriers. The majority of survey respondents indicated that they mostly eat at their desk, only go out to lunch about once a week, use most of their lunch hours for running errands, and have very limited time for the lunch hours (30 to 45 minutes). Only seven percent indicated that they go to lunch at local IBC restaurants.

Based on staff meetings with the hotels in the IBC, staff has concluded that The *i* Shuttle does not meet the transportation needs of the IBC hotel, visitors and recreational travel due to its frequency, hours of service, and the destinations that it serves.

Revised Service Plan

Initially The *i* Shuttle provided service on weekdays, weekends and midday; annual vehicle service hours were estimated at approximately 26,825. In response to the low ridership, the weekend service was cancelled in September 2008 and the number of midday trips on commuter routes was reduced from 42 to 22 in January 2009.

Staff has reevaluated the service and is recommending that the former *i* Shuttle program be replaced with a program that is limited to commuter Routes A and B with no lunch service. This will result in reducing the annual number of vehicle service hours to approximately 14,100.

In addition, staff also recommends implementation of a demand responsive transit service and/or a subscription service in the off-peak hours subject to compliance with federal regulations. This user-oriented service would include flexible routing and scheduling of shuttle vehicles in the off-peak hours between pick-up and drop-off locations according to passenger needs. A comprehensive analysis will be conducted to determine the type of demand responsive transit service or subscription service that could be implemented during off-peak hours to serve the needs of Irvine visitors and youth (hotels, school, after school and special events trips).

Operation and Maintenance Contract

The City has a contract with MV Transportation for maintenance and operations functions for The *i* Shuttle. The contractor provides the following services:

- Screen, hire and train all employees necessary for service
- Maintain, operate, and store City provided vehicles
- Provide an operations and maintenance facility
- Assume liability for accidents and incidents on service

The contract is a five-year term standard industry contract which allows the contractor to spread its startup costs over the term of the agreement and requires the City to revise the

agreed upon contract rates if the City changes the service hours by more than 15 percent. The above recommended service change would result in more than a 15 percent reduction and, therefore, requires an amendment to the contract. Staff recommends that the contract be revised to a fixed, plus hourly contract, for a fixed annual amount of $910,693 with the provision of fixed expenses at the hourly rate of $22.54 for each vehicle service hour.

Based on 14,100 annual vehicle service hours, the annual cost of the contract will be $1.385 million which is approximately $600,000 less than the Fiscal Year 2009-10 Shuttle Operating Capital Plan approved by City Council on November 19, 2007.

The *i* Shuttle Vehicles:

In June 2007 the OCTA Board approved a capital plan for the countywide Bus Rapid Transit (BRT) Program which included funding for twelve IBC Shuttle vehicles. This funding was part of a state grant that OCTA received for both vehicle and infrastructure improvements necessary to implement its first three BRT routes. OCTA has delayed the BRT implementation program due to lack of state funding. In December 2008, as part of an amendment to the OCTA budget, the Board reaffirmed its commitment to providing the vehicles needed for The *i* Shuttle.

Staff has been working closely with OCTA staff to ensure OCTA's prior commitment to funding the vehicles can be met in light of the unavailability of State funding. OCTA staff has agreed to provide 16 new Clean Fuel Compressed Natural Gas (CNG) vehicles (ten needed for The *i* Shuttle service, with an option for six additional buses for overloads or future service expansion). This will allow the City to immediately convert the fleet to CNG and eliminate the need for the vehicle lease agreement resulting in a savings of $440,000 per year.

The new vehicles will also be outfitted with bike racks and fully accessible ramps. Staff is finalizing the insurance terms for the vehicles with OCTA. The insurance provisions will be inserted in the attached sample Cooperative Agreement with OCTA (Attachment 3).

Issue 2: Citywide Transit

History:

On September 9, 2008 the City Council approved the Planning Area 40/12 GPA Zoning Development requirements. In cooperation with the City, the Irvine Company (TIC) was conditioned to prepare a comprehensive study of a clean technology system that extends the existing shuttle system in the IBC (The *i* Shuttle) to Irvine Station, the Great Park, and the Spectrum. The analysis was required to discuss and identify optional routes, stops, phasing, costs and other information necessary to explore eligible funding opportunities available from the OCTA or outside funding sources.

City Council Meeting
April 28, 2009
Page 5 of 12

In addition, on January 13, 2009 Council approved an agreement with OCTA for the transfer of the Proposition 116 funds to the OCTA in exchange for future credit that will be available to the City through the Renewed Measure M Program. The credit would be available to the City to use as matching funds for eligible City projects funded through the Renewed Measure M Transit Funding Programs. The Council also directed staff to develop a revised Go Local report to replace the Irvine Guideway with a Citywide Shuttle Transit Program.

Analysis/Discussion:

TIC contracted Fehr & Peers as transportation consultants for the development of the Citywide Transit Vision. A Technical Advisory Committee was formed with members from OCTA, University of California, Irvine (UCI), Irvine Business Complex (IBC), Spectrumotion, Lennar Corporation, Irvine Chamber of Commerce, City and TIC. The goals of this citywide transit vision are to:

- Operate a rubber-tire shuttle system that will connect regional rail services via Tustin and Irvine Stations to surrounding residential and employment areas in Irvine;
- Provide a peak hour alternative to the "Choice" rider;
- Provide employees and residents of the City with a "Green Lifestyle" alternative mode of transportation consistent with a livable and sustainable community that reduces the dependency on automobiles;
- Connect to other bus and shuttle services, including OCTA local and regional bus service, the UCI shuttle system, and The *i*-Shuttle;
- Supplement and/or modify existing OCTA transit services to improve connectivity between origins and destinations within the City;
- Provide a transit system that is cost effective and qualifies for OCTA Measure M2 funding.

The Citywide Transit Vision balances need and cost, and recommends an efficient solution for providing transit mobility and accessibility to Irvine employees, residents, and visitors. The first step in developing a 30-year transit vision involved an assessment of the current system and an evaluation of potential demand. Based upon the technical analysis and input from City staff and the advisory committee, four concept alternatives were developed that would satisfy the goals for the Citywide system. Each alternative was evaluated against a set of measures of effectiveness to determine the most appropriate solution.

The recommendation of this study centers on peak-period service linking employees, residents, and visitors to the Metrolink stations, and it offers the option to add other services such as midday and/or evening service as travel patterns develop within the City. The peak period service radiates outward from either the Tustin or Irvine station, which are multi-modal transportation hubs. The recommendations include a basic service plan, phasing, ridership estimates, and a 30-year system cost, which is within the expected funding available from Proposition 116 and Measure M2.

City Council Meeting
April 28, 2009
Page 6 of 12

The recommended Preferred Alternative Features include the following systems in three phases:

- Metrolink Extensions
  - Continuation of The *i* Shuttle in the IBC
  - Addition of two Irvine Station based routes (Spectrum/Great Park)
  - Addition of four Tustin Station based routes serving residential areas
- Midday Community Circulators/Evening Shuttles
  - Modification of IBC midday circulators
  - Spectrum lunch time circulators
  - Additional circulators to serve residential villages within the City
  - Evening shuttles to serve residential villages/Spectrum, IBC and provide an IBC/Spectrum connection
- Enhanced OCTA Bus Service
  - Planned BRT service
  - Changes to existing station link service
  - Modifications to improve internal City mobility and also to enhance access to/from non-City areas

The study also indicates that more detailed planning and strategies are needed to finalize route planning to serve hotel, recreational, school, retail, senior and other needs such as potential weekend/special event charter use in the middle of the day and evening hours. Attachment 4 shows the Preferred Alternative Peak Service recommended for all phases.

Staff is seeking City Council approval of the Citywide Transit Vision. Implementation of this vision requires that the City receive over $113 million of the renewed Measure M transit funds as well as an OCTA provision of $121.3 million of transit matching funds anticipated in exchange for Proposition 116 funds. The transit matching funds are contingent upon the California Transportation Commission's selling of the bonds and making the Proposition 116 funds available to OCTA for other transit projects.

Issue 3: Go Local, Step 1:

History:

On February 27, 2006 the OCTA Board of Directors approved a four step process for City initiated extensions to Metrolink known as the *Go Local Program*. Participation in the *Go Local Program* makes the City eligible to compete for Measure M2 transit funds.

Step 1 of the *Go Local Program* provided every city in Orange County the opportunity to conduct feasibility analysis and planning activities. Step 2 provides funding for service planning and implementation activities. Step 3 funds project construction and implementation. Step 4 will fund efforts to transform Metrolink stations to multi-modal transportation centers.

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Analysis/Discussion:

In order to continue to participate in the *Go Local Program*, OCTA requires submittal of a report with detailed information about each of the transit projects under consideration by each city. With approval of the Citywide Transit Vision, staff is recommending that a revised Go Local, Step 1, Report be submitted to OCTA to include the study recommendations.

Issue 4: Bake/I-5:

History

The Bake/I-5 Fee District (Fee District 89-1) was established for transportation capital improvements in the fee district area of benefit. A fund balance of approximately $4.6 million is available in the fee district fund for other capital improvements.

Analysis/Discussion:

All capital projects originally identified in the Bake/I-5 Fee District have been completed. The Fee District has not been closed out and has a balance of approximately $4.6 million. The City Attorney has concluded that surplus Fee District funds could be used for transit and other infrastructure improvements within the Fee District boundaries if the City includes the proposed improvements in Resolution No. 431, which establishes City policy regarding developer contributions for capital improvements. Although Resolution No. 431 states the purpose of the Capital Improvement Policy is to provide "public facilities and services", the City's legal counsel recommends that the Resolution be revised to clarify that transit related capital improvements are consistent with Resolution No. 431's definition of the term "Capital Improvements".

Based on the results of the Citywide Transit Vision, staff is seeking City Council approval to initiate the public hearing and notification process to revise Resolution No. 90-84, which established the original fee program. The revision will include modifying the description of work to include the establishment of a shuttle system in the Spectrum making the funds available for the Spectrum Shuttle.

ALTERNATIVES CONSIDERED:

An alternative to staff recommendation is to not approve the revised service plan for The *i* Shuttle and the corresponding agreements needed for the implementation of the City's transit programs. This alternative is not recommended.

FINANCIAL IMPACT:

Implementation of The *i* Shuttle service change will result in a reduction of approximately $600,000 from the previously approved Fiscal Year 2009-10 shuttle operating and capital plans. Staff will seek funding for implementation of the Vision Plan recommendations from future M2 transit grant programs.

ENVIRONMENTAL REVIEW

The approval of The *i* Shuttle program detailed in this staff report is CEQA exempt under (1) the CEQA statutory exemption for the instituting or increasing passenger or commuter services on highway rights-of-way already in use, including the modernization of existing facilities (Pub. Resources Code, § 21080(b)(10)); (2) the CEQA categorical exemption for small structures (14 Cal. Code Regs., § 15303), and (3) the "catch-all" exemption under which CEQA is not applied to projects that do not have the potential for causing a significant effect on the environment. (14 Cal. Code Regs., § 15061(b)(3).)

The environmental determination contained herein is consistent with the City's determination when the original iteration of The *i* Shuttle was approved on November 27, 2007. Further, the environmental determination utilizes, but is not dependent upon, the initial study and NOE prepared by the County in connection with its approval of the overall BRT program.

Accordingly, City staff recommends that the City Council direct staff to file an NOE with respect to the revised *i* Shuttle service plan and execution of the Cooperative Agreement. The NOE should reference the above-cited statutory, categorical, and "catch-all" CEQA exemptions.

Finally, environmental review of (1) the Citywide Transit Vision recommendations, (2) the City's Revised Go Local report, and/or (3) the revision of Resolution No. 90-84 is premature. None of these three recommended actions commit the City to a definite course of action, and thus none of the three recommended actions constitute the approval of a discretionary project necessitating CEQA review. (See 14 Cal. Code Regs., § 15352(a); Pub. Resources Code, § 21080(a).) In any case, the City anticipates that hypothetical future actions that may or may not occur in furtherance of the three recommended actions will be CEQA exempt. (See Pub. Resources Code, § 21080(b)(10) [passenger or commuter services]; 14 Cal. Code Regs., § 15303 [small structures].)

CONCLUSION:

With Council approval of the revised service plan for The *i* Shuttle and corresponding agreements, operation of The *i* Shuttle will continue with a focus on commuter peak period service and the City will be well positioned for the receipt of future Measure M2 funds.

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Report prepared by: Shohreh Dupuis, Manager of Transit and Transportation

Reviewed by: Joyce Amerson, Deputy Director of Public Works

Attachments:
Attachment 1: The *i* Shuttle System Map
Attachment 2: The *i* Shuttle Ridership Report
Attachment 3: The sample OCTA Vehicle Consignment Agreement
Attachment 4: Citywide Transit Vision Preferred Alternative Peak Service

cc: Stephen G. Harding, Deputy City Manager for Development Services, Community Development Agency, 20 Civic Center Plaza, M-25, Santa Ana, CA 92701
Brian Speegle, County of Orange, Resources and Development Management Department, 300 North Flower Street, P.O. Box 4048, Santa Ana, CA 92702-4048
J. J. Abraham, Legacy Partners, 30 Executive Park, Suite 100, Irvine, CA 92614-4724
Bob Olson, R. D. Olson Development 2955 Main Street, Irvine, CA 92614
Rick Wandrocke, Irvine Office Company, 8105 Irvine Center Drive, Irvine, CA 92618
John Katkish, First Management Group, 3201 New Mexico Ave., N.W., Suite 246, Washington, D.C. 20016
Nadar Shaw, Koll Development Company, 4343 Von Karman, Newport Beach, CA 92660
Mark Valentine, Equity Office Properties, 600 City Parkway West, #165, Orange, CA 92868
Wistar Wood, Beacon Capital Partners, 11755 Wilshire Blvd., Suite 1770, Los Angeles, CA 90025
Wendy K. Peterson, Knobbe Martens Olson & Bear, LLP, 2040 Main Street, 14th Floor, Irvine, CA 92614, 3641
Mitchell S. Bloom, Crown Associates Realty, Inc., 9777 Wilshire Blvd., Suite 711, Beverly Hills, CA 90212
Richard Hausman, 2500 Michelson, LP, 2500 Michelson Drive, Suite 200, Irvine, CA 92612-1568
Patti Krebs, Industrial Environmental Association, 701 B Street, Suite 1040, San Diego, CA 92101
Nancy L. Davis, Verizon Wireless Legal Dept.- West Area, 15505 Sand Canyon Avenue, Irvine, CA 92618
Patricia Martz, California Cultural Resource Preservation Alliance, P.O. Box 54132, Irvine, CA 92619-4132
Brian Leahey, Lincoln Property Company, 4700 Von Karman, Suite 130, Newport Beach, CA 92660
John Eudy, Essex Property Trust, 925 East Meadow Drive, Palo Alto, CA 94303

Edwin Sundareson, KB Home Coastal, Inc. 3 Jenner, Suite 100, Irvine, CA 92618
Michael Finger, Avalon Bay, Inc., Avalon Bay Communities, Inc., 4440 Von Karman, Suite 300, Newport Beach, CA 92660
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David Miller, Greenlaw Partners, 4750 Von Karman Avenue, Newport Beach, CA 92660
Matt Wheelright, Standard Pacific Homes, 15326 Alton Parkway, Irvine, CA 92618-2338
Garth Erdossy, Nexus Development, 1 MacArthur Place, Suite 300, Santa Ana, CA 92707
Jackie Conley, 1016 Indian Peak Road, Golden, CO 80403.
Jason W. Holder, Remy, Thomas, Moose and Manley, LLP, 455 Capitol Mall, Suite 210, Sacramento, CA 95814

ec: Jeff Melching, Rutan and Tucker
Vahid Toosi, Orange County Fire Authority
Laura Blaul, Orange County Fire Authority
Michelle Hernandez, Orange County Fire Authority
Don Lamm, Deputy City Manager - Development Services Director, City of Costa Mesa, lamm@ci.cost-mesa.ca.us
Sharon Wood, Asst. City Manager, City of Newport Beach, swood@city.newport-beach.ca.us
David Lepo, Planning Director, City of Newport Beach, dlepo@city.newport-beach.ca.us
Elizabeth Binsack, Director of Community Development, City of Tustin, ebinsack@tustin.ca.org
Kari Rigoni, Executive Officer, Airport Land Use Commission, krigoni@ocair.com
Richard Demerjian, Campus and Environmental Planning, University of California, Irvine, rgdemerj@uci.edu
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Brock Wagner, Superintendent, Tustin Unified School District, bwagner@tustink12.ca.us
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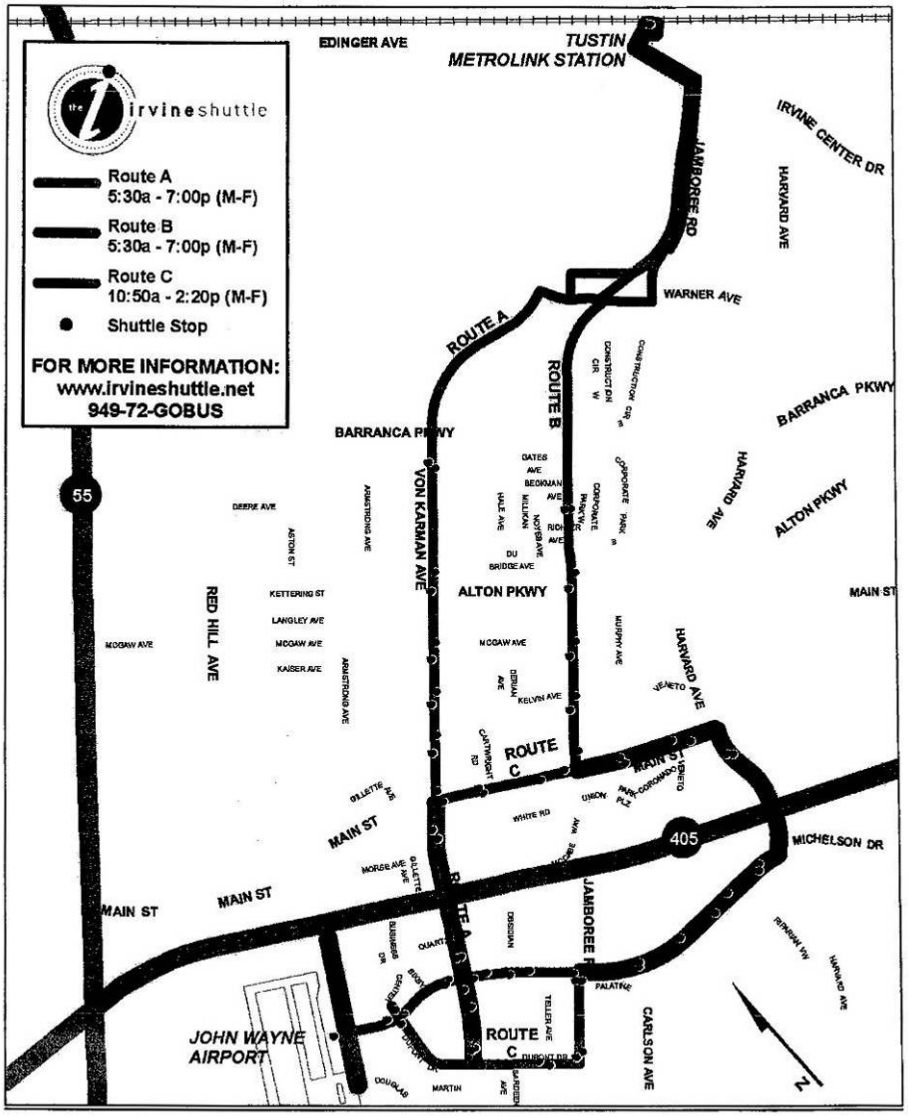
Mark Asturias, Housing Manager
Stacy Blackwood, Manager, Community Services
Shohreh Dupuis, Manager of Transportation and Transit, Community Services
David Tungate, Budget Officer
John Ernst, Principal Planner, Community Development
Steve Haubert, Principal Planner, Community Services
Stephen Higa, Principal Planner, Community Development

Steve Weiss, Principal Planner, Community Development
Debra Mears, Senior Planner, Community Services
Lana Weiss, Senior Planner, Community Services
Katie Berg, Project Development Administrator, Public Works
Sun Sun Murillo, Supervising Transportation Analyst, Public Works
Lisa Thai, Senior Transportation Analyst, Public Works
John Hare, Public Safety
Bruce Ramm, Public Safety
Craig Reem, Public Information Officer
Timor Rafiq, Rafiq and Associates



Attachment 1

The *i* Shuttle
Ridership Report

Month	Boardings						Weekdays	Average Weekday	Average Metrolink Weekday (OC & IEOC LINES)	Notes
	Route A Weekday	Route B Weekday	Route C Weekday	Route A Weekend	Route B Weekend	Total				
Mar-08	-	-	18	-	-	18	1	18		Partial Month- Service Started on 03/31/08
Apr-08	-	-	714	-	-	714	22	32		
May-08	-	-	650	-	-	650	21	31		
Jun-08	3,352	3,117	1,225	52	139	7,885	21	366		Routes A & B Started on 06/09/08
Jul-08	5,503	5,249	1,460	152	160	12,524	22	555	13,215	
Aug-08	5,143	5,376	1,240	147	183	12,089	21	560	13,047	
Sep-08	5,257	4,707	984	125	216	11,289	21	521	13,041	Weekend Service Discontinued on 09/28/08
Oct-08	5,502	4,877	918	-	-	11,297	23	491	12,676	
Nov-08	3,926	3,531	651	-	-	8,108	18	445	12,497	Day After Thanksgiving Removed from Averages
Dec-08	4,165	3,210	630	-	-	8,005	18	417	11,219	Day Before & After Christmas, and Dec. 31 Removed from Averages
Jan-09	3,736	3,120	554	-	-	7,410	19	371	11,790	Day After New Years and MLK Day Removed from Averages
Feb-09	3,063	2,991	322	-	-	6,376	20	330	11,581	President's Day Removed from Averages
Mar-09	3,270	3,411	452	-	-	7,133	22	324	11,417	Cesar Chavez Day Removed from Averages
Total	42,917	39,589	9,818	476	698	93,498				

Attachment 2

COOPERATIVE AGREEMENT NO. C-9-0364

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF IRVINE

FOR

VEHICLE CONSIGNMENT

THIS AGREEMENT, is made and entered into this __day of _____ 2009, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Irvine, Public Works, Post Office Box 19575, Irvine, California 92623, a municipal corporation (hereinafter referred to as "CITY").

RECITALS:

WHEREAS, AUTHORITY has agreed to consign twelve (12), 27-Foot Compressed Natural Gas (CNG) powered vehicles to the City of Irvine for the operation of the CITY's Irvine Business Complex (IBC) Shuttle (hereinafter referred to as "**The *i* Shuttle**"); and

WHEREAS, **The *i* Shuttle** project was included in the substitute Transportation Control Measure package after the CenterLine project was terminated; and

WHEREAS, on October 14, 2005, the AUTHORITY's Board of Directors approved funding for **The *i* Shuttle** project, sometimes referred to in this Agreement as "PROJECT"; and

WHEREAS, the CITY wishes to compete under Project S (Go Local Step 3), a transit enhancement program under the renewed Measure M, known as Transit Extensions to Metrolink by expanding access to commuter rail and establishing connections to communities and major activity centers that are not immediately adjacent to the Metrolink corridor; and

WHEREAS, the CITY has requested and AUTHORITY agrees to consign the use of twelve (12), 27-Foot CNG vehicles from the AUTHORITY for the operation of **The *i* Shuttle**; and

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Attachment 3

WHEREAS, CITY has agreed to operate the consigned vehicles at its own cost, including maintenance and repair during the term of this Agreement; and

WHEREAS, this Agreement shall fulfill the AUTHORITY's commitment to provide capital equipment for this PROJECT;

NOW, THEREFORE, it is mutually understood and agreed by AUTHORITY and CITY as follows:

ARTICLE 1. COMPLETE AGREEMENT

This Agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between AUTHORITY and CITY concerning the PROJECT and supersedes all prior representations, understandings and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.

ARTICLE 2. RESPONSIBILITES OF AUTHORITY

AUTHORITY agrees to the following responsibilities for PROJECT:

A. AUTHORITY will consign twelve (12) new 27-Foot CNG buses to CITY as specified in Attachment A, entitled "Vehicle Specifications." At all times during the term of this Agreement the AUTHORITY shall maintain ownership of the vehicles and ownership shall not transfer to the CITY at any time.

B. If the CITY requires additional vehicles in the future for service expansion or increased passenger loads, the AUTHORITY shall upon notice and formal request provided by the CITY, consign up to four (4) new or used vehicles at the AUTHORITY'S sole discretion.

C. The AUTHORITY will wrap and decal the buses to match the existing vehicles in **The *i* Shuttle** fleet prior to consigning the vehicles to the CITY at the AUTHORITY's expense. Maintenance and replacement of vehicle graphics shall be the sole responsibility of the CITY.

D. Provided the CITY meets all of its required obligations under this Agreement for the delivery of the consigned vehicles, including, but not limited to, securing and providing the AUTHORITY

with the required evidence of insurance as set forth in Article 5 below, the AUTHORITY will deliver twelve (12) buses to CITY's shuttle operating facility between May 1, 2009 and May 31, 2009.

E. AUTHORITY shall retain ownership of the buses and, therefore will conduct quarterly maintenance audits to insure the CITY's contractor is performing vehicle maintenance in accordance with vehicle manufacturer requirements and Title 13 of the California Code of Regulations. Failure of the CITY or its contractor to properly perform vehicle maintenance shall be considered a breach of the terms of this Agreement. In the event of a breach in the terms of the this Agreement by the CITY, the AUTHORITY shall have the right to seek any and all remedies available under this Agreement and applicable law including, but not limited to, termination of the Agreement.

ARTICLE 3. RESPONSIBILITIES OF CITY

CITY agrees to the following responsibilities for PROJECT:

A. CITY staff will recommend formal CITY Council action on accepting the consignment of twelve (12), 27-Foot CNG vehicles from AUTHORITY needed for the operation of **The *i* Shuttle**.

B. CITY and AUTHORITY will conduct a vehicle inspection at an AUTHORITY facility at least one week prior to vehicle delivery. CITY and AUTHORITY shall mutually agree on any items that are deemed to be defective or inadequate for fixed-route operation as outlined in the North American Uniform Out-of-Service Criteria and Title 13 of the California Code of Regulations. If the Parties cannot reach a mutual agreement as to the items deemed to be defective or inadequate, this Agreement shall immediately be terminated.

C. CITY will operate and maintain the vehicles for a minimum of seven (7) years at the CITY'S sole cost. At the end of this term, CITY will return the vehicles to AUTHORITY. Prior to the end of the term of this Agreement, CITY and AUTHORITY shall conduct a vehicle inspection to determine the condition of the vehicles. CITY agrees that it shall be responsible for all damage to the vehicles beyond normal wear and shall, at the AUTHORITY'S sole discretion, either repair said damage or reimburse the AUTHORITY for the cost of said repair.

D. The CITY agrees to allow AUTHORITY full access to the consigned vehicles at any time

during normal business hours for any reasonable purpose, including inspection of the AUTHORITY'S property. CITY further agrees to require that any contractor engaged by the CITY for the operation of the consigned vehicles shall also grant the AUTHORITY access to the consigned vehicles at any time during normal business hours.

E. The CITY agrees that the vehicles provided by AUTHORITY shall meet the CITY's existing need for revenue vehicles and spare vehicles.

F. CITY will submit a monthly operating summary to AUTHORITY. AUTHORITY will evaluate service based on AUTHORITY's Bus Service Guidelines and Performance Goals. **The *i* Shuttle** service will be considered in the same service type as AUTHORITY's feeder routes or community routes.

G. The CITY agrees if **The *i* Shuttle** successfully competes under Project S (Go Local Step 3) then all requirements of Project S (Go Local Step 3) will apply to continued operation of **The *i* Shuttle**.

H. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property including AUTHORITY vehicles used by CITY caused by the negligent acts, omissions or willful misconduct by CITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement. CITY shall indemnify the AUTHORITY for property damage to the vehicles regardless of CITY's fault, for example accidents, fire, etc. The AUTHORITY will waive the right to subrogate for any losses.

I. CITY shall be responsible for any damage caused to AUTHORITY vehicles used by the CITY under this Agreement. CITY agrees to provide AUTHORITY written notice within three (3) business days of the occurrence of any damage to the consigned vehicles with an estimated repair cost over One Thousand Dollars ($1,000.00.) CITY reserves the right to subrogate against the responsible party to recover expenses paid to the AUTHORITY.

ARTICLE 4. IT IS MUTUALLY UNDERSTOOD AND AGREED:

All parties agree to the following mutual responsibilities regarding PROJECT:

A. This Agreement shall continue in full force and effect for seven (7) years. This Agreement may only be extended upon mutual written agreement by both parties.

B. If CITY fails to abide by its obligations under this Agreement, the AUTHORITY shall have the right to immediately terminate this Agreement upon written notice pursuant to subparagraph E below. Upon notice of termination for breach the CITY shall immediately deliver to AUTHORITY all AUTHORITY property, including, but not limited to, the consigned vehicles hereunder. CITY shall be responsible for all damage to said property excluding normal wear.

C. This Agreement may be amended in writing at any time by the mutual consent of both parties. No amendment shall have any force or effect unless executed in writing by both parties.

D. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that, by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

E. All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered, or certified mail and addressed as follows:

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To CITY:	To AUTHORITY:
City of Irvine	Orange County Transportation Authority
Post Office Box 19275 Irvine, California 92623	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Shohreh Dupuis	Attention: Yvette Crowder
Transit Program Manager	Contract Administrator
(949) 724 - 7526	(714) 560 - 5616

F. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not part of and not intended to govern, limit or aid in the construction or interpretation of any terms or provision thereof.

G. The provision of this Agreement shall bind and inure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.

H. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

I. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

J. Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented

to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

K. This Agreement shall be governed by and construed under the laws of the state of California.

ARTICLE 5. INSURANCE

A. CITY or the City's shuttle operation and maintenance contractor shall procure and maintain insurance coverage during the entire term of this Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. The following insurance coverage will be provided:

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

2. Automobile Liability insurance to include all vehicles consigned under this Agreement, owned, hired and non-owned autos with a combined single limit of $1,000,000.00 each accident;

3. Workers' Compensation with limits as required by the State of California including a waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents;

4. Employers' Liability with minimum limits of $1,000,000.00;

5. Garage Liability with minimum limits of $1,000,000.00 per claim;

B. Proof of such coverage, in the form of an insurance company issued policy endorsement and a broker-issued insurance certificate, must be received by AUTHORITY prior to delivery of any vehicle pursuant to this Agreement. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement with the AUTHORITY, its officers, directors, employees and agents designated as additional insured on the general and automobile liability. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.

C. CITY shall include on the face of the Certificate of Insurance the Agreement Number C-9-

0364; and, the Contract Administrator's Name, Yvette Crowder.

D. CITY shall also include in each subcontract the stipulation that subcontractors shall maintain insurance coverage in the amounts required from CITY as provided in this Agreement.

This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-9-0364 to be executed on the date first above written.

CITY OF IRVINE

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

Dated: _____

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

James S. Kenan
Interim Chief Executive Officer

APPROVED AS TO FORM

By: _____

Kennard R. Smart, Jr.
General Counsel

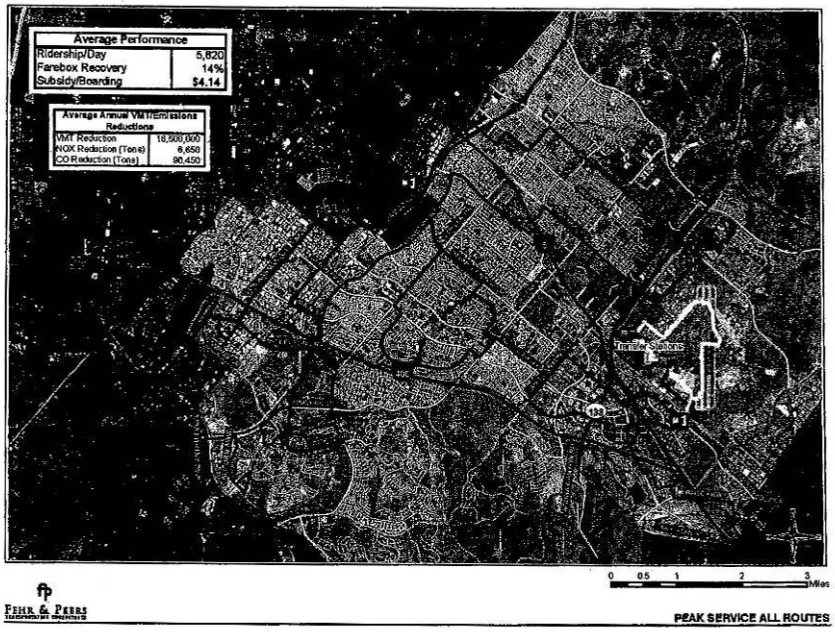
APPROVAL RECOMMENDED:

By: _____

Beth McCormick
Executive Director, Transit

Dated: _____

Citywide Transit Vision
Preferred Alternative Peak Service
All Phases



Attachment 4

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: APRIL 28, 2009

TITLE: IRVINE BUSINESS COMPLEX SIDEWALK ENHANCEMENTS, PHASE 3 – CIP 319120

Director of Public Works

City Manager

RECOMMENDED ACTION:

Approve the plans, specifications, and contract documents for the Irvine Business Complex (IBC) Sidewalk Enhancements, Phase 3, Capital Improvement Project (CIP) 319120, on file with the Public Works Department.

EXECUTIVE SUMMARY:

Plans, specifications, and contract documents for the IBC Sidewalk Enhancements, Phase 3, are complete and ready for City Council approval. These documents are available for review in the Public Works Department.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION:

Not applicable.

STATEMENT OF THE ISSUE:

History:

The Strategic Business Plan and Fiscal Year 2008-09 budget identified the IBC Sidewalk Enhancements project, CIP 319120. The proposed improvements are located on Murphy between Alton and Corporate Park, and on Dupont between Teller and Bardeen.

Analysis/Discussion:

This project consists of constructing new sidewalks and upgrading handicapped access ramps and driveways to comply with the Americans with Disabilities Act. Construction is anticipated to begin in July 2009 and should be completed in September 2009. Construction activity will occur between 7:00 a.m. to 7:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on Saturdays. Traffic impacts to the public will be minimized by restricting traffic lane closures and coordinating this work with other street rehabilitation

work in the area. The specifications restrict traffic lane closures to occur only on weekdays between the hours of 9:00 a.m. and 3:30 p.m.

ENVIRONMENTAL REVIEW:

Pursuant to Section 4 of the City of Irvine California Environmental Quality Act (CEQA) Procedures and Article 19 of the State of California CEQA Guidelines, the proposed project has been found to be categorically exempt from the requirements of CEQA, under State Guideline Section 15301, Class 1, Existing Facilities.

ALTERNATIVES CONSIDERED:

The City Council could elect not to approve the plans, specifications, and contract documents. Staff does not recommend this alternative because this project will improve pedestrian access within the IBC area.

FINANCIAL IMPACT:

Funding in the amount of $360,820 was approved in the Fiscal Year 2008-09 Capital Improvement Budget through a combination of Transportation Development Act (TDA) State grant funds in the amount of $249,000 and IBC Transportation Management Plan (TMP) funds in the amount of $111,820.

CONCLUSION:

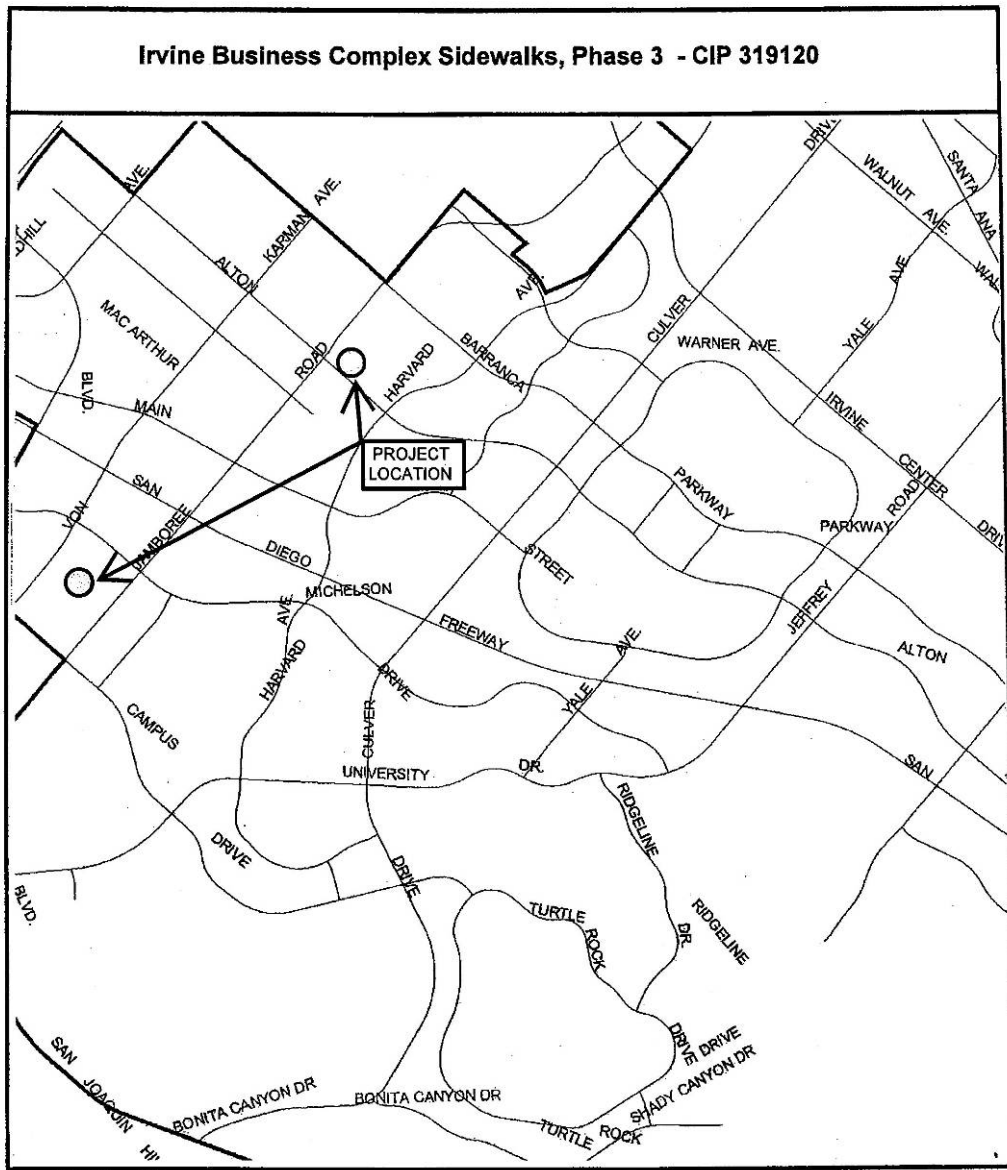
The IBC sidewalk project is ready for construction. Staff recommends approval of the plans, specifications, and contract documents so that staff may request bids and proceed with construction.

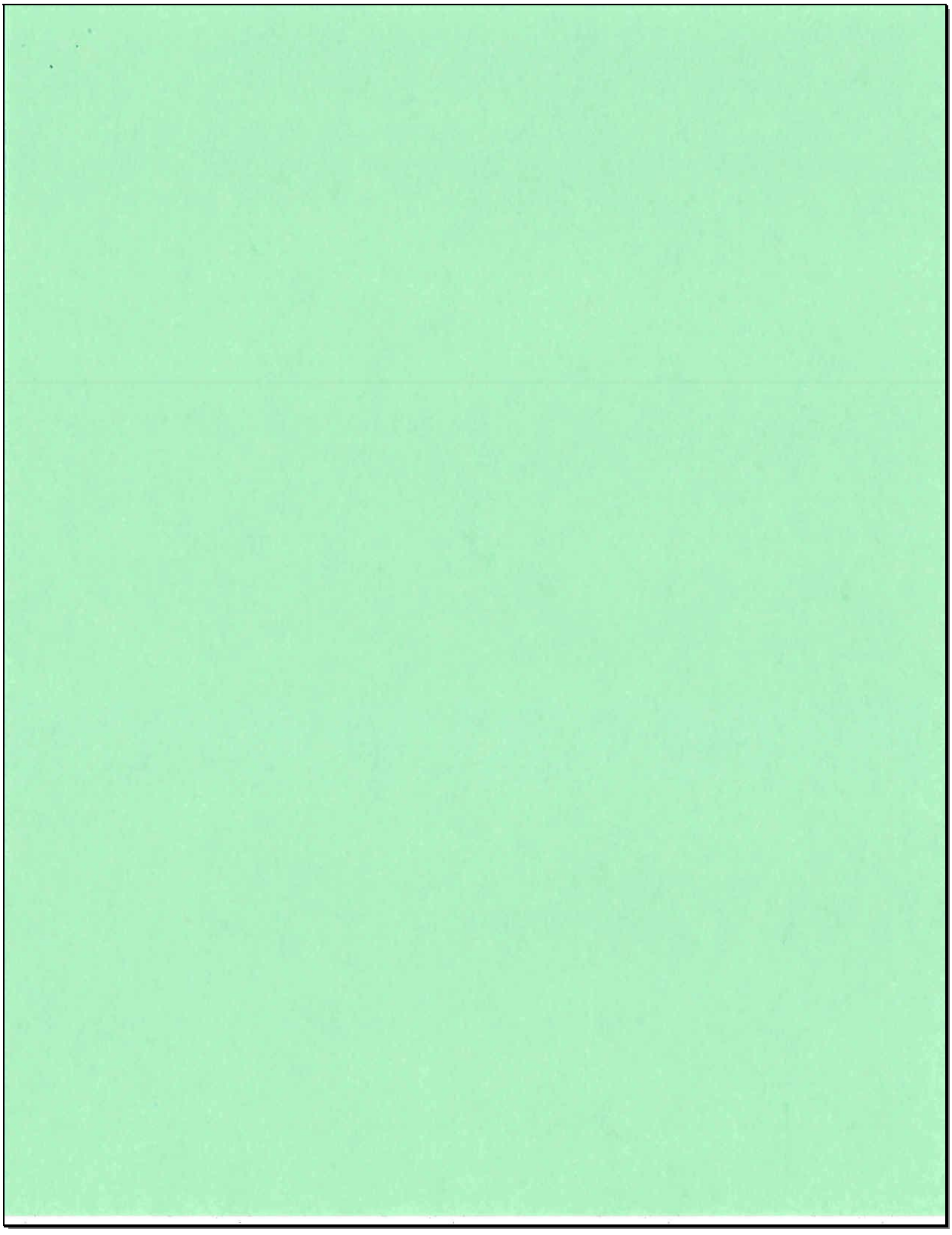
Report prepared by: Uyenly Bui, Senior Project Manager

Reviewed by: Mark Carroll, City Engineer
Steve Ollo, Senior Civil Engineer

Attachment:

Vicinity Map


Irvine Business Complex Sidewalks, Phase 3 - CIP 319120
PROJECT LOCATION
VICINITY MAP
N
ATTACHMENT
Powered By GeoSmart.net
Printed: 4/9/2009 11:38:
MAC ARTHUR BLVD.
MAIN
ALTON
KARMAN AVE.
ROAD
HARVARD
BARRANCA
CULVER
WARNER AVE.
YALE
IRVINE CENTER DRIV
PARKWAY
PARKWAY
JEFFREY
ALTON
SAN DIEGO FREEWAY
MICHELSON
HARVARD AVE.
CULVER DRIVE
YALE AVE.
CAMPUS DRIVE
UNIVERSITY DR.
RIDGELINE DR.
TURTLE ROCK
BONITA CANYON DR
SHADY CANYON DR
SAN JOAQUIN HI



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: MARCH 24, 2009

TITLE: ORDINANCE NO. 09-02, ORDINANCE APPROVING ZONE CHANGES 00463315-PZC AND 00478498-PZC AND TECHNICAL UPDATES TO THE GENERAL PLAN AND ZONING CODE

City Clerk

City Manager

RECOMMENDED ACTION

Read by title only, second reading and adoption of **ORDINANCE NO. 09-02** - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE APPROVING ZONE CHANGES 00463315-PZC and 00478498-PZC TO REVISE THE ZONING ORDINANCE BY PROPOSING NEW OR REVISED LAND USE/ZONING PROVISIONS; INCORPORATING MINOR "CLEAN-UP" CHANGES; REVISING TEXT AND EXHIBITS FOR BETTER ACCURACY AND READABILITY; AND UPDATING THE ZONING ORDINANCE WITH PREVIOUSLY APPROVED LAND USE DECISIONS; FILED BY CITY OF IRVINE COMMUNITY DEVELOPMENT DEPARTMENT

EXECUTIVE SUMMARY

Ordinance No. 09-02 was introduced and first read on March 10, 2009 by the City Council. The vote at the first reading was:

AYES:	5	COUNCILMEMBERS:	Agran, Choi, Krom, Shea and Kang
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

Unless otherwise directed by a member of the City Council, the vote at second reading will reflect the same vote as at first reading. However, if a Councilmember is not present at the second reading/adoption, the vote will be reflected as absent.

CITY COUNCIL ORDINANCE NO. 09-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE APPROVING ZONE CHANGES 00463315-PZC and 00478498-PZC TO REVISE THE ZONING ORDINANCE BY PROPOSING NEW OR REVISED LAND USE/ZONING PROVISIONS; INCORPORATING MINOR "CLEAN-UP" CHANGES; REVISING TEXT AND EXHIBITS FOR BETTER ACCURACY AND READABILITY; AND UPDATING THE ZONING ORDINANCE WITH PREVIOUSLY APPROVED LAND USE DECISIONS; FILED BY CITY OF IRVINE COMMUNITY DEVELOPMENT DEPARTMENT

WHEREAS, the City of Irvine Community Development Department has initiated Zone Change 00463315-PZC requesting the following:

- Incorporating minor "clean-up" changes such as corrections to scrivener's errors, revising text and exhibits for better accuracy and readability (Exhibit A); and

- New or revised land use/zoning provisions related to accessory retail uses, domestic animal care facilities, and solar energy facilities (Exhibit B); and

WHEREAS, the City of Irvine Community Development Department has initiated Zone Change 00478498-PZC requesting the following:

- Addition of new and revised land use and zoning provisions related to massage establishments, (Exhibit C); and

- Addition of text to allow for the deferment of transfer of development fees within the Irvine Business Complex, and for further clarification for special landscaped street setback requirements (Exhibit D); and

WHEREAS, Zone Change 00463315-PZC and Zone Change 00478498-PZC will improve the functionality of the Zoning Ordinance by ensuring accurate information is contained in the document and expands the uses available to residents, property owners, and business owners; and

WHEREAS, Zone Change 00463315-PZC and Zone Change 00478498-PZC are considered a "project" as defined by the California Environmental Quality Act (CEQA); and

WHEREAS, is it has been determined that the proposed project is covered by the General Rule Exemption (Section 15061(b) (3)), for projects where it can be seen with certainty that the activity in question will have no significant effect on the environment; and

WHEREAS, the Planning Commission of the City of Irvine has considered information presented by staff, the applicant, and other interested parties at public hearings held on November 6, 2008 for Zone Change 00463315-PZC in which the Planning Commission recommended approval and January 15, 2009 for Zone Change 00478498-PZC in which the Planning Commission recommended of approval for the deferment of fees and revisions to regulations to special landscaped street setbacks, and forwarded a split 2-2 vote on massage establishments to the City Council; and

WHEREAS, the City Council of the City of Irvine has considered information presented by City staff, the applicant, and other interested parties at a public hearing held on March 10, 2009.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. Pursuant to Section 15061(b)(3) of the State CEQA Guidelines, it has been determined that the proposed project is covered by the General Rule Exemption outlined in CEQA guidelines section 15061(b)(3).

SECTION 2. The City Council makes the following findings as required by Section 2-38-7 of the Zoning Code for approval of a Zone Change.

A. The proposed zone changes are consistent with the City of Irvine General Plan.

The purpose of the zone changes are to ensure consistency with revisions to the General Plan, correct minor errors, reflect previous land use decisions, and incorporate new/revised land use provisions. As such, these zone changes are consistent with the goals and objectives of the City of Irvine General Plan.

B. The proposed zone changes are consistent with any applicable concept plan.

There is no Concept Plan associated with this project.

C. The proposed zone changes meet all the requirements set forth within Division 8 for the dedication of permanent open space through a specified phased implementation program for affected planning areas and zoning districts.

This project is not required to dedicate open space because there is no development associated with the zone change.

D. The proposed zone changes are in the best interest of the public health, safety and welfare of the community.

The zone changes are consistent with all applicable provisions of the Zoning Ordinance and are in the best interests of the community's health, safety, and welfare. The zone changes correct minor errors, incorporates previous land use

decisions, and expands the land use available to residents, property owners, and business owners.

E. Based upon information available at the time of approval, adequate sewer and water lines, utilities, sewage treatment capacity, drainage facilities, police protection, fire protection/emergency medical care, vehicular circulation and school facilities will be available to serve the area affected by the proposed zone changes when development occurs.

The proposed project does not include any specific development. The zone change is limited to incorporating minor corrections, previous land use decisions and new land use provisions to improve the functionality of the Zoning Ordinance.

F. If the proposed zone change affects land located within the coastal zone, the proposed zone change will comply with the provisions of the land use plan of the certified local coastal program.

The project does not include any development within the coastal zone.

SECTION 3. Based on the above findings, the City Council of the City of Irvine DOES HEREBY APPROVE Zone Change 00463315-PZC and Zone Change 00478498-PZC amending the City's Zoning Ordinance by:

- Incorporating minor "clean-up" changes such as corrections to scrivener's errors, and revising text and exhibits for better accuracy and readability (Exhibit A); and
- Adding new or revised land use/zoning provisions related to accessory retail uses, domestic animal care facilities, and solar energy facilities (Exhibit B);
- Addition of new and revised land use and zoning provisions related to massage establishments, (Exhibit C); and
- Addition of text to allow for the deferment of transfer of development fees within the Irvine Business Complex, and providing further clarification for special landscaped street setback requirements (Exhibit D).

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 24th day of March 2009.

MAYOR OF THE CITY OF IRVINE

Zoning Ordinance Technical Update
Exhibit B

Accessory Retail Business

CHAPTER 1-2. DEFINITIONS

Sec. 1-2-1. General Definitions.

> Retail business, accessory: Mix of retail uses with square footage restrictions that offer convenience goods and personal services that have been incorporated into higher density residential neighborhoods and office complexes intended to be ancillary to the primary use. Accessory retail is intended to meet the daily needs of the immediate residential and employee population through the offering of goods and services in close proximity in order to promote a sustainable lifestyle and reduce traffic. The uses shall not be a generator of additional auto trips or parking needs above the primary use. Typical accessory retail uses include, but are not limited to, mini-market, bank and/or automated teller machine (ATM), drug store, eating establishment such as a café, coffee/sandwich shop (excluding a drive-thru business), personal services (i.e. barber, hair salon, shoe repair), and dry cleaners (excludes operations involving storage of hazardous solvents and chemical use). Alcohol-related businesses shall obtain a CUP, when required.

Add prescriptive requirements and provisions to limit *"Retail business, accessory"* uses in Chapter 3-5 (Accessory Structures) as follows:

> Sec. 3-5-2. Accessory Retail.
>
> *A. Residential uses.* Accessory retail uses are permitted on any site containing attached residential uses (for-sale or rental) exceeding the density of 20 dwelling units per net acre. The accessory retail uses shall meet the following requirements:
>
> 1. Local-serving retail equal to a maximum of two percent of the total aggregate square footage of residential unit living space on the project site. Multiple residential project sites may be included in this calculation when projects have been developed with shared components such as internal roadways, driveways, pedestrian connections, recreation amenities, architectural theme, etc.
> 2. The use shall be located within internal local street systems or front pedestrian-oriented gathering spaces (sidewalk, parks, schools, etc.).

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EXHIBIT B

3. The use shall be incorporated into the overall building, design, and architecture of the project site.
4. The use may offer a limited selection of convenience goods and services for the daily needs of the residents. Examples may include, but are not limited to the following:
   - Mini-market, no larger than 5,000 square feet.
   - Eating establishments (e.g., café, coffee, sandwich shops) no larger than 3,000 square feet. Eating establishments shall exclude drive thru.
   - Retail shops, walk-up bank and/or automated teller machine, drug stores, no larger than 2,000 square feet.
   - Personal services (e.g., barber, shoe repair, hair salon, dry cleaners), no larger than 2,000 square feet. Dry cleaners shall exclude operations involving storage of hazardous solvents and chemical use.
5. The use shall comply with all applicable land use regulations, development standards, and codes; however, additional regulatory vehicle trip limitations and parking requirements shall not apply to accessory retail businesses.

B. Office uses. Accessory retail uses are permitted on any site containing office development. The accessory retail uses shall meet the following requirements:

1. Total accessory retail can occupy a maximum of two percent of the total gross square footage of office uses on the project site. Multiple sites may be included in this calculation when projects have been developed with shared components such as internal roadways, driveways, parking lots and/or structures, architectural theme, etc.
2. Exterior or external evidence of the accessory retail shall be minor, so that the appearance of the site remains defined by the primary use.
3. The use shall be incorporated into the overall building, design, and architecture of the project site.
4. The use may offer a limited selection of convenience goods and services for the daily needs of employees. Examples may include, but are not limited to, the following:
   - Mini-market, no larger than 5,000 square feet.
   - Eating establishments (e.g., café, coffee shop, sandwich shops) no larger than 3,000 square feet. Eating establishments shall exclude excluding drive-thru.
   - Retail shops, walk-up bank and/or automated teller machine, drug stores, no larger than 2,000 square. feet.
   - Personal services (e.g., barber, shoe repair, hair salon, dry cleaners), no larger than 2,000 square feet. Dry cleaners exclude operations involving storage of hazardous solvents and chemical use.

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5. The use shall comply with all applicable land use regulations, development standards, and codes; however, regulatory vehicle trip limitations and parking requirements shall not apply to accessory retail businesses.

C. *Additions of Accessory Retail for Existing Buildings:* Additions to existing buildings for accessory retail shall be subject to the modification procedures outlined in Chapter 2-19 of the Zoning Code.

- Revise the Land Use Matrix of Chapter 3-3-1 to include "*Retail business, accessory*" uses in the following zoning designations as permitted uses:
  - 2.3 Medium-Density Residential
  - 2.4 Medium-High Density Residential
  - 2.5 High-Density Residential
  - 3.1 Multi-Use
  - 3.2 Transit Oriented Development
  - 4.1 Neighborhood Commercial
  - 4.2 Community Commercial
  - 4.9 LPC Regional Commercial
  - 5.0 IBC Mixed-Use
  - 5.1 IBC Multi-Use
  - 5.3 IBC Residential
  - 5.4 General Industrial
  - 5.5 Medical and Science
  - 6.1 Institutional
  - 8.1 Lifelong Learning

Domestic Animal Care Facility

CHAPTER 1-2. DEFINITIONS

Sec. 1-2-1. General Definitions.

Domestic animal: an animal or pet commonly kept in a residential area which includes, but is not limited, to a dog, cat, bird, ferret, or hamster.

Domestic Animal Care Facility: Any business that, for compensation, provides care for two or more domestic animals, primarily within an enclosed building (see Domestic Animal).

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REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: March 10, 2009

TITLE: GENERAL PLAN AND ZONING ORDINANCE TECHNICAL UPDATE

Director of Community Development

City Manager

RECOMMENDED ACTION:

1. Receive staff report.
2. Open the public hearing, receive public input.
3. Close the public hearing.
4. City Council comments and questions.
5. Adopt Resolution No. 09 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE APPROVING GENERAL PLAN AMENDMENT 00463314-PGA TO AMEND THE GENERAL PLAN TO RECONCILE MINOR INCONSISTENCIES; AND CLARIFY AND UPDATE SPECIFIC GENERAL PLAN PROVISIONS; FILED BY THE CITY OF IRVINE COMMUNITY DEVELOPMENT DEPARTMENT
6. Introduce for first reading and read by title only ORDINANCE NO – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE APPROVING ZONE CHANGES 00463315-PZC and 00478498-PZC TO REVISE THE ZONING ORDINANCE BY PROPOSING NEW OR REVISED LAND USE/ZONING PROVISIONS; INCORPORATING MINOR "CLEAN-UP" CHANGES; REVISING TEXT AND EXHIBITS FOR BETTER ACCURACY AND READABILITY; AND UPDATING THE ZONING ORDINANCE WITH PREVIOUSLY APPROVED LAND USE DECISIONS; FILED BY CITY OF IRVINE COMMUNITY DEVELOPMENT DEPARTMENT

EXECUTIVE SUMMARY:

State law requires that a General Plan be updated periodically so that it remains a true reflection of the community's values and goals. It also needs to be updated to reflect current technical information and address locally relevant issues. Staff reviewed each element of the General Plan to verify that the text and exhibits continue to accurately represent land use approvals as well as City policy. Similarly, because zoning is an important means of implementing the General Plan, staff concurrently reviewed the Zoning Ordinance to determine if revisions were necessary. Upon review of the current General Plan and Zoning Ordinance, staff concluded that several opportunities exist for the City to make minor technical corrections and revisions to improve each document.

City Council Meeting
March 10, 2009
Page 2

Proposed technical corrections and revisions include:

- Corrections to scrivener's errors,
- Revising text and exhibits for better accuracy and readability; and
- Updating the General Plan and Zoning Ordinance with previously approved land use decisions not shown in the text or exhibits.

Staff's proposed specific minor changes are listed in Attachment 1 and staff's proposed text for previous land use approvals is shown in Attachment 2. In addition to minor corrections, staff is also proposing modifications to the Zoning Ordinance to add and/or clarify provisions related to the following:

1. Accessory retail business
   Staff is proposing a new land use category of accessory retail business to encourage smart growth in major residential and office developments without redundant traffic modeling and parking penalties. This proposed use will act as part of a larger citywide smart growth trip reduction program.

2. Domestic animal care facilities
   The Zoning Ordinance does not currently include provisions for domestic animal care facilities and greatly restricts areas where kennels can be established. Staff believes the Zoning Ordinance should be amended to provide Irvine residents with zoning districts where domestic animal care facilities can be developed.

3. Solar energy systems
   Staff is proposing revisions to solar energy systems in order to encourage solar energy and alleviate restrictions related to homeowner associations.

4. Massage uses
   As an emerging industry, therapeutic massage has grown in popularity and has become part of the daily routine of many people. With the appropriate zoning regulations and compatible neighborhood locations, massage establishments offer professional massage services to the community. Staff believes the current land use regulations should be updated to allow for expanded opportunities for massage establishments as primary land uses in specific areas of the City.

5. Deferment of transfer of development rights (TDR) fees
   The proposed change would bring the trip fee payment and the final actual trip recordation into consistency with one another.

6. Special landscaped street setbacks
   This revision will eliminate an existing discrepancy in the Zoning Ordinance by making the landscape setback consistent with the required building setback by allowing a reduced landscape setback of less than 30 feet in instances where the allowable building setback is less than 30 feet.

Two corrections are also proposed in the General Plan to reflect prior City Council approvals not reflected in the current General Plan document:

1. Library Services: On October 24, 2006, the City Council voted to revise the ratio for library services from 0.20 square foot of facility per person to 0.50 square feet per person and 2.5 volumes per capita.

2. San Joaquin Marsh (Planning Area 23): San Joaquin Marsh (Planning Area 23): A single 25-acre portion of the San Joaquin Marsh, owned by Irvine Ranch Water District (IRWD) and located at the southeast corner of Michelson and Carlson, is designated in the General Plan as Medium Density Residential and zoned "1.2 Development Reserve", and allocated 1,000 units of residential intensity, all approved as part of the 1988 City Open Space Initiative GPA-16. However, the City Council ultimately approved the San Joaquin Marsh Enhancement Plan in 1994, in which the development site was split into two sites in the same general area, with no change in overall acreage or intensity. This split was not changed in the General Plan at that time and therefore, there currently exists a discrepancy between the City's General Plan and the adopted San Joaquin Marsh Enhancement Plan.

A detailed explanation of these modifications to the Zoning Ordinance and General Plan is provided below in the Issues section of this report.

Section 2-11-2 of the Zoning Ordinance states that a General Plan Amendment is required wherever a request is made to add, delete, or alter land use districts; land use regulations; or goals, objectives, or implementing actions of the General Plan. Additionally, Section 2-38-2 of the Zoning Ordinance states that a Zone Change is required for any change to the City of Irvine Zoning Ordinance.

The proposed General Plan and Zoning changes were also provided to the development community, including the Irvine Company, Lennar, and major IBC developers, for input. No significant comments or issues were raised.

Staff recommends that the City Council approve the General Plan Amendment and Zone Changes associated with the technical update.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION:

The Planning Commission met on November 6, 2008 and January 15, 2009, and unanimously recommended that the City Council approve the General Plan Amendment and zone changes associated with the technical update, except for revisions related to massage businesses, which resulted in a tie vote. The Commissioners who voted in favor expressed confidence that the new provisions would allow for proper review and

licensing to provide for safe, quality establishments. Those who voted no expressed concerns that allowing for such uses would lead to increased opportunities for unlawfully-operated massage uses throughout the City.

STATEMENT OF THE ISSUES:

Issue No. 1: General Plan Technical Changes

The proposed changes to the General Plan consist of minor corrections to and clarifications of General Plan text and Land Use Statistical Tables A-1 and A-2 (ttachment 1). Two changes of note which were previously directed by the City Council, but not incorporated into the General Plan at the time, are an increase to the library service ratio and an amendment to the General Plan and zoning maps to reflect a reconfiguration of the IRWD-owned parcel on the San Joaquin Marsh property, as discussed above. (Additional items outlined in Attachment 2). The approval of the reconfiguration of the Marsh site will only update the land use designation in the General Plan. IRWD will still be required to submit a Zone Change application for approval by the City Council in order to create any development potential on the site.

Issue No. 2: Accessory Retail Business

History: When located within a larger development, an accessory retail business is solely intended to support an existing or future development with local serving goods and services without creating additional traffic or parking demand. Research was conducted within the City of Irvine and adjacent cities where accessory retail has been successfully incorporated into a development. Examples include the 3,000-unit Village and Park Apartments, located near the Spectrum Center, which offers a bank ATM, juice, coffee, specialty grocery, flowers, and dry cleaner within the development. Also in the Spectrum area, located at the Irvine Transportation Center, retail space has been reserved in the parking structure to serve their patrons. Attachment 3 lists examples of accessory retail businesses.

Analysis/Discussion: This Zoning Ordinance update introduces a new definition, *"Retail business, accessory"* that will allow for the operation of retail businesses that are solely accessory and intended to support a primary land use. Accessory retail would offer convenience goods and services (e.g., cleaners, café, banking). The retail uses will promote a sustainable lifestyle by offering daily goods and services nearby to encourage pedestrian activity and the reduction in automobile reliance.

Accessory retail businesses are intended to support larger residential neighborhoods and mixed-use projects since they have the needed population to generate the demands for the goods and services that are offered. Accessory retail businesses operate differently from traditional retail business since their target audience is limited

only to the patrons of the primary land use (residents or employees) and not the general public. The current Zoning Ordinance does not provide flexibility or special consideration for accessory uses even when they are only intended to serve the principal land use.

All applicable development standards will have been met through the principal land use. With the appropriate zoning regulations and restrictions, accessory retail businesses can be successfully incorporated into Irvine's maturing areas.

To adequately regulate the amount of an accessory retail business, staff proposes a two percent maximum that would be allowed within a project. This limitation was established based on research of existing examples both within the City of Irvine and in surrounding cities that could support the primary land use without being considered a traditional retail business and causing outside traffic flow. In addition to this, square footage restrictions have also been established. Other provisions include public access and integrated designs.

With this update, accessory retail businesses would not be subject to further discretionary review and would be permitted as part of the overall development. Staff recommends that the Zoning Ordinance be updated to include the following:

- Add a new definition for *"Retail business, accessory"* to clarify the intended purpose of this land use into Chapter 1-2-1 (Definitions) of the Zoning Ordinance as follows:

  Retail business, accessory: Mix of retail uses with square footage restrictions that offer convenience goods and personal services that have been incorporated into higher density residential neighborhoods and office complexes intended to be ancillary to the primary use. Accessory retail is intended to meet the daily needs of the immediate residential and employee population through the offering of goods and services in close proximity in order to promote a sustainable lifestyle and reduce traffic. The uses shall not be a generator of additional auto trips or parking needs above the primary use. Typical accessory retail uses include, but are not limited to, mini-market, bank and/or automated teller machine (ATM), drug store, eating establishments such as a café, coffee/sandwich shop (excluding a drive-thru business), personal services (e.g., barber, hair salon, shoe repair), and dry cleaners (excludes operations involving storage of hazardous solvents and chemical use). Alcohol-related businesses shall obtain a CUP, when required.

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Page 6

- Add prescriptive requirements and provisions to limit *"Retail business, accessory"* uses in Chapter 3-5 (Accessory Structures and Uses) as follows:

  Sec. 3-5-2. Accessory Retail.

  A. Residential uses. Accessory retail uses are permitted on any site containing attached residential uses (for-sale or rental) exceeding the density of 20 dwelling units per net acre. The accessory retail uses shall meet the following requirements:

  1. Local-serving retail equal to a maximum of two percent of the total aggregate square footage of residential unit living space on the project site. Multiple residential project sites may be included in this calculation when projects have been developed with shared components such as internal roadways, driveways, pedestrian connections, recreation amenities, architectural theme, etc.

  2. The use may be located within internal local street systems or front pedestrian-oriented gathering spaces (e.g., sidewalk, parks, schools).

  3. The use shall be incorporated into the overall building, design, and architecture of the project site.

  4. The use may offer a limited selection of convenience goods and services for the daily needs of the residents. Examples may include, but are not limited, to the following:

     - Mini-market, no larger than 5,000 square feet.
     - Eating establishments (e.g., café, coffee, sandwich shops), no larger than 3,000 square feet. Eating establishments shall exclude drive-thru.
     - Retail shops, walk-up bank and/or automated teller machine, drug stores, no larger than 2,000 square feet.
     - Personal services (e.g., barber, shoe repair, hair salon, dry cleaners), no larger than 2,000 square feet. Dry cleaners shall exclude operations involving storage of hazardous solvents and chemical use.

  5. The use shall comply with all applicable land use regulations, development standards, and codes; however, additional regulatory vehicle trip limitations and parking requirements shall not apply to accessory retail businesses.

B. Office uses. Accessory retail uses are permitted on any site containing office development. The accessory retail uses shall meet the following requirements:

1. Total accessory retail can occupy a maximum of two percent of the total gross square footage of office uses on the project site. Multiple sites may be included in this calculation when projects have been developed with shared components such as internal roadways, driveways, parking lots and/or structures, architectural theme, etc.

2. Exterior or external evidence of the accessory retail shall be minor, so that the appearance of the site remains defined by the primary use.

3. The use shall be incorporated into the overall building, design, and architecture of the project site.

4. The use shall offer a limited selection of convenience goods and services for the daily needs of employees. Examples may include, but are not limited to, the following:

   - Mini-market, no larger than 5,000 square feet,
   - Eating establishments (e.g., café, coffee shop, sandwich shops, excluding drive-thru), no larger than 3,000 square feet,
   - Retail shops, walk-up bank and/or automated teller machine, or drug stores, no larger than 2,000 square feet, and
   - Personal services (e.g., barber, shoe repair, hair salon, dry cleaners), no larger than 2,000 square feet. Dry cleaners exclude operations involving storage of hazardous solvents and chemical use.

5. The use shall comply with all applicable land use regulations, development standards, and codes; however, regulatory vehicle trip limitations shall not apply to accessory retail businesses.

C. *Additions of Accessory Retail for Existing Buildings:* Additions to existing buildings for accessory retail shall be subject to the modification procedures outlined in Chapter 2-19 of the Zoning Code.

- Revise the Land Use Matrix of Chapter 3-3-1 to include "*Retail business, accessory*" uses in the following zoning designations as permitted uses:

  - 2.3 Medium-Density Residential
  - 2.4 Medium-High Density Residential
  - 2.5 High-Density Residential
  - 3.1 Multi-Use
  - 3.2 Transit Oriented Development

- 4.1 Neighborhood Commercial
- 4.2 Community Commercial
- 4.9 LPC Regional Commercial
- 5.0 IBC Mixed-Use
- 5.1 IBC Multi-Use
- 5.3 IBC Residential
- 5.4 General Industrial
- 5.5 Medical and Science
- 6.1 Institutional
- 8.1 Lifelong Learning

Issue No. 3: Domestic Animal Care Facility

History: Over the past few years staff has received numerous inquiries regarding land use requirements for domestic animal care facilities in general and day care for dogs in particular. Staff has informed interested parties that such a use, per se, is not currently permitted in the City. In fact, the closest use to domestic animal care facility or day care for dogs would be a kennel. According to the Zoning Ordinance, a kennel is any property, building or structure where four more dogs or four or more cats over the age of four months are kept for commercial purposes or solely for the personal enjoyment of the owner.

Furthermore, kennels are primarily an outdoor use, permitted in the 4.9 Lower Peters Canyon Regional Commercial zoning district (Irvine Marketplace) and conditionally permitted in the 1.1 Exclusive Agriculture and 1.2 Development Reserve zoning districts. The City has land zoned 1.1 in Orchards Hills, Northwood, and the Orange County Great Park; much of this land is either developed or reserved as legacy agriculture. The areas zoned 1.2. includes the Southern California Edison substation in Planning Area 31, the proposed residential development in Planning Area 23, and a small site in Planning 25.

Analysis/Discussion: The premise behind most domestic animal care businesses is to provide a convenient and qualified facility that is a safe and healthy environment with plenty of human and domestic animal interaction. The Zoning Ordinance does not include provisions for domestic animal care facilities and greatly restricts areas where kennels can be established. Staff believes the Zoning Ordinance should be amended to provide Irvine residents with zoning districts where domestic animal care facilities can be developed.

Domestic animal care facilities can offer a broad range of services, limited only by the imagination of the operator. Some offer overnight boarding, training programs, and grooming, as well as other health treatments. Often they are housed in buildings with large open spaces that can be separated for various animals. Depending upon the vision of the owner, some of these facilities have special furniture, tunnels, and other

play equipment and toys not so dissimilar to a daycare for children. Because facilities will vary in size, number and/or type of animal, and other business models, staff believes the use should be evaluated on a case-by-case basis by the Zoning Administrator. The Zoning Ordinance is proposed to be updated to include the following:

- Add a new definition for "domestic animal" to clarify types of animals intended for domestic animal care facilities into Chapter 1-2-1 (Definitions) of the Zoning Ordinance as follows:

  Domestic animal: an animal or pet commonly kept in a residential area which includes, but is not limited, to a dog, cat, bird, ferret, or hamster.

- Add a new definition for "domestic animal care facility" to clarify the intended purpose of this land use into Chapter 1-2-1 (Definitions) of the Zoning Ordinance as follows:

  Domestic Animal Care Facility: Any business that, for compensation, provides care for two or more domestic animals, primarily within an enclosed building (see Domestic Animal).

- Add domestic animal care facility to the list of uses reviewed by the Zoning Administrator in Section 2-9-4; and

- Add domestic animal care facility as a conditionally permitted use, signified with a "C", to the zoning districts shown in the Land Use Matrix as follows.

- Add the following Zoning Ordinance Land Use Endnotes:

  Domestic animal care facilities shall require a veterinary certificate of health and proof of current vaccinations for distemper, rabies, and parvovirus.

  Animals may be groomed, trained, exercised, socialized, and kept or boarded overnight, but not bred, sold, or let for hire.

Issue No. 4: Solar Energy Systems

History: The Solar Rights Act of 1978 (the "Act'), was enacted to "promote and encourage the use of solar energy systems and to protect and facilitate adequate access to the sunlight which is necessary to operate solar energy systems." The Act protects consumers' right to install and operate solar energy technology on a home or business by limiting the ability of covenants, conditions, and restrictions (CC&Rs),

typically enforced by homeowner associations (HOA), to prohibit or restrict solar energy systems.

The Act permits CC&Rs to impose reasonable restrictions that do not "significantly" increase the cost of the system or decrease its efficiency or performance. Restrictions "significantly" alter solar water heating system price or performance if they result in a cost increase of more than 20 percent *or* a decrease in the system's efficiency by more than 20 percent. Restrictions on photovoltaics cannot increase the system cost by more than $2,000 or decrease system efficiency by more than 20 percent. Restrictions on either type of system need only increase cost or decrease efficiency to be determined unreasonable under the Act; both criteria are not required for a restriction to be considered unreasonable.

Although the City of Irvine has regulations in place that support the Solar Rights Act, it is appropriate to update the Zoning Ordinance relating to the support of residents and businesses wishing to install solar energy systems in the City.

Analysis/Discussion: The Zoning Ordinance guarantees access to sunlight for property owners and renters in the City. This is accomplished by setting limits on the amount of permitted shading from new construction and requiring new buildings be sited to provide solar access. The degree of solar access protection is defined by either a 12 foot or 25 foot hypothetical "solar fence" on the property lines of the protected buildings. The Zoning Ordinance is designed to protect access for a four hour period on December 21. Under most circumstances, new structures will not be allowed to shade adjacent lots to a greater extent than the applicable solar fence. However, staff is proposing changes to Section 3-31 of the Zoning Ordinance to provide more clarity on solar energy system rights. The goals of these changes are to encourage increased use of solar energy systems and alleviate restrictions of Homeowner Associations.

Staff recommends that the Zoning Ordinance be updated to include the following:

Add a definition to Zoning Ordinance section 1-2-1 for the term "Solar Energy System" consistent with California Civil Code Section 801.5 (a)(1)

– A solar energy system is any solar collector or other solar energy device or any structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating. Based on this statutory definition, solar energy systems include, but are not limited to:

- Photovoltaics (solar electric)
- Solar water heating for use in buildings
- Solar water heating for space heating or cooling
- Solar pool heating

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CHAPTER 3-31. SOLAR ~~COLLECTOR~~ ENERGY SYSTEM STANDARDS

Sec. 3-31-1. Applicability.
Sec. 3-31-2. Approvals required.
Sec. 3-31-3. Residential standards.
Sec. 3-31-4. Commercial/industrial/institutional/multi-use/office standards.

Sec. 3-31-1. Applicability.

The purpose of the Solar Energy System Standards is to encourage investment in solar energy systems on all parcels in the City, both residential and non-residential, while providing guidelines for the installation of those systems that are consistent with the architectural and building standards of the City of Irvine. All solar ~~collectors~~ energy systems shall comply with all applicable provisions of the City of Irvine Codes and the standards of this chapter.

Sec. 3-31-2. Approvals required.

The applicant shall submit for and receive approval of a building permit prior to installation of any ~~ground- or roof-mounted~~ solar energy system ~~collectors~~.

Sec. 3-31-3. Residential standards.

A. *Ground-mounted solar energy systems ~~collectors~~.*

1. All ground-mounted solar ~~collectors~~ energy systems ~~shall be restricted to the rear or side yard areas, and~~ shall not be located within the front, side, or rear building setbacks, or front yard area and shall comply with all applicable height restrictions.

2. To the ~~maximum~~ extent possible without compromising the solar energy system's access to the sun, ground-mounted solar energy systems ~~collectors~~ shall be screened from view at-grade from all adjacent streets and adjacent properties.

B. *Roof-mounted ~~collectors~~ solar energy systems.*

1. All solar energy system appurtenances such as, but not limited to ~~collectors~~, water tanks, supports, and plumbing shall be screened to the maximum extent possible without compromising the effectiveness of the solar collectors, and shall be painted a color similar to the color of the ~~roof~~ surface upon which they are mounted. Solar collectors are exempt from the screening and color provisions of this subsection.

2. All roof-mounted solar collectors ~~mounted on a 7:12 pitched roof or greater shall be flush-mounted parallel to the roof's surface. Collectors installed on a roof which is less~~

~~than a 7:12 pitch may be mounted in such a manner to raise the solar collectors to an angle equal to but not greater than a 7:12 pitched roof~~ can be mounted at an optimum angle to the sun for maximum energy production. The maximum height of a solar collector shall be two feet, measured perpendicular to the roof surface, and may not exceed the maximum overall building height. The remainder of the solar energy system shall be below the level of the solar collector(s).

Sec. 3-31-4. Commercial/industrial/institutional/multi-use/office standards.

A. ~~*Ground-mounted collectors*~~ *Covered parking solar energy systems*.

1. Covered parking ~~S~~solar energy systems ~~collectors~~ shall not be located within any required building setback, but may encroach into a landscaping setback a maximum of three feet.

2. Covered parking ~~All ground-mounted~~ solar energy systems ~~collectors~~ shall ~~be screened from all adjacent views~~ not result in a net loss of any required parking.

B. *Roof-mounted ~~collectors~~ solar energy systems*

1. All ~~collectors,~~ solar energy system appurtenances such as, but not limited to, plumbing, water tanks, and support equipment shall be screened to the maximum extent possible without compromising the effectiveness of the solar collectors and shall be painted a color similar to the color of the ~~roof~~ surface upon which they are mounted. If panels are used as screening, they shall contain a finish and color consistent with the building's exterior walls. Solar collectors are exempt from the screening and color provisions of this subsection.

Issue No. 5: Massage Establishments

History: In response to a private zone change application to allow massage establishments in commercial areas throughout the City and the increased popularity of therapeutic massage, the Community Development Department incorporated analysis of this land use City-wide as part of this technical update, to allow for properly licensed retail massage establishments in appropriate areas of the City..

In addition to specific zoning requirements administered by the Community Development Department, the Public Safety Department is responsible for issuing massage establishment permits for each massage business and individual licenses to massage technicians that operate in Irvine as required by the Municipal Code. These permits must be obtained in addition to a Conditional Use Permit (CUP) and a standard business license required through City ordinance.

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The Public Safety Department plays an integral role in implementing and enforcing massage establishment regulations in the City. The Public Safety Department has been concurrently drafting companion provisions to update the Municipal Code related to the permitting and licensing of massage establishments and technicians and will present the revised language to the City Council at a subsequent meeting. Public Safety is, and will continue to be, responsible for issuing massage establishment permits for each operating business and all other massage technician permits. Public Safety coordinates with the Community Development Department to ensure Zoning Ordinance compliance prior to issuance of any of these permits.

Analysis/Discussion: As an emerging industry, therapeutic massages have grown in popularity and have become part of the daily routine of many people. With the appropriate zoning regulations and compatible neighborhood locations, massage establishments offer professional massage services to the community. It is staff's opinion that the current land use regulations should be updated to allow for expanded opportunities for massage establishments as primary land uses in specific areas of the City.

Currently, the Zoning Ordinance permits massage establishments, subject to the approval of a CUP by the Zoning Administrator. Of the current nine total zoning districts that allow massage establishments, five zones permit massage establishments only in conjunction with a health club or hotel/motel. There are a total of four non-commercial zones that permit massage establishments as primary, stand-alone businesses. Table 1 below summarizes the land use districts that permit massage establishments and restrictions, if any, with a CUP:

Table 1 – Current Zoning Districts Allowing Massage Establishments with CUP

Land Use District	In Conjunction w/ Health club and/or hotel/motel	In Conjunction w/ Health club only	Primary use
3.1 Multi-Use	X		
4.1 Neighborhood Commercial		X	
4.2 Community Commercial	X		
4.4 Commercial Recreation		X	
5.0 IBC Mixed-Use			X
5.1 IBC Multi-Use			X
5.4 General Industrial		X	
5.5 Medical and Science			X
8.1 Lifelong Learning			X

In addition to the conditionally permitted massage establishments, accessory uses are also allowed as ancillary uses to various primary land uses that comply with the following criteria: 1) clearly incidental and subordinate to the principal use of the land or

building; 2) located on the same lot with the principal use; 3) not be a generator of additional auto trips, parking needs, or adverse environmental impacts; and 4) occupies a maximum of ten percent of the area of the principal use. Typical examples include a nail or hair salon that offer massage services in a designated area that does not exceed 10 percent of the total gross square footage of the tenant space. Accessory uses are intended to provide an added service (that occupies no more than 10 percent of the area) to the customers of the primary business within a minimal area. Accessory uses are permitted within all zoning districts of the City that comply with the specific limitations described above without discretionary review. Attachment 4 lists all existing massage establishments by name, address, and zoning district.

Staff began the analysis of massage land uses by researching the policies and procedures of neighboring cities, and soliciting the input of the City's Public Safety Department. Staff found that neighboring cities allow massage uses through different land use policies. The cities of Aliso Viejo, Mission Viejo, and Tustin allow massage establishments in commercially designated zones with a CUP, while other cities such as Costa Mesa, Norwalk, and Orange allow massage establishments in all commercial zones without a CUP.

Coordination with the Public Safety Department revealed that their main concern was the location of primary massage uses throughout the City. It was recommended that massage establishments be located in high activity areas, such as retail centers, to promote greater public visibility and away from areas secluded from the general public, such as industrial areas. These concerns have been incorporated into the proposed Zoning Ordinance update.

The Zoning Ordinance update for massage establishments identifies the zoning districts where massage establishments, as primary businesses, are appropriate. Staff has determined that this use is compatible in commercially designated zones within retail centers, such as the Orchard Hills Retail Center and the Irvine Spectrum Commercial Center. These commercial centers provide a wide variety of uses that serve the needs of the surrounding residential and employee population of the City. In addition, commercial retail centers provide greater levels of public visibility with high-traveled areas and customer turnover. This update will retain the current limitation of massage establishments in the 4.4 Commercial Recreation and 5.4 General Industrial zoning districts in conjunction with a health club, given the lack of residential populations to serve within these zoning districts.

Table 2 shows the current and the proposed standards for massage establishments in each land use district. Deleted text is shown as strikethrough and revised text as underlined.

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Table 2 – Proposed Zoning Districts Allowing Massage Establishments with CUP

Land Use District	In Conjunction w/ Health club and/or hotel/motel	In Conjunction w/ Health club only	Primary use
3.1 Multi-Use	~~X~~		X
4.1 Neighborhood Commercial		~~X~~	X
4.2 Community Commercial	~~X~~		X
4.4 Commercial Recreation		X	
4.5 Regional Commercial			X
4.6 Retail Office			X
4.9 Lower Peters Canyon Regional Commercial			X
5.0 IBC Mixed-Use			X
5.1 IBC Multi-Use			X
5.4 General Industrial		X	
5.5 Medical and Science			X
8.1 Lifelong Learning			X

All massage establishments will continue to be subject to the review and approval of a CUP before the Zoning Administrator, which is consistent with the current policy for conditionally permitted massage establishments. As a discretionary action, departments such as Public Safety will review, comment, and establish conditions of approval for each specific application as appropriate. This allows the City to review important aspects of the proposed business and place conditions of approval on a case-by-case basis. The City's review would include, but not be limited to: 1) business plan review, including services offered, hours of operation, and floor plans; 2) adequacy of parking; 3) land use compatibility with surrounding uses; and 4) compliance with City or State requirements regarding licensing for massage establishment businesses and technicians.

Along with the Zoning Ordinance technical update efforts, Public Safety is also proposing to update the Municipal Code (Chapter 3, Division 10) for massage establishments and technician permits. The proposed changes will strengthen the current Code by revising existing requirements and establishing additional qualifications for massage establishment permits and technician licensing. For massage technician licenses, changes within the Municipal Code include specific requirements regarding schooling, certification, and background checks. It also covers procedural aspects such as grounds for revocation or suspension of permits, inspections, appeals, and the renewal processes. Public Safety staff anticipates completing and presenting changes to the Municipal Code updates to the City Council in the near future.

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The Zoning Ordinance update is proposed to include the following items related to massage provisions:

1. Eliminate the provision limiting massage establishments only in conjunction with a health club or hotel; therefore, conditionally permitting them as primary businesses within the following commercial zones:

   - 3.1 Multi-Use
   - 4.1 Neighborhood Commercial
   - 4.2 Community Commercial

2. Conditionally permit massage establishments within the 4.9 Lower Peters Canyon Regional Commercial, 4.5 Regional Commercial, and 4.6 Retail Office zoning districts, which includes the Irvine Marketplace and Spectrum Center.

3. Revise and add definitions for massage activities and massage establishments to further clarify the use. The Zoning Ordinance currently does not define what activities constitute a "massage"; therefore, a definition will be added consistent with the Municipal Code definitions. Thus, the following definitions are proposed to be included as part of the Zoning Ordinance update, shown as underlined text:

   - *Massage:* Any method of treating the external parts of the body for remedial, health, hygienic or any other reason or purpose by means of applying pressure on or friction against, or stroking, manipulation, kneading, rubbing, tapping, pounding, stimulating or other manner of touching, the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice. A massage shall include, but is not limited to, herbal body wraps, acupressure and reflexology.

   - *Massage establishment:* Any establishment having a fixed place of business where any person, firm, association, partnership, or corporation engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any business of providing massages, or any other similar type of system for treatment or manipulation of the human body regardless of what portion of the business is engaged in the provision of Massage.

4. Establish the parking requirement for massage establishments to be provided at the ratio of one parking space per 250 square feet, consistent with the general retail parking rate.

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Issue No. 6: Deferral of Transfers of Development Rights Fees

History: At the City Council hearing of November 12, 2008 on the Hines Office complex, the City Council directed staff to amend the Zoning Ordinance to allow the deferral of fees for the transfer of development rights (TDR). Section 9-36-17 of the Zoning Ordinance allows a transfer of development rights between sites located in the Irvine Business Complex subject to the requirements outlined in the section. Section 9-36-17.E, requires the payment of fees to the City within 30 days of the final discretionary approval.

This payment policy differs from the timing of the actual trip transfer within the City's database, which occurs prior to the issuance of building permits. In some instances, the payment of fees could take place up to three years before the trip transfer in the City's database occurs. The proposed timing change would ensure that the fee payment takes place when the actual trip transfer in the City's database occurs.

Analysis/Discussion: The proposed change would bring the trip fee payment and the final actual trip recordation into consistency with one another. Therefore, the following changes to Section 9-36-17.E, as shown with revised text underlined and existing text strike-out, are proposed:

Section 9-36-17. Transfer of development rights.

E. Transfer of development rights fee. A fee shall be charged for the transfer of development rights payable prior to the issuance of building permits for the receiving site. ~~within 30 calendar days after the final approval of a transfer of development rights development case (MP and/or CUP)~~.

1. Fee rate. Transfer of development rights fees shall be charged as established by resolution through the City Council.

2. Fee calculation. Trip Fee × Transferred P.M. Trips = Total TDR Fee

The recommended change would extend the time period for the payment of fees, but would also make the payment of fees consistent with the recordation of the transfer of development rights which occurs prior to the issuance of building permits.

Issue 7: Special Landscaped Street Setback Requirements

History: Zoning Ordinance Section 3-15-9 requires that properties abutting certain designated streets and any freeway provide a 30-foot-wide landscaped setback area from the right-of-way (ROW) line to the face of the building. Specially landscaped streets are designated in Planning Areas 13 (Irvine Spectrum 4), 30 (Orange County Great Park), 34 (Irvine Spectrum 5), 35 (Irvine Spectrum 2), and 36 (Irvine Business

Complex) as listed in Section 3-15-9. The only improvements allowed in this area are driveway entrances, sidewalks, planters, and walls. Historically, this setback requirement was established when building setbacks along the listed arterials and freeways were uniformly 40 feet from face of curb. This provided sufficient area for the 30-foot landscaped setback area from the ROW line.

Currently, reduced building setbacks are allowed in a number of zoning districts, including 5.0 IBC Mixed-Use, 5.3 IBC Residential, and as included in Section 3-27-2 SETBACK EXCEPTIONS MATRIX. Additionally, the Code includes footnotes regarding road widening that further reduce the building setback from 40 feet to as little as 12 feet along such streets as Main Street and 15 feet for Jamboree Road in selected areas. When a Code-allowed building setback is less than the 30-foot landscape setback, an applicant must either 1) push their building farther back from the street to meet the 30-foot landscape setback from the ROW line; or 2) request administrative relief to allow for a reduced landscape setback requirement of less than 30 feet.

Analysis/Discussion: This ordinance amendment will clean-up an existing discrepancy in the Zoning Ordinance by making the landscape setback consistent with the ordinance required building setback by allowing a reduced landscape setback of less than 30 feet in instances where the allowable building setback is less than 30 feet. The following changes to Section 3-15-9, as shown with added text underlined, are proposed:

> *Section 3-15-9. Special landscaped streets requirements and Master Streetscape Plan.*
>
> *Properties abutting any of the streets or freeways listed below must provide a 30-foot-wide landscaped setback area from the right-of-way line. The only improvements permitted in this area are driveway entrances, sidewalks, planters, and walls. Variations to the width of the landscaped area may be made in the Irvine Business Complex as provided for in sections 3-37-29, 3-37-31 and 3-37-32. If the building setback results in a dimension of less than 30-feet from the right-of-way line to the face of the building, the landscape setback may equal the dimension from the right-of-way line to face of building without the need for administrative relief.*

ENVIRONMENTAL REVIEW:

Pursuant to Section 4 of the City of Irvine California Environmental Quality Act (CEQA) procedures and Article 5 of the CEQA Guidelines, it has been determined that the proposed project is covered by the General Rule Exemption (Section 15061(b)(3)), for projects where it can be seen with certainty that the activity in question will have no significant effect on the environment.

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ALTERNATIVES CONSIDERED:

None as the proposed amendments serve to clarify or correct existing information. The proposed amendments for new/revised land use definitions have been made in response to Planning Commission and City Council requests.

FINANCIAL IMPACT:

None.

CONCLUSION:

Staff believes the technical update represents an opportunity for the City to improve the functionality of the General Plan and Zoning Ordinance by ensuring that the information will be useful, up-to-date, and accurate.

Report prepared by: Sherman Jones, Associate Planner

Reviewed by: Bill Jacobs, Principal Planner
Brian Fisk, Manager of Planning and Redevelopment

Attachments:

1. Minor Revisions to the General Plan and Zoning Ordinance
2. Previously Approved Land Use Decisions
3. Examples of Accessory Retail Businesses
4. Existing City of Irvine Massage Establishments
5. City Council Resolution approving General Plan Amendment 00463314-PGA
6. City Council Ordinance approving Zone Changes 00463315-PZC and 00478498-PZC

cc: Jennifer Bohen, Lennar Communities, via e-mail
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Gary S. Weber, Weber Consulting, via e-mail
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Steven De Wilde, Geographic Information Systems
John Ernst Principal Planner
Brian Fisk, Manager of Planning and Redevelopment
Tim Gehrich, Manager of Planning and Development
Steve Haubert, Principal Planner, Community Services
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Shawn Thompson, Environmental Programs Coordinator
Stacy Tran, Senior Planner
Steve Weiss, Principal Planner
Vivienne Hedgpeth, Public Safety

File Nos.: 00463314-PGA, 00463315-PZC, 00478498-PZC

ATTACHMENT 2

Comment letters

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April 28, 2009

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Re: City of Irvine City Council Consideration of the *i* Shuttle Revised Service Plan

Dear Mr. Joyce and Ms. Apodaca:

On behalf of the Cities of Newport Beach and Tustin, I am writing to object to the City of Irvine's potential approval of the proposed *i* Shuttle Revised Service Plan as an independent project. Environmental review pursuant to the California Environmental Quality Act ("CEQA") within the context of the Vision Plan Environmental Impact Report ("EIR") must occur before the City Council considers whether to approve the *i* Shuttle Revised Service Plan.

As a general matter, the Cities of Newport Beach and Tustin commend the City of Irvine for its apparent efforts to reduce greenhouse gas emissions, traffic congestion, and other air quality impacts within the region by pursuing smart growth development and promoting public transit within the IBC. The City of Irvine, however, must comply with

* We have sent a copy of this letter to the City Council for the City of Irvine ("City Council"), via the general e-mail address for the City Counsel. Please ensure this letter is considered by the City Counsel at the Special Session meeting this afternoon and that the letter is included in the administrative record of decision for tonight's action, if any.

ATTACHMENT 2

CEQA in pursuing these goals. In this instance, the proposed action to approve the ***i*** Shuttle Revised Service Plan pursuant to claimed statutory, categorical, and the "catch-all" exemption violates CEQA. Considering the ***i*** Shuttle Revised Service Plan in isolation is similar to Irvine's recent consideration of the Accessory Retail Business ("ARB") designation in isolation: both actions involve piece-meal review under CEQA and both are equally improper. (See attached letter objecting to recent approval of ARB designation and invocation of the "catch-all" or "common sense" exemption.)

The City of Irvine developed the ***i*** Shuttle as an early implementation measure as part of the ongoing development of the Irvine Business Complex ("IBC"). The City of Irvine has long-considered the shuttle as a component of the transforming IBC as reiterated by fact that "City staff and outreach consultants met with the IBC hotels, apartments, and office building stakeholders to promote The ***i*** Shuttle and discuss future partnership opportunities to increase ridership." (City of Irvine Staff Report on ***i*** Shuttle Revised Service Plan (April 28, 2009), p. 2 ("Staff Report").) Moreover, the recently released Draft EIR for the Vision Plan, in fact, includes an amendment to the Circulation Element that amends Figure B-3 to explicitly reference the ***i*** Shuttle routes. Therefore, as a component of the Vision Plan for the IBC, the ***i*** Shuttle must be analyzed within the Vision Plan EIR. Carving out a piece of a project and claiming that piece is exempt from CEQA's environmental review requirements, as is the case here, is unlawful.

The CEQA Guidelines define "project" to mean "the whole of an action" that may result in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, § 15378, subd. (a).) "'Project' is given a broad interpretation in order to maximize protection of the environment." (*McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143.) In general, the lead agency must fully analyze each "project" in a single environmental review document. Thus, in performing its analysis, the agency should not "piecemeal" or "segment" a project by splitting it into two or more segments. This approach ensures "that environmental considerations not 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 decision in *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007)155 Cal.App.4th 1214, 1223-1224 ("*Tuolumne County Citizens*") is particularly informative. In *Tuolumne County Citizens* the court concluded that off site mitigation must be analyzed as part of the project. The court ruled that a city unlawfully segmented its environmental review of a proposed Lowe's home improvement center because the negative declaration prepared for the center did not also identify and analyze the impacts of relocating a road required as a condition of approval. On appeal, the

dispute centered on whether the proposed home improvement center and the realignment of the road were part of a single "project" for purposes of CEQA. (*Ibid.*)

The ***i*** Shuttle Revised Service Plan is an early implementation measure for the IBC Vision Plan, with the asserted purpose of reducing traffic and air quality impacts associated with intensive redevelopment of the IBC. Therefore, there is substantial evidence that supports the conclusion that the ***i*** Shuttle is designed as a component of the Vision Plan to facilitate the development, and mitigate impacts, of projects analyzed in the Vision Plan EIR. The relationship between the particular act and the remainder of the project is sufficiently close when the proposed physical act is among the "'various steps which taken together obtain an objective.' [Citation omitted.]" (*Tuolumne County Citizens, supra*, 155 Cal.App.4th at pp. 1226-1227.) The ***i*** Shuttle Revised Service Plan is analogous to the off-site mitigation in *Tuolumne County Citizens* and must therefore be analyzed in the Vision Plan EIR.

Analyzing the ***i*** Shuttle within the Vision Plan EIR will further the purposes of CEQA. The Staff Report asserts that the ***i*** Shuttle "will result in annual reductions of 1.7 million vehicles miles traveled, 78 tons of Nitrogen Oxide (NOX), 7,800 tons of Carbon Monoxide (CO), and 156,000 tons of Carbon Dioxide (CO2)." (Staff Report, p. 2.) The Staff Report does not include sufficient evidence to support these conclusions. If the ***i*** Shuttle Revised Service Plan is properly analyzed in the Vision Plan EIR, these and other claims made regarding the ***i*** Shuttle will be vetted publicly. Moreover, by properly analyzing the ***i*** Shuttle as part of the Vision Plan EIR, the City of Irvine will be able to analyze the need for the shuttle within the context of the entire program. Through such an analysis the City will be able to more effectively design an ***i*** Shuttle service plan that achieves the goal to increase ridership while reducing traffic and air quality impacts associated with the transformation of the IBC into a mixed-use urban core.

Thank you for considering these comments. If you have any questions or concerns about anything expressed in this letter, please do not hesitate to contact me.

Sincerely,

Jason Holder

Attachment
cc: (via e-mail w/ attachment):
David Hunt, Newport Beach City Attorney
Douglas Holland, Tustin City Attorney
Jeffrey Melching, Counsel for City of Irvine
Irvine City Council (irvinecitycouncil@ci.irvine.ca.us)

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March 24, 2009

BY FACSIMILE AND U.S. MAIL

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Re: Proposed Ordinance No. 09-02 – Objection to Creation of "Accessory Retail Business" Designation

Dear Mr. Joyce:

On behalf of the Cities of Newport Beach and Tustin, I am writing to object to the proposed creation of an "Accessory Retail Business" designation ("Designation") for certain businesses that would be located among residential and office uses in the Irvine Business Complex ("IBC"). Environmental review pursuant to the California Environmental Quality Act ("CEQA") must occur before the City Council for the City of Irvine ("City Council") considers whether to approve the Designation.

The Designation is by no means a "minor correction or revision" to the Zoning Ordinance as described in the staff report for the General Plan amendment that was approved on March 10, 2009. It was inappropriate for Irvine to bury this significant regulatory change among many "technical updates" to the Zoning Ordinance and General Plan.

The Designation, as currently drafted, can either be interpreted as 1) presuming 100% "trip capture" for retail businesses that fall within the definition and restrictions or 2) prohibiting use of the Designation for retail uses that create any additional auto trips or

ATTACHMENT

parking needs. (See proposed Ordinance 09-02, Exhibit B, Sec. 1-2-1 [stating "[t]he uses shall not be a generator of additional auto trips or parking needs"].) This aspect of the Designation should be clarified. If the latter interpretation described above is correct, then every retail "accessory" use will properly be the subject of a traffic study. If the former interpretation is correct, then the Designation would provide a loophole large enough for potentially several thousand cars and trucks to drive through daily. [1]

The Designation would impose square footage limitations to the "accessory" retail uses. These limitations would, however, allow for, among other things, retail uses that are up to 2% of the total gross square footage of an office development. (See proposed Ordinance 09-02, Exhibit B, Sec. 3-5-2(B)(1).) This turns out, therefore, to be not much of a limitation. For example, with respect to the recently approved HCG Irvine project, the allowable "accessory" retail uses could occupy as 15,700 square feet under the Designation.

Page 1 of proposed Ordinance 09-02 states that the zoning change that will create the Designation is exempt from CEQA because it is "covered by the General Rule Exemption ([CEQA Guidelines] [s]ection 15061[, subd.] (b)(3))." Irvine may not rely on this exemption, however, because it cannot conclude with "certainty", based on substantial evidence, that there is "no possibility" the Designation will have no significant effect on the environment. In fact, as our traffic consultant observes, it is likely that so-called "accessory" retail uses will generate traffic, thereby causing transportation, air quality, noise, and other impacts. [2] Rather than declare this project exempt from CEQA, Irvine should subject the Designation aspect of the project to thorough CEQA review.

The Designation also exempts accessory retail uses from the trip limitations set forth in the IBC Database and managed through the Transfer of Development Rights ("TDR") program. (See proposed Ordinance 09-02, Exhibit B, §§ 3-5-2(A)(5), 3-5-2(B)(5).) This appears to be an end run around the overall development intensity limits established for the IBC. It is manifestly inappropriate to create such a large loophole in the TDR program, especially when Irvine is currently preparing an programmatic EIR for

[1] / By referring to "redundant traffic modeling", the March 10, 2009, staff report suggests that no traffic study will be prepared for accessory business uses. (See p. 2 of staff report.) Modeling the traffic impacts of these uses would not be redundant because such modeling and the associated careful analysis are the only way Irvine can be "certain" that there would be 100% "trip capture."

[2] / Dan Smith of Smith Engineering and Management informs me that the *ITE Trip Generation Manual* provides accepted "conservative" trip capture rates. These trip capture rates are incorporated herein by reference.

the Vision Plan and could easily include the Designation as part of the Vision Plan project and analyze the impacts of the Designation along with all the other associated impacts of the Vision Plan. Approving the Designation without first analyzing the impacts that it may cause is a form of "piecemealing" environmental review which is strictly prohibited under CEQA.

Finally, the Cities were not provided any notice concerning the General Plan amendment concerning the Designation and were not provided with any notice of tonight's proposed action concerning the Designation. Thus, we have had very limited time to prepare our comments concerning the Designation. We have previously requested notice of all IBC projects. Because Irvine appears to narrowly interpret our former request for notice, we are submitting another request for notice that applies to all IBC regulatory changes.

Please contact me with any questions or concerns you may have regarding these comments. Please unsure that the City Council considers these comments and includes them in the record of decision for this project. Thank you for your assistance in this matter.

Sincerely,

Jason Holder

cc: (via e-mail):
David Hunt, Newport Beach City Attorney
Aaron Harp, Newport Beach Assistant City Attorney
Douglas Holland, Tustin City Attorney
Jeffrey Melching, Counsel for City of Irvine

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ATTACHMENT 3

ITE TRIP GENERATION HANDBOOK
(June 2004)

Trip Generation Handbook

Second Edition

An ITE Recommended Practice

June 2004

Institute of Transportation Engineers

ATTACHMENT 3

CHAPTER 7

Multi-Use Development

7.1 Background

A basic premise behind the data presented in *Trip Generation* is that data were collected at single-use, free-standing sites. However, the development of mixed-use or multi-use sites is increasingly popular. While the trip generation rates for individual uses on such sites may be the same or similar to what they are for free-standing sites, there is potential for interaction among those uses within the multi-use site, particularly where the trip can be made by walking. As a result, the total generation of vehicle trips entering and exiting the multi-use site may be reduced from simply a sum of the individual, discrete trips generated by each land use.

A common example of this internal trip-making occurs at a multi-use development containing offices and a shopping/service area. Some of the trips made by office workers to shops, restaurants, or banks may occur on site. These types of trips are defined as internal to (i.e., "captured" within) the multi-use site.

7.2 What Is a Multi-Use Development?

For purposes of this handbook, a ***multi-use development is typically a single real-estate project that consists of two or more ITE land use classifications between which trips can be made without using the off-site road system.*** Because of the nature of these land uses, the trip-making characteristics are interrelated, and some trips are made among the on-site uses. This capture of trips internal to the site has the net effect of reducing vehicle trip generation between the overall development site and the external street system (compared to the total number of trips generated by comparable, stand-alone sites).

Multi-use developments are commonly found ***ranging in size from 100,000 sq. ft. to 2 million sq. ft.*** The data presented in this chapter correspond to multi-use developments in this size range. The recommended procedures for estimating trip generation at multi-use developments are likely applicable at even larger sites, but the analyst is encouraged to collect additional data.

A key characteristic of a multi-use development is that trips among the various land uses can be made on site and these ***internal trips are not made on the major street system.*** In some multi-use developments, these internal trips can be made either by walking or by vehicles using internal roadways without using external streets.

An ***internal capture rate*** can generally be defined as a percentage reduction that can be applied to the trip generation estimates for individual land uses to account for trips internal to the site. It is important to note that these reductions are applied externally to the site (i.e., at entrances, adjacent intersections and adjacent roadways). The trip reduction for internally captured trips is separate from the reduction for ***pass-by trips.*** These are two distinct phenomena and both could be applicable for a proposed development. The internal trips, if present, should be subtracted out ***before*** pass-by trip reductions are applied (refer to Chapter 5 for a complete discussion of pass-by trip estimation).

Multi-Use Development

- Typically planned as a single real-estate project,
- Typically between 100,000 and 2 million sq. ft. in size,
- Contains two or more land uses,
- Some trips are between on-site land uses, and
- Trips between land uses do not travel on major street system.

Not a(n)

- Central business district,
- Suburban activity center, or
- Existing ITE land use classification with potential for a mix of land uses, such as
  - Shopping center,
  - Office park with retail,
  - Office building with retail, or
  - Hotel with limited retail and restaurant space.

7.3 What Is *Not* a Multi-Use Development?

In literal terms, a multi-use development could mean any combination of different land use types within a defined, congruous area. But that definition would encompass a wide range of potential applications, many of which are not intended to be the focus of this chapter.

A traditional **downtown or central business district (CBD)** is not considered a multi-use development for purposes of this handbook. Downtown areas typically have a mixture of diverse employment, retail, residential, commercial, recreation and hotel uses. Extensive pedestrian interaction occurs because of the scale of the downtown area, ease of access and proximity of the various uses. Automobile occupancy, particularly during peak commuting hours, is usually higher in the CBD than in outlying areas. Some downtowns have excellent transit service. For these reasons, trip generation characteristics in a downtown environment are different from those found in outlying or suburban areas. The focus of the data presented throughout *Trip Generation* is on sites in suburban settings with limited or no transit service and free parking. ***Accordingly, trip generation characteristics in this chapter, and specifically in the case of capture rates at multi-use developments, are directly applicable only to sites outside the traditional downtown.*** The potential effects of transit service and on-site parking fees are discussed in Appendix B.

A **shopping center** could also be considered a multi-use development. However, because data have been collected directly for them, shopping centers are considered in *Trip Generation* as a single land use. The associated trip generation rates and equations given in *Trip Generation* reflect the "multi-use" nature of the development because of the way shopping center data have been collected. ***Accordingly, internal capture rates are not applicable and should not be used to forecast trips for shopping centers if using statistis and data for Land Use Code 820.*** However, if the shopping center is planned to have out-parcel development of a significantly different land use classification or a very large percentage of overall GLA, the site could be considered a multi-use development for the purpose of estimating site trip generation.

Likewise, a subdivision or planned unit development containing general office buildings and support services such as banks, restaurants and service stations arranged in a park- or campus-like atmosphere should be considered as an **office park** (Land Use Code 750), not as a multi-use development. Similarly, office buildings with support retail or restaurant facilities contained inside the building should be treated as **general office buildings** (Land Use Code 710) because the trip generation rates and equations already reflect such support uses. A hotel with an on-site restaurant and small retail falls within Land Use Code 310 and should not be treated as a multi-use development.

7.4 Methodology for Estimating Trip Generation at Multi-Use Sites

Internally captured trips can be a significant component in the travel patterns at multi-use developments. However, more studies are needed to thoroughly quantify this phenomenon. Section 7.5 presents a recommended procedure for estimating internal capture rates (and a worksheet for organizing and documenting the analysis assumptions used in the estimation of the internal capture rates) for multi-use development sites.

The internal trip-making characteristics of multi-use development sites are directly related to the mix of on-site land uses (which are typically a combination of residential, office, shopping/retail, restaurant, entertainment and hotel/motel). When combined within a single mixed-use development, these land uses tend to interact and thus attract a portion of each other's trip generation.

The recommended methodology for estimating internal capture rates and trip generation at multi-use sites is based on two fundamental assumptions. First, the proportions of trips between interacting land use types (which will be satisfied internally by pairs of land uses) are assumed to be relatively stable. Second, if sufficient data were available, these internal capture percentages could be predicted with adequate confidence. The need for additional data collection at multi-use developments is described in Section 7.7.

As should be expected, the observed internal capture rates for multi-use developments vary by time of day, the site's mix of land uses and size of the development.

Several premises frame the recommended methodology. An example to illustrate its application is presented in the highlighted text to the side. Key to the success of this methodology in replicating internal capture patterns at multi-use sites is its iterative, balancing steps that constrain internal trip-making levels to what are realistic given the mix of land uses.

Illustration of Methodology Overview

Assume a multi-use development with a mix of office, retail and residential uses. Assume that the office building generates 500 exiting trips during the evening peak hour (based on factors presented in *Trip Generation*).

Based on surveys at other multi-use developments (for illustration purposes), it is estimated that the 500 peak hour trips could go to the following destinations: 5 trips to another office building within the development, 115 trips to a retail site within the development, 10 trips to residential units on-site and 370 to external sites (as illustrated in Figure 7.1a).

What if there are no on-site residential units? **The number of trips from the office to an internal residential destination changes to zero and the number of trips to external destinations becomes 380 (i.e., the total trips from the office building remains constant at 500).**

What if there are a large number of on-site residences? **Assume the residential uses generate 1,000 entering trips during the evening peak hour. As illustrated in Figure 7.1b, the trips are assumed to originate as follows: 20 trips from an on-site office building, 310 trips from on-site retail, no trips from another on-site residential component and 670 trips from external origins.**

With the larger number of residences, as many as 20 trips could come from on-site office buildings. But the actual on-site office buildings generate only 10 trips to the on-site residential land use. So, 10 trips would be expected from on-site office to on-site residential in Figure 7.1c. The key assumption is that the *"balanced" number of internal trips will match the controlling (i.e., lower) value.*

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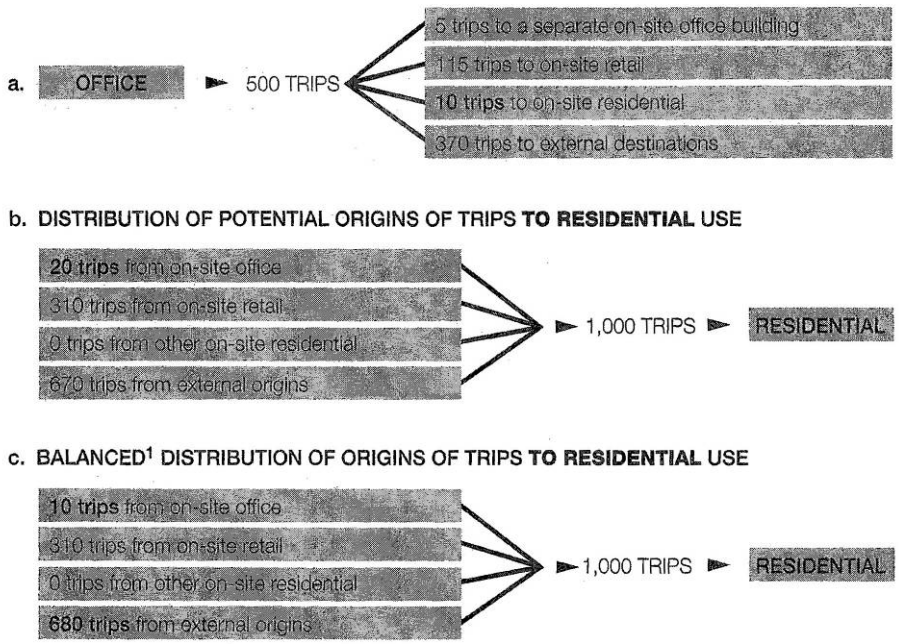
Figure 7.1 Illustration of Internal Trip Balancing for a Multi-Use Development



[1] Only the office-to-residential values have been "balanced." Similarly, all other land use pairs would need to be balanced.

Premise 1: The distribution of trip purposes among motorists entering or exiting a development site is relatively stable. The distribution of destination land uses is likewise assumed to be relatively stable. For example, the destinations of trips from an office building are distributed among the many potential destinations (e.g., retail, residential, other office) in roughly the same pattern whether the office is stand-alone or in a multi-use development.

Premise 2: The converse of Premise 1 is also true, that the distribution of origins for trips to a particular land use is relatively stable.

Premise 3: The number of trips *from* a land use within a multi-use development *to* another land use within the same multi-use development (i.e., an internal trip) is a function of the size of the "receiving" land use and the number of trips it attracts, as well as the size of the "originating" land use and the number of trips it sends. ***The number of trips between a particular pair of internal land uses is limited to the smaller of these two values.***

7.5 Procedure for Estimating Multi-Use Trip Generation

The recommended procedure for trip estimation, although complex, simplifies the actual trip-making dynamics within a multi-use development. For example, the procedure does not take into account a number of key variables that are likely to affect the internal capture rate, such as proximity of on-site land uses (and pedestrian connections between them) and location of the multi-use site within the urban/suburban area (and the proximity of competing or complementary land uses). **The analyst is encouraged to exercise caution in applying the data presented herein because of the limited sample size and scope. Additional data should be collected where possible (refer to Section 7.7 for guidance). The analyst is also encouraged to make logical assumptions in his/her use of this procedure. In summary, use good professional judgment.**

WORDS OF ADVICE

- **Collect additional data if possible**
- **Exercise caution**
- **Be logical**
- **Use good professional judgment**

The step-by-step procedure, as described below, can be used for any number of land uses within the multi-use site. Sample forms are provided for three and four land uses, however, the analyst can modify the sample worksheet to correspond to the desired number of land uses. The layout of the worksheet will become more complex as additional land uses are included.

Blank worksheets for estimating multi-use development trip generation are provided at the end of this chapter. The following step-by-step procedures illustrate how the worksheet should be completed.

Step 1. Document Characteristics of Multi-Use Development

Enter the following information onto the worksheet:

- Name of development;
- Description of each land use in the development and its ITE land use code; and
- Size of each land use, corresponding to the most appropriate independent variable used in *Trip Generation* (e.g., gross leasable area, gross floor area, dwelling units).

If the site has two or more buildings containing the same land use, combine the sizes of the multiple buildings if they are situated within reasonable and convenient walking distance of each other. If the buildings are not close to each other, treat them as separate land uses on the worksheet (for example, as Office A and Office B).

If the site has multiple residential components (single-family, apartment, etc.), compute the trip generation for each residential type separately (later in Step 3), but record as only a single land use on the worksheet.

Step 2. Select Time Period for Analysis

Enter the time period for which the analysis is being conducted onto the worksheet (for help in selecting the appropriate time period for analysis, refer to Chapter 2 of this handbook).

Internal capture rates vary by time of day. A separate worksheet should be completed for each distinct time period. It should be noted that typical internal capture rates are presented later in this chapter for the weekday midday, weekday evening peak and weekday daily.

Internal capture rates may also vary by day of the week. The typical internal capture rates used in a later step are based on data collected on a Tuesday, Wednesday, or Thursday (unless specifically noted otherwise). Analyses for a Friday or Saturday may need modified rates.

Step 3. Compute Baseline Trip Generation for Individual Land Uses

Compute the number of trips generated for the desired time period for each land use based on the given independent variable.

◆ Refer to notes in Step 1 if there are multiple buildings of the same land use within the site.

◆ Compute number of trips generated by direction (enter/exit).

◆ Use the *Trip Generation* rate, *Trip Generation* equation, or local data for each land use. Refer to Chapter 3 for guidance on how to select the appropriate rate or equation for each land use. Do not adjust for pass-by or diverted linked trips at this time.

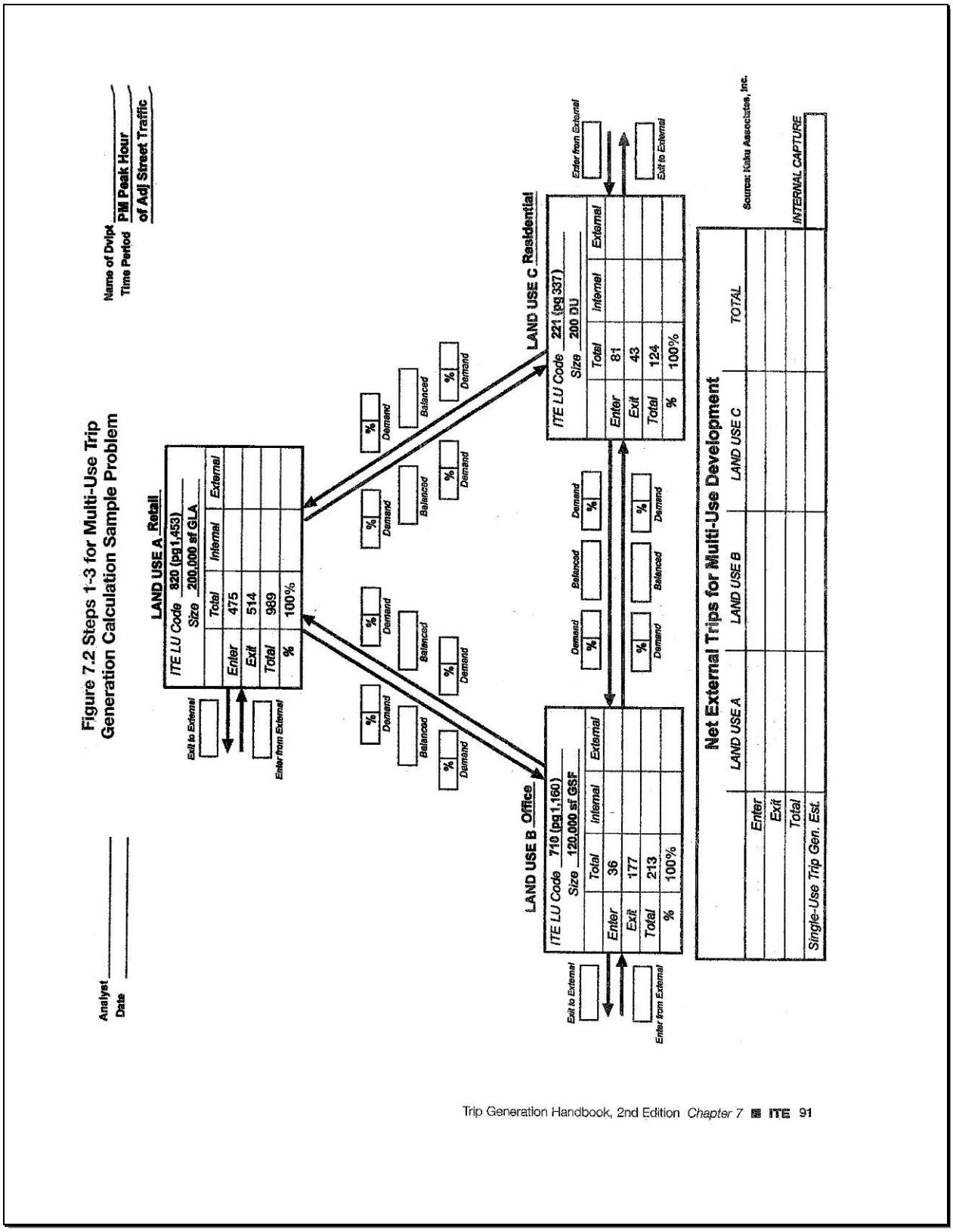
Record trip generation values in worksheet. For each land use, record the baseline trip generation in the column under the "total" heading.

SAMPLE PROBLEM

Step 1. For our example problem, we are analyzing a multi-use site comprised of a 200,000-sq. ft. shopping center; a 120,000-sq. ft. office building; and 200 low-rise apartments. On the worksheet in Figure 7.2, the three land use types and their corresponding ITE land use codes and sizes are recorded.

Step 2. We will assume the analysis time period is the evening peak hour of adjacent street traffic (as indicated in the worksheet in Figure 7.2).

Step 3. For Land Use Code 820, use the equation from page 1,453 of *Trip Generation*, Seventh Edition, to compute trips; for Land Use Code 710, use the equation from page 1,160; for Land Use Code 221, use the equation from page 337. The results are listed in the worksheet in Figure 7.2.



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Step 4. Estimate Anticipated Internal Capture Rate Between Each Pair of Land Uses

Tables 7.1 and 7.2 present unconstrained internal capture rates that have been estimated on the basis of a series of studies conducted in Florida. These are the only data available to ITE prior to publication that are detailed enough for credible use. Readers are encouraged to collect and submit additional data to ITE using procedures described in Section 7.7. As the best available applicable data, it is recommended that these internal capture rates be used unless local data are collected.

SAMPLE PROBLEM (continued)
Step 4. The sample worksheet in Figure 7.3 shows the recorded "internal capture" rates for each pair of land uses.

Estimate the interaction between each pair of land uses for the selected time period.

◆ Use Tables 7.1 and 7.2 (or local data) as the basis for the estimate. (Note: there are no data provided for the weekday morning peak period or for the Saturday midday peak period.)

◆ Table 7.1 presents estimated unconstrained internal capture rates for trip origins within a multi-use development. For example, during the weekday midday peak period, of all the vehicle-trips **exiting** an on-site office use, 2 percent of the trips could be destined for another on-site office use and 20 percent destined for on-site retail use.

◆ Table 7.2 presents estimated unconstrained internal capture rates for trip destinations within a multi-use development. For example, during the weekday midday peak period, of all the vehicle-trips entering an on-site retail use, 4 percent of the trips could originate at an on-site office use and 5 percent at an on-site residential use.

Record the estimated capture rates on the worksheet (in the boxes marked "demand").

◆ For each land use pairing, record four values; for example, for the pairing of retail and office uses, the following four values should be recorded:

- Percent of trips from on-site office destined to an internal retail destination
- Percent of trips to on-site retail originating from an internal office use
- Percent of trips from on-site retail destined to an internal office destination
- Percent of trips to on-site office originating from an internal retail use

◆ Each value represents the unconstrained demand (or maximum potential trip interaction between the two land uses), by direction.

Because of the limited database on trip characteristics at multi-use sites, the analyst is cautioned to review the particular characteristics of the multi-use development under analysis before using the factors presented in Tables 7.1 and 7.2. Specifically, the analyst must ***assess whether each set of internal trip capture rates makes sense considering the particular individual land uses within the multi-use development.***

If local data on internal capture rates by land use pair can be obtained, the local data should be given preference.

The data in Table 7.1 are limited to trip interaction among the three land uses for which sufficient data were available. ***If an on-site land use does not match a land use category in Table 7.1, either (1) collect local data to establish an internal capture rate, according to procedures described in Section 7.7 of this chapter, or (2) assume no internal capture.*** (Note: although this assumption of no internal capture may be unrealistic, in the absence of any data it is better to overestimate off-site vehicle-trips.)

Table 7.1 Unconstrained Internal Capture Rates for Trip Origins within a Multi-Use Development

		WEEKDAY		
		MIDDAY PEAK HOUR	p.m. PEAK HOUR OF ADJACENT STREET TRAFFIC	DAILY
from OFFICE	to Office	2%	1%	2%
	to Retail	20%	23%	22%
	to Residential	0%	2%	2%
from RETAIL	to Office	3%	3%	3%
	to Retail	29%	20%	30%
	to Residential	7%	12%	11%
from RESIDENTIAL	to Office	N/A	N/A	N/A
	to Retail	34%	53%	38%
	to Residential	N/A	N/A	N/A

Caution: The estimated typical internal capture rates presented in this table rely directly on data collected at a limited number of multi-use sites in Florida. While ITE recognizes the limitations of these data, they represent the only known credible data on multi-use internal capture rates and are provided as illustrative of typical rates. ***If local data on internal capture rates by paired land uses can be obtained, the local data may be given preference.***

N/A—Not Available; logic indicates there is some interaction between these two land uses; however, the limited data sample on which this table is based did not record any interaction.

Table 7.2 Unconstrained Internal Capture Rates for Trip Destinations Within a Multi-Use Development

		WEEKDAY		
		MIDDAY PEAK HOUR	p.m. PEAK HOUR OF ADJACENT STREET TRAFFIC	DAILY
to OFFICE	from Office	6%	6%	2%
	from Retail	38%	31%	15%
	from Residential	0%	0%	N/A
to RETAIL	from Office	4%	2%	4%
	from Retail	31%	20%	28%
	from Residential	5%	9%	9%
to RESIDENTIAL	from Office	0%	2%	3%
	from Retail	37%	31%	33%
	from Residential	N/A	N/A	N/A

Caution: The estimated typical internal capture rates presented in this table rely directly on data collected at a limited number of multi-use sites in Florida. While ITE recognizes the limitations of these data, they represent the only known credible data on multi-use internal capture rates and are provided as illustrative of typical rates. ***If local data on internal capture rates by paired land uses can be obtained, the local data may be given preference.***

N/A—Not Available; logic indicates there is some interaction between these two land uses; however, the limited data sample on which this table is based did not record any interaction.

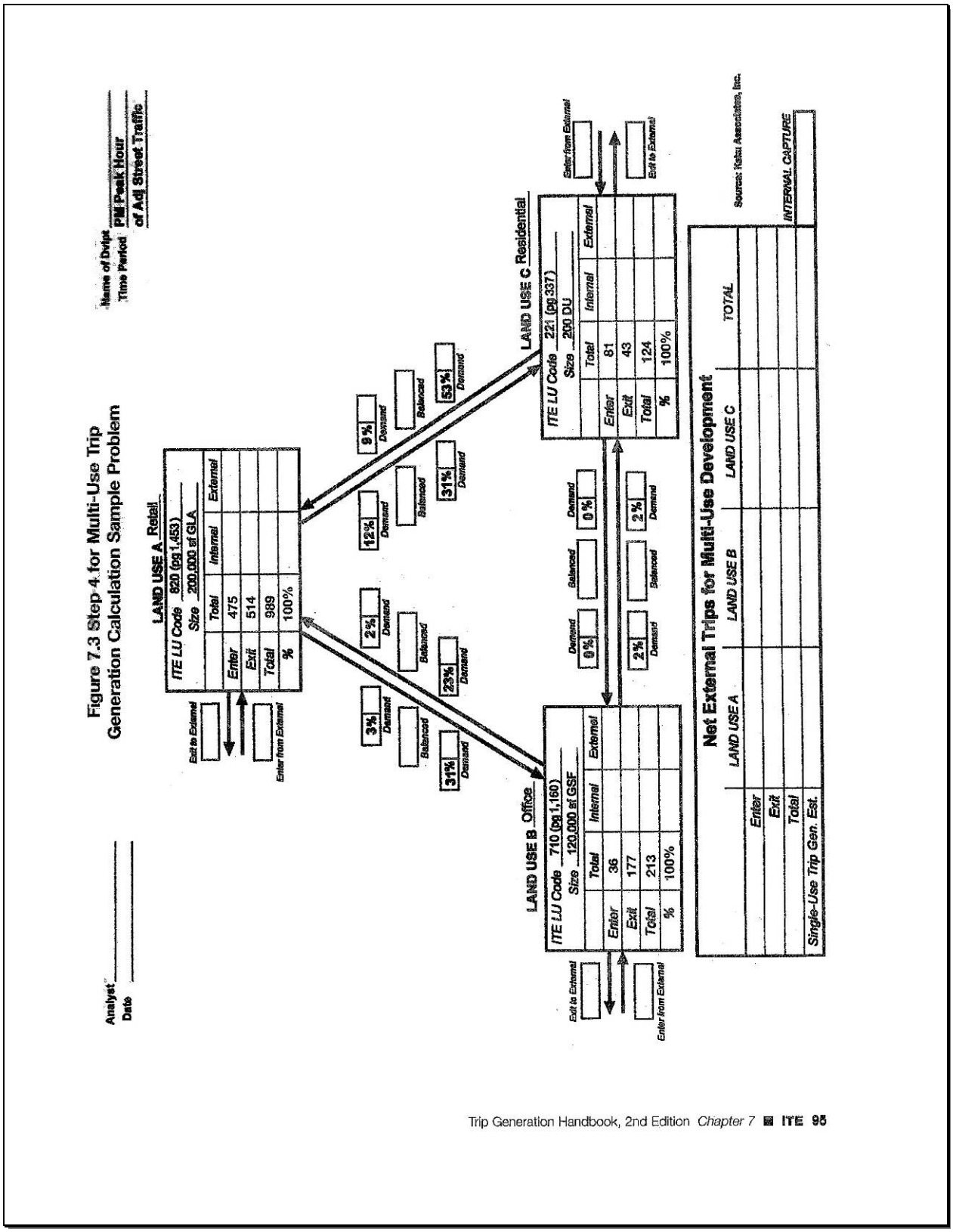


Figure 7.3 Step 4 for Multi-Use Trip Generation Calculation Sample Problem
Analyst
Date
Name of Dvlpt
Time Period PM Peak Hour of Adj Street Traffic
LAND USE A Retail
ITE LU Code 820 (pg 1,453)
Size 200,000 sf GLA
Total Internal External
Enter 475
Exit 514
Total 909
% 100%
LAND USE B Office
ITE LU Code 710 (pg 1,160)
Size 120,000 sf GSF
Total Internal External
Enter 36
Exit 177
Total 213
% 100%
LAND USE C Residential
ITE LU Code 221 (pg 337)
Size 200 DU
Total Internal External
Enter 81
Exit 43
Total 124
% 100%
Exit to External
Enter from External
3% Demand
31% Demand
2% Demand
23% Demand
12% Demand
9% Demand
31% Demand
53% Demand
Balanced
0% Demand
2% Demand
Net External Trips for Multi-Use Development
LAND USE A
LAND USE B
LAND USE C
TOTAL
Enter
Exit
Total
Single-Use Trip Gen. Est.
INTERNAL CAPTURE
Source: Kittelson Associates, Inc.
Trip Generation Handbook, 2nd Edition Chapter 7 ■ ITE 95

Step 5. Estimate "Unconstrained Demand" Volume by Direction

Multiply the internal capture percentages by the appropriate directional trip generation value in the worksheet.

◆ For each pair of land uses, compute a directional value from the percentages that were entered. (Note: these values will be balanced later in Step 6.)

Record the "unconstrained demand" volumes by direction on the worksheet in the boxes marked "demand" next to the percentages.

SAMPLE PROBLEM
(continued)

Step 5. The "unconstrained demand" volumes are computed by multiplying the directional trip generation value by the "unconstrained demand" percentage, as shown in the sample worksheet in Figure 7.4. For example,

- **Trips from retail to office: 514 outbound trips × 3% = 15 trips**
- **Trips to office from retail: 36 inbound trips × 31% = 11 trips**
- **Trips from office to retail: 177 outbound trips × 23% = 41 trips**
- **Trips to retail from office 475 inbound trips × 2% = 10 trips**

Step 6. Estimate "Balanced Demand" Volume by Direction

Compare the two values in each direction for each land use pairing and **select the lower (i.e., controlling) value.**

Record the value as the "balanced demand" (the lower of the directional internal volumes) between each pair of land uses.

◆ Record the lower value for each land use for each direction

◆ Record in the worksheet boxes marked "balanced."

Step 6. Select the controlling value (i.e., the lower value) for each pair of land uses for each direction. For example, in the Figure 7.4 worksheet,

- **For trips from retail to office, the retail could generate 15 internal trips but the office could only receive 11 internal trips; the controlling value is 11 internal trips.**
- **For trips from office to retail, the office could generate 41 internal trips but the retail could only receive 10 internal trips; the controlling value is 10 internal trips.**

Step 7. Estimate Total Internal Trips to/from Multi-Use Development Land Uses

For each land use, first sum the internal trips *to* each other land use. Then for each land use, sum the internal trips *from* each other land use. Record these total internal trip values in the worksheet in the summary table for each land use.

Compute and record the internal percentages for each land use in the summary table for each land use. **Review values and verify that they are reasonable.**

Step 7. The sample worksheet in Figure 7.5 illustrates Step 7. For the retail land use, 10 internal trips are estimated from the on-site office and 23 internal trips from the on-site residential. Therefore, the total internal trips entering the retail land use is 33. The internal trips exiting retail sum to 36 (11 to the on-site office and 25 to the on-site residential). In total, seven percent of the retail trips (69 of 989) are internal to the multi-use site. This procedure is followed for each land use.

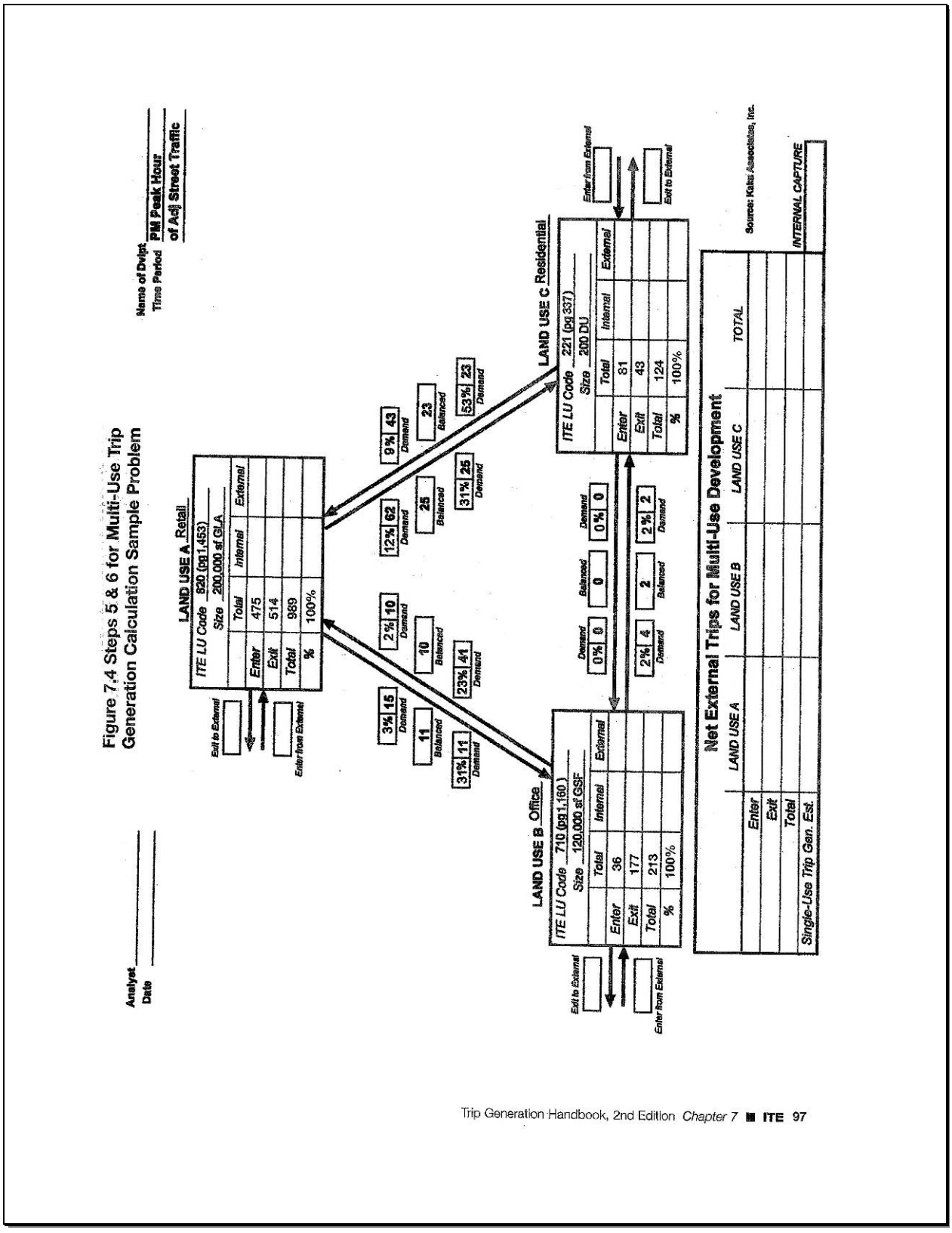


Figure 7.4 Steps 5 & 6 for Multi-Use Trip Generation Calculation Sample Problem
Analyst
Date
Name of Dvlpt
Time Period PM Peak Hour of Adj Street Traffic
LAND USE A Retail
ITE LU Code 820 (pg 1.453)
Size 200,000 sf GLA
Total Internal External
Enter 475
Exit 514
Total 989
% 100%
LAND USE B Office
ITE LU Code 710 (pg 1.160)
Size 120,000 sf GSF
Total Internal External
Enter 36
Exit 177
Total 213
% 100%
LAND USE C Residential
ITE LU Code 221 (pg 337)
Size 200 DU
Total Internal External
Enter 81
Exit 43
Total 124
% 100%
Exit to External
Enter from External
3% 15 Demand
11 Balanced
31% 11 Demand
2% 10 Demand
10 Balanced
23% 41 Demand
12% 62 Demand
25 Balanced
31% 25 Demand
9% 43 Demand
23 Balanced
53% 23 Demand
Demand 0% 0
Balanced 0
Demand 0% 0
2% 4 Demand
2 Balanced
2% 2 Demand
Net External Trips for Multi-Use Development
LAND USE A
LAND USE B
LAND USE C
TOTAL
Enter
Exit
Total
Single-Use Trip Gen. Est.
INTERNAL CAPTURE
Source: Kaku Associates, Inc.
Trip Generation Handbook, 2nd Edition Chapter 7 ■ ITE 97

Step 8. Estimate the Total External Trips for Each Land Use

Calculate the number of external trips (by direction) by subtracting the estimated internal trips from the total trips for each individual land use. Record values in tables for each land use and in the boxes marked "exit to external" and "enter from external."

SAMPLE PROBLEM (continued)

Step 8. The sample worksheet in Figure 7.5 lists the external trip volumes for each land use. For the retail use, there are estimated to be 442 trips entering from outside the site (computed by subtracting 33 internal trips from 475 total trips) and 478 trips exiting to outside the site (514 minus 36).

Step 9. Calculate Internal Capture Rate and Total External Trip Generation for Multi-Use Site

Record the final external trip estimates for each land use onto the worksheet and in the table of "net external trips."

Compute the *net external trip generation* for the entire site by summing the external volumes for each of the site land uses.

Record the original estimates for total trip generation for each land use onto the worksheet in the row denoted "original trip generation estimate." Compute the overall *internal capture rate* by dividing the net external trip generation estimate by the original total trip generation estimate, and subtracting the quotient from 100 percent.

Step 9. The sample worksheet in Figure 7.5 lists the net external volumes for each of the three land uses in the summary table. The entering volume estimate of 521 peak hour trips is the sum of the external trips entering retail (442 trips), entering office (25 trips), and entering residential (54 trips). The net external volume for the multi-use site is 1,184 (521 plus 663) and represents an 11 percent reduction.

7.6 Cautions Regarding Recommended Procedure

The data presented in Section 7.5 quantify the influence of several key factors on internal capture rates. Numerous other factors have a direct influence on travel at multi-use sites, factors for which the current data do not account. Additional data and analysis are desirable to better quantify the relationships between these factors and multi-use development trip generation and internal capture rates. A summary description of the pertinent information contained in several existing documents is included in Appendix C of this handbook.

Limited Sample Size—The estimated typical internal capture rates presented in Section 7.5 in Tables 7.1 and 7.2 rely directly on data collected at a limited number of multi-use sites in Florida. While ITE recognizes the limitations of these data, they represent the only known credible data on multi-use internal capture rates and are provided as illustrative of typical rates. ***If local data on internal capture rates by land use pair can be obtained, the local data should be used (and the data submitted to ITE for use in future publications).***

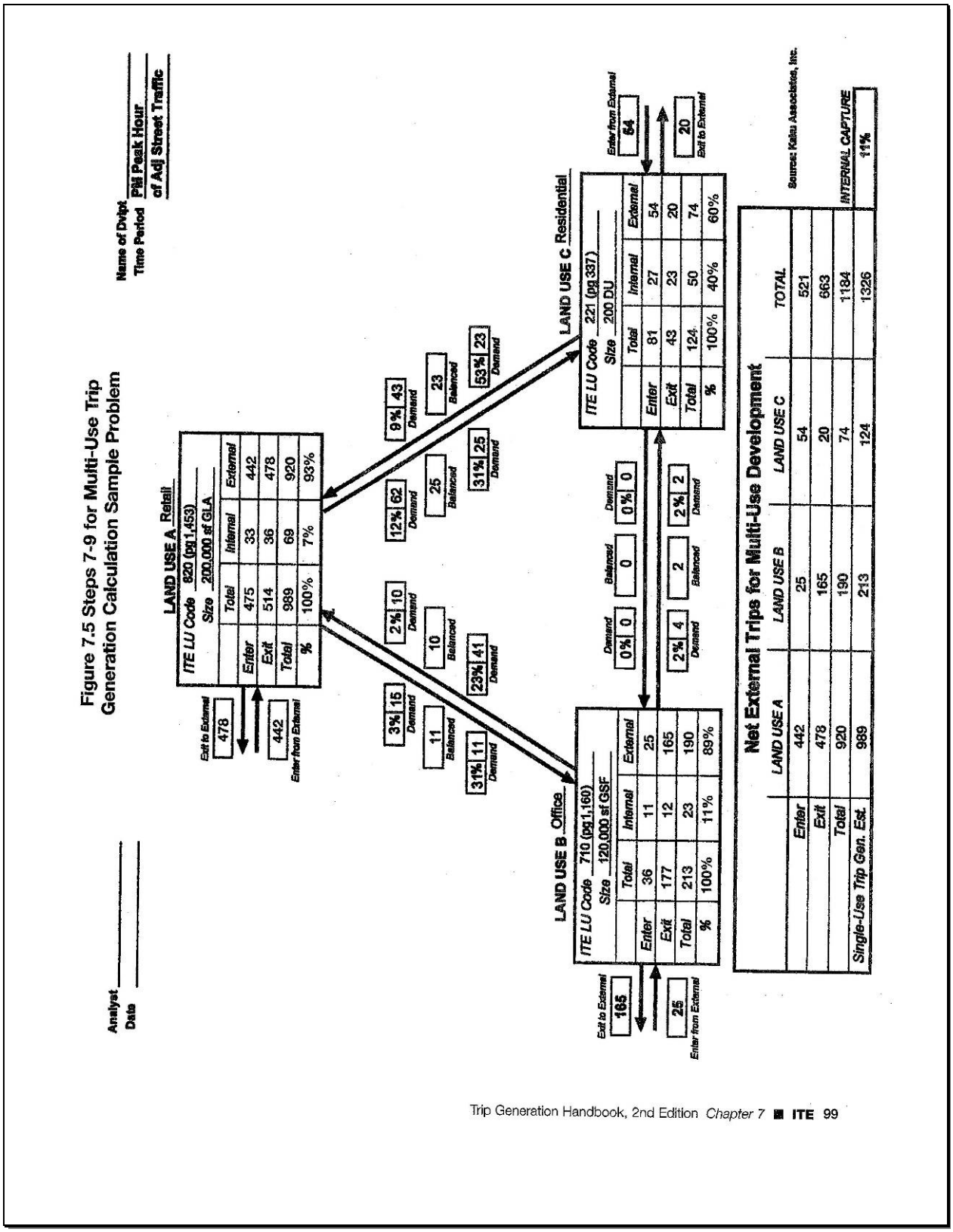


Figure 7.5 Steps 7-9 for Multi-Use Trip Generation Calculation Sample Problem
Analyst
Date
Name of Dvlpt
Time Period
PM Peak Hour of Adj Street Traffic
LAND USE A Retail
ITE LU Code 820 (pg 1,453)
Size 200,000 sf GLA
Total Internal External
Enter 475 33 442
Exit 514 36 478
Total 989 69 920
% 100% 7% 93%
LAND USE B Office
ITE LU Code 710 (pg 1,160)
Size 120,000 sf GSF
Total Internal External
Enter 36 11 25
Exit 177 12 165
Total 213 23 190
% 100% 11% 89%
LAND USE C Residential
ITE LU Code 221 (pg 337)
Size 200 DU
Total Internal External
Enter 81 27 54
Exit 43 23 20
Total 124 50 74
% 100% 40% 60%
Exit to External 478
Enter from External 442
Exit to External 165
Enter from External 25
Exit to External 20
Enter from External 64
3% 15 Demand
11 Balanced
31% 11 Demand
2% 10 Demand
10 Balanced
23% 41 Demand
Demand 0% 0
Balanced 0
Demand 0% 0
2% 4 Demand
2 Balanced
2% 2 Demand
12% 62 Demand
25 Balanced
31% 25 Demand
9% 43 Demand
23 Balanced
53% 23 Demand
Net External Trips for Multi-Use Development
LAND USE A LAND USE B LAND USE C TOTAL
Enter 442 25 54 521
Exit 478 165 20 663
Total 920 190 74 1184
Single-Use Trip Gen. Est. 989 213 124 1326
INTERNAL CAPTURE 11%
Source: Kaku Associates, Inc.
Trip Generation Handbook, 2nd Edition Chapter 7 ■ ITE 99

ADDITIONAL LAND USE MIXES

The analyst should exercise caution when considering the effects of additional land use mixes. For example, one of the newer types of multi-use developments is the large entertainment center complex with cinemas, restaurants, nightclubs and retail space. Customer interviews in Florida and California have suggested that as many as 40 percent of cinema users also eat at on-site restaurants. In another survey, only 20 percent of visitors to the complex report visiting only one land use at the site. However, reliance on interview data alone will tend to overstate the actual amount of internal capture. Actual counts should be taken to supplement these data.

Pass-By Trips—The application of pass-by trip reductions presented in Chapter 5 should be likewise applicable to multi-use sites. However, none of the internal trips can be of a pass-by nature because they do not travel on the adjacent (external) street system. ***Pass-by trip percentages are applicable only to trips that enter or exit the adjacent street system.*** Use the pass-by trip estimation procedure in Chapter 5 of this handbook.

Competing Markets—Proximity to competing markets is expected to influence internal capture rates. ***The greater the distance to external competing uses, the greater the likelihood of capturing trips internally within a multi-use development site.*** Developments in a suburban community may have higher capture rates than those in urban developments since urban areas provide a higher number of alternative opportunities than many suburban developments. For example, residents in an urban mixed-use development have more choices in shopping opportunities and thus may travel outside the development site for their shopping needs, even though there are retail uses in their development site. Suburban residents, on the other hand, may not have as many alternative opportunities and therefore may be more likely to confine their trips to the mixed-use site for their shopping or other needs. However, at this time there are no site-trip generation data available on which to base adjustment factors of this type.

Proximity and Density of On-Site Land Uses—The proximity and density of the residential, retail, office and hotel uses will affect internal trip-making. ***Generally, the greater the density and the closer the proximity of the complementary uses on site, the greater the level of internalization of trips.*** The proximity should be measured in terms of both distance and impedance to the traveler. For example, the presence of foot paths or bicycle paths, protected crosswalks or overpasses and pedestrian refuge areas greatly enhance the accessibility of paired on-site land uses. At this time, however, no site-trip generation data are available on which to base adjustment factors of this type.

Key Premise

Internal capture should increase with an increase in proximity, density and number of complementary land uses within a multi-use development.

Other Site-Specific Issues—Many other issues potentially affect trip making at multi-use sites. For example, can those who work on-site afford to live on-site? How long will it take for the office uses to attract work trips from on-site residences? Is there an internal circulation system that enhances or discourages internal trips?

Shared Parking—Shared parking and multi-use trip generation estimation methodologies, though similar, are not interchangeable. Shared parking factors cannot be applied to estimate trip generation at multi-use developments.

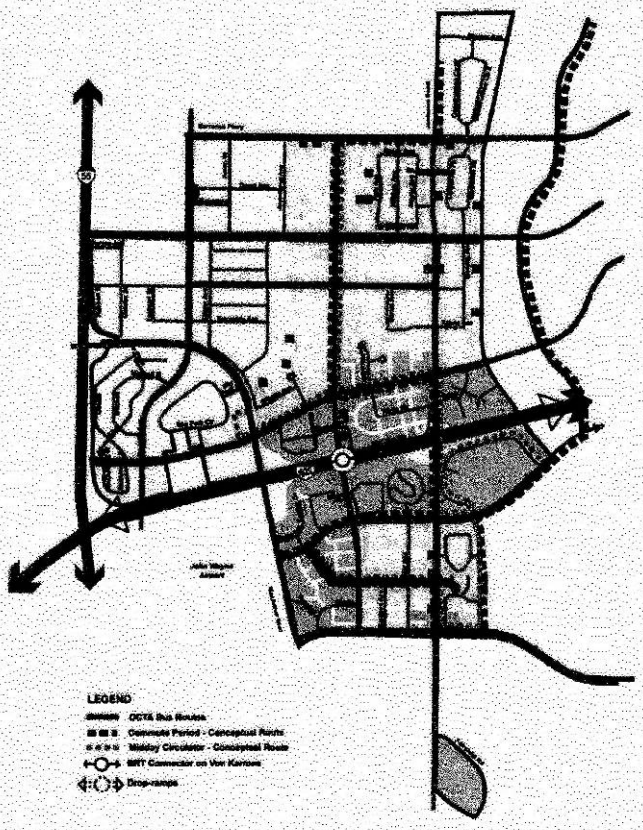
Shared parking factors *cannot* be applied to estimate trip generation at multi-use developments.

ATTACHMENT 4

Excerpt from Draft Vision Plan

Transit

A new IBC Shuttle System is proposed within the IBC. The shuttle system is shown on the conceptual Transit Plan. When implemented, the IBC shuttle system together with the existing bus routes will provide the opportunity for improved transit connections throughout the IBC. OCTA has proposed a Bus Rapid Transit (BRT) route from Fullerton Transportation Center to the Irvine Transportation Center with an intermediate stop at John Wayne Airport via the High Occupancy Vehicle (HOV) drop ramp at Von Karman Avenue.



Transit Plan

ATTACHMENT 4

ATTACHMENT 5

Excerpts from Transcript of October 23, 2007,
Vision Plan Task Force Meeting

CERTIFIED
COPY

IRVINE CITY COUNCIL REGULAR MEETING

TUESDAY, OCTOBER 23, 2007

CITY COUNCIL CHAMBER

ONE CIVIC PLAZA

IRVINE, CALIFORNIA

TRANSCRIPTION OF ITEM 3.1

IRVINE BUSINESS COMPLEX TASK FORCE REPORT

ON RECOMMENDATIONS

BETH KROM, MAYOR
LARRY AGRAN, MAYOR PRO TEMPORE
STEVEN CHOI, COUNCILMEMBER
SUKHEE KANG, COUNCILMEMBER
CHRISTINA SHEA, COUNCILMEMBER

TRANSCRIBED VIA AUDIOTAPE BY JENNIFER K. ABE, RPR,
CSR NO. 10753

1

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ATTACHMENT 5

Force took up was land-use and transportation issues and those fell into four basic categories.

The top two I'm going to spend a little bit more time on in a moment, town center alternatives and optimal unit cap.

The third item, trip reduction strategies, is really all about traffic modeling. The City, led by the Public Works Department and being supported by the Community Development Department, and both departments' group of consultants, is taking a very in-depth, brand-new look at traffic modeling in the IBC, getting state-of-the-art information as far as traffic data out, that will eventually result in the EIR, which is being worked on by the City Staff that will be ready at the middle 2008, along with a full Vision Plan and design guidelines for Council adoption, is creation of new mitigation levels for traffic improvements that would be necessary for future development in the IBC.

And one of the aspects that's being looked at as far as that traffic modeling is trip reductions and strategies.

And what that is really talking about is in this community, as well as other communities, when you begin getting into mixed-use developments,

19

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combining residential with retail and business development, begin adding in infrastructure, such as IBC shuttles and the like, we begin to have the opportunity to reduce trips. We call it also trip capture to capture trips that normally would have been vehicles, now can be in the same building, the same site, across the street from each other, or a shuttle bus or a bicycle trip away.

We are looking at the appropriate opportunities to put that kind of strategy into our city-wide traffic modeling; and I will say, assuming we're successful with that, that same kind of traffic modeling would be available for similar-type neighborhoods in Heritage Fields and perhaps some day in the Spectrum, as well.

The school district consultation, and coordination, there are three separate school districts within the IBC, Irvine, Tustin, Santa Ana.

Historically, through various agreements, almost all of the students that have been generated out of the IBC have ended up being taken by the Irvine Unified School District.

They have expressed to us in discussions we've had with them some challenges about continuing to do that.

20

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ATTACHMENT 6

Letter from Counsel for Allergan to City Council
dated November 27, 2007

BINGHAM

David R. Hunt
Direct Phone: 714.830.0621
Direct Fax: 714.830.0721
david.hunt@bingham.com
Our File No.: 0000323339

November 27, 2007

Via Hand Delivery

The Honorable Beth Krom, Mayor
and City Council
City of Irvine
One Civic Center Plaza
Irvine, CA 92623

Re: Nov. 27, 2007, City Council Meeting Agenda Item No. 3.1 re Approval of the IBC Shuttle Implementation Plan

Dear Mayor Krom and Council Members:

Please accept this correspondence as comments on behalf of Allergan, Inc. regarding the approval of the IBC Shuttle Implementation Plan, agenda item no. 3.1 at today's City Council meeting.

Today, the Council is asked to approve a seven-year Operating and Capital Plan for the shuttle and a Budget Adjustment to transfer IBC Transportation Management Program ("TMP") funds to a newly established IBC Shuttle Fund. In addition, it is asked to approve a route alignment and service plan for the shuttle, a fare structure, the execution of an Interagency Service Transfer Agreement with the Southern California Regional Rail Authority, and the execution of a contract with MV Transportation, Inc. to provide the shuttle operations and maintenance services for five years. Unfortunately, the Council's approval of the IBC Shuttle Implementation Plan (the "Plan") today would be "jumping the gun" since environmental review is incomplete and financing has not been secured. In addition, it would largely be ignoring the recommendations of the City's Finance Commission made at its November 19, 2007, meeting.

Proceeding with the Plan now essentially ignores the need for environmental review and continues the City's policy of segmentation of the IBC Vision Plan and Overlay Ordinance without completion of environmental review. While the staff report prepared for the your consideration of the Plan states that "[t]he IBC Shuttle was included in a Notice of Exemption filed by OCTA for their BRT project" and that "[n]o impacts will occur," it provides the Council with no evidence of either the prior alleged environmental review, nor of its supposed consistency with the Plan as presently proposed. The staff report provides you nothing but conclusory statements regarding environmental review. The Notice of Exemption is not even included in the staff report. Thus, in effect, you have no evidence of environmental review of the project before you At the very least, the Council needs to have the Notice of

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Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

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bingham.com

ATTACHMENT 6

Exemption and its underlying assumptions regarding the Plan before it in order to determine if the prior environmental review is adequate to study the impacts of the Plan now being reviewed. Without this information, there is no substantial evidence to support a determination that there will be no impacts from the implementation of the IBC Shuttle.

Upon receiving the agenda for today's meeting yesterday, we immediately made a Public Records Act request for the Notice of Exemption referred in the staff report so that we could present it for your consideration. We had not received it as of the time of submission of this correspondence but will forward it to your attention when we do. We suspect that you will find that the environmental review "filed by OCTA for their BRT project" did not study the environmental impacts of creating a new City bus system. It is hard to believe that the addition of three new bus routes with twelve new buses will have *no* air quality, no traffic and no noise impacts at all.

Moreover, the IBC Shuttle is an integral part of the Vision Plan, for which the EIR has not yet been completed. The Initial Study for the EIR includes the shuttle in the project description as proposed infrastructure to be studied. The City refers to the planned initiation of shuttle service in Spring of 2008 as an "early implementation action" of the Vision Plan. Since the shuttle is part of the project to be studied by the EIR, by approving the shuttle Plan, the City would be implementing a part of the project prior to completion of environmental review - an action expressly prohibited by CEQA.

If the Council approves the Plan today, the City will be locked into implementing the shuttle regardless of what is found by the Vision Plan EIR. What if the EIR finds that the shuttle significantly contributes to air pollution and noise impacts? What is the residential density necessary to support the shuttle and take cars off the road? What if the EIR finds that the shuttle cannot achieve a critical mass of riders? What if the EIR finds that the shuttle fails to relieve traffic congestion? How does the proposed shuttle affect the consideration of Town Centers within the IBC? The Council should know the answers to those questions before approving the Plan or implementation of the plan may result in undesirable environmental impacts and a waste of the City's resources.

Staff brought the financial issues of the Shuttle Plan to your Finance Commission for consideration on November 19, 2007. Unfortunately, however, staff has not adequately explained the concerns of the Commission to you in the staff report. The majority of the Commission, Chair Dressler and Commissioners Ward and Duong, showed great concern over the rush to implement the shuttle from an economic perspective. The Commissioners repeatedly stated that approving the Plan now is "jumping the gun" because the availability of sufficient funding and whether there will be a critical ridership mass to support the shuttle has not yet been determined.

The Commission expressed belief that the approval of the budget for the IBC Shuttle is premature because the agreement between the City and OCTA for funding of the shuttle has not yet been executed, so it is unknown how much, if any, funding the City will receive for the shuttle and when it will receive the funding. If OCTA grant funds are not available or sufficient, the money needed to operate and maintain the

shuttle will come from the City's General Fund, which likely results in the loss of other City services, an increase in taxes, and/or new development fees. As Commissioner Duong pointed out, it is unfair to burden the City's taxpayers to provide a service that primarily benefits people coming in from out of town by the Metrolink and JWA.

The Commission was also dismayed that there was no financial feasibility study prepared to determine whether the benefits outweigh the costs of the shuttle. The total capital, maintenance and operating expenses for fiscal years 2008-2009 through 2013-2014 is projected to be $18,169,245. The revenue from fares (50 cents per ride) and bus-side advertising for the same period is projected at $1,257,468. TMP funds available for that period total only 1,200,000. That leaves a projected total expense of $15,711,777 that is not offset by revenue or TMP funds. Based on the City's expected ridership of 400 people per day, the average cost to the City's taxpayers per ride[1] is $9, and the average total cost per person[2] for those six years is $39,279. As Commissioner Duong said, "the City could buy each and every one of them a Prius for that!" The Council should consider whether this cost is acceptable when making the decision whether to approve the IBC Shuttle Implementation Plan.

When the majority of the Commissioners seemed to be headed toward a decision not to recommend approval of the Plan, staff member Manny Gomez stepped to the podium and told the Commission that the decision to implement the Plan is a policy one, and the Council would approve the Plan even if the Commission denied it. With that in mind, Chair Dressler moved to recommend approval upon four additional conditions intended to prevent the City from being obligated to purchase buses and continue operations should the funding and/or critical ridership mass not be achieved. Those conditions are listed in the Council's staff report for this item as the Commission's recommendation, but the staff did not include them in the recommended action put before the Council today. Please take the time to consider the Commission's recommendation. (We have also commissioned a rush transcript of the Commission's discussion of this item and we will forward it to your attention as soon as it is completed.)

[1] $15,711,777 total expense for FY 08-09 - FY 13-14 (see Attachment 6 to the staff report), divided by 6 years, divided by 365 days in a year, divided by 800 trips in a day (400 riders each way) = $8.97.
[2] $15,711,777 total expense for FY 08-09 - FY 13-14, divided by 400 people = $39,279.44.

In summation, you do not have sufficient evidence before you to make a determination regarding environmental review of this project, and it truth, approval of the IBC Shuttle Implementation Plan needs to wait until after environmental review of the Vision Plan has been completed. The Council should also consider the Finance Commission's recommendations to prevent obligating the City to paying for the acquisition of twelve buses and a seven-year operations and maintenance contract if the shuttle does not prove successful in attracting riders and removing personal vehicles from the IBC roadways.

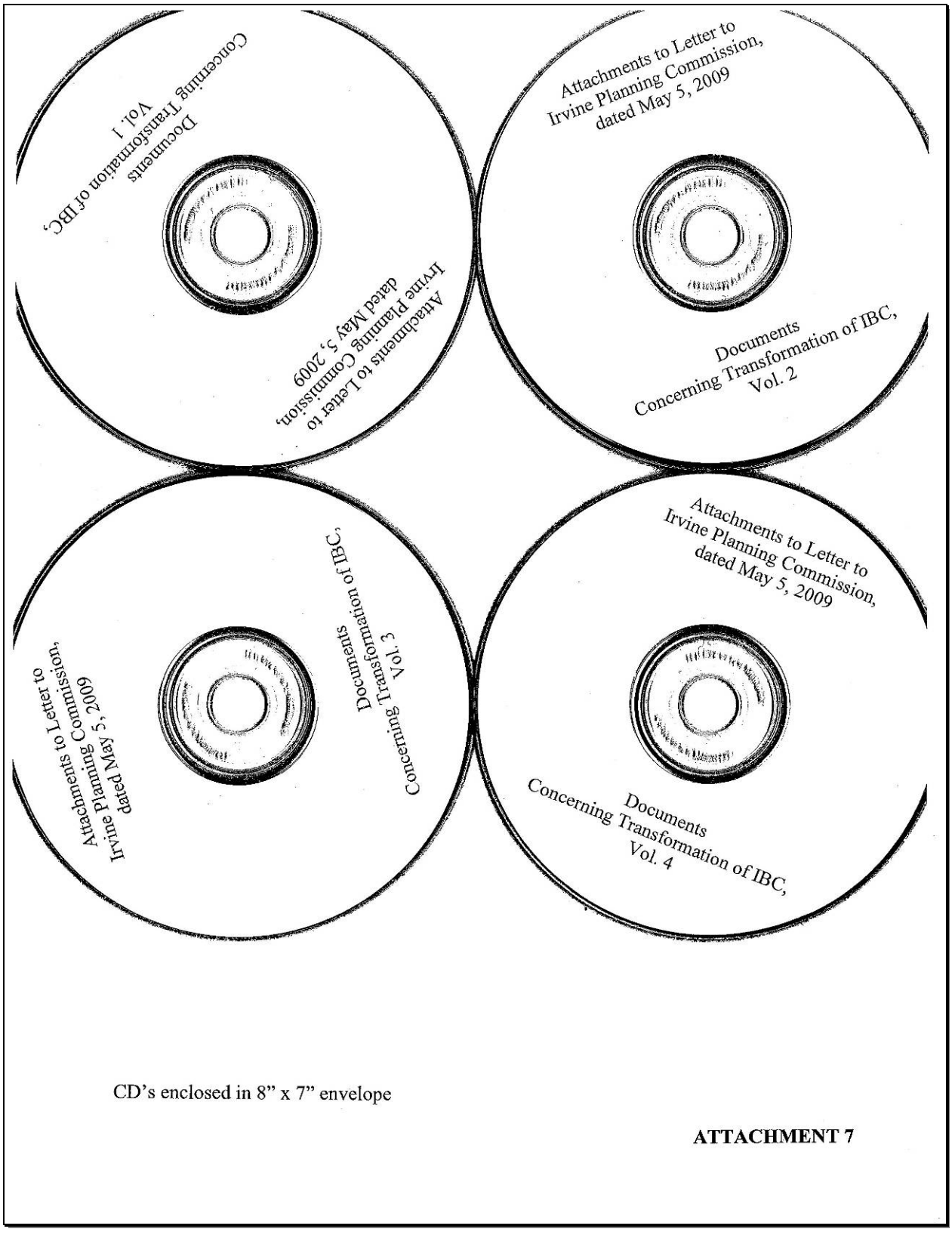
Sincerely,

David R. Hunt
Of Counsel
Bingham McCutchen, LLP

cc: Manny Gomez, Director of Public Works
Sean Joyce, City Manager
Jeffrey T. Melching, City Attorney

ATTACHMENT 7

4 CDs: copies of documents previously produced by Irvine concerning the 1992 IBC Rezone and numerous residential projects



CD's enclosed in 8" x 7" envelope

ATTACHMENT 7

A10. Response to Comments from Jason W. Holder, Remy, Thomas, Moose and Manley, LLP, dated May 5, 2009.

A10-1 A description and analysis regarding the recently adopted Accessory Retail Business designation has been incorporated into Chapter 4, *Environmental Setting*, of the Recirculated DEIR. It should be noted that the traffic study prepared by Parsons Brinkerhoff Associates did not assume a reduction in trips or vehicle miles traveled (VMT) associated with internal trip capture from mixed-use development in the IBC Vision Plan area.

While operation of **The *i* Shuttle** is a relevant amenity in the IBC because it provides transit service within the IBC area, the proposed project involves changes to the land use and zoning designations within the IBC area of the City. The DEIR for the IBC Vision Plan evaluates changes in the physical environment associated with the proposed project. **The *i* Shuttle** item would proceed with or without the adoption of the IBC Vision Plan. Indeed, **The *i* Shuttle** program is calibrated to meet the existing needs in the IBC, not those that would or will exist in the future. If the IBC Vision Plan is adopted and implemented in the future, the **The *i* Shuttle** program may need to be amended to suit increased or changing needs. But for the time being, **The *i* Shuttle** serves its own independent purpose. Pursuant to the CEQA Guidelines, an agreement to maintain **The *i* Shuttle** program and vehicle maintenance was determined to be exempt from CEQA and a Notice of Exemption was filed.

However, because **The *i* Shuttle** service operates within the IBC Vision Plan area, and in an effort to respond to the commenter's comment, a discussion of **The *i* Shuttle** has been incorporated into Chapter 4, *Environmental Setting*, of the Recirculated DEIR as it relates to the existing and future conditions in the IBC Vision Plan area.

Additionally, as requested by the commenter, a copy of the memorandum that was presented to the City Council at the April 28, 2009, hearing regarding **The *i* Shuttle** and the ARB designation was sent to the commenter by Rutan and Tucker, on behalf of the City.

A10-2 In light of the magnitude of the increase in new development in the IBC Vision Plan area, the EIR for the IBC Vision Plan has been completely revised and does not tier off the EIR conducted for the 1992 IBC Rezoning. Chapter 4, *Environmental Setting*, of the Recirculated DEIR describes the context of the previously approved project. The City of Irvine maintains its Transfer of Development Rights (TDR) program, codified in the Zoning Code, to regulate the overall intensity of development within the IBC Vision Plan area by providing a mechanism by which to compare intensity of land use between non-residential and residential land uses. A description of the TDR program and process is provided in Chapters 3, *Project Description*, and 4, *Environmental Setting*, of the Recirculated DEIR.

The City of Irvine acknowledges that the certified 1992 IBC EIR identified several roadways that could not be mitigated to a less than significant level. However, the DEIR and associated traffic study for the IBC Vision Plan and Mixed Use Overlay Zoning Code in no way relies on the 1992 IBC DEIR. A new traffic study has been completed (see Appendix N of the Recirculated DEIR) for the current project which

identifies significant impacts associated with the current project. Due to changes in the existing environment over the last 17 years, as well as changes to the proposed project, the results of the 1992 IBC traffic study and 2009 traffic study are different.

A10-3 Comment noted. No further response necessary.

A10-4 Comment noted. No further response necessary.

LETTER A11 – Remy, Thomas, Moose and Manley, LLP (102 pages)

REMY, THOMAS, MOOSE and MANLEY, LLP
ATTORNEYS AT LAW

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BRIAN J. PLANT
OF COUNSEL

May 14, 2009

VIA E-MAIL
ORIGINAL WILL FOLLOW BY U.S. MAIL

Bill Jacobs, Principal Planner
City of Irvine
Community Development Department
P.O. Box 19575
Irvine, CA 92623-0575

Re: Comments Concerning Draft EIR for IBC Vision Plan

Dear Mr. Jacobs:

On behalf of the City of Newport Beach and the City of Tustin (collectively, the "Cities"), we are writing to urge the City of Irvine to substantially revise the environmental review document prepared for the Irvine Business Complex ("IBC") Residential Mixed-Use Overlay Zone and Vision Plan ("Vision Plan" or "Project"). As explained below, the Draft Environmental Impact Report ("DEIR") for the Vision Plan is flawed in a number of ways and fails to satisfy the requirements of the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000, et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq.). [1] A11-1

[1] / Engineers and planners at the City of Tustin and the City of Newport Beach have prepared additional comments concerning this DEIR, these comments are attached hereto as Attachment A and Attachment B, respectively. In addition, expert consultants have analyzed the DEIR's traffic and recreation impact analyses and have prepared separate comment letters attached hereto as Attachment C and Attachment D, respectively. These four comment letters are incorporated herein by reference.

By providing these comments, we intend to foster a productive dialogue with Irvine, so that the environmental issues of pressing concern to the Cities are finally resolved. While we have noticed problems with other chapters of the DEIR, these comments focus on the chapters that address impacts that will most affect the Cities, Transportation and Recreation. The Cities have provided comments concerning IBC projects for almost as long as the IBC has existed. [2] Yet, their long-standing concerns regarding traffic, parks, and broad cumulative impacts have largely gone unheaded and unaddressed. The Vision Plan planning and environmental review process provides a vital opportunity for mutually beneficial cooperation. For the sake of all stakeholders in the region, we sincerely hope that Irvine will also see this process as an important opportunity for mutually beneficial cooperation and will respond to these comments with an eye towards addressing and resolving the Cities' concerns.

Since at least 2005, Irvine has been in the process of developing the Vision Plan while simultaneously considering for approval several individual residential development projects within the IBC. [3] The Cities maintain that Irvine has not adequately considered the direct and cumulative impacts caused by the rapid transformation of the IBC exemplified by these individual projects, and therefore has not mitigated the impacts of this transformation. [4]

A11-2

Since October 23, 2007, when we submitted our comments concerning the IBC Task Force's recommendations concerning the Vision Plan, we have received DEIRs for several residential and office projects that would be located within the IBC. Some of these DEIRs purported to consider the Vision Plan in their cumulative impact analysis. This was not possible, however, since the ultimate characteristics of the Vision Plan remained in flux until only recently. Because full and adequate consideration of the Vision Plan was elusive in these project DEIRs, the Cities urged Irvine to complete its environmental review of the Vision Plan *before* it considered for approval any additional individual residential projects in the IBC. Irvine ignored these requests, approving several more projects while this DEIR was being prepared.

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[2] / See, e.g., Attachment E: Cities' comment letters concerning the program EIR prepared for the 1992 IBC rezone ("1992 IBC PEIR"). These letters present comments that are characteristic of the comments raised to Irvine repeatedly for almost 20 years.

[3] / See Attachment 7 to the Cities' letter to the Planning Commission, dated May 5, 2009: 4 CDs containing documents concerning the pending Vision Plan (labeled "B-00-") and concerning pending projects (labeled "D-00-").

[4] / A judge of the Orange County Superior Court has agreed that Irvine has failed to adequately analyze, pursuant to CEQA, the transformation of the IBC. (See Letter to Irvine, dated April 29, 2008, with attached Minute Orders from 2851 Alton and Martin Street cases.)

The Cities' concerns regarding this Project's impacts must be considered in the context of the history of intensive redevelopment in the IBC without adequate mitigation of the impacts that previously approved projects within the IBC have caused both directly and cumulatively. The following comments detail the Cities' general and specific concerns about problematic issues raised by this Project. When responding to these comments, please provide "good faith reasoned analysis." (See CEQA Guidelines, § 15088, subd. (c); see *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1359-1360.)

A11-2 cont'd.

I. General Comments:

A. The DEIR Provides an Inadequate Project Description.

CEQA requires a clear and comprehensive description of the proposed project is critical to accurate analysis of impacts and meaningful public review. An accurate, stable and finite project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity. (See *San Joaquin Raptor Rescue Center v. County Of Merced* (2007) 149 Cal.App.4th 645, 655; *McQueen v. Board of Directors of the Midpeninsula* (1988) 202 Cal.App.3d 1136, 1143; *County of Inyo v. City of Los Angeles* ("*County of Inyo*") (1977) 71 Cal.App.3d 185, 193.) The DEIR's description of the Project is inconsistent with the General Plan amendment, zone change, and other appendices and omits critical information and thus fails to meet this requirement in several important respects.

A11-3

The two appendices that show proposed changes to the General Plan and Zoning Code use inconsistent redlining methods. This creates a false impression. Appendix C, Draft General Plan Amendment for IBC Residential Mixed Use Vision Plan, shows changes *from an earlier version of the unadopted Vision Plan*. However, Appendix D, Draft Amendments to the Zoning and Municipal Codes and Park Standards Manual, shows changes *from the existing zoning code* as well as changes in the unadopted Vision Plan and Overlay District. These appendices do not consistently reveal the proposed changes from the existing General Plan and Zoning Code. To be clear, the entire IBC Element is new to the General Plan and the Vision Plan and Overlay District, in their entirety are components of the Project. Appendix C and the DEIR must make this fact obvious.

A11-4

1. <u>The Description of the General Plan Amendment is Inadequate.</u>

The new IBC Element refers to the Alfred Gobar Associates' surveys conducted in 2005 and and 2007. (Appendix C, pp. N-6 – N-8.) Despite the proposed recognition of these surveys, Irvine continues to ignore evidence about the IBC population that these

A11-5

surveys reveal. In particular, Irvine continues to use the 1.3 persons per household population generation factor for park dedication that has been discredited by these surveys. This description of the two surveys should be amended, as well as the subsequent section concerning parks, in order to confirm that the results of these and other timely surveys will be used for park dedication and impact analysis purposes. The Parks and Open Space description should also be amended to reflect the proposed development of community and neighborhood parks within the IBC. (See *id.* at p. N-9.)

A11-5 cont'd.

References in the new IBC Element to transportation and transit appear to be inconsistent with prior positions taken by Irvine. During the hearing in December 2008, concerning the HCG Irvine Project, Mayor Pro Tem Larry Agran stated, in response to concerns that allowing a deviation from the setback requirements will interfere with future necessary roadway expansion, "Jamboree will never be widened." Yet the new element states that Jamboree will indeed by widened in connection with the Vision Plan. (Appendix C, p. N-19.) In addition, Assistant City Attorney Jeff Melching recently stated, in connection with the recent re-approval of the *i* Shuttle, that this transit system had "independent utility" and thus could be exempted from CEQA's requirements and not analyzed along with the rest of the Vision Plan. Yet the new element has strikeout language suggesting that Irvine recently considered the *i* Shuttle to be part of the Vision Plan. (See *id.* at p. N-22.) These inconsistent statements reveal the problem with piecemeal environmental review prior to the required comprehensive review. Irvine approved the HCG Irvine project and the *i* Shuttle without considering their environmental consequences in connection with the larger Vision Plan.

A11-6

Policy (a) under Object N-4 states that fees will be collected for "new community park within or adjacent to the IBC." (Appendix C, p. N-24.) According to the anticipated population for the IBC, at least two community parks, and six to eight neighborhood parks will be required for the IBC. These parks must be within the IBC, not adjacent to the area, in order to meet the recreational needs of IBC residents. This objective should therefore be amended so that the policy reflects the IBC's true needs. And this revised aspect of the Project must be analyzed in the DEIR. Moreover, on the following page, the statement, "[t]he following parks *should* be provided in the IBC," must be changed to the "[t]he following parks *shall* be provided in the IBC."

A11-7

Amendments to the General Plan Land Use Element must be internally consistent to provide an adequate project description. The DEIR states that the General Plan Land Use Element would be amended to include the proposed cap of 15,000 dwelling units for the IBC and a corresponding reduction of nonresidential office uses, as depicted in Table A-1, Maximum Intensity Standards by Planning Area, of the General Plan Land Use Element. (DEIR, pp. 3-11 to 3-12.) The General Plan amendment would also remove

A11-8

the existing density cap of 52 dwelling units per acre and would add a density level of a minimum of 30 units per acre to Table A-1. (DEIR, p. 3-12.) A11-8 cont'd.

In addition to the amendments identified above, footnote 21 to Table A-1 should be amended for consistency with the proposed IBC density requirements and for consistency with the state density bonus law. Moreover, Table A-3, Non-Regulatory Population Standards by Land Use Element Category, should be amended to include "Urban/Industrial" as a sub-category under "Residential," to the extent residential uses are permitted within this district, with its corresponding numbers for residents per dwelling unit and residents per acre. These changes should be added to the project description to provide an accurate picture of the Project. Moreover, the referenced tables to the General Plan Land Use Element should be appended to the DEIR to fulfill CEQA's informational requirements. A11-9

2. The Description of the Zoning Code Amendments is Inadequate.

The amendments to the Zoning Code provisions are similarly unclear. First, section 5-8-3 of the Zoning Code provides that the new Overlay Zone would create three districts: Multi Use, Urban Neighborhood, and Business Complex. (DEIR, p. 5.8-5.) However, sections 9-36-3 and 9-36-5 provide different land use category titles for Planning Area 36 (IBC): Mixed Use (IBC), Multi-Use (IBC), Industrial (IBC), Residential (IBC), and IBC Vision Plan Residential/Mixed Use Overlay. It is our understanding that the existing zoning districts identified in Chapter 9-36 remain and the new IBC Overlay Zones become effective only when a property owner proposes new residential development. Section 5-8-2, Applicability, however, does not clearly state this and the DEIR should clarify this point. A11-10

Second, Section 9-36 fails to reference the pending 2009 Vision Plan EIR (the subject of these comments). Section 9-36-4, Intent, states:

> It is the intent of this chapter to specify regulations to maintain the development and traffic intensity at the levels analyzed in and mitigated by the final program environmental impact report for the planning area adopted on October 27, 1992. A11-11

While the Zoning Code makes multiple references to the 1992 IBC Program EIR, the Zoning Code has not been amended to include references to the 2009 Vision Plan EIR. Because this EIR is supposed to address and mitigate the traffic intensity for the IBC (as significantly modified by the substantial increase in residential uses), the Zoning Code must be updated to include references to this EIR. Moreover, we note that it is disingenuous to claim that impacts were mitigated by the 1992 IBC Program EIR. The

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Statement of Overriding Considerations adopted in connection with the 1992 IBC rezone directly contradicts this assertion. Thus, this inaccurate language must be removed from the Zoning Code. A11-11 cont'd.

Third, section 3-37-28.1(D)(3), 5.0 IBC Mixed Use, is not consistent with the General Plan. Specifically, this section states that the maximum residential density shall be 30-52 dwelling units per acre (a cap that may be increased to 30-56 dwelling units per acre provided that the development include on-site affordable housing units and in accordance with certain criteria). This section has not been updated so that allowable density is consistent with the General Plan and with current state law. The Zoning Code must be updated to meet the consistency requirement. All additional comments regarding the zone changes are addressed further in the specific comments below. A11-12

B. The DEIR Fails to Consider the Whole of the Action

The DEIR neglects to evaluate the whole of the proposed Project. Under CEQA, a project is defined as "the whole of the action" that may result in either a direct or reasonably foreseeable indirect physical change to the environment. (CEQA Guidelines, § 15378, subd. (a); Pub. Resources Code, § 21065.) This broad definition of "project" is intended to maximize protection of the environment. (*McQueen v. Bd. of Directors of the Midpeninsula Regional Open Space Dist.* (1988) 202 Cal.App.3d 1136, 1143; *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1227.) In performing its analysis, a lead agency must not "piecemeal" or "segment" a project by splitting it into two or more segments. This approach ensures "that environmental considerations do not 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; *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284 (same).) A11-13

The trial court ruled that Irvine was required to analyze the "transformation of the IBC." Specifically, the court determined:

> Whether [Irvine] wants to admit it or not, [it] is transforming the IBC into a mixed use residential area and is contemplating raising the residential cap in relation to the Vision Plan, while at the same time approving individual residential projects without conducting a proper environmental analysis of that transformation.

(Minute Order regarding the 2851 Alton project, p. 4, ¶ 9.) The potentially significant impacts caused by projects that have already been approved are relevant to the

cumulative impacts of the Vision Plan project. (*Environmental Protection & Information Center v. Cal. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 523 (*EPIC*) [cumulative impact analysis must also consider the impacts of past projects].) Accordingly, the DEIR's discussion of the impacts caused by past projects must be revised.

A11-13 cont'd.

The DEIR must also consider the City Council's March 24, 2009, approval of the "Accessory Retail Business" ("ARB") zoning designation. The ARB designation, as a land use regulation that seeks to encourage mixed-use neighborhoods in the IBC, is necessarily a part of the Vision Plan Project and must therefore be considered in the DEIR's analyses. [5] As the Cities noted in previous correspondence concerning this issue, in approving the zoning ordinance, Irvine assumed, without sufficient factual basis, that the businesses falling within the ARB designation would not generate any traffic (i.e., there would be 100% "trip capture"). Irvine improperly determined that the ARB designation would therefore be exempt from CEQA. This conclusion, however, is unfounded. Rather, there is substantial evidence that businesses within the ARB designation category will generate traffic. (See *ITE Trip Generation Handbook* (June 2004), attached to letter to Planning Commission, dated May 5, 2009.) Irvine, therefore improperly concluded that the ARB designation was exempt.

The accessory retail uses within residential and office complexes, now authorized under the ARB designation, will have a significant effect on land use within the IBC and will generate at least some traffic (though how much is unknown, because this has not been analyzed). Because Irvine's zoning ordinance does not place a cap on the total amount of allowable square footage of ARB uses within the IBC, the ARB zone has the potential to significantly change the face of the IBC. The ARB designation also exempts ARB uses in the IBC from Irvine's Transfer of Development Rights ("TDR") mechanism. The TDR program allows trading of development intensity rights between parcels up to a maximum development cap. Allowing this broad exception to the TDR program's development limitations, without any environmental analysis, raises further concerns regarding the associated potentially significant impacts and Irvine's commitment to address them. In short, the ARB designation constitutes a broad change in land use regulation within the IBC that should have been considered along with other related regulatory changes in the Vision Plan DEIR. Irvine was wrong to consider the ARB designation as distinct from the Vision Plan and must instead analyze the potential

A11-14

[5] / See Cities' comment letter regarding the ARB designation, dated March 24, 2009. See also the comment letter from Allergan, dated March 24, 2009, regarding the same. See also the Cities' comment letter to the Irvine City Manager and City Clerk, dated April 28, 2009. Each of these letters were resubmitted in connection with the Vision Plan project and are incorporated herein by reference.

direct and cumulative impacts of the businesses that will be permitted through this designation. A11-14 cont'd.

Moreover, the DEIR must consider the *i* Shuttle and Irvine's recent adoption of the *i* Shuttle Revised Service Plan. As the Cities' previously commented, the *i* Shuttle has long been considered an integral part of the Vision Plan and only recently has the *i* Shuttle been considered as a distinct project with "independent utility." The DEIR itself demonstrates that Irvine does not consider the *i* Shuttle to be wholly distinct from the Vision Plan. For example, section 5.13.3 identifies the Transportation Management Association ("TMA") and the TMA's goals as an existing Project Design Feature ("PDF") that applies to the Project. Among the goals of the TMA include overseeing and funding the implementation and expansion of the *i* Shuttle. (DEIR, p. 5.13-40.) The discussion of Impact 5.13-4 in the Transportation and Traffic Chapter provides another example of the *i* Shuttle's connection to the Vision Plan. (DEIR, p. 5.13-217.) Specifically, the impact analysis for Impact 5.13-4 concludes that it complies with adopted programs for alternative transportation, including the *i* Shuttle, which "was designed for the IBC community." The DEIR establishes that there is a connection between the *i* Shuttle service and the Project area, thus negating the *i* Shuttle as having "independent utility" from the Vision Plan.

Irvine's decision to chop up the Vision Plan project into pieces for the either project-level environmental analysis or an exemption from CEQA violated one of the central purposes of an EIR – "to inform other governmental agencies, and the public generally, of the environmental impact of a proposed project [citations omitted], and to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.) A11-15

The DEIR cannot view the ARB zone and the *i* Shuttle as distinct from the Vision Plan for the purpose of finding these "sub-projects" exempt. Instead, the environmental impacts of both projects must be considered in the DEIR. This is precisely the type of segmentation prohibited under CEQA, because it results in the DEIR understating the potential impacts of the "whole of the Project." (See *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 ["[a] narrow view of a project could result in the fallacy of division . . . that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole"].) Because the Vision Plan DEIR failed to analyze the entire project, it has potentially understated the potentially significant impacts. The DEIR must therefore be revised and recirculated so that it adequately addresses all of the impacts that may be caused by the transformation of the IBC and by all regulatory land use changes associated with the Vision Plan.

Similarly, Section 3.3.3 of the DEIR provides project descriptions for the nine proposed projects for which applications are currently on file with Irvine. (DEIR, p. 3-20.) These nine individual projects would result in the development of 2,522 residential units. The DEIR notes that these projects will be evaluated in the DEIR to the extent that specific information is available. (DEIR, p. 3-20.) The DEIR should also state, however, whether subsequent environmental review would be required for these individual projects to the extent that they are not analyzed in the DEIR. If so, would these projects, and any additional projects, be put through a "fast-track" process of review? Moreover, the project descriptions of these individual projects are incomplete and the DEIR must provide further information. For example, in section 3.3.3.4, the DEIR notes that the Irvine Technology Center ("ITC") consists of a Master Plan, Park Plan, Affordable Housing Plan, and the TDR from the Campus Center sending site to the ITC site. The DEIR does not provide detailed discussions of these sub-components even though extensive information concerning these projects are on file with Irvine and these details are readily available.

A11-16

II. Specific Comments

A. Section 5.7 – Hydrology and Water Quality

***Proposed Conditions, Hydrology* (p. 5.7-22).** The DEIR suggests that the Lane Channel and Armstrong Channel currently provide inadequate protection against the 25-year flood as they have the capacity to convey only 65% of the 25-year discharge. (DEIR, p. 5.7-23.) The design capacity of the channels currently do not meet design parameters of the 1986 Orange County Hydrology Manual and its 1996 Addendum, thus the channels also have insufficient capacity to weather the 100-year flow rates as well. (DEIR, p. 5.7-23.)

While the DEIR recognizes that the channels provide inadequate flood protection, the DEIR does not analyze the potential impacts to downstream ecological resources, including the biological resources in San Diego Creek and upper Newport Bay. This is especially critical, in light of the hazardous materials used by industries located in the IBC. Moreover, the need to analyze the impacts downstream is important because runoff from the IBC ultimately discharges into San Diego Creek, which discharges into the upper Newport Bay, a significant biological and recreational resource for the region. (DEIR, p. 5.7-12.) Given that the drainage channels are inadequate to convey flood-level flows, the DEIR must analyze and mitigate all potentially significant impacts to downstream resources. The issue of flooding is, of course, of particular concern to Newport Beach.

A11-17

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***Impact 5.7-4: Portions of the Project Site Proposed for Development are Located Within a 100-Year Flood Hazard Area* (p. 5.7-42).** As noted above, the IBC Master Drainage Study found that that several portions of the Lane Channel and Armstrong Channel in the IBC were insufficient to contain the 100-year storm flows. (DEIR, p. 5.7-42.) According to the DEIR, with implementation of improvements recommended by the IBC Master Drainage Study, potential flooding impacts are considered less-than-significant. (DEIR, p. 5.7-43.) The DEIR states that implementation of specific improvements "is to be determined" by Irvine and Orange County Flood Control Division ("OCFCD"). Directing that Irvine and OCFCD work out the details regarding flood control protection at some later undefined time is vague and unenforceable, and thus inadequate. (See *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1262.) The DEIR must provide language that ensures implementation of flood protection coordination efforts that lead to improvements. The details of these improvements must be described in the DEIR, or specific performance standards must be included to ensure the mitigation works as advertised. (See See, e.g., *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793-796; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.) A11-18

This section is also internally inconsistent. The DEIR states that with implementation of PPPs 7-1 through 7-3, Impact 5.7-4 would be less than significant. However, PPPs 7-1 through 7-3 do not address flood protection measures. PPP 7-1 requires an applicant to submit a groundwater survey, PPP 7-2 requires an applicant to file a Notice of Intent with the State Water Resources Control Board, and PPP 7-3 requires an approved Water Quality Management Plan. Please explain how the DEIR reaches a conclusion of less-than-significant impact to flood zones based on implementation of PPPs 7-1 through 7-3.

B. Section 5.12 – Recreation

The Recreation Chapter does not describe the open space aspect of the General Plan amendment, the proposed Design Criteria for IBC parks, the Zoning Ordinance amendment, the Subdivision Ordinance, the Municipal Code amendment, and the amendments to Irvine's Parks Standards Manual. As such, this chapter fails to analyze the potentially significant impacts that may result from these significant regulatory changes. Moreover, the Recreation Chapter does not mention the nine individual projects that are supposedly considered in this DEIR. Please provide a discussion of each, any resulting impacts, and necessary mitigation. A11-19

Additionally, while the Recreation Chapter addresses park resources, the Public Services Chapter, Chapter 5.11, ignores this issue entirely. Thus, Chapter 5.11 fails to answer the following question:

> Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response times or other performance objectives for any of the public services: [including] Parks?
>
> (CEQA Guidelines, Appendix G, Environmental Checklist.)

A11-20

Consequently, the Public Services Chapter does not satisfy the EIR standards set forth in Section XIII of Appendix G. The DEIR must answer the questions quoted above.

Section 5.12.1 – Environmental Setting

***City of Irvine Park Standards* (p. 5.12-1).** The City's standard for new residential development is five acres of new parkland (three acres neighborhood / two acres community) for each 1,000 residents. The vast majority of residential development in Irvine is in the form of single-family homes, each of which typically have some sort of play area or "mini-park" in their back or front yards for its inhabitants to utilize. In contrast, residential development in the IBC is characterized by condominium developments with private common recreational areas with no public parks within the IBC itself. The Project is anticipated to add 6,745 residential units (including density bonus units) and a total of 16,191 units (also including density bonus units) at build-out of the IBC, all of which would be high density multi-story apartments or condominiums. Due to the high-density developments in the IBC, which does not allow for the typical open space areas attached to single-family residential development, the Project should not be evaluated using the same standards as single-family detached homes. Instead, public open space is even more important.

A11-21

This section fails to address the proposed changes to the City's Park Standards Manual. The Park Standards Manual is in the process of being updated — a draft was released early this year. Despite the fact that a component of the Project is to update the Park Standards Manual to address urban open space, this section of the Recreation Chapter only briefly notes that the Park Standards Manual is among a collection of other standards relevant to park development. The DEIR should include an in-depth discussion of the proposed changes to the manual and must address the impacts that may result from these changes.

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***Current Inventory of Parks and Recreation Facilities* (p. 5.12-1).** The section fails to disclose the lack of public community or neighborhood parks in the IBC. This deficiency has an impact on the public parks located in neighboring Newport Beach and Tustin. Public recreational opportunities for IBC residents would have to be provided either at Irvine public parks outside the IBC or at parks outside Irvine's jurisdiction, including Newport Beach and Tustin parks. The Recreation Chapter indirectly acknowledges this fact by stating that Irvine residents have access to recreational opportunities outside of Irvine, including Laguna Wilderness Park and Crystal Cove State Park in Newport Beach, but it does not mention a single public recreational facility within the IBC available to IBC residents. (DEIR, p. 5.12-1.)

Appendix C to the DEIR includes Figure N-9, "Local Open Space System." The text of the Recreation Element of the General Plan should clarify the relevance Figure N-9. In addition, the Recreation Chapter should identify the facilities identified in the figure and include a discussion of these facilities in the analysis. The discussion should note, however, that some of the facilities depicted in Figure N-9 are not public recreation facilities, including: A11-22

- Newport Beach's Big Canyon Reservoir (not a park at all, but our covered and secure water storage facility)
- Big Canyon Country Club (private club in Newport Beach)
- Santa Ana Country Club (private club in Costa Mesa sphere of influence)

Although this section describes the various Irvine park facilities within the vicinity of the Project site, it fails to provide an inventory of neighborhood parks that currently serve the IBC. Such information is necessary to provide a full picture of the existing parks and recreational facilities that are relevant to the Project. Table 5.12-1 only addresses the community park amenities and facilities in Irvine. In addition to describing neighborhood parks, Table 5.12-1 should indicate the existing parks' distance from the IBC.

Finally, the in lieu fees applicants for past IBC residential developments have contributed for parks and recreational facilities have never been applied to the construction of a public park in the IBC. The Cities are concerned that Bill Barber Park and other nearby recreational facilities are already over-utilized and that public park dedication has fallen behind the demand created by new IBC residents. Please provide an explanation of the current demand for existing recreational facilities and how this compares to capacity. Without this information, it is impossible to discern whether the A11-23

DEIR adequately analyzes this project's contribution to the cumulative demand for recreation facilities. A11-23 cont'd.

Section 5.12.3– Environmental Impacts

***Impact 5.12-1: The Proposed Project Would Generate Approximately 8,769 Additional Residents, Which Would Increase the Use of Existing Park and Recreational Facilities* (p. 5.12-5).** Irvine continues to incorrectly apply a population ratio of 1.3 residents per dwelling unit to assess the impacts of the Project to parks and recreational facilities. Although Irvine's General Plan and Subdivision Ordinance specifies 1.3 persons per household based on density factors and information gathered from the 2000 Federal Census, the actual number of persons per household within the IBC area is closer to 1.86 people, according to the 2005 survey conducted by Gobar Associates. Another study conducted in 2007 found that the average number of residents per unit was 1.65.

Using a factor of 1.3, and based on the Project's proposed addition of 6,785 units, the DEIR estimates that the residents added by the Project will be 8,769 people. However, using the more conservative factor of 1.86 residents per dwelling unit, the added residents would total 12,546. The DEIR fails to consider the impacts of the additional 3,777 people. Moreover, cumulatively at buildout of the IBC, the DEIR estimates the total population would be 21,048, using the 1.3 ratio. The more realistic 1.86 ratio results in an estimated 30,116 IBC residents. Thus, at buildout, the IBC would be ill-equipped to serve the recreational needs of approximately 9,068 people. A11-24

Basing the parkland requirements on a population generation factor of 1.3 persons per household, rather than a more accurate estimate of 1.65 to 1.86 persons, further diminishes the amount of parkland that will be available to IBC residents through Project mitigation. This necessarily places a strain on other park facilities in the region that IBC residents must use instead. Considering the DEIR identified no community or neighborhood parks that exist within the IBC itself, the result of using the lower ratio is significant. In response to past comments from the Cities, Irvine consistently points to the adopted ratio, but has failed justify overlooking the results of its own surveys.

By applying the 1.3 persons per household figure to the proposed number of residential units to be added by the Project, the DEIR fails to accurately determine the impacts to parks and recreational facilities, which in turn leads to inadequate mitigation. Mitigation must be included in the EIR to address the additional impacts that would result from the more accurate estimate of the projected residential population.

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Section 5-5-1004(D) of the Subdivision Ordinance has a placeholder concerning the average number of persons per dwelling unit for 50.1+ dwelling units per acre. The Subdivision Ordinance should be amended to include an accurate and factually supported estimate of the number of persons for this density level and even higher density levels (since there apparently will no longer be a maximum residential density for the IBC). The amendment should then be included as part of a revised Project description and analyzed in this chapter of the DEIR. A11-25

The DEIR notes that park and recreation facility needs have historically been met by on-site recreational opportunities, including swimming pools, fitness centers, community rooms, and tot lots and that any neighborhood facility shortcomings would be mitigated by the provision of in-lieu fees for the creation or improvement of neighborhood parks "available to IBC residents." (DEIR, p. 5.12-5.) The DEIR does not acknowledge that all of these existing facilities are private nor does the DEIR explain whether any shortcomings would be mitigated by public neighborhood parks that are actually located in the IBC. The DEIR also does not disclose the ultimate size of these proposed neighborhood facilities and states that actual neighborhood park amenities for individual projects would not be defined until the "Park Plan process" occurs. As a result, we cannot determine how much of the required amount of neighborhood parkland would be provided on-site or elsewhere within the IBC. A11-26

When an impact will result from the cumulative contribution of several projects, the mitigation measures for single project "may be deemed sufficient if those measures are based on a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186-87 (*Anderson First*); see also *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 141 (*Save Our Peninsula*).) In *Anderson First*, the Court found that the city improperly assumed that certain roadway improvements would be in place when concluding that the project in question would not have any significant cumulative traffic impacts. (*Id.* at p. 1189 [cumulative traffic impacts analysis held inadequate because agency relied on uncertain funding and therefore had insufficient evidence to conclude that necessary road improvements would, in fact, be built].) The cumulative impacts to parks here are analogous to the cumulative traffic impacts in *Anderson First*. The DEIR presents inadequate impact analysis and improperly defers mitigation under CEQA A11-27

The park planning process must occur *now*, during the updated programmatic analysis for the IBC. The public and Irvine's elected decision makers must be able to ascertain whether or not adequate facilities *will be* provided, either on- or off-site. This is currently not possible, because the DEIR relies primarily on conjecture and preliminary conclusions, neither of which may be used to satisfy the requirement that EIRs provide

effective, enforceable mitigation for impacts. If an in-lieu fee is proposed as a mitigation measure, the DEIR must demonstrate that such fee will actually result in mitigation of the Project's impacts on parks and recreational facilities. A11-27 cont'd.

According to the DEIR, "City is currently seeking an adequate site within the IBC for construction of *a* public *neighborhood* park." (DEIR, p. 5.12-5 (italics added).) A report to the Community Services Commission, dated April 15, 2009, stated that Irvine has prioritized of developing a *community* park south of I-405. This inconsistency must be explained. Furthermore, Irvine will apply park in-lieu fees from the general IBC neighborhood account to purchase the site and construct the park. While the DEIR correctly acknowledges the need for neighborhood parks, the language in the DEIR only vaguely suggests that *one* neighborhood park would be built within the IBC to address the Project's impacts on parks and recreation. According to the Cities' consultant, based on the projected population at buildout, the DEIR must include mitigation that requires the construction of at least two community parks and eight neighborhoods parks. Any additional park resources that will be included in the IBC should be reflected in updated General Plan figures denoting the location of these parks. A11-28

Moreover, the language quoted above provides no assurance that Irvine will move past the stage of seeking an appropriate park site the single neighborhood park. Conceivably, Irvine could continue to collect in-lieu fees for its park fund but never actually select a park site it deems appropriate. Although residential developments have historically paid park in-lieu fees to meet park requirements, the exaction of in lieu fees for parks has not led to the development of parks in the IBC. The DEIR should include enforceable mitigation that would require Irvine to apply its park in-lieu fees so that recreational opportunities within the IBC are provided in a timely manner. Furthermore, the DEIR should describe provisions that will guarantee funding sources will be available when Irvine is ready to purchase the required sites for recreational facilities.

The DEIR mentions that there are no community parks within proximity to the Project. Although the DEIR notes that Bill Barber Community Park is located near the IBC, approximately 0.5 miles to the east, the DEIR does not discuss the population that Bill Barber Community Park already serves, or will be expected to serve upon implementation of the Project. In 2005, Irvine created a future IBC community park fund. Since then, however, no community parks have been created and Irvine has continued to approve residential developments in the IBC. A11-29

The DEIR must include an analysis demonstrating that, with the implementation of these and other mitigation measures, the potentially significant impacts to parks and recreation facilities would be reduced to a less than significant level. Because this program EIR purports to analyze the impacts of significant regulatory changes for the A11-30

IBC, more information concerning the mitigation measures that will be used to reduce the Project's impact on parks and recreational facilities are required at *this* stage. Newport Beach and Tustin are especially and increasingly concerned about this issue. They are neighboring communities with parks and open space that are increasingly impacted by the growing number of Irvine residents who lack adequate parks and other recreational facilities and are therefore forced to utilize those of Newport Beach and Tustin. A11-30 cont'd.

The DEIR concludes that development of the San Diego Creek "Creekwalk" will result in no significant impacts to recreational facilities. The DEIR asserts, without sufficient supporting evidence, that the Creekwalk would "expand existing parks and recreational facilities" by creating "an interconnected system of streets, bikeways, and trails connecting the new streets, parks, and urban plazas within the IBC to the wider system of City open space." (DEIR, pp. 5.12-5 to 5.12-6.) Unfortunately, the DEIR provides no concrete analysis of how the proposed Creekwalk, in addition to the existing plans, programs, and policies, and Irvine's search for a neighborhood park site, would be sufficient to serve the projected population, and if they would not be, what further mitigation would be required. A11-31

The Cities urge Irvine to more carefully consider the impact of the Project on the existing recreational resources as well as how these impacts will be mitigated through the timely development of additional parks. The Project area is already highly urbanized, and this trend continue through Project buildout, the need for recreational amenities within the IBC is therefore critical. The timely dedication of adequate park facilities is an important step in satisfying several Vision Plan goals, such as creating a vibrant community, usable open space, and a well-designed neighborhood. (DEIR, p. 3-1.) A11-32

C. Section 5.13 – Transportation and Traffic

General Comments

The scope of the proposed Project makes it a project of areawide significance that could affect transportation facilities within neighboring jurisdictions, including the Cities. Consequently, Irvine is required to consult with the Cities, as it would other responsible agencies, concerning the Project's potential impacts on regional traffic. (See Pub. Resources Code, § 21092.4.) A11-33

Assumptions Regarding the IBC Roadway Network. The 2004 Traffic Impact Analysis ("TIA") Guidelines adopted by Irvine require traffic studies to provide detailed information regarding improvements that are assumed to be in place in the interim year (i.e., 2013). According to the TIA Guidelines, such information includes the nature and extent of the improvement project, the implementation schedule, and the agency or A11-34

funding source responsible. The DEIR does not include this information or refer the reader to the pages of the traffic study (DEIR, Appendix N-1) where this information may be presented. Please provide all the required information concerning the assumed improvements for the interim year scenario in a manner accessible to the reader. (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at p. 442 (quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239) ["[t]he data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. "[I]nformation 'scattered here and there in EIR appendices,' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis. . . .'"].) A11-34 cont'd.

The traffic study in Appendix N-1 should also update its tables to accurately reflect the City of Tustin's Settlement Agreement with Irvine for the MCAS Tustin Reuse Project. Tables 2.9 and 2.10 in the traffic study list the status of the Study Committed Roadway Improvements considered in the IBC Vision Plan traffic analysis, of which numerous improvements remain unfunded. Additionally, only the improvements that are already built or are fully funded are assumed in the Project scenarios. However, these lists of funded improvements should also include the improvements called for in the Settlement Agreement between Tustin and Irvine, concerning the MCAS Tustin Reuse Project. By not including these improvements, these improvements do not appear as committed improvements and as necessary throughout the IBC Vision Plan analysis. A11-35

Similarly, the DEIR only casually mentions that the large "number of deficient intersections in the Post-2030 conditions . . . take[] into consideration intersection improvements expected by buildout and fully paid for in each of the jurisdictions." (DEIR, p. 5.13-141.) However, the DEIR does not address the information required for the build-out year scenario required by the TIA Guidelines. The DEIR must be revised to include this information. A11-36

The DEIR's discussion of proposed amendments to the General Plan Circulation Element discloses plans to downgrade three arterial segments (Red Hill Avenue between Barranca Parkway and Main Street, MacArthur Boulevard between SR-55 and Jamboree Road, and MacArthur Boulevard between SR-55 and Campus Drive) from eight-lane divided arterials to six-land divided arterials as part of the General Plan amendments. (DEIR, p. 3-20.) The DEIR states that this is necessary to be consistent with the Orange County Master Plan of Arterial Highways ("MPAH"). (DEIR, p. 3-20.) However, the DEIR does not discuss whether downgrading these arterial segments is truly consistent with the MPAH and whether the traffic study in Appendix N-1 assumes that these downgrades have occurred. The DEIR does not address whether the downgrades are A11-37

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consistent with the assumptions in the Newport Beach General Plan EIR. All of these points must be clarified in the DEIR. A11-37 cont'd.

Appendix C, page N-17 states that widening of Jamboree Road is part of "the IBC area-wide improvements approved in conjunction with the certified EIR for the Vision Plan project." As mentioned above, this statement is inconsistent with a recent public statement, by Mayor Pro Tem Agran, in connection with the HCG Irvine project, that Jamboree will never be widened. Due to the importance of Jamboree Road, the DEIR must specifically resolve this issue and provide assurance that the planned improvements and mitigation measures that are assumed and called for in the DEIR will actually be implemented. A11-38

Land Use Assumptions. The land use assumptions underlying the DEIR's analysis of Project and No Project conditions at buildout and interim year 2013 do not accurately reflect potential land use patterns. Table 2-2 of the traffic study found in Appendix N-1 further evidences the fact that the land use assumptions have resulted in questionable results. Table 2.2, Trip Generation Summary for Future Forecast Scenarios, indicates that the average daily trip differences between the 2013 No Project scenario and the 2030 No Project scenario is 48 trips, a negligible change. This conclusion seems to indicate there was no regional growth from 2013 to 2030 without the Project, the analysis does not explain this improbable scenario. Thus, the traffic analysis improperly considers the cumulative impacts of the Project based on erroneous land use assumptions. A11-39

Zoning Code, section 9-36-8(3)(b), states that land use code 36 "[u]ses are assumed to have no traffic generation. " These uses include parks. This does not appear to be a realistic assumption. If Irvine believes that park uses generate no traffic, the DEIR should explain why Bill Barber has a large parking lot for park users. The statement in the code section may be based on the distinction between traffic *generation* and traffic *attraction*. If so, that should be explained in the DEIR. A11-40

As noted above, on March 24, 2009, Irvine approved a zone change that created an ARB zoning designation. The City Council's approval occurred only a few days before the release of the DEIR. The DEIR's assumptions regarding particular land uses, including restaurants and commercial uses, fail to take into account potential land use changes that will result from the ARB designation. For example, Table 5.13-28 on page 5.13-175, Post-2030 Pending No Project Land Use Summary, provides land use assumptions based on likely and foreseeable conditions. Section 5.13.3.6, 2013 on page 5.13-63, Future Conditions, also describes future trip generation based on land use assumptions and development in the Project area. These fundamental assumptions to the analysis do not consider the changes that will result from the ARB designation. Because the language instituting the ARB zone does not place an overall cap on the total square A11-41

footage of ARB uses allowed in the IBC, land use patterns could change significantly, thereby creating additional traffic impacts that the DEIR must consider in the No Project and With Project scenarios. A11-41 cont'd.

The DEIR also states that Irvine calculated its future forecast volumes using the Irvine Transportation Analysis Model ("ITAM"). (DEIR, p. 5.13-11.) Traffic engineers and planner from Irvine and the Cities met to consult regarding the scope of the traffic study and the ITAM 8.1 modeling for the DEIR. The Cities note that there are unexplored discrepancies between the results of ITAM 8.1 and the OCTAM 3.2 model used for recent projects in the Cities. For example, ITAM forecast volumes for Red Hill Avenue and Barranca Parkway in the 2030 scenarios are substantially lower than OCTAM 3.2 forecast volumes for these segments. In addition, the ITAM's forecast ADT traffic volumes for Jamboree are in the 60,000 range, whereas the OCTAM 3.2 reports these volumes to be in the 90,000 ADT range. Thus, while the OCTAM model confirms the need for larger capacity arterials, Irvine proposes to downgrade a number of facilities. In order to downgrade arterial segments, Irvine must ensure that the roadway network has sufficient capacity and must follow specific guidelines and procedures required for reclassification of MPAH roadways. A11-42

Land use assumptions provided by Irvine and existing count volumes formed the basis for future daily and peak hour forecast volumes. (DEIR, p. 5.13-11.) The land use assumptions, however, did not consider the adoption of the ARB designation. To accurately forecast future trips, the assumptions in the ITAM should be updated to include potential land use changes that will likely result from the ARB designation. Basing the traffic conclusions on faulty land use assumptions creates an inaccurate portrayal of existing and future conditions. A11-43

IBC Development Caps and the TDR Mechanism. Irvine will apparently continue to use the TDR mechanism, and will rely on the existing development caps for the IBC. The DEIR does not address the likely development pattern that will arise through multiple transfers of development rights.[6] The potential development pattern arising from implementation of the TDR mechanism also affects the land use assumptions used in the Transportation and Traffic Chapter. The DEIR must be revised to identify the current development patterns in the IBC and to anticipate and analyze the development patterns that will likely arise over time through multiple TDRs. A11-44

[6] / The footnote to the table in revised Zoning Code section 9-36-5 suggests that the 15,000 unit cap, is not really a cap, but can be adjusted upward or downward as long as development in the IBC remains within the Planning Area Trip Budget. The DEIR, however, analyzes the impacts of the proposed mix of uses. Any deviation from the 15,000+ residential development cap would be inconsistent with the Project and would require separate environmental review.

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Zoning Code section 9-36-4 states that the intent of Chapter 9-36 is "to specify regulations to maintain the development and traffic intensity at the levels analyzed in *and mitigated by* the [1992 IBC Program EIR]." (Italics added.) The 1992 Program EIR, however, did not mitigate all impacts. Instead, the 1992 Program EIR identified numerous significant and unavoidable impacts, resulting in the adoption of a Statement of Overriding Considerations. The DEIR fails to acknowledge and address the significant and unavoidable impacts identified in the 1992 IBC Program EIR. [7] It is inappropriate and, yes, irresponsible to rely on the existing development cap for the IBC without addressing these impacts.

A11-45

> The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.
>
> (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124-125 (CBE).)

As Irvine is well aware, a Superior Court judge confirmed that Irvine is required to address these impacts if it wishes to use the TDR mechanism (see rulings in the 2851 Alton and Martin St. cases). Unfortunately, by not addressing these impacts in this DEIR, Irvine apparently intends to ignore the Judge Sundvold's rulings. This DEIR, as the purported comprehensive analysis for the IBC, must squarely address the unmitigated impacts identified in 1992 or perform an entirely new analysis for the so-called "development intensity values" allotted to parcels within the IBC. [8]

A11-46

If the unavoidable impacts identified in 1992 have been mitigated, the DEIR should describe the measures that have achieved reduction of the impact to less-than-significant levels. Irvine cannot assume (as it has routinely in the past) in this program

A11-47

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[7] / The DEIR itself makes only passing reference to the 1992 IBC PEIR and instead emphasizes a "1988 EIR" prepared for the IBC. These references may be to the EIR prepared for the General Plan amendment in 1989 (referred to as "GPA-16"), but this is not clear from the text of the DEIR. The DEIR must clarify what it is referring to, and the referenced document must be included in the administrative record for this Project. Moreover, it is unclear why the DEIR does not reference the 1992 IBC PEIR instead, as this was the last comprehensive environmental review addressing the plan for development in the IBC.

[8] / The change from "trips" to "intensity values" in the Zoning Code does not address the real issue concerning unmitigated impacts. In addition, the change in nomenclature is confusing. "Intensity values" still sound like "trips" and there are still references to "trip budgets."

DEIR, that Project impacts will be less-than-significant as long as overall development within the IBC remains below limits managed through the TDR mechanism. Rather, a fresh analysis of the overall development capacity for the IBC is required. In addition, the DEIR must analyze the impacts caused by transferring development rights from one area of the Project to another and from one type of use (office/industrial) to another (residential) and must provide feasible mitigation for these impacts. This discussion would help ensure that the analysis of the Project's impacts to local and regional traffic is accurate. A11-47 cont'd.

Because the Project includes comprehensive regulatory changes for the IBC, it must reevaluate the impacts that will occur upon buildout, using the existing IBC conditions as the baseline. "CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area." (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 709 (*Woodward Park*) (citing *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354).) By utilizing the 1992 IBC development cap, the DEIR understates the impacts that will occur upon IBC buildout, because it impermissibly deducts projected traffic that hypothetically would have been generated by industrial and office uses, but in many instances that hypothetical development will never occur on the sending site. A11-48

Moreover, under newly added Zoning Code section 9-36-17(H), no CUP or Master Plan will be required for transfers of development intensity values within the same TAZ or between adjacent TAZs. This suggests there will be no discretionary review and traffic analysis for such TDRs, even if future transfers are not consistent with the "optimization" assumptions used for the EIR traffic study. The DEIR should address this new subsection to the Zoning Code and explain what discretionary review, if any, will be required for TDRs within the same TAZ or adjacent TAZs. If Irvine wishes to rely on this DEIR as the environmental review document for this new subsection, the traffic analysis must specifically address the potential impacts that may be caused by the TDRs permitted under the subsection. For example, while "Town Centers" are no longer a part of the proposed Vision Plan, the new subsection provision may foster *de facto* Town Centers with the possibility of no subsequent environmental review. The DEIR must address this distinct possibility. A11-49

The DEIR must also thoroughly discuss the TDRs for the nine individual projects that are pending in the IBC. Information regarding the TDRs associated with these projects is available to Irvine, and should be presented in the DEIR. A11-50

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Section 5.13.1.3 – Traffic Analysis Methodology

***Traffic Counts* (p. 5.13-11).** This section indicates that the peak periods for traffic counts was "vetted" by Irvine and that the peak AM and PM periods for the purposes of this DEIR vary from Irvine's generally accepted peak periods. The peak AM and PM periods considered for this DEIR are shorter than the standard periods by 30 minutes to a full hour. Using these shortened time frames may not provide the most accurate traffic counts for the ITAM model. Please explain why these peak AM and PM periods were selected and why this choice was reasonable. A11-51

Section 5.13.2 – Thresholds of Significance

Pursuant to the DEIR's thresholds of significance, the Project would have a significant effect if the project could exceed a level of service ("LOS") standard established by Orange County's congestion management agency for designated roads or highways. (DEIR, p. 5.13-39.) However, Irvine's continued use of LOS E as the acceptable baseline condition throughout the IBC is inappropriate. (DEIR, pp. 5.13-12, 5.13-14 to 5.13-15.) This standard, derived from Orange County's Congestion Management Program, establishes levels of unsatisfactory traffic differently for the IBC area (LOS E) as opposed to the remainder of the study area and areas outside of Irvine (i.e., LOS D). This may have made sense when the area was almost exclusively industrial, commercial, and office uses, but does not make sense with increased residential uses, which have intensified exponentially in recent years. The new residents of the Project should be entitled to the same traffic level protection as other residents. A11-52

Section 5.13.3 – Environmental Impacts

***Existing With Project Intersection Analysis* (p. 5.13-46).** The DEIR states that the Existing With Project analysis determined five intersections in the PM peak hour would operate at a deficient LOS. (DEIR, p. 5.13.) The DEIR further acknowledges that these deficiencies are temporary and will be included as part of already planned traffic improvements. The DEIR does not explain, however, how these deficiencies will be addressed because it does not discuss the relationship between planned improvements to the identified deficiencies. The DEIR should provide an explanation concerning the adequacy of funding for the assumed intersection improvements and the likelihood that they will be implemented in a timely manner. While CEQA does not require that the EIR set forth a time-specific schedule for the lead agency to complete specified improvements, it does require that the agency have a reasonable plan for mitigation. (*Save Our Peninsula, supra,* 87 Cal.App.4th 99, 135.) The DEIR also does not state whether the planned traffic improvements will act as formal and enforceable mitigation for the temporary deficiencies. A11-53

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Impact 5.13-2: The Proposed Project Would Not Increase Hazards Due to a Design Feature or Incompatible Uses **(p. 5.13-217).** The DEIR recognizes that potential hazards created by future projects may impact the circulation system or emergency access routes. (DEIR, p.5.13-217.) The DEIR states that because the "City has adopted roadway design standards that would preclude the construction of any unsafe features, no increased hazards are anticipated." (DEIR, p. 5.13-217.) However, the DEIR fails to provide a description of the roadway design standards and it is unclear whether these standards would lead to a level of no impact. A11-54

Impact 5.13-4: The Proposed Project Complies With Adopted Policies, Plans, and Programs for Alternative Transportation **(p.5.13-217).** The DEIR does not provide adequate information regarding the community-oriented pedestrian infrastructure improvements. The DEIR states that the Vision Plan creates a funding mechanism for implementation of these infrastructure improvements. The DEIR refers to PDF 15-9 for discussion of the funding mechanism, but PDF 15-9 merely mimics the statements made in this section. The DEIR should provide information to clarify how the funding mechanism will ensure implementation of the pedestrian infrastructure improvements. The DEIR should also provide a discussion of whether the infrastructure improvements themselves will create traffic-related impacts. A11-55

Additionally, the City of Irvine Public Works Department is currently exploring trip reduction strategies. To the extent that these strategies support alternative modes of transportation, please identify these strategies and analyze the degree to which the Project will be consistent with and foster these strategies.

<u>Section 5.13.6 – Mitigation Measures</u>

The DEIR's Mitigation Program identifies many mitigation measures in the traffic analysis. As explained in comment letters from Tustin and the Cities' traffic consultant, many of these measures either (i) fail to include the necessary details to ensure enforceability, (ii) do not sufficiently mitigate the Project's impacts to traffic, (iii) do not include adequate sources of funding, or (iv) do not include performance standards or otherwise impermissibly defer mitigation. A11-56

To satisfy the requirement to mitigate project impacts, EIRs must set forth mitigation measures that decisionmakers can adopt at the findings stage of the CEQA process. (Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, §§ 15126, subd. (e), 15126.4.) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. The EIR fails to ensure that the required intersection and roadway improvements will occur when needed to serve future conditions, and that project proponents will pay their appropriate fair share.

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When explaining the DEIR's Mitigation Program, the DEIR is impermissibly vague. The DEIR states: "If an intersection impact occurs only in 2013 and subsequent improvements allow the intersection to perform at an acceptable LOS under buildout conditions, the improvement is viewed as temporary and may be overridden." The DEIR does not explain, however, the circumstances that would allow Irvine to "override" an improvement. It is entirely unclear whether the improvement addressing an identified impact would be overridden entirely, partially, or at all. A11-56 cont'd.

Differences in Traffic Modeling Results Raises Concerns Regarding Identified Mitigation. Chapter 6 of the traffic study in Appendix N-1, entitled Future Improvements and Mitigation, identifies mitigation improvements at locations impacted by the proposed Project. Due to the differences in traffic forecast volumes and modeling methodologies, there may be other unidentified locations where the Project has potential impacts. Based on numerous inconsistencies between the traffic models used by Irvine and the Cities, the Cities are not convinced that the proposed locations are the only locations impacted by the Project. This skepticism is due in part to the numerous inconsistencies between models. Tustin has provided previous comments to Irvine regarding the feasibility and constraints of implementing the proposed mitigation improvements. These cities are currently discussing the specific requirements to implements the mitigation improvements as well as the costs. A11-57

Mitigation may be Physically Infeasible. Because the IBC is already intensively developed, and new developments, such as the recently approved HCG Irvine project (with reduced building setbacks) provide limited room for right-of-way expansion, the DEIR also must more specifically address the feasibility of acquiring right-of-way for required roadway expansion for each identified mitigation measure. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 727–728 [EIR's treatment of groundwater issues was deficient in part because there was no evidence in the record showing that any replacement water was, or would be, available for purchase"].) The availability of right-of-way for necessary traffic mitigation is analogous to the availability of replacement groundwater in *Kings County*. For many required mitigation measures, the DEIR does not describe, with sufficient specificity the feasibility of acquiring necessary right of way. (See p. 5.13-252 [identifying general physical constraints for undisclosed intersections, but only describing likely infeasibility of one measure at Jamboree/Michelson].) A11-58

The mitigation measure proposed for Intersection #145 recognizes that there are physical constraints that "limit the improvements necessary to mitigate the project impacts[.]" The DEIR goes on to state that despite the physical constraints, "a future pedestrian overcrossing is planned at this intersection which may improve signal operations and [ICU] levels at this intersection." (DEIR, p. 5.13-231.) This language is A11-59

problematic because the measure fails to ensure that identified impacts will be mitigated at all. Furthermore, the measure fails to describe how a future pedestrian bridge would improve signal operations. A11-59 cont'd.

Revisions to Zoning Code Section 3-37-28.1(I) suggests that there will be no setbacks for residential uses in the Mixed-Use district other than from freeways and transportation corridors. Is this correct? If so, the DEIR must explain how the elimination of the setback requirement may affect the feasibility of future right-of-way acquisition for necessary traffic mitigation. The DEIR must also address how the General Plan provision for a setback of 30 feet from arterial streets will be implemented. A11-60

Mitigation may be financially infeasible. Although the DEIR's description of many of the mitigation measures identify whether the particular measure would be physically feasible, the DEIR fails to identify whether sufficient funds are expected to be available to construct the improvement when needed. The DEIR is also vague in providing assurances that the mitigation measures are enforceable. For example, mitigation for Intersection #12 (SR-55 SB Frontage Road at Baker Street) only provides that "[r]ecommended improvements include adding two southbound left-turn lanes," but does not describe: 1) the measure as mandatory, 2) the source of funding, and 3) the timing of implementation. (DEIR, p. 5.13-227.) A11-61

Similarly, mitigation measures included for Intersection #62 Campus Drive at Bristol Street NB and Intersection #543 Bristol Street and Segerstrom Avenue state that with the improvements, "the intersection returns to an acceptable LOS under all scenarios and the mitigation appears to be physically feasible although potentially cost prohibitive." (DEIR, p. 5.13-235 to 5.13-236.) The DEIR does not specifically state whether any funds would be available in the future for these improvements that may be financial infeasible. Additionally, the EIR fails to identify the timing for particular improvements. Stating that a necessary mitigation measure may or may not be feasible does not satisfy CEQA's requirements for enforceable mitigation, and fails to provide the public and decision-makers with important information concerning required mitigation. Please provide the required information regarding the anticipated timing and funding sources for implementation of these mitigation measures. A11-62

Some Measures Impermissibly Defer Mitigation. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1608-1609; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) For example:

1. The Cities of Irvine and Costa Mesa will determine the preferred proposed measure for mitigating impacts for Intersection #50 Red Hill Avenue at Paularino Avenue. The DEIR provides no details regarding the selection criteria these cities will use to select the preferred measure, nor does it provide specific performance standards for mitigation. The DEIR also does not discuss the timeline for selecting the preferred measure.

2. Mitigation proposed for Intersection #62 Campus Drive at Bristol Street NB suffers from the same flaws identified above concerning Intersection #50. The mitigation measures provide no suggested criteria for selection, thus impermissibly deferring mitigation.

3. The mitigation measures included to address freeway mainline and ramp improvements impermissibly defer to Caltrans. The DEIR states that Caltrans has the primary responsibility to implement transportation improvements to Caltrans facilities, including freeway mainlines. (DEIR, p. 5.13-247.) According to the DEIR, neither Caltrans nor the State has adopted programs to ensure locally contributed impact fees will fund improvements to freeway mainlines and only Caltrans has the authority to ensure these fees are tied to implementation of mitigation. (DEIR, p. 5.13-247.) Although the DEIR recognizes that Orange County has some programs to improve and upgrade regional transit systems, it notes that the lead agency's hands are tied. Instead of grappling with mitigating the potential impacts to freeway mainline segments and ramps, the EIR concludes that, if the relevant agencies do not implement these programs, the impacts will remain significant and unmitigated.

A11-62 cont'd.

In each of the above examples, the details of mitigation are not sufficiently defined. CEQA requires more. To the extent that the Project is responsible for impacts, Irvine must ensure that feasible measures are defined and enforceable. (See CEQA Guidelines, § 15126.4, subd. (a)(1)(B); see also *Endangered Habitats League*, *supra*, 131 Cal.App.4th at pp. 793–794; *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-1029 (*SOCA*); see also *Federation of Hillside and Canyon Associations, supra,* 83 Cal.App.4th at p. 1262 [mitigation measures must be "incorporate into the project or required as a condition of project approval in a manner that [would] ensure their implementation"].)

Fee Assessment/Fair Share for Improvements. The DEIR states that a fair share fee program will be developed to address the overall cost of improvements required for significant Project impacts identified in adjacent jurisdictions. (DEIR, p. 5.13-224.) This description of a fair share program does not address whether sufficient fees for particular

A11-63

improvements will be collected and whether the improvement will be completed by the time it is needed.

In *Gray v. County of Madera* (2008) 2008 Cal.App.4th 1099, an EIR prepared for a 900,000 ton per year aggregate quarry required the applicant to "[c]ontribute an equitable share of the cost of construction of future improvements[.]" (*Id.* at p. 1121.) The court struck down the adopted fee program, because there was "no definite commitment on when improvements [would] take place[.]" (*Id.* at p. 1122.) The same error has occurred here. The DEIR must provide the required information concerning mitigation funding and the timing of implementation. A11-63 cont'd.

***IBC Development Fee Program* (p. 5.13-39).** The DEIR describes the IBC Development Fee Program as an existing plan, program, or policy that will help reduce and avoid potential traffic impacts. (DEIR, p. 5.13-39.) It states that the IBC Development Fee program funds IBC areawide circulation improvements within the IBC area. (*Ibid.*) "Fees are assessed when there is new construction or when there is an increase in square footage within an existing building or the conversion of existing square footage to a more intensive use." It further states that development fees collected are used strictly for circulation improvements and right-of-way acquisition in the IBC area. (*Ibid.*) The DEIR fails, however, to explain that the IBC Fee program was established in 1992 to fund the numerous mitigation measures that were called for then. Many of these mitigation measures have not been implemented. The DEIR's discussion of the fee program should more clearly explain how funds will be applied in a timely manner to implement required mitigation. A11-64

The DEIR also does not analyze the impacts associated with infrastructure improvements that will be funded by IBC Fees, including the impacts caused by the right-of-way acquisition. These impacts must be analyzed now, at the programmatic level, to the extent these indirect impacts are reasonably foreseeable. CEQA requires that lead agencies analyze both the direct and indirect impacts of a project that may arise from implementation of mitigation measures. Failing to consider these impacts is a form of impermissible piecemeal review. A11-65

Section 9-36-14 of the Zoning Code, which refers to the IBC Development Fee Program, should be updated to refer to the 2009 Vision Plan DEIR. Subsection D should not refer to the traffic study prepared for the 1992 IBC GPA/rezoning. The Zoning Code should also clarify whether the Transportation Mitigation Fee Program is a distinct program or whether it is one in the same as the IBC Development Fee Program. A11-66

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Section 5.1.6.7 – Level of Significance After Mitigation.

This section acknowledges that "there are intersections where improvements may not be possible due to cost, right-of-way concerns, or community opposition. For these intersections a Statement of Overriding Considerations will be adopted." (DEIR, p. 5.13-252.) If Irvine adopts a Statement of Overriding Considerations, it must explicitly state Irvine's compelling reasons to ignore the significant and unmitigated impacts. Irvine must also support its determination that specific measures are infeasible. A decision to adopt a Statement of Overriding Considerations should not be made without sufficient factual support. All feasible mitigation measures must be adopted and enforced, especially in light of the numerous remaining significant unmitigated traffic impacts that date back to the 1992 IBC Program EIR. A11-67

D. The DEIR Fails to Adequately Address the Cumulative Impacts of the Project

The DEIR's cumulative impact analyses do not consider the cumulative impacts caused by adding thousands of residential units to an area that has historically been dominated by office and industrial uses. The rapid conversion of a formerly predominantly commercial and industrial area to high-density residential uses has had profound and adverse effects on the area, including impacts to traffic levels, parks and recreational facilities, and land use. The cumulative impacts must also consider the impacts of past projects. (*EPIC*, *supra*, 44 Cal.4th at p. 523.) A11-68

Furthermore, the Cities note that the DEIR must evaluate the cumulative effects of both the ARB zone designation and the *i* Shuttle service. As discussed above and in prior comments, both are part in parcel of the Vision Plan and must be analyzed accordingly. A11-69

"[I]t is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) A robust analysis of the Project's cumulative impacts is especially important here, given the existing current demands on the area's transportation infrastructure and the current lack of parks and recreation facilities in the IBC. In general, the poorer the quality of the existing environment, the more likely it is that a project's incremental contribution to future cumulative conditions will be significant (i.e., "cumulatively considerable"). (*CBE*, *supra*, 103 Cal.App.4th at p. 120; see also *Kings County Farm Bureau*, *supra*, 221 Cal.App.3d at p. 720.) A11-70

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Recreation. The DEIR does not address the cumulative impacts to parks and recreational facilities caused by other pending and reasonably foreseeable development projects within the IBC and the surrounding area. Moreover, the geographic scope of analysis for cumulative impacts to parks fails to consider impacts in neighboring jurisdictions, such as the Cities, where recreational facilities are used by IBC residents. Instead, the DEIR merely states that park in-lieu fees for parkland dedication would be collected for the provision of neighborhood and community parks, thus finding that no significant cumulative impacts will result from the Project. The DEIR does not demonstrate, however, that in-lieu fees will actually result in mitigation of the Project's contribution to cumulative impacts on recreation facilities. The DEIR also fails to consider whether the park in-lieu fees would be adequate to develop the requisite amount of parkland at buildout. If these fees are insufficient, the DEIR must identify alternative funding sources. Furthermore, the DEIR's use of a lower population ratio to calculate needed parkland undermines the cumulative impacts to parks and recreational facilities. A11-71

Transportation and Traffic. The DEIR must evaluate the cumulative effects of the Project in light of the various "closely related past, present, and reasonably foreseeable probable future projects" to ensure that all cumulatively significant environmental effects resulting from the Project are adequately identified and mitigated. (CEQA Guidelines, § 15355, subd. (b); *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024-1025.) The DEIR does not address the cumulative impacts that have been and will continue to be caused by the TDR mechanism within the IBC. The DEIR also fails to adequately consider the potential impacts and applicable mitigation measures for all of the residential development projects that have already been approved in the IBC, which have contributed to the measurable and rapid transformation of the IBC. In its cumulative impact analysis, the DEIR must also consider the ARB zoning designation A11-72

The DEIR analyzes cumulative traffic impacts by applying a threshold of significance that does not appropriately consider smaller impacts that may nonetheless by cumulatively considerable. Specifically, Irvine applies a change in ICU or LOS of 0.02 as the threshold of significance for both direct and cumulative traffic impacts to intersections and segments. (DEIR, p. 5.13-15.) In the context of cumulative impacts, the issue is not the relative contribution of the project as compared to existing conditions, but whether "any additional amount" contributed by the project should be considered significant in light of the severity of the existing problem. (*CBE*, *supra*, 103 Cal.App.4th at p. 120.) The Cities urge Irvine to change the threshold of significance for identifying cumulative traffic impacts to a change in LOS or ICU of .01. If Irvine insists on using the same threshold of significance for cumulative traffic impacts as it does for direct traffic impacts, the Cities ask that Irvine explain how application of this threshold complies with CEQA's requirements for analyzing cumulative impacts. A11-73

The traffic study (Appendix N-1 to the DEIR) supporting the impact analysis in Chapter 5 contains data and analysis that defy reason. According to Table 2.2 on page 12 of the traffic study, the projected traffic numbers represent either a negligible increase or a slight decrease in the traffic in the IBC under the No Project scenario. A11-74

E. The DEIR Fails to Adequately Analyze the Alternatives to the Project

Table 7-4, Ability of Each Alternative to Meet the Project Objectives, of the Alternatives Chapter provides a side-by-side comparison of the alternatives. This table concludes that all alternatives except the No Project/Existing General Plan Alternative meet the following Project objectives: 1) "Provide neighborhood level amenities to serve the level of mixed-use development envisioned by the City's General Plan and IBC Vision Plan," and 2) "Identify and pursue opportunities for open space areas that serve the recreational needs of IBC residents and employees." (DEIR, p. 7-34.) The DEIR does not provide sufficient evidence or analysis to support this determination as to each alternative. The DEIR must provide evidence that supports the conclusion that the recreational needs of IBC residents will be met through implementation of the in lieu fee program and parkland dedication. A11-75

The Reduced Urban Neighborhood Alternative is of interest to Newport Beach. It would concentrate residential development north of I-405, where most of the traffic mitigation form the 1992 EIR was focused and is in closer proximity to the only community park in that area, Bill Barber Park. Impacts on Newport Beach caused by this alternative could thus be less significant than from the proposed project, not equal as shown in Table 7-3. A11-76

III. Conclusion

For all of the foregoing reasons, Irvine must revise the DEIR for the Project. The revised analysis will likely reveal additional significant impacts and other significant new information, requiring recirculation. (See Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5; *Laurel Heights Improvement Assn. v. Regents of the Univ. of California* (1993) 6 Cal.4th 1112 (*Laurel Heights II*).) The revised environmental document must be subjected to the same "critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; see also *Save Our Peninsula Com., supra,* 87 Cal.App.4th at 131.) A11-77

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Bill Jacobs, Principal Planner
May 14, 2009
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Thank you for considering these comments. If you have any questions or concerns about anything expressed in this letter, please do not hesitate to contact me.

Very truly yours,

Jason W. Holder

cc: (via e-mail):
Mayor Selich and Members of the Newport Beach City Council
David Hunt, Newport Beach City Attorney
Sharon Wood, Newport Beach Assistant City Manager
Douglas Holland, Tustin City Attorney
Elizabeth Binsack, Tustin Director of Community Development

ATTACHMENT A

Letter from City of Tustin
re: Vision Plan EIR

Community Development Department

TUSTIN

BUILDING OUR FUTURE
HONORING OUR PAST

May 14, 2009

Bill Jacobs, AICP
Principal Planner
City of Irvine
Community Development Department
P.O. Box 19575
Irvine, CA 92623-0575

SUBJECT: DRAFT EIR FOR CITY OF IRVINE VISION PLAN/OVERLAY ZONE

Dear Mr. Jacobs:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) for a City-initiated project that consists of a General Plan Amendment to establish a cap of 15,000 dwelling units (plus 1,191 density bonus units) for the Irvine Business Complex (IBC) area, an IBC Mixed Use Community Vision Plan, IBC Residential Mixed Use Overlay Zone, a program of various infrastructure improvements, new urban park standards, design guidelines, and other discretionary actions.

The following comments are noted for your use in revising the DEIR:

1. Appendix N of the Draft EIR is the Traffic Study for the IBC Vision Plan. Prior to the release of the Draft EIR, the Cities of Tustin and Newport Beach and their consultant teams spent considerable efforts in coordinating the content of the Traffic Study. Many concerns and issues were resolved including identification of the study area and locations within each jurisdiction to be studied, fair share methodology, performance criteria, significance thresholds, traffic lane assignments, and a number of comments Tustin had provided on the Notice of Preparation for this project. However, Tustin consistently expressed concern with traffic volume forecasts resulting from the ITAM 8.1 modeling efforts. It was discussed with Irvine staff that there are substantial differences in traffic volumes between the modeling for Tustin Legacy and the Orange County Traffic Analysis Model (OCTAM 3.2), and the ITAM 8.1 model. It is still unknown what causes the differences in results, but the issues of compatibility and consistency between results of Tustin's efforts and those of Irvine using supposedly comparable data and model formulations is still of concern. A11-78

2. In the Executive Summary of the Traffic Study it is noted that the City of Irvine intends to downgrade three arterial roadway segments from 8-lane divided highways to 6-lane divided highways as a General Plan Amendment. These include: 1). Red Hill Avenue between Barranca Parkway and Main Street, 2). A11-79

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Barranca Parkway between SR-55 and Jamboree Road, and 3). MacArthur Boulevard between SR-55 and Campus Drive. The IBC Vision Plan Traffic Study assumes the above noted roadways as 6-lane facilities for all of the future scenarios in 2013 and 2030. The forecast volumes for Red Hill Avenue and the Barranca Parkway segments in the 2030 scenarios are reported to be substantial lower than those shown in the Tustin Legacy model and the OCTAM 3.2 model. Since Tustin has already disagreed with the ITAM 8.1 traffic volume forecasts, the reduction in volumes for these two facilities is also suspect. All three of these facilities are part of the County Master Plan of Arterial Highways (MPAH) and specific guidelines and procedures are required for reclassification of MPAH roadways.

A11-79 cont'd.

3. In Chapter 2, Traffic Forecasting Methodology, there is concern that the traffic analysis is identifying and considering cumulative impacts of the project. In Table 2.2, Trip Generation Summary for Future Forecast Scenarios, it is indicated that the ADT differences between the 2013 No Project scenario and the 2030 No Project scenario is 48 trips. This seems to indicate that there is no growth from 2013 to 2030 without the project.

A11-80

4. Tables 2.9 and 2.10 list the status of the Study Committed Roadway Improvements considered in the IBC Vision Plan traffic analysis, of which numerous improvements remain unfunded, and apparently only the improvements that are already built or are fully funded are assumed in the project scenarios. The City of Tustin maintains a Settlement Agreement with Irvine for the MCAS Tustin Reuse Project that includes mitigation locations. However, these locations do not appear as committed improvements and furthermore it appears they are not needed throughout the IBC Vision Plan analysis. If the IBC Vision Plan is to be considered definitive and correct, some of the MCAS Tustin Settlement Agreement mitigation improvements are unnecessary and perhaps the Settlement Agreement needs to be modified accordingly.

A11-81

5. As shown in Tables 4.3, 4.10, 4.17, 4.24, and throughout the 2030 scenarios, Link # 1585 Newport Avenue from Valencia Avenue to Edinger Avenue is shown as a 4-lane undivided roadway. In fact it is a 6-lane divided roadway and was constructed in 2007/2008. Please make this correction throughout the analysis.

A11-82

6. As shown throughout the 2030 scenarios the classification for Barranca Parkway between Jamboree Road and Red Hill Avenue is shown as a 7-lane arterial. This section of roadway is noted on both the MPAH and the City of Tustin's Arterial Plan as an 8-lane arterial, as well as on the City of Irvine's General Plan.

A11-83

7. In Table 5.3, Jamboree Road between Barranca Parkway and McGaw is shown as an 8-lane divided roadway. However, it is noted in the Irvine General Plan currently on the City of Irvine's web page as a 10-lane roadway. There is not a reference in the IBC Vision Plan Draft EIR of a General Plan Amendment to modify this section of Jamboree Road. Furthermore the forecast ADT traffic volumes are shown in the 60,000 ADT range, whereas they are reported to be in the 90,000 ADT range in the OCTAM 3.2 model. It appears the OCTAM model verifies the need for the 10-lane facility. A11-84

8. Also in Table 5.3: Link #663 Edinger Avenue between Newport Avenue and Red Hill Avenue is shown with a volume of 63,300 ADT, however, in the OCTAM 3.2 it is shown as 34,000 ADT. Link #26 Red Hill Avenue between Valencia Avenue and Warner Avenue is shown as 33,900 ADT, and as 53,000ADT in the OCTAM model. Also, Links #26 and #30 are shown as 6-lane roadways, when they will be 8-lane roadways in 2030. There are other discrepancies throughout the IBC Vision Plan analysis when compared to the OCTAM and Tustin traffic model results. A11-85

9. In Chapter 6 Future improvements and Mitigation, mitigation improvements at locations impacted by the proposed project are identified. Due to the differences in traffic forecast volumes and modeling methodologies there may be other locations where the project has impacts that are not readily shown. The City is not convinced that the proposed locations are the only ones impacted by the project due to numerous inconsistencies between models. However, the City of Tustin has provided previous comments to the City of Irvine regarding the feasibility and constraints of implementing the proposed mitigation improvements. Tustin and Irvine are currently discussing the specific requirements to implement the mitigation improvements as well as the costs. A11-86

10. The proposed mitigation improvements identified in the IBC Vision Plan Draft EIR will need to include cost estimates, funding commitments, and thresholds for implementation. A11-87

11. Lastly, in Chapter 9, References, it should be noted that the MCAS Tustin reference is the Traffic Study for the April 17, 2006, MCAS Tustin Specific Plan/Reuse Plan. The traffic information provided by the City of Tustin for use in this analysis and for comparative comments was derived from the noted reference. A11-88

Thank you again for the opportunity to provide comments on the Draft EIR for the City of Irvine Business Complex Mixed Use Community Vision Plan and Overlay Zone. The City of Tustin requests that the City of Irvine revise the DEIR and recirculate the document for public review and comment rather than proceeding directly with the preparation of the A11-89

Final EIR. In any event, the City of Tustin would appreciate receiving all additional environmental documents with the responses to our comments when they become available and all future public hearing notices with respect to this project.

A11-89 cont'd.

If you have any questions regarding the City's comments, please call me at (714) 573-3016 or Doug Anderson, Transportation and Development Services Manager at (714) 573-3172.

Sincerely,

Scott Reekstin

Scott Reekstin
Senior Planner

cc: Elizabeth A. Binsack, Community Development Director
Tim D. Serlet, Public Works Director/City Engineer
Douglas S. Stack, Assistant Public Works Director
Doug Anderson, Transportation and Development Services Manager
Dana Kasdan, Engineering Services Manager
Douglas Holland, City Attorney

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ATTACHMENT B

Letter from City of Newport Beach re: Vision Plan DEIR

CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT
Stephen G. Badum, Director

May 13, 2009

Bill Jacobs, AICP
Principal Planner
City of Irvine
Community Development Department
PO Box 19575
Irvine, CA 92623-0575

Re: Irvine Business Complex – Traffic Study comments

Dear Mr. Jacobs;

I have reviewed the IBC Traffic Study – Appendix N of the Environmental Impact Report. I would like to provide the following comments based upon my review.

1. On Page I of the Executive Summary: The introduction states that "known pending projects" will be completed by 2013. By describing them as pending projects, the assumption is that these projects will be included as part of the "Pending Project" scenario analysis. On the next page it states that "approved projects are classified as projects that are expected to be built within the timeframe of the scenario". Are the "known pending" projects actually "approved projects" because they are expected to be built by 2013? Are the "known pending" projects included in the Approved Project traffic analysis, or are these 2,522 units included in the Pending Project analysis? This needs to be clarified. A11-90
2. On page 4 of the Introduction section: Transfer of Development Rights, it is discussed that the existing trip budgets will remain in place. Is the project "trip neutral" ? Within the document it is stated that the overall IBC trip cap would be maintained. Table 2.2 shows overall trip increases. At some point in the document there should be a table that summarizes the total trip generation figures (ADT and peak hour), as calculated by the ITAM model, for each of the scenarios analyzed as part of the study. This table should differentiate between land uses and clearly compare the trips for all of the existing land uses to the proposed IBC Residential Mixed Use Vision Plan. This table should be consistent with Table 1.1 on page 1 of the Introduction section, except with ADT and peak hour trip generation figures. A11-91
3. On page III of the Executive Summary: It is stated that the analysis of the intersections was completed using "established and published criteria." It is also stated that "Project impacts are identified for the study area using the methodology for each respective jurisdiction."On page 18 the methodology is described. Included in the methodology is a right-turn-on-red utilization factor. The City of Newport Beach does not use this factor in ICU calculations. A11-92
4. On page V of the Executive Summary: The table on this page outlines the mitigation strategies. The proposed Alternative 1 for the intersection of Campus Drive @ Bristol Street (add 3rd SBR) would require acquisition of County of Orange airport property. This is outside of the City's jurisdiction. A11-93

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May 13, 2009 Irvine Business Complex – Traffic Study Comments

5. For the proposed Alternative 2 for Campus Drive @ Bristol Street (add 5th WBT), the improvements west of the intersection are located in Caltrans right-of-way. This is outside of the City's jurisdiction. A11-94
6. The proposed SBR addition on MacArthur Boulevard @ Birch Street would eliminate a significant number of private parking spaces. The right-of-way costs should include compensation for the lost parking to the property owner. A11-95
7. On Page V of the Executive Summary, the improvements outlined for the intersection of Jamboree Road @ San Joaquin Hills Road do not match the exhibits provided to the City via e-mail on April 16. A11-96
8. On page VI of the Executive Summary: For all of the arterial segments analyzed in the study, the future forecasts for the IBC Vision traffic study should use the programmed MPAH lane designations. For example, the Von Karman segment referenced in this section remains as 4 lanes in the IBC study future forecasts, but is programmed as a 6 lane facility in the County MPAH. Until an MPAH Amendment has been approved, the existing programmed MPAH should be used in the future forecasts for the IBC study. A11-97
9. On page 4 of the Introduction section, it is stated that "as new land uses are proposed, the database will be updated accordingly and reconciled with the City's traffic model".On page 13, it is stated that "there are no current applications pending for these potential units, thus the location, density, and design are unknown at this time". Also, the "potential residential units in the traffic study were assumed to be located within the same geographical area in which existing zoning potential is identified". Combining both of these statements would clearly point to the need to prepare project specific traffic studies for future project applications. Only in this way can more accurate impacts be reviewed and addressed for all future projects. A11-98
10. On page 6 of the Introduction section: Please explain how these alternative forms of transportation are incorporated into the ITAM model. Is the iShuttle incorporated into the model trip generation, or is it considered non-operational in the ITAM model, and thereby not a part of this study analysis. A11-99
11. On page 27, the existing ADT for the arterial segment of MacArthur from University to Bison is shown as 43,429. Recent traffic counts taken by Newport Beach show approximately 66,000 ADT. A11-100
12. On page 35, the existing ICU calculations shown in the study for two Newport Beach intersections differ significantly from the existing ICU in our records. At Von Karman @ Campus, we have 0.61 AM and 0.87 PM. At Jamboree @ Campus, we have 0.79 AM and 0.79 PM. A11-101
13. On page 78 and 79, please indicate the changes in the 2013 Arterial Classifications from the Existing Arterial Classifications. For Newport Beach segments, are there any differences between the existing classifications and the 2013 classifications shown in this table? If so, are these improvements funded? Are these classifications consistent with the County MPAH? A11-102
14. On page 87, the 2013 Approved No Project ICU is 0.81 in the PM for Von Karman at Campus. Based on the earlier comment regarding our existing ICU of 0.87 in PM at this location, the intersection should be re-analyzed with existing counts provided by the City. A11-103
15. On page 18 of Introduction section, it is stated that "only IBC improvements that are already built or fully funded are assumed in the No Project and With Project scenarios". This is not correct. At various intersections in Newport Beach, the P2030 Pending with Project ICU calculations include lane improvements (beyond existing) that are included in the Newport Beach General Plan but are not funded. Thus, the IBC Study is essentially taking credit for improvements that are not funded A11-104
16. On page 127, it describes the "cumulative impact analysis, hereinafter known as pending,". Does this include "known pending"? Also, it is stated that the transportation network improvements A11-105

2

for 2013 have been incorporated into ITAM for the model runs for both scenarios. Do these include the full MPAH improvements, or fully funded only? A11-105 cont'd

17. On page 292, it is stated that traffic studies and other planning documents were sourced in adjacent jurisdictions to development mitigation measures for intersection deficiencies. Was the Newport Beach General Plan used as a reference? A11-106
18. On page 300, in Table 6.4, the improvements shown for MacArthur Boulevard at Birch Street should be 2 EBL and 2 EBT. For the improvements at Jamboree Road and San Joaquin Hills Road, it indicates that the improvements are restriping. The exhibits provided show construction in the median, not just striping. The cost estimates may need to be revised. A11-107
19. On page 307, there is discussion about proposed improvements, where construction might be impacted because of other jurisdiction involvement. At the intersection of Campus Drive and Bristol Street North, there are right-of-way requirements within the jurisdiction of Caltrans and the County of Orange (John Wayne Airport). Also, the cost estimates provided for this intersection will need to be reviewed in much greater detail. The estimate provided appears to be significantly low. This is recognized in the report with the statement that the "mitigation appears to be physically feasible although potentially cost prohibitive". A11-108

Antony Brine, P.E., T.E.
City Traffic Engineer
City of Newport Beach

ATTACHMENT C

Letter from Smith Engineering & Management re: Vision Plan DEIR

SMITH ENGINEERING & MANAGEMENT

May 12, 2009

City of Irvine
Department of Community Development
Attn: Bill Jacobs, AICP, Principal Planner
One Civic Center Plaza, P.O. Box 19575
Irvine, CA 92623-5975

Subject: Vision Plan and Mixed Use Overlay Zoning Code Project Draft Environmental Impact Report

Dear Mr. Jacobs:

On behalf of the Cities of Newport Beach and Tustin (hereinafter the "Cities"), I have reviewed Draft Environmental Impact Report (hereinafter the "DEIR") for the Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (hereinafter the "Project"). My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 40 years traffic and transportation engineering consulting practice. I have both prepared and reviewed the traffic and transportation components of numerous CEQA environmental documents. I am familiar with traffic and transportation conditions in the IBC area of Irvine and the neighboring areas of Newport Beach and Tustin having, over the past two years reviewed the traffic components of environmental documents for several proposed developments in IBC and, more generally, having reviewed traffic planning and environmental documents for the IBC and surroundings extending back over the prior two decades. My professional resume is attached as Exhibit A to this letter. My detailed comments on the subject DEIR follow.

The Project Evaluated in the DEIR Is Not "The Project"

The change in the IBC that comprises "The Project" or "the action" in this matter is the change to the Irvine Business Complex Plan and Overlay Zoning Code that increases allowable residential units in the area to increase from a total of 9,446 units to a total of 15,000 units (plus up to 1,191 density bonus units) and a corresponding decrease in the allowable developable office equivalency area by 2,715,462 square feet. However, the project that is evaluated in the DEIR traffic analysis is the change to increase the allowable residential units and cancellation

A11-109

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of allowance of 2,715,462 square feet of previously allowed office equivalency as described above plus development of the remaining 6,380,955 square feet of office equivalency that were already allowable under the existing IBC plan and zoning. In other words, the traffic impacts of the actual project or "action that comprises the change in plan and zoning for the IBC" are obscured in the analysis by including in the purported project the development of 6,380,955 square feet of office space, the permissibility of which in the plan and zoning remains unchanged.

The reason why the improper definition of the Project in the traffic analysis is important is because of the different characteristics of travel of residential use versus non-residential use. Residential use is rich in generation of trip productions; non-residential use is rich in generation of trip attractions. What this generally means in laymen's terms is that trips tend to flow outward from residential use early in the day and return later. For non-residential use, the pattern is opposite. Trips tend to flow in early in the day and depart later. Hence, when a project involves replacing a quantity of non-residential use by a number of residential units that would generate an approximately equal number of trips per day, a completely altered pattern of traffic flows would occur. The numbers of travelers projected to flow into and out of the IBC and into and out of the entire area, according to the traffic model employed in the analysis (the ITAM model), might be significantly altered. Hypothetically, from the perspective of transportation system performance, the effects of the change may be desirable in comparison to build-out under the existing plan and zoning. However, this is not demonstrated in the DEIR because the DEIR traffic analysis muddles the picture by including as part of the Project the 6,380,955 square feet of office equivalency that presumably would develop regardless of whether the new plan and zoning is adopted.

A11-109 cont'd

Because the DEIR analysis does not distinguish the actual Project from other massive office equivalency development that was previously allowable and apparently would continue to be allowable, the DEIR analysis produces indistinct and irrelevant results and is therefore inadequate. The entire "buildout" analysis should be performed on the actual net change in allowable development that would result from the Project's proposed changes. The DEIR should be recirculated in draft status. This defect in the DEIR is a fatal flaw.

The sections that follow detail other defects that also are critical flaws in the DEIR that require revisions.

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The Residential Portion of the Project as Defined Is a Piecemealed Part of the Residential Transformation of the IBC Likely To Take Place by the Planning Horizon of Post-Year 2030

The DEIR assumes that 8,164 residential units, including the 2,111 residential units under construction, the 2,766 units approved but not yet under construction, and the 3,287 units pending at some stage of the planning process, would be completed and occupied by Year 2013. This reflects an average absorption rate in IBC over the intervening five years of 1,633 residential units per year. Taken together with the 4,524 residential units that already exist in IBC, the residential units the DEIR assumes would exist by 2013 take up 12,688 of the proposed total residential cap of 15,000 units. Only 2,312 residential units would remain to be developed under the proposed cap in the 17 years to the planning horizon of post-2030. If these develop at an average rate over that time frame, the absorption rate would be only 136 units per year. This is less than 10 percent of the absorption rate that the DEIR projects over the 5 years between 2008 and 2013. More likely, the remaining 2,312 units would be absorbed at rates similar to what the DEIR projects up to 2013. This would mean all of the 15,000 units would be absorbed by Year 2015.

A11-110

The unrealistic assumptions regarding the absorption rate of new residential units has several implications. First, if the demand for residential development in IBC is as significant as the DEIR projects through 2013, then the demand through the post-2030 planning horizon is likely to be considerably more than 15,000 units. Hence, limiting the definition of the Project to 15,000 units constitutes piecemealing of the likely residential transformation of the IBC by the post-2030 planning horizon. If the 15,000 unit cap (plus bonus density units) will indeed be absolute, the General Plan amendment, and zone change should specifically state this, and the DEIR should explain how Irvine intends to place an ultimate cap on residential development for the IBC.

Second, if all of the 15,000 units are likely to be absorbed by 2015, the DEIR should have evaluated traffic impacts for that time frame instead of creating the impression that the traffic impacts of full absorption would not be felt until some distant post-2030 date. By assuming the traffic impacts will not occur until later, the DEIR fails to identify feasible mitigation that would address the brunt of impacts that will occur by as early as 2015.

A11-111

Third, since almost 85 percent of the proposed 15,000 residential unit cap already exist or are at some stage of the development process, it is obvious that the subject project is not the visionary planning process that the name "Vision Plan" implies. On the contrary, the process appears to be a defensive "post hoc rationalization" designed as a cloak of plan legitimacy to a residential transformation already initiated by individual property owners and developers.

A11-112

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As such, the Vision Plan DEIR bears a remarkable resemblance to the 1992 IBC program EIR, which analyzed the impacts of new residential projects after they had already been approved. A11-112 cont'd

Future Residential Development Components of the Project Are Assumed in Unrealistically Small Concentrations. This Results in the DEIR Understating Potential Traffic Impacts of the Project

As indicated in Appendix 9 to DEIR Appendix F, the assumed land use plan for the Project's traffic analysis allocates the 2,312 residential units that are not part of currently known development proposals (that is, not part of the existing, under construction, approved, and in process residential development in IBC) to development in 13 Traffic Analysis Zones ("TAZs"). The hypothetical distribution of these remaining 2,312 units under the proposed 15,000 unit cap has an average residential development size of 178 units per project for the portion of the overall Project's residential units that is not comprised of already announced projects. But according to DEIR Appendix F, Appendix 4, the 35 announced development projects considered in the overall DEIR Project would be comprised of 12,688 residential units or an average of 363 units per residential development. Thus, the DEIR disperses the portion of the Project that would be in as yet unannounced residential developments in concentrations of units that are less than half the typical pattern of residential development concentration that has been experienced to date. In fact, not one of the site concentrations of future residential units assumed for the traffic analysis is even as large as the average number of units for the currently known projects. This assumption appears even more unrealistic when one considers the elimination of the maximum density restrictions for the IBC and the establishment of a 30 units-per-acre minimum density. The assumption of an unrealistic dispersal of the future residential units tends to minimize and avoid disclosure of the traffic impacts that the more likely higher concentration of those units would have. A11-113

In addition to the above, the DEIR analyzes only a single hypothetical dispersal of the 2,312 units that are not yet part of known projects. At a minimum, the DEIR should include a sensitivity analysis testing alternate locations of these units, with the units' concentrated in clusters comparable to the average number of units in currently known residential developments in IBC. A11-114

The Scenarios Evaluated In the DEIR Traffic Study Are Inconsistent with the Residential Land Use Quantification in the DEIR Land Use Section

The DEIR Section 5.13.3.6 states that there are 2,522 units in residential projects currently pending and 3,077 units above these would be available under the proposed 15,000 unit residential cap (all excluding density bonus units). The appendix to the DEIR Land Use section (Volume II, Appendix F, Appendix 4) indicates that there are 3,287 units in pending residential projects and that only A11-115

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2,312 units would remain under the proposed 15,000 unit cap when all pending units are approved (all of the above excluding density bonus units). DEIR Volume II, Appendix F, Appendix 9 also affirms that only 2,322 units (non-density bonus total) would remain under the cap beyond units comprising current pending residential projects. Hence, it is clear that the traffic analysis evaluated the impact of developing too few residential units in the 2013 "with project" analysis, hence understating the project's early traffic impacts. The analysis should be redone, so that it is based on realistic and factually supported assumptions concerning the number of units that will be completed by 2013. These assumptions must be consistent with the equivalent assumptions in the DEIR's Land Use, Air Quality, and Climate Change Sections.

A11-115 cont'd

The DEIR Fails To Assess the Impact of Transfer of Development Rights (TDR)

In comments on the NOP for this DEIR, representatives of the Cities of Newport Beach and Tustin requested that the traffic study explicitly evaluate the impacts of TDR in concert with the project. The City of Irvine's response to that request was as follows: "The traffic study addresses the TDRs required for implementation of the IBC Vision Plan".[1] However, it is quite evident that there is no meaningful analysis of TDR in the DEIR.

Most of the residential projects in IBC that have previously been approved have achieved their concentration of units through proposed transfer of development rights from other sites. If past is prologue, many of the pending development proposals involving new residential units will also include TDR. None of the hypothetical projects that the City has identified for purposes of the DEIR involves TDR. Hence, the DEIR traffic analysis provides no attempt at an indication of what the traffic impacts of the Project would be with TDR versus without it. This could easily have been done. A "no TDR/ with Project" scenario could have been created by removing the TDR units from pending proposals and creating an additional hypothetical residential site with an equivalent number of units to the foregone TDR units. A representative "with TDR/with Project" scenario could have been created by leaving pending developments that have TDR as proposed, identifying a lesser number of hypothetical sites where the balance of the proposed cap units are assumed to be located to create an average development size of 363 units per site and assume TDRs as necessary to develop that number of units on the reduced number of sites. Such an analysis should be done to make the DEIR adequate as well as consistent with the City's response on the NOP.

A11-116

[1] Memo to Doug Anderson, City of Tustin, entitled *"IBC Vision NOP Responses To Comments"* from Lisa Thai, Senior Transportation Analyst, City of Irvine Senior Transportation Analyst dated February 11, 2009.

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Furthermore, the DEIR should include an analysis of the traffic impacts that have resulted and will occur as a consequence of multiple TDRs. These TDRs have the effect of concentrating development patterns, which of course also concentrates the points where trips generated are loaded onto the street and highway system. This tends to intensify the traffic impacts that a fixed amount of trip generation would have if dispersed more evenly over the entire IBC. The DEIR should identify where development intensity has already occurred due to multiple TDRs and should predict future development patterns that are likely to occur. If development is likely adjacent to transportation infrastructure that is already congested with traffic, then mitigation will more likely be required.

A11-117

The DEIR Fails To Mitigate the Project's Traffic Impacts on the Existing Environment as Required by CEQA. Mitigation Measures Only Address Hypothetical Near-Term and Long-Term Cumulative Impacts

CEQA Guidelines § 15125 (a) states that the ordinary baseline for assessing a project's impacts is the environmental conditions that exist at the time of the NOP. The DEIR does perform an analysis of how the Project would alter and impact the existing traffic environment. The DEIR, however, does not satisfy CEQA's requirement to disclose mitigation for those impacts based on the claim that much of the Project would not be completed until close to the post-2030 plan horizon year and that therefore the Project's impacts and mitigation should be defined relative to the transportation system that would exist at that period of time. This facile rationalization has a major flaw. The real Project involved in this action will be built out in very short term. Only a small fraction of the currently permissible development potential for the IBC would not be complete until the post-2030 era: specifically, the remaining 6,380,955 square feet of office equivalency that has been improperly included as part of the Project in the DEIR's definition. The DEIR assumes that approximately 85 percent of the actual Project (i.e., the replacement of 2,715,462 square feet of office equivalency by allowing development of up to a total of 15,000 residential units (plus density bonus units)) would be built-out by 2013 – not post-2030. And as we have shown above, under the same absorption rates as the DEIR assumes to 2013, the entire 15,000 residential unit cap could easily be built out by 2015. So the evaluation of the Existing + Project condition is relevant to immediate mitigation needs and the lack of disclosure of mitigation for this scenario constitutes an inadequacy under CEQA.

A11-118

The DEIR claims that long range mitigation of cumulative traffic impacts would mitigate the impacts it discloses for the "Existing + Project" condition. However, long term cumulative mitigation measures that may not be implemented until 20 years hence or more can hardly be said to mitigate Project traffic impacts that would materialize in the immediate short term.

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The DEIR Post-2030 Traffic Analysis Assumes Prior Completion of Traffic Improvements in Newport Beach and Tustin That, Though Identified By Those Cities as Desirable Improvements, Are Unfunded and Will Require Fair Share Funds from Outside Developments Such As Vision Plan for Completion

The DEIR traffic analysis assumes as a background condition to the analysis the completion of certain traffic improvements in the Cities of Newport Beach and Tustin that are recognized in the plans of those cities but that are unfunded and are likely to remain unfunded and unconstructed unless there are fair share funding contributions paid by outside projects like Vision Plan that contribute to the improvement needs at these locations.

Key locations where unfunded improvements have been assumed to be in place in the future year analyses include: A11-119

- Intersection of MacArthur with Campus – DEIR assumes addition of 2nd northbound left turn lane,
- Intersection of Jamboree with Campus – DEIR assumes addition of a northbound right turn lane,
- Intersection of MacArthur with San Joaquin Hills – DEIR assumes addition of 3rd southbound left turn lane, a 4th northbound through lane, and a 3rd eastbound left turn lane.

The DEIR should reassess the Project's impacts assuming the questionable improvements are not in place, identifying Project traffic impacts in the unimproved condition and fair share contributions toward implementing the identified mitigations.

Traffic Mitigation Measures Purported to Mitigate Significant Project Traffic Impacts In Newport Beach and Tustin Are Inadequate and the DEIR's Cost Estimates For Them are Understated

The Cities of Newport Beach and Tustin have carefully reviewed the mitigation measures and the City of Irvine's estimated costs for those mitigation measures.

In general, the Cities find that the proposed mitigations are in some instances infeasible, insufficient and that the City of Irvine's estimates of their costs are low. Tustin's comments on the proposed mitigation measures have already been forwarded informally to Irvine staff and are reiterated herein to become part of the formal record of comments on the DEIR. A11-120

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In general, Tustin finds Irvine's cost estimates for proposed mitigation measures in Tustin about 20% lower than the City of Tustin estimates for this work. Specific items that appear low are the "electrical" components including modification of traffic signals, relocations of street lights, and relocation of utility boxes, meters and vaults. The following comments pertain to site-specific mitigation proposals: A11-120 cont'd

1. Newport Avenue & Edinger Avenue: The cost estimate does not identify any right-of-way costs or needs to implement the two free-right turns at the intersection. The estimate must reflect the additional right-of-way needs. A11-121

2. Newport Avenue & Walnut Avenue: The ICU worksheets for 2030 indicate that there are 364 AM peak hour westbound right turns. However, the proposed right turn de-facto lane appears to be about 100-feet long. This is not sufficient to accommodate the projected westbound right-turn movements at this location. Please revise to include a de-facto lane length of at least 300-feet and additional right-of-way to implement this improvement and update costs accordingly. A11-122

3. Tustin Ranch Road & El Camino Real: The proposed fourth southbound through lane needs to be continued through the intersection. The bicycle lanes along the west side of Tustin Ranch Road need to remain 8-feet wide and also be continuous through the intersection to the bridge over the I-5 freeway. As proposed, the bicycle lanes are shown to be reduced to a 5-foot width in the work area. The free right-turn onto the NB I-5 freeway ramp is shown as a 12-foot wide lane. The City standard width for a free right-turn lane is 20-feet. However, this is within the Caltrans area, so please check with them for requirements. The EB free right-turn lane needs to be increased from the proposed 12-wide lane to City standard 20-foot lane. Please revise the exhibits and costs to reflect these changes including the additional right-of-way needed to accommodate these changes. A11-123

4. Franklin Avenue & Tustin Ranch Road: The proposed third WB lane needs to extend through to Tustin Ranch Road, and terminate in a designated right-turn only lane. The 8-foot bicycle lane also needs to extend to the intersection of Tustin Ranch Road/Walnut Avenue. This will necessitate the modification of the traffic signal at the corner of Tustin Ranch Road/Walnut as well as at the Franklin Avenue/Walnut Avenue intersection. Please revise the exhibits and the cost estimates to accommodate these changes. A11-124

5. Newport Avenue & Sycamore Avenue: The City of Tustin has not planned to make the identified improvements at this location until Year 2030.. However, the DEIR indicates that the Project causes those improvements to be needed as mitigation by 2013. There is a cost to accelerate these A11-125

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improvements since they are not planned to be implemented by the City until a much later date. Please review the IBC project impacts at this location and identify any fair share costs to accelerate these improvements. A11-125 cont'd

In Newport Beach, the feasibility of the aforementioned improvements at the intersection of MacArthur with San Joaquin Hills may be compromised by physical constraints and lane alignment difficulties. A11-126

The Cities of Newport Beach and Tustin Continue To Have Concerns That the Procedures and Traffic Forecasts That Underlie the DEIR's Findings Regarding Traffic Impacts and Mitigation Are Unreliable and Inadequate. Moreover, the DEIR Is Deficient as an Information Document Because Details of Traffic Analysis Procedures Are Not Sufficiently Described To Demonstrate Whether an Adequate Traffic Analysis Has Been Performed

The Cities of Newport Beach and Tustin have repeatedly put the City of Irvine on notice of their concerns regarding adequacy and reasonableness of the City of Irvine's traffic analysis procedures in comments on the EIRs for other IBC developments over the past two years, in comments on the NOP(s) and traffic work scope for this DEIR, and in informal working meetings between the staff's of the three cities during the conduct of the traffic study for this DEIR. The concerns relate to numerous facets of the traffic analysis procedures that are detailed below. A11-127

- The Cities have objected to Irvine's practice of passing Project traffic through a full forecast run of Irvine's traffic forecast and analysis model, ITAM, and its' post-processors, instead of overlaying an estimate of Project traffic atop forecasts of non-project traffic for the various forecast year scenarios. The objections are based on the belief that running the entire "with project" scenario through ITAM excessively optimizes both non-project and Project traffic's use of the roadway system in reaction to the Project traffic's presence, that it also unreasonably factors-down Project traffic contributions on key road segments and intersection approaches where ITAM is high in validation runs (treating what should be the Project's discrete traffic contributions as if they were a product of ITAM model error) particularly where segments/intersection approaches are subjected to very high percentage validation adjustments, and that passing Project traffic through the ITAM post-processors that estimate intersection turn movements results in dispersal over multiple turn movements of what should be discrete Project traffic contributions to specific turn movements. Each of these considerations tends to reduce the likelihood of proper disclosure of Project traffic impacts. A11-128

The City of Irvine has responded to these concerns in this DEIR in part positively, in part in a negative fashion and in part not at all. The positive A11-129

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step was to eliminate the use of the "Ratio Method" of adjustment for validation error in instances where the ITAM validation forecasts were higher than actual counts. The Ratio Method was the instrument that applied the inappropriate factoring-down of Project traffic contributions when the "with project" scenario was run through the entire ITAM model and its post-processors in previous IBC EIRs. The Cities acknowledge and appreciate the fact that Irvine has made this change in its process.

A11-129 cont'd

The negative response was in reaction to the Cities' concern regarding numerous segments/intersection approaches critical to the analysis requiring high percentages of adjustment to correct for validation error. The City of Irvine's response to this concern has been to withhold from publication in the DEIR appendices the logs of what adjustments for validation error (Irvine prefers to call these "refinements") have been applied to each road segment/intersection approach considered in the traffic study. Such logs were routinely included in the 'traffic appendices' of prior IBC EIRs (a sample page of the log from the 2008 HCG DEIR is included as Exhibit B to this letter). Suppressing and failing to publish the available technical information on a known point of concern is inappropriate in relation to CEQA's disclosure requirements and the failure to provide this heretofore routinely provided information renders the DEIR inadequate as an information document.

A11-130

The issues the City of Irvine has not addressed at all in this DEIR are the concerns about excessive traffic optimization in the model and inappropriate redistribution of the turn movements of Project trips. In the informal meetings between staffs that the City of Irvine hosted (an initiative appreciated by the Cities) and in the belated response to the Cities' comments on the NOP, the City of Irvine presented a test comparative analysis of the Intersection Capacity Utilization (ICU) that would result from the Project overlay method the Cities have suggested versus the analysis methods currently employed by the City of Irvine. The City of Irvine's interpretation of the test results is that about three-quarters of the intersections represented in the traffic model showed no ICU difference at all under the alternate methods, and of the roughly one-quarter that exhibited differences, the differences were so small as to be insignificant. The Cities place an absolutely opposite interpretation on the results of this test. The fact that three-quarters of the intersections in the model did not show any difference at all is a completely expected result because roughly that percentage of the 435 intersections represented in the ITAM model are so far away from the test project site that difference would be highly unlikely. The Cities believe it highly significant that differences in ICU were found at roughly 25 percent of the intersections and that where differences were found, those differences were of the same magnitude of change as the threshold required to support a finding of significant impact

A11-131

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(0.02 or 0.01 in some instances) if the intersection is in or on the cusp of deficient condition. Hence, the Cities find Irvine's dismissal of the Cities' concerns on these points and misinterpretation of the results of Irvine's own methodology test to be inappropriate and compromising to the findings of the DEIR traffic study.

A11-131 cont'd

- The Cities of Newport Beach and Tustin have noticed substantial discrepancies between the traffic forecasts of the DEIR and traffic forecasts prepared by the respective Cities within their own jurisdictions and for intersections on their borders with the City of Irvine. Discrepancies between the DEIR traffic forecasts and the official OCTAM forecasts prepared by the Orange County Transportation Authority are also observed. The discrepancies in results occur despite the fact that the basic forecasting methodologies and fundamental data bases relied on by the four organizations are such that results should be similar. The discrepancies are critical because they result in underestimated Project impacts. The DEIR's traffic forecasts also undermine the basis for conditioning of mitigation measures on prior development projects approved by the Cities or planned traffic improvements in the Cities. For example, the mitigation measure of widening Barranca imposed on the Tustin Legacy project largely at the City of Irvine's insistence appears unjustified in the DEIR's ITAM forecast.

  A11-132

  As a remedy, the Cities propose a method of estimating traffic to be employed at locations within the jurisdictions of the Cities of Tustin and Newport Beach wherein the Cities identify their best estimates of future year background traffic and then the DEIR can overlay the Project's incremental traffic over that base to identify Project traffic impacts.

- The Cities' efforts to understand, rationalize and resolve discrepancies between the DEIR and their own traffic forecasts have been hampered by a lack of complete information in the DEIR about the ITAM forecasts. The DEIR's lack of customarily provided validation adjustment data for all road segments considered in the analysis has already been cited herein.

  When the Cities requested 'screenline validation data' for the version of ITAM used in the DEIR, the Cities' received only aggregate statistics (instead of the segment by segment data that would have enabled scrutiny of the model's accuracy across key screen lines). In informal discussion between staffs, the Cities observed that, based on the screen line data, the validation of the DEIR's version of ITAM was considerably poorer than the prior version of ITAM for which validation data was available, that most of the poorest performing screen lines were in locations critical to the project and critical to Newport Beach or Tustin, and that the model appeared to be under-predicting traffic. Irvine's response was to reissue

  A11-133

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the aggregate data summary, citing correction of a computational error that resulted in a couple of the screen lines that had exceeded acceptable error thresholds to barely fall within those thresholds. But it never addressed the more fundamental issues in the comment.

A11-133 cont'd

- As noted previously in this letter, the Project involves the substitution of a quantity of residential units for a quantity of office equivalency development that would generate an equal *number* of trips. However, the trip generation of residential units is rich in *trip productions*; the trip generation of office use is rich in *trip attractions.* The DEIR presents detailed trip generation data only for traffic analysis zones (TAZs) within the IBC. The increase in trip productions and decrease in trip attractions within IBC must be balanced out in the rest of the ITAM model. This balancing can be carried out in a reasonable way or in a way that totally biases the model forecasts in favor of the Project. The public can only determine whether the balancing was done reasonably or biased in favor of the Project if it has access to the trip data for all TAZs in the ITAM model including external stations and including both trip generation and trips assigned. Since trip generation is only presented for TAZ's within IBC, the DEIR is deficient as an information document. This issue is critical not only for the traffic analysis itself; it similarly affects the reasonableness of traffic statistics input to the air quality and greenhouse gases emission components of the DEIR, statistics such as total trips, average trip length and vehicle miles traveled (VMTs). Furthermore, it is critical to the accuracy of the air quality and greenhouse gas evaluations whether the statistics cited above are reported as inputs directly from raw ITAM model data or compiled after the ITAM output has been adjusted for validation error. The DEIR does not make clear whether raw model data or 'refined' model output has been used as input to these analyses.

A11-134

The DEIR is under obligation to provide, in appendices, information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. CEQA Guidelines § 15147, provides:

> *"The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review."*

A11-135

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As the paragraphs above make evident the DEIR has failed to comply with this section of the CEQA Guidelines in numerous critical instances. A11-135 cont'd

Contribution of Accessory Retail Business to the Project's Traffic Impacts Is Not Assessed

The City of Irvine recently adopted Ordinance 09-02 concerning "Accessory Retail Business". The ordinance provides that 100 percent of the trip generation that would ordinarily be estimated for these retail business would be internally captured from the development(s) to which they are accessory. In other words, they are presumed to have zero trip generation onto the street and highway network. The authoritative reference source on internal trip capture is *Trip Generation Handbook*, published by the Institute of Transportation Engineers. This publication indicates the likely trip capture for accessory retail in a residential complex is only about 24.5 [2] percent of the trips to and from the retail and about 12.5 [3] percent of trips to and from the accessory retail in an office complex. To the extent that there is accessory retail business in residential or office development under the IBC Vision Plan and Mixed Use Overlay Zoning Code, its contribution to traffic would be understated 75.5 to 87.5 percent. A11-136

Conclusion

This completes my current comments on the Vision Plan . As documented in the detailed comments above, the DEIR traffic analysis and documentation is inadequate and must be revised and recirculated in draft status. A11-137

Sincerely,

Smith Engineering & Management
A California Corporation

Daniel T. Smith Jr., P.E.
President

[2] Average of 38 percent of trips inbound to retail from residential and 11 percent of trips outbound from retail to residential.
[3] Average of 22 percent of trips inbound to retail from office and 3 percent of trips outbound from retail to office.

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Mr. Bill Jacobs, Principal Planner
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Exhibit A
Resume of Daniel T. Smith Jr., P.E.

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DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil)
California No. 938 (Traffic)
Nevada No. 7969 (Civil)
Washington No. 29337 (Civil)
Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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Transportation Centers. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard et al., U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

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Exhibit B
Sample Page of Log of Road Segment Adjustments For Validation Error

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Adt Refinement Summary

Scenario: Approved with Project Alt 2
Existing Model RunID: ITAM-Y05-07.3
Future Model RunID: ITAM-F30-07.3
Existing Validation Year: 2005
Future Analysis Year: Post-2030

Project: HINES TRAFFIC STUDY
JobNumber:
Analyst: PA
Date: 3/24/2008

Adt Post Location	Adt Post Location Description		Existing Count Adt	Existing Model Adt	Future Model Adt	Procedure Type	Interim Raw Growth	Interim Raw Growth %	Smooth Raw Growth %	Minimum Growth % (User Input)	Final Growth %	Final Growth	Refined Adt
30	Red Hill Av.	n/o Barranca	29,101	30,740	34,650	Ratio	3,702	13%	13%	-100%	13%	3,702	32,800
31	Red Hill Av.	s/o Barranca	29,693	27,501	36,220	Increment	8,719	29%	29%	-100%	29%	8,719	38,400
32	Red Hill Av.	n/o Alton	29,002	31,725	40,426	Ratio	7,954	27%	27%	-100%	27%	7,954	37,000
33	Red Hill Av.	s/o Alton	30,870	32,370	43,045	Ratio	10,180	33%	33%	-100%	33%	10,180	41,100
36	Red Hill Av.	n/o MacArthur	43,107	49,847	61,818	Ratio	10,352	24%	24%	-100%	24%	10,352	53,500
37	Red Hill Av.	s/o MacArthur	18,228	19,716	31,422	Ratio	10,821	59%	59%	-100%	59%	10,821	29,000
39	Red Hill Av.	Main St. to Paularino Av.	20,606	19,906	33,629	Increment	13,723	67%	67%	-100%	67%	13,723	34,300
59	MacArthur Bl.	Red Hill Av. to Main St.	27,929	42,205	52,786	Ratio	7,002	25%	25%	-100%	25%	7,002	34,900
60	MacArthur Bl.	Main St. to I-405 Fwy.	46,546	57,411	72,155	Ratio	12,056	26%	26%	-100%	26%	12,056	59,000
62	MacArthur Bl.	n/o Michelson Dr.	55,522	51,385	60,764	Increment	9,379	17%	17%	-100%	17%	9,379	64,900
63	MacArthur Bl.	s/o Michelson Dr.	45,232	43,261	52,193	Increment	8,932	20%	20%	-100%	20%	8,932	54,200
64	MacArthur Bl.	n/o Campus		40,011	44,607	Increment	4,596	0%	0%	-100%	0%	0	44,600
65	Campus Dr.	w/o MacArthur		29,534	33,023	Increment	4,489	0%	0%	-100%	0%	0	33,000
66	Campus Dr.	Airport Wy. to Bristol St.	37,961	32,367	40,001	Increment	7,634	20%	20%	-100%	20%	7,634	45,800
69	Birch St.	w/o MacArthur Bl.	13,081	14,479	19,912	Ratio	4,908	36%	36%	-100%	36%	4,908	18,000
70	Birch St.	MacArthur Bl. to Bristol St.	13,081	34,450	23,309	Ratio	-4,230	-32%	-32%	-100%	-32%	-4,230	8,900
73	MacArthur Bl.	s/o Campus	34,511	29,240	34,507	Increment	5,267	15%	15%	-100%	15%	5,267	39,800
74	MacArthur Bl.	n/o Birch	34,511	26,726	29,752	Increment	3,027	9%	9%	-100%	9%	3,027	37,500
97	Von Karman Ave.	n/o Barranca		0	41,561	Increment	41,561	0%	0%	-100%	0%	0	41,600
99	Von Karman Ave.	n/o Alton	17,594	11,795	42,814	Increment	31,019	176%	176%	-100%	176%	31,019	48,600
100	Von Karman Ave.	s/o Alton	18,187	14,847	41,408	Increment	26,462	145%	145%	-100%	145%	26,462	44,600
103	Von Karman Ave.	n/o Main	19,070	22,290	48,715	Ratio	22,608	119%	119%	-100%	119%	22,608	41,700
104	Von Karman Av.	s/o Main	19,728	29,822	54,611	Ratio	16,399	83%	83%	-100%	83%	16,399	36,100
107	Von Karman Ave.	n/o Michelson	21,655	20,484	43,913	Increment	23,429	108%	108%	-100%	108%	23,429	45,100
108	Von Karman Ave.	s/o Michelson	15,897	16,629	31,843	Ratio	14,544	91%	91%	-100%	91%	14,544	30,400

Monday, March 24, 2008

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TRAFFIC • TRANSPORTATION • MANAGEMENT
5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

ATTACHMENT D

Memo from Hogle-Ireland, Inc.
re: Vision Plan DEIR

HOGLE-IRELAND INC.
A Land Planning & Development Consulting Firm

MEMO

Date: May 13, 2009

To: Sharon Wood, Assistant City Manager, City of Newport Beach
Elizabeth Binsack, Community Development Director, City of Tustin
Jason Holder, Remy, Thomas, Moose, and Manley, LLP

From: Hogle-Ireland, Inc.

Subject: Analysis and Comments on DEIR for IBC Vision Plan

Introduction

The following summarizes our review and analysis of the project components of the Irvine Business Complex (IBC) Vision Plan and the Draft Environmental Impact Report (DEIR) prepared to analyze the potential impacts of the IBC Vision Plan. The analysis has been divided into two sections: Section I describes components of the project that are either internally inconsistent or inconsistent with associated regulations or standards; Section II identifies those portions of the DEIR that we believe are deficient pursuant to State CEQA Statutes and Guidelines. As directed by the Cities of Newport Beach and Tustin, this analysis primarily focuses on park and recreation issues, although additional observations on the project and DEIR have been included.

I. Project Component Consistency Analysis

A. Section 9-36-4 and Section 9-36-8(B)(2) of the Zoning Code indicates that development and traffic intensity levels are to be maintained as analyzed in and mitigated by the final program environmental impact report for the planning area adopted on October 27, 1992'. However, the IBC Vision Plan proposes to increase the maximum residential unit cap of the planning area to 15,000 regular dwelling units, an increase of 5,599 over the potential residential build-out of the current General Plan. The DEIR should address the increased need for recreation facilities within the IBC, in light of the shift to more intensive residential uses. A11-138

B. The proposed Municipal Code Amendment requires minimum 6,000 sf private parks for developments of less than 200 units and 1/3 acre for developments over 200 units (see Section 5-5-1004(F)(2)(a)(i)) within all planning areas. Sub-section (ii) of the amendment indicates that development within the IBC planning area shall be subject to IBC Residential Mixed Use Design Criteria. The Design Criteria includes requirements for a variety of park sizes and development sizes. Particularly, any development with 750 units at a density of 31 dwelling units or greater are encouraged to provide a one acre on-site public park. Any development between 375 units and less than 750 has the option to provide a 0.5 public park that is privately maintained. The Design Criteria text does not actually set any development standard, but rather proposes guidelines for park development. No actual standard will be enforceable because the Design Criteria relies on the use of language such as 'should' and 'may' as opposed to 'shall' and 'will'. The permissive language must therefore be substituted for mandatory language otherwise the parkland requirements within the IBC planning area will be arbitrary. A11-139

C. The DEIR indicates that the City of Irvine is currently seeking an adequate site within the IBC for construction of a public neighborhood park; however at the April 15, 2009 Community Services Commission meeting, the staff report regarding this project indicates that the 'next A11-140

steps' following adoption of the Vision Plan includes 'development of a community park south of the 405 freeway'. The City should clarify if it is currently pursuing a neighborhood or community park within the IBC planning area. A11-140 cont'd

D. The proposed IBC Element states that a new community park should be provided south of Interstate 405 and at least six neighborhood parks should be provided within the IBC planning area (see p. N-23). The stated location of the community park is not consistent with Figure N-3 (IBC Vision Framework Plan) that shows the conceptual location of the community park north of Interstate 405. Additionally, in order to provide for the needs of new residents within the IBC planning area, at least two community parks and ten neighborhood parks would be required to be provided (see Item II.F below for further discussion). A11-141

E. The table used for determining average number of persons per dwelling unit for parkland and in-lieu fee calculations in Section 5-5-1004(D)(1) of the Municipal Code does not include a persons per dwelling unit ratio for any development with a density greater than 50.1 dwelling units per acre. The text indicates that it will 'be determined once updated results are available'. The City should clarify what data it is waiting for and when this data is expected to be provided. A11-142

II. DEIR Analysis

A. *Review of the Project Description (Section 3, p. 3-1)*

The following identifies discrepancies between the Project Description and the program components under review. The Project Description should be revised in order to accurately describe the program.

- The project description indicates that the IBC encompasses 2,800 acres; however the proposed IBC General Plan Element indicates that the area encompasses 2,700 acres.
- The proposed Municipal Code Amendment to Section 5-5-1004(F)(2)(a) modifies private parkland requirements by reducing the minimum neighborhood park requirement from 0.33 acres to 6,000 sf for any development with less than 200 units. This is not disclosed in the Project Description, no justification or reasoning for this reduction is provided, and the reduction has not been analyzed in the DEIR (see Item II.G below). Furthermore, the proposed amendment to Section 5-5-1004 will affect the City as a whole, not just the IBC planning area. This fact is not disclosed in the project description and has not been analyzed in the DEIR. A11-143
- Section 3.3.2.6 of the DEIR identifies the methodology and model for optimization of land use within the IBC planning area. This model (both under pending and non-pending scenarios) includes only 14 acres of neighborhood parkland and no community parkland. This is significantly less than what would be required to serve the planning area under the 5 acres per 1,000 persons standard. The project description should explain why optimization of land uses would result in only 14 acres of neighborhood parks and no community parks within the IBC planning area. This explanation should be expanded on in the recreation analysis to indicate how the additional required recreational facilities are planned to be provided and where.

B. *The DEIR fails to discuss the environmental effects of the construction and provision of recreational facilities associated with 2,522 pending residential units (Section 3.3.3, p. 3-20)*

The Project Description includes nine proposed projects within the IBC planning area for which applications are currently on file with the City. Environmental analysis of these projects is supposed to occur in the EIR based on the availability of project specific data. Eight of the nine projects have park plan applications filed with the City. The recreation section fails to evaluate A11-144

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the potential environmental impacts of the construction of these proposed recreation facilities. Furthermore, the amount of parkland that is to be dedicated in conjunction with these projects and whether that parkland is adequate in meeting the needs of the development has not been disclosed. A11-144 cont'd

C. *The DEIR fails to analyze impacts associated with the construction of new or expanded recreational facilities, including the proposed Creekwalk (Section 5.11, p. 5.11-1 & Section 5.12.2, p. 5.12-4)*

The DEIR does not discuss Threshold of Significance R-2, which states that a project would normally have a significant effect on the environment if it 'includes recreational facilities or requires the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.' The DEIR fails to discuss potential future new or expanded recreational facilities at a programmatic level. Furthermore, the DEIR fails to discuss the physical impacts from proposed recreational facilities associated with the nine projects that are included in the project description. The analysis of recreation impacts is deficient in addressing potential construction related impacts.

Section 5.11 (Public Services) indicates that park services are addressed in Section 5.12 (Recreation) of the DEIR. The threshold of significance for park services indicates that a significant impact would occur if the project would result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives. The DEIR does not discuss any potential impacts associated with the construction of parks required to meet the service standard for the planning area. It does not include any analysis of impacts associated with the construction of the trail and bikeway system associated with the proposed Creekwalk. Failure to discuss these project components results in a deficient environmental analysis because the whole of the project has not been analyzed. A11-145

D. *The DEIR has not established what constitutes 'substantial or accelerated physical deterioration' of recreational facilities (Section 5.12.2, p. 5.12-4)*

The DEIR concludes that 'the proposed project would provide new recreational facilities in compliance with City park dedication standards and therefore [will] not have a significant impact on existing neighborhood and regional parks or other recreational facilities that would result in, or accelerate, substantial physical deterioration of the facilities.' However, the DEIR does not explain what criteria the City is using to determine what constitutes 'substantial or accelerated physical deterioration'. Without defining the threshold, the City cannot assess the significance of the project's impacts. A11-146

E. *The future potential residential units under review in the DEIR are incorrect (Impact 5.12-1, p. 5.12-5)*

Section 5.12 (Recreation) of the DEIR indicates that the IBC Vision Plan has the potential to add 6,745 residential units to the City of Irvine (5,599 regular units and 1,146 density bonus units). This is the incorrect amount of potential residential units by which to assess park and recreation needs because it is examining the potential units compared to the existing General Plan land use designations and not to the existing residential units within the IBC planning area. Pursuant to State CEQA Guidelines Section 15126.2(a), 'An EIR shall identify and focus on the significant effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is A11-147

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published. . .' Court decision has made it clear (see *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 355-358) that program level environmental analysis must examine the changes to the physical environment, finding that solely examining plan-to-plan projections is improper. As such, the DEIR should examine the fact that there are 4,569 existing residential units within the planning area and that the IBC Vision Plan will have the potential to add 11,622 residential units (16,191 units – 4,569 units = 11,622 units). A11-147

F. *Utilizing 1.3 persons per high-density unit for purposes of calculating parkland requirements results in a significant impact (Impact 5-12.1, p. 5.12-5)*

It is clear that the City of Irvine utilizes 1.3 persons per dwelling unit for the calculation of parkland dedication requirements and payment of in-lieu fees. However, the General Plan Amendment references a survey conducted in 2007 that indicates the actual average household size within the IBC planning area is 1.65 persons per household (see p. N-6 of the proposed IBC Element). This discrepancy in actual household residency provides substantial evidence that use of 1.3 persons per dwelling unit is deficient and will result in the provision of less than 5 acres of parkland per 1,000 residents for the IBC planning area. Considering an average household size of 1.65 persons per residential unit, the build-out of the planning area could result in approximately 19,176 new residents, requiring 38.4 acres of additional community parkland and 57.5 acres of additional neighborhood parkland. This equates to approximately 2 community parks and 10 public neighborhood parks (assuming 1/3 of required neighborhood parks are implemented through private facilities, as proposed in the IBC General Plan Element). Calculation of parkland requirements based on a household size of 1.3 persons per dwelling unit constitutes a potentially significant impact because failure to provide adequate recreational facilities could result in degradation of existing and future facilities and could further contribute to a cumulatively considerable lack of parkland as the IBC planning area is developed. Additional analysis of this potential impact is required. A11-148

G. *The DEIR fails to discuss changes related to recreation facilities due to the proposed General Plan Amendment, Municipal Code Amendments, and revisions to the Park Standards Manual (Impact 5.12-1, p. 5.12-5)*

The DEIR fails to analyze specific changes related to the core components of the program that could result in physical changes to the environment related to the provision of recreation facilities. Furthermore, inconsistencies exist between the core components of the program.

The program includes revisions to Section 5-5-1004 (Park Dedication) of the Municipal Code by modifying standard minimum private park size requirements. The proposed Municipal Code Amendment removes the 1/3 acre minimum size park requirement for any development over 31 dwelling units per acre in any Planning Area (except for the IBC planning area), permitting private park sizes of 6,000 sf. The DEIR does not analyze any potential impacts associated with this citywide amendment. The DEIR should discuss the reasoning behind allowing a smaller sized park for a denser development. A11-149

The proposed Park Standards Manual directs the user to the provisions of the proposed IBC Residential/Mixed-Use Design Criteria (Design Criteria) and the proposed Chapter 5-8 of the Zoning Code Amendment for private park dedication requirements within the IBC planning area. Chapter 5-8 contains no provisions for the dedication of private neighborhood parks. The Design Criteria includes language requiring private park dedication at a minimum of two acres public neighborhood parkland per 1,000 persons and one acre private neighborhood parkland per 1,000 persons. However, this language does not ensure that parkland will be provided in

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such a manner because the text uses 'should' instead of 'shall'. Changes to recreation requirements proposed in the Design Criteria are not analyzed in the DEIR.

The program also proposes a General Plan Amendment to the Parks and Recreation Element, again addressing the modification to minimum private park size requirements in the IBC planning area. This has not been analyzed in the DEIR. Another General Plan Amendment is proposed to add Element N (Irvine Business Complex) to the General Plan. Objective N-4 (Open Space) of this proposed element is not analyzed in the DEIR recreation section. Policy (a) of Objective N-4 reads 'Contribute fees to new community park within or adjacent to the IBC that serves new residents and provides for a variety of amenities'. This policy is further clarified: 'Within the IBC, Community Park dedication shall only be provided through payment of in-lieu fees at the required 2 acres per 1,000 population'. The DEIR should explain why dedication of land to fulfill community park needs has been eliminated as an option within the IBC planning area; although this remains an option in the rest of the City. A11-149 cont'd

H. *The DEIR fails to appropriately analyze impacts to recreation facilities (Impact 5.12-1, p. 5.12-5)*

The DEIR indicates that no significant impact related to the substantial or accelerated deterioration of recreation facilities will occur, based on the fact that parkland dedication and in-lieu fee requirements will provide adequate recreation facilities for future development. This is an inappropriate determination because the DEIR fails to explain the anticipated location of neighborhood and community parks, how fees are set-aside to acquire and develop such parks, and if these provisions will be sufficient to provide adequate parkland for the build-out of the IBC planning area. Furthermore, impact analysis based on payment of fees is sufficient only if a commitment of those fees has been established (see *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727). The City currently has an established 'IBC Recreation Fund' that has been accruing in-lieu fees since 2005, however the City has shown no evidence of how these fees are planned to be used. Furthermore, Section 66477(a)(2)(B)(6) of the California Government Code (Quimby Act) indicates that any 'public agency to which . . . land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision.' The DEIR does not explain how existing funds have been planned to be used nor does it explain how the funds to be collected from the nine projects included in the project description are planned to be used. A11-150

The DEIR discloses existing community parks within the City but does not discuss their relationship to the project. The analysis does indicate that Bill Barber Community Park is located approximately 0.5 miles from the east of the IBC; however no explanation is given as to what population this park is currently serving, who it is designed to serve, and how it relates to the project. It is our understanding that Bill Barber Park was designed to serve the Westpark neighborhoods (Planning Areas 14 and 38). The DEIR should disclose the estimated population that this facility serves and determine what capacity it has (if any) to serve the IBC planning area. The DEIR also fails to identify the existing private neighborhood parks located within the IBC planning area. These factors show a failure of the DEIR to analyze the whole of the project in light of the existing conditions.

I. *The analysis of cumulative recreation impacts is deficient (Section 5.12.4, p. 5.12-6)*

Section 5.12.4 (Recreation – Cumulative Impacts) does not properly analyze cumulative impacts because it does not take into account applicable past, current, or reasonably foreseeable future projects. The cumulative impacts analysis fails to discuss the fact that the City of Irvine is currently experiencing a lack of parkland. Based on 2008 population estimates A11-151

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from the California Department of Finance, the City has approximately 209,806 residents that at 5 acres per 1,000 persons would require 1,049 acres of parkland (420 acres community parkland and 629 acres of neighborhood parkland). The City currently provides approximately 326 acres of community parkland, 149 acres of public neighborhood parkland (excluding 0.5 acres at Vista Point), and 11 acres of 'special facilities'. According to the DEIR there are approximately 200 private neighborhood parks within the City. Assuming each private neighborhood park is 1/3 of an acre in size (based on City's minimum standard), and recognizing that this may be an optimistic assumption, approximately 66 acres of private neighborhood parkland currently exists. Therefore, the City provides approximately 553 total acres of parkland, 496 acres less than what is required to meet the City's standard of 5 acres of parkland per 1,000 persons. This should serve as the baseline condition for analysis of cumulative impacts because it is the result of past projects that have contributed to the existing conditions.

The analysis of cumulative recreation impacts indicates that a total of approximately 105 acres of parkland would be required to serve the potential 21,048 residents of the IBC planning area. The conclusion that dedication of parkland and payment of park in-lieu fees as new development occurs throughout the City will ensure that no significant impacts related to recreational opportunities occurs is incorrect, because the cumulative lack of parkland will continue.

Furthermore, the estimated amount of required parkland is based on a population factor of 1.3 persons per household. This flawed analysis will result in a net deficiency in parkland because the actual population factor of the IBC planning area is 1.65 persons per household.

A11-151 cont'd

Section 15130(a)(3) of the State CEQA Guidelines indicate that 'a project's contribution is less than cumulatively considerable if the project is required to implement or fund it's fair share of a mitigation measure or measures designed to alleviate the cumulative impact.' Although project's within the IBC may be required to fund parkland in addition to providing dedicated parkland, neither of these requirements are designed to mitigate for the existing lack of parkland. Under the City's current requirement of 5 acres of parkland per 1,000 persons, a cumulative lack of parkland will persist into the future. Therefore, the conclusion that a cumulative impact related to the provision of recreation facilities will not occur is not supported by the available data.

The analysis of program specific and cumulative impacts fails to account for the pending projects and the projects 'under construction' described in the Project Description (Sections 3.3.2 and 3.3.3 of the DEIR). The analysis does not indicate what parkland has been or will be dedicated or what fees have been paid or will be paid. The analysis does not include discussion of any of the potential impacts associated with construction or expansion of recreation facilities associated with these projects. This results in a deficient cumulative impacts analysis because it fails to include reasonably foreseeable future projects and fails to consider the whole of the project.

The cumulative recreation impacts discussion fails to identify the proper geographic scope of the area affected by cumulative recreation impacts (see Guidelines Section 15130(b)(3)). The Cities of Newport Beach and Tustin have provided evidence that the recreation facilities within their jurisdictions are being utilized by City of Irvine residents, a fact the Cities attribute to the existing lack of recreation facilities in the IBC planning area. The DEIR must discuss any potential cumulative impact to other jurisdictions' recreational facilities (including local and regional facilities), particularly when substantial evidence has been presented.

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Conclusion

Based on our review of the project and the DEIR, the environmental analysis prepared for the IBC Vision Plan is inadequate and in violation of State CEQA Statutes and Guidelines in regards to the impacts associated with recreation facilities. A11-152

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ATTACHMENT E

Letters from City of Tustin and City of Newport Beach re: Irvine Business Complex Rezoning EIR No. 88-ER-0087

COMMENT NO.8

Community Development Department

City Of Tustin

15222 Del Amo Avenue
Tustin, CA 92680
(714) 544-8890
FAX (714) 832-0825

May 2, 1991

Mr. Jim Lawson
City of Irvine
P.O. Box 19575
Irvine, CA 92713-9575

RE: IRVINE BUSINESS COMPLEX REZONING PROJECT EIR NO. 88-ER-0087

Dear Mr. Lawson:

Thank you for the opportunity to review the above referenced document. We believe the Draft EIR significantly fails to address our Agency's response to the NOP for said project dated February 6, 1991 (see attachment). It is our request that the Draft EIR be reused prior to formal action to adequately recognize and address all the concerns raised in our February response. Such concerns include the following:

* The DEIR should contain a discussion of Proposed General Plan zoning and land use compatibility where the IBC project area abuts the City of Tustin. **8a**

* The DEIR should identify impacts and propose mitigation measures dealing with the jobs/housing imbalance within the IBC and housing impacts to surrounding cities. **8b**

* The DEIR does not identify the maximum square footage or unit buildout of vacant/under-utilized parcels nor does it define "under-utilized". Consequently, land use impacts, and mitigation of such impacts are not addressed. **8c**

* The transportation and circulation elements of the proposed IBC rezoning project will have a direct impact on the City of Tustin through regional traffic routes to the I-5 and SR55 freeways. **8d**

* Traffic/circulation impacts potentially created by the project are a major concern to the City of Tustin, the DEIR should include a discussion of the 15 percent trip reduction for Transportation Demand Management (TDM). **8e**

Also, the City of Tustin believes that the following additional concerns have not been adequately addressed within the document:

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HCG 07588

* Expand the scope of the Traffic Analysis to address the intersections as outlined in the response to the Project's NOP by the Cities of Santa Ana, Tustin, Costa Mesa, and Newport Beach. 8f

* All proposed mitigation should be reviewed with the responsible Agency impacte to assure the proposed mitigation is feasible and that the pe cent contribution by IBC Rezoning is equitable. Non-feasible mitigation should not be reported in the Traffic Study as viable Mitigation Measures. 8g

* All Capital Improvement mitigation involving Tustin should be clearly documented in the EIR, identifying the proposed source(s) for funding; timing for construction; and responsible parties for coordinating project construction. 8h

* The Draft EIR should identify all the projects that are vested and/or protected by Development Agreements from any and all of the proposed IBC Rezoning Mitigation Measures. For example, several of the Mitigation Measures require specific actions or fees be paid prior to issuance of a Building Permit. Yet, a number of the studied projects appear to be exempt from such Mitigation Measures as they are already protected by previously approved Development Agreements and Conditions of Development. 8i

  How will such projects be impacted by these proposed Mitigation Measures? Will the City of Irvine be granting additional Development Agreements exempting more development from IBC, Phase I Rezoning Mitigation Measures?

* The Draft EIR should identify the relevant Conditions of Development for approved projects in the IBC, Phase I Rezoning not yet built.

Again, we respectfully request that the Draft EIR be revised to address our concerns prior to formal action. We look forward to receiving and reviewing this revised draft once prepared. Should you have any questions regarding this matter, please contact me at (714) 544-8890, extension 291.

Very truly yours,
Christine Shingleton
Assistant City Manager

Dana Ogdon

Dana Ogdon
Senior Planner

CS:DO:kd\Lawson.ltr

cc: City of Costa Mesa
City of Newport Beach
City of Santa Ana

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HCG 07589

DATE: JANUARY 18, 1991

Inter - Com

TO: RITA WESTFIELD, ASSISTANT DIRECTOR, COMMUNITY DEVELOPMENT

FROM: DANA R. KASDAN, ENGINEERING SERVICES MANAGER

SUBJECT: **REVIEW OF ENVIRONMENTAL DOCUMENTS: INITIAL STUDY AND NOTICE OF PREPARATION AND EIR FOR THE IRVINE BUSINESS COMPLEX REZONING PROJECT (File No. 1570)**

The Engineering Division has reviewed the materials for the noted project in response the Community Development Department's request of January 8, 1991.

In reviewing this material, it was determined that the transportation and circulation elements of the proposed Irvine Business Complex Rezoning Project will have a direct impact on the City of Tustin. This project will have a local as well as regional traffic impact. Access routes to the Newport and Santa Ana Freeways will directly utilize the local Tustin street system.

The City of Tustin Public Works Department feels the rezoning of this project will cause severe traffic impacts to the neighboring streets such as Barranca Road, Red Hill Avenue, Jamboree Road and Edinger Avenue (which is part of the Moulton Parkway Super Street Project).

The EIR for the Irvine Business Complex should include the traffic analysis of intersections and links volumes described below:

1. Link Volumes analysis for the following streets.
   a. Red Hill Ave. - Dyer Road to El Camino Real
   b. Barranca - Red Hill to Jamboree
   c. Jamboree - Barranca to the Santa Ana Freeway (I5)
   d. Proposed Tustin Ranch Road - Edinger to Santa Ana Freeway (I5)
   e. Edinger Avenue - Harvard Avenue to Newport Freeway (SR55)
   f. Newport Avenue (Proposed Extension) from Newport Freeway (SR55) to the Santa Ana Freeway (I5)

2. A.M. and P.M. peak hour ICU analysis at the following intersections for proposed opening year and 2010.
   a. Red Hill Ave @ Dyer Road
   b. Red Hill Ave @ Warner Avenue
   c. Red Hill Ave @ Valencia Avenue
   d. Red Hill Ave @ Edinger Avenue
   e. Red Hill Ave @ Sycamore Avenue
   f. Red Hill Ave @ Walnut Avenue

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HCG 07590

g. Red Hill Ave @ Mitchell Avenue
h. Red Hill Ave @ I5 on and off ramps
i. Red Hill Ave @ El Camino

j. Jamboree Road @ Barranca
k. Jamboree Road @ Edinger Avenue
l. Jamboree Road @ Walnut Avenue
m. Jamboree Road @ I5 on and off ramps

n. Edinger Avenue @ Newport Avenue

o. Proposed Tustin Ranch Road @ Edinger Avenue
p. Tustin Ranch Road @ Walnut
q. Tustin Ranch Road @ I5 proposed on and off ramps

r. Newport Avenue @ Sycamore Avenue
s. Newport Avenue @ Walnut Avenue
t. Newport Avenue @ Mitchell Avenue
u. Newport Avenue @ I5 on and off ramps

All proposed mitigation should be reviewed with the responsible Agency to assure the proposed mitigation is feasible, and percent contribution by Irvine Business Complex Rezoning is equitable. Non-feasible mitigation for intersections should not be reported in the Traffic Analysis.

3. Other recently proposed projects in the City of Tustin which should be considered in the Infrastructure Analysis for the Irvine Business Complex Rezoning are as follows:

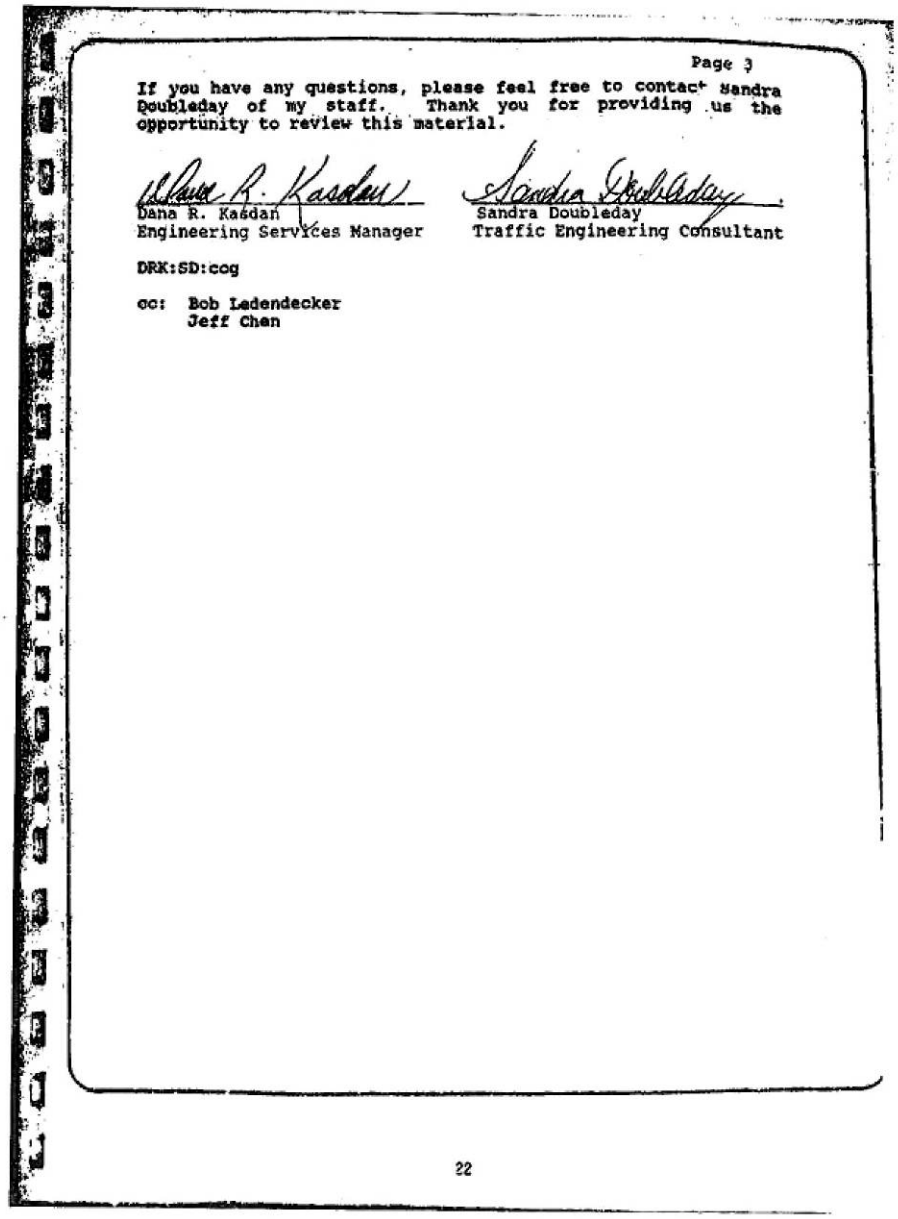
   a. Moulton Parkway Super Street
   b. Pacific Center East
   c. Eastern Transportation Corridor
   d. Bedford Properties

EIRs or related studies for the above mentioned projects are available from the City of Tustin, Planning Department. Please contact Rita Westfield (714) 544-8890, Ext. 278.

4. The EIR should justify the 15% trip reduction for Transportation Demand Management to be used in the traffic model. Are there studies of similar projects that validate this percentage?

5. All capital improvement mitigations involving Tustin should be clearly documented in the EIR, identifying the proposed source(s) for funding; timing for construction;and responsible parties for coordinating project construction.

It is for the above reason the City of Tustin's Public Works Department desires to be involved with setting the initial study's sphere of influence boundary limits. The City also wishes to have the opportunity to review and comment on all documents related to this project.



Page 3

If you have any questions, please feel free to contact Sandra Doubleday of my staff. Thank you for providing us the opportunity to review this material.

Dana R. Kasdan
Engineering Services Manager

Sandra Doubleday
Traffic Engineering Consultant

DRK:SD:cog

cc: Bob Ledendecker
Jeff Chen

22

HCG 07592

FILE COPY

City of Tustin

Community Development Department

February 6, 1991

Ms. Seda Yaghoubian
City of Irvine
Department of Community Development
P.O. Box 19575
Irvine, CA 92713-9575

SUBJECT: NOTICE OF PREPARATION - IRVINE BUSINESS COMPLEX REZONING PROJECT

Dear Seda:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the Irvine Business Complex Rezoning Project. After reviewing the NOP, the City of Tustin has the following comments we would like to see addressed in the Draft Environmental Impact Report (DEIR).

Under project characteristics the Notice of Preparation refers to "approved development". This term needs to be defined as to the exact entitlement, status and vested rights of each of these "approved developments". The DEIR should further explore what actions could be taken to reduce the intensity of these "approved developments" thereby reducing potential impacts.

Also, under project characteristics, you refer to 0.25 FAR for vacant/underutilized parcels. Does "approved development" include these vacant/underutilized parcels or are they considered over and above existing and approved development? If they are, what is the maximum square footage or unit buildout of vacant/underutilized parcels? What is your definition of underutilized?

The DEIR should contain a discussion of proposed General Plan zoning and land use compatibility where the IBC project area abuts the City of Tustin.

The DEIR should identify impacts and propose mitigation measures dealing with the jobs/housing inbalance within the IBC and housing impacts to surrounding cities.

300 Centennial Way • Tustin, California 92680 • (714) 544-8890

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HCG 07593

Pacific Center East EIR, Specific Plan, General Plan Amendment and Rezoning has recently been approved by the Tustin City Council. Due to the proximity of this project to the IBC, your DEIR must consider Pacific Center East in the cumulative impacts section.

Traffic/circulation impacts potentially created by the project are a major concern to the City of Tustin, the DEIR should include a discussion of the 15% trip reduction for Transportation Demand Management (TDM). The Public Works Department of the City of Tustin has also reviewed and commented on the NOP, you will find their memorandum attached to this letter.

Thank you for the opportunity to comment prior to the preparation of the EIR and please transmit a copy of the draft document when prepared.

Sincerely,

Rita Westfield

Rita Westfield
Assistant Director of Community Development

RW:ld\cofirvsy.ltr
Enclosure

24

HCG 07594

COMMENT NO.9

CITY OF NEWPORT BEACH

P.O. BOX 1768, NEWPORT BEACH, CA 92659-1768

PLANNING DEPARTMENT (714) 644-3225

May 3, 1991

Ms. Seda Yaghoubian
Mr. Jim Lawson
City of Irvine
Department of Community Development
One Civic Center Plaza
Irvine, CA 92713

Subject: Comments in Response to Review of the Draft Program EIR for the Irvine Business Complex Rezoning Project

Dear Ms. Yaghoubian and Mr. Lawson:

The City of Newport Beach has reviewed the Draft Program Environmental Impact Report for the Irvine Business Complex Rezoning Project, and is dismayed to find that responses to the Notice of Preparation submitted by the City of Newport Beach and others have been largely disregarded in the DEIR. A copy of the City's earlier response to the NOP is enclosed. **9a**

Although the City of Newport Beach provided a list of specific intersections potentially affected by the proposed project, no intersection in the City of Newport Beach has been analyzed. It has always been desirable for local agencies to cooperate in planning efforts which may result in effects on other agencies. Recent programs for congestion management render such cooperation imperative. Based on information provided in the DEIR, it appears that several million square feet of new development will occur immediately adjacent to or within a few blocks of the City of Newport Beach boundary. Impacts upon City of Newport Beach must be analyzed and adequately mitigated. **9b**

Likewise, information requested regarding the extent to which anticipated development was vested, approved but not fully vested, or merely in process has not been provided, nor have alternatives providing for conversion of nonvested development to lower intensity or to lower intensity uses. **9c**

The City of Newport Beach requests that information requested in response to the NOP for this project be provided and has the following specific comments:

3300 Newport Boulevard, Newport Beach

25

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City of Irvine
May 3, 1991
Page 2.

Project Description

Please provide specific locations of anticipated new development. This is provided for certain developments, but this constitutes only a portion of the proposed growth. Although data is provided for specific sites in the Appendix, there is no explanation of the data, as to whether "zoning potential" is existing or proposed zoning, what portion of "existing" or "potential" includes approved projects, and what floor area ratio is reflected. 9d

The zoning should reflect a floor area ratio or square foot limit for each site. It may be that the provision of an overall development cap for IBC, rather than a site by site limit has helped contribute to record keeping problems and approval of overentitlement in IBC. 9e

Traffic

1. Is a 24 % reduction in traffic from TDMs (9% existing + additional 15% anticipated) realistic? 9f

2. Did traffic analyses provide for additional pedestrian movements at intersections due to encouragement of alternate transportation, whether walking to destinations, busing, with associated walking to bus stops, walking to car pool locations, etc.? 9g

3. As noted previously, the following streets and intersections in the City of Newport Beach should be analyzed and appropriate fair share mitigation provided: 9h

   a. Coast Highway from Pelican Hill Road to Jamboree Road.
   b. MacArthur Boulevard from Coast Highway to Campus Drive.
   c. Jamboree Road from Coast Highway to Campus Drive.
   d. San Joaquin Hills Road from Pelican Hill Road to Jamboree Road.
   e. Bristol Street Couplet from Jamboree Road to Campus Drive.
   f. Campus Drive from Bristol Street North to Jamboree Road.
   g. Birch Street from Bristol Street North to Jamboree Road.
   h. Von Karman Avenue from MacArthur Boulevard to Campus Drive.
   i. Jamboree Road @ Campus Drive
   j. Jamboree Road @ MacArthur Boulevard
   k. Jamboree Road @ Bristol Street North
   l. Jamboree Road @ Bristol Street
   m. Campus Drive @ Bristol Street
   n. Campus Drive @ Bristol Street North
   o. Campus Drive @ MacArthur Boulevard
   p. Birch Street @ Bristol Street
   q. Birch Street @ Bristol Street North

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r. MacArthur Boulevard @ San Joaquin Hills Road
s. Coast Highway @ MacArthur Boulevard
t. Coast Highway @ Goldenrod Avenue
u. Coast Highway @ Marguerite Avenue
v. Coast Highway @ Poppy Avenue

4. The traffic generation rate utilized for all industrial uses appears to be that for warehouses. In light of statements in the DEIR indicating that at least a portion of the industrial uses will be research and development, traffic generation rate appears to be unrealisticly low. 9i

5. Has the expansion of train service to the Irvine Transportation Center been financed? 9j

6. If bicycling is to be included as a means of reducing peak hour traffic, then showers would be required as well as bike racks. 9k

7. If the project builder will not be occupying the structure, how can details of Traffic Management Plans be approved prior to submittal of building permits? What assurance is there that future tenants will find the TMPs workable? How will implementation of the plans be assured? 9l

8. What is the anticipated timing for the adoption of a Transit Fee Ordinance? 9m

Land Use 9n

1. What is the definition of "medium density residential"? 9o

2. How many hotel rooms are anticipated? 9p

3. How will the anticipated growth be distributed within the IBC? 9q

3. What is the acreage and vesting status of projects listed on Pages IV.B.7-9?

Utilities and Services

1. What City of Irvine parks are located in proximity to proposed residential uses in IBC? 9r

2. If AQMD permits for expansion of sewer treatment plant capacity are not approved, what alternate means are proposed for disposal of sewage from IBC? 9s

HCG 07597

Air Quality

1. Do air quality analyses assume a 24% reduction in trips due to implementation of TDMs? 9t

2. Air quality mitigation measures should require that projects be constructed in such a manner to provide for implementation of Regulation XV, and should include van pool parking, bike racks, showers and other physical improvements needed to implement alternate transportation. 9u

Noise

How will traffic from IBC contribute to cumulative increases in noise adjacent to roadways in Newport Beach? 9v

Water Quality

1. How will runoff from areas irrigated with gray water be controlled? 9w

2. Mitigation measures should include compliance with all aspects of the 208 Water Quality Program for Upper Newport Bay, which the City of Irvine has previously agreed to implement. 9x

Housing

1. The EIR should address housing needs for various income groups, such as very low, low and median income households. 9y

2. The EIR should identify specific programs in the Housing Element which will mitigate housing impacts, rather than make a global statement about Housing Element compliance, particularly since previously adopted programs are currently under review. 9z

Growth Inducing Impacts

1. What pressure will the proposed project generate for new or expanded roads elsewhere, outside IBC? 9aa

2. The DEIR acknowledges that the proposed project will lead to increased demand for all travel from John Wayne Airport, but makes no effort to quantify demand. The City of Newport Beach requests that the following mitigation measure be required: 9bb

- An alternative mitigation measure exploring use of El Toro Marine Corps Air Base for civilian use should also be considered.

3. To what extent will increased commercial and industrial development in IBC increase pressure for increased housing densities in surrounding cities? 9cc

Thank you for this opportunity to review the DEIR for the Irvine Business Complex Rezoning Project. It is hoped that the City of Irvine will address the issues noted herein and in our response to the NOP in the Final EIR.

Very truly yours,

PLANNING DEPARTMENT
JAMES D. HEWICKER, Director

By Patricia L. Temple
Patricia L. Temple
Advance Planning Manager

Attachment

xc: City of Santa Ana
City of Costa Mesa
City of Tustin

SG\ibcrsslt

HCG 07599

CITY OF NEWPORT BEACH

P.O. BOX 1768, NEWPORT BEACH, CA 92659-1768

PLANNING DEPARTMENT (714) 644-3225

February 4, 1991

Ms. Seda Yagobian, Principal Planner
City of Irvine
Department of Community Development
P.O. Box 19575
Irvine, CA 92713-9575

SUBJECT: IRVINE BUSINESS COMPLEX GPA AND REZONE

Dear Ms. Yagobian:

The City of Newport Beach has reviewed the Notice of Preparation for the Irvine Business Complex Rezoning Project and General Plan Amendment and Zone Change Amendment. It is the understanding of the City of Newport Beach that this proposal has resulted from the need for the City of Irvine to legally provide for development which is the product of errors made in the over-entitlement of properties in the IBC, to provide for a Floor Area Ratio of .25 on properties currently developed with less than that amount, and to adopt transportation system improvements necessary to deal with increased demand.

While the NOP does not specifically define Phase I and Phase II, it appears from the context that Phase I consists of the items discussed above, while Phase II will consists of an overall re-examination of long range development in IBC. We would like to verify this perception. While we appreciate the pressing need of the City of Irvine to deal with existing over-entitlements on an interim basis, we would also caution against piecemealing plans for IBC.

Our comments and requests for environmental information and suggested mitigations are summarized as follows:

Existing and Proposed Development

1. How much development currently exists in IBC, how much has been approved, and how much is subject to an approval that is "near completion?" To what extent are approved projects vested? 9dd

2. It is requested that the EIR compare the existing environment to that which will result upon implementation of the proposed project as required by the California Environmental Quality Act. Previous EIR's prepared for projects in the Irvine

3300 Newport Boulevard, Newport Beach

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Business Complex have compared a projection referred to as "IBC Baseline" to "Baseline plus Project" in a build-out (2010) time frame. While we understand that this type of analysis is helpful in understanding the implications of the General Plan Amendment after build-out of the General Plan, it does not provide any meaningful information on the environmental effects which are directly attributable to the project. We do not believe that the *no project alternative analysis* is sufficient to elucidate the direct implications of the proposed project. 9ee

3. The NOP does not identify specific circulation system improvements contemplated as part of the Traffic Mitigation/Circulation Phasing Plan. It is not possible to fully identify appropriate analyses without more detail in this regard. The city of Newport Beach is particularly concerned inasmuch as the previously proposed circulation system for the Urban Village concept tended to direct traffic into neighboring cities rather than to other areas in the City of Irvine. We request that the City of Irvine recirculate the NOP at such time as specific circulation improvements and phasing are identified. 9ff

Transportation 9gg

The traffic analyses should include the following:

1. Link volume analysis for the following streets:

   a. Coast Highway from Pelican Hill Road to Jamboree Road.
   b. MacArthur Boulevard from Coast Highway to Campus Drive.
   c. Jamboree Road from Coast Highway to Campus Drive.
   d. San Joaquin Hills Road from Pelican Hill Road to Jamboree Road.
   e. Bristol Street Couplet from Jamboree Road to Campus Drive.
   f. Campus Drive from Bristol Street North to Jamboree Road.
   g. Birch Street from Bristol Street North to Jamboree Road.
   h. Von Karman Avenue from MacArthur Boulevard to Campus Drive.

2. AM and PM peak hour ICU analysis at the following intersections, for 1995 and 2010:

   a. Jamboree Road @ Campus Drive
   b. Jamboree Road @ MacArthur Boulevard
   c. Jamboree Road @ Bristol Street North
   d. Jamboree Road @ Bristol Street
   e. Campus Drive @ Bristol Street
   f. Campus Drive @ Bristol Street North
   g. Campus Drive @ MacArthur Boulevard
   h. Birch Street @ Bristol Street
   i. Birch Street @ Bristol Street North

k. Coast Highway @ MacArthur Boulevard
l. Coast Highway @ Goldenrod Avenue
m. Coast Highway @ Marguerite Avenue
n. Coast Highway @ Poppy Avenue

To complete this analysis, your City Traffic Engineer or Consulting Traffic Engineer should contact Richard Edmonston, the City of Newport Beach Traffic Engineer, at (714) 644-3344, for all necessary base data, recent intersection traffic counts and committed project traffic for approved projects in Newport Beach.

3. **Traffic distributions should be developed which realistically reflect project access to the freeway system considering project location, freeway ramp locations, freeway congestion and available capacity.** 9hh

4. **The link volume and ICU projections prepared for items 1 & 2 above should include alternative projections based upon conventional trip generation and distribution assumptions utilized by the traffic engineering profession, as well as for the proposed case assuming certain trip reductions and internalizations.** 9ii

5. **The 15% trip reduction assumed for Transportation Demand Management (TDM) measures seems somewhat high, especially when typical trip generation rates utilized in the City of Irvine are compared with those utilized in the City of Newport Beach. Complete validation of anticipated trip reductions is necessary, including any case studies of similar projects.** 9jj

6. **How will the effectiveness of proposed TDMs be monitored? What is proposed for the protection of adjacent communities if the anticipated traffic reductions are not realized?** 9kk

7. **The traffic analysis should include a specific breakdown of service vehicle trips, which have unique characteristics for TDM planning.** 9ll

8. **On October 31, 1988, the Cities of Newport Beach and Irvine entered into a joint policy statement for the San Joaquin Hills Transportation Corridor. This statement includes as part of its guiding principles that "all TCA Member Agencies adopt traffic circulation and growth management land use plans to control future development for compatibility with the countywide transportation systems." It further stated that the facility recommended in this policy statement (6 lanes initially and 8 lanes maximum) was adequate to serve currently-planned land uses although it would experience some congestion during peak commuting hours. In light of this policy, it is very important** 9mm

HCG 07602

to assess the adequacy of the San Joaquin Hills Transportation Corridor in relation to the proposed amendments.

9. **Traffic analyses should consider the effects of project traffic on surrounding cities should there be substantial delays in construction of the San Joaquin Hills Transportation Corridor. Development should be phased with completion of the Corridor and other transportation improvements.** **9nn**

10. **Estimates of the increase in demand for air travel from John Wayne-Orange County Airport generated by the development should be provided. Previous EIR's prepared for projects in the City of Irvine have acknowledged that there is a greater demand for air travel services at John Wayne Airport than that facility's capacity. The City of Newport Beach requests that a conscientious effort be made to develop a set of mitigation measures to address the significant increase in air travel service demands which will result from significant intensification of the IBC.** **9oo**

11. **Will the plan continue to restrict access to John Wayne-Orange County Airport from Michelson? Significant additional traffic into the airport area will result from the development, which will be forced to travel a circuitous route via Campus Drive and MacArthur Boulevard. This is important even in a scenario assuming reduced dependence on the automobile, since taxis and busses will form an important component of travel to and from the airport.** **9pp**

Water Quality

The Initial Study indicates that there is a potential for increased deposition in Upper Newport Bay. In addition to compliance with the Construction Best Management Practices (BMP's) identified in the Upper Newport Bay 208 planning studies, it is requested that consideration be given to the establishment of a fee program to provide funds for the on-going maintenance of the desiltation facilities created in San Diego Creek and Upper Newport Bay, for those projects which are found to have significant erosion potential. **9qq**

Housing

1. Analysis of the jobs/housing balance of the proposal should be provided. Of particular importance is the availabili y of the housing affordable to low and moderate income workers, which domina.e the employee profile of office and service retail development. **9rr**

2. Increased demand for housing in the surrounding area should be quantified by income category. **9ss**

HCG 07603

Ms. Seda Yagobian
February 4, 1991
Page 5.

Cumulative Impacts

Cumulative impacts of the project must be completely addressed. The cumulative impact section must address possible growth in areas outside the City of Irvine, including the Cities of Newport Beach, Costa Mesa, and Santa Ana. Increased pressure for residential growth in other parts of the County and region should be addressed. Additionally, the pressure for increased development may also occur in the Irvine Spectrum area. 9tt

Project Alternatives

Alternatives to the project should include those which would reduce allowable development within the capacity constraint of existing and planned infrastructure to the extent possible. Specifically, these alternatives should include a preclusion of additional office development and the conversion of existing and future entitlements to lower intensity uses such as light industry or residential uses, with only such commercial development as is necessary to support the primary residential or industrial use. The possibility for reducing the intensity of approved projects which are not yet vested should also be examined. 9uu

Thank you for the opportunity to comment prior to the preparation of the Environmental Impact Report. We look forward to reviewing the draft document when it is completed. If possible, the City would like to receive three (3) copies of the final planning studies and proposals, the EIR and Technical Appendices in order to expedite our review. If you have any questions or need additional information, please call me at the above number.

Very truly yours,

PLANNING DEPARTMENT
JAMES D. HEWICKER, Director

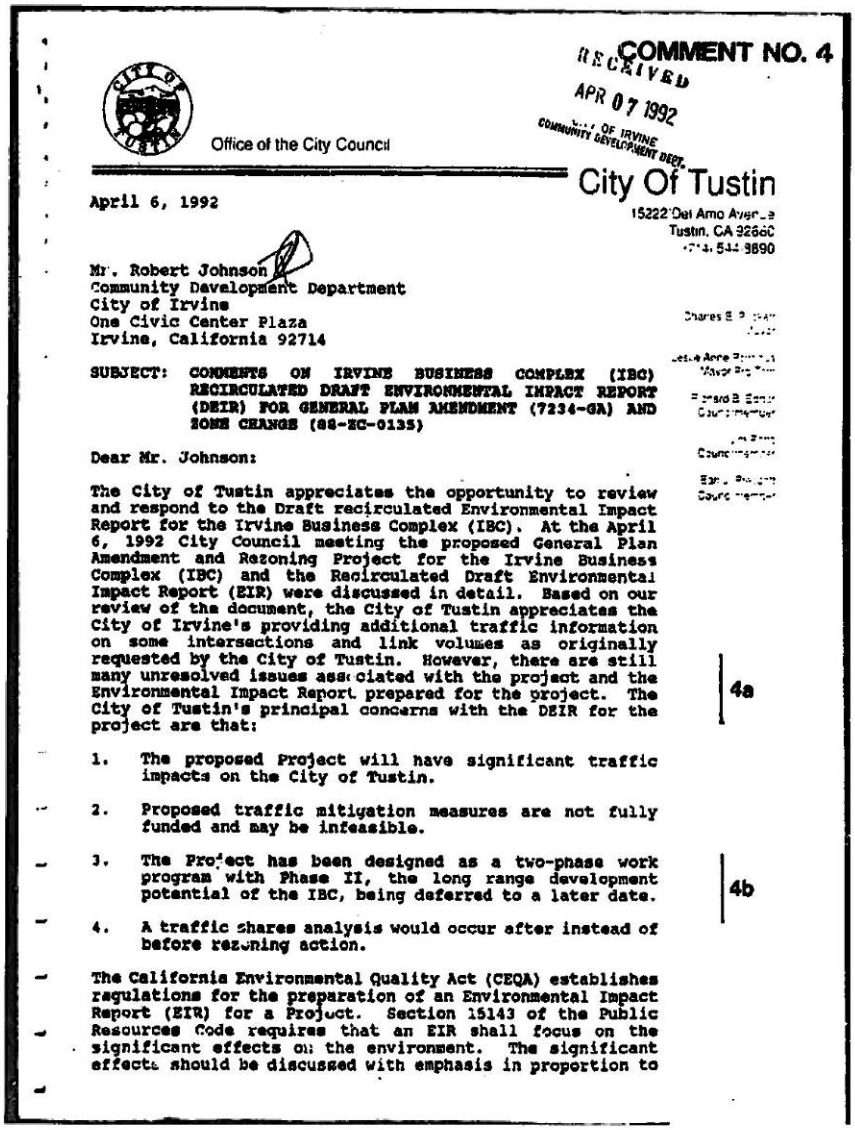
By _____
Sandra L. Genis
Principal Planner

xc: Rita Westfield, Assistant Director
Community Development, City of Tustin

SLG\NOPS\IBC2

34

HCG 07604



COMMENT NO. 4

RECEIVED
APR 07 1992
CITY OF IRVINE
COMMUNITY DEVELOPMENT DEPT.

Office of the City Council

City Of Tustin
15222 Del Amo Avenue
Tustin, CA 92680
(714) 544-5890

April 6, 1992

Mr. Robert Johnson
Community Development Department
City of Irvine
One Civic Center Plaza
Irvine, California 92714

SUBJECT: COMMENTS ON IRVINE BUSINESS COMPLEX (IBC) RECIRCULATED DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR GENERAL PLAN AMENDMENT (7234-GA) AND ZONE CHANGE (88-ZC-0135)

Dear Mr. Johnson:

The City of Tustin appreciates the opportunity to review and respond to the Draft recirculated Environmental Impact Report for the Irvine Business Complex (IBC). At the April 6, 1992 City Council meeting the proposed General Plan Amendment and Rezoning Project for the Irvine Business Complex (IBC) and the Recirculated Draft Environmental Impact Report (EIR) were discussed in detail. Based on our review of the document, the City of Tustin appreciates the City of Irvine's providing additional traffic information on some intersections and link volumes as originally requested by the City of Tustin. However, there are still many unresolved issues associated with the project and the Environmental Impact Report prepared for the project. The City of Tustin's principal concerns with the DEIR for the project are that: 4a

1. The proposed Project will have significant traffic impacts on the City of Tustin.

2. Proposed traffic mitigation measures are not fully funded and may be infeasible.

3. The Project has been designed as a two-phase work program with Phase II, the long range development potential of the IBC, being deferred to a later date. 4b

4. A traffic shares analysis would occur after instead of before rezoning action.

The California Environmental Quality Act (CEQA) establishes regulations for the preparation of an Environmental Impact Report (EIR) for a Project. Section 15143 of the Public Resources Code requires that an EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to

HCG 08586

their severity and probability of occurrence. Through the Notice of Preparation and Draft Environmental Impact Report Review public comment period the City of Tustin identified that the adoption of General Plan Amendment 7734-GA and Zone Change 88-ZC-0135 would have a significant traffic impact upon the City of Tustin. We believe that the recirculated Draft Environmental Impact Report does not adequately respond to the severity of the IBC traffic impacts upon the City of Tustin, and the following items are not adequately addressed.

1. The City of Tustin has previously prepared a response to both the Notice of Preparation and the original draft EIR. While we recognize that there has been some effort to respond to our previous comments and concerns, the draft EIR fails to adequately mitigate traffic/circulation impacts which would be created by the approval of the General Plan Amendment and Rezoning Project. The City has continually stressed the necessity for the City of Irvine to prepare a comprehensive traffic study as part of the EIR process which identifies improvements, phasing and funding necessary to mitigate IBC impacts. Identification of significant impacts and appropriate mitigation is required by CEQA.

2. The AM and PM peak hour ICU analysis that was prepared is not complete it fails to draw conclusions and identify appropriate mitigation measures. Without a complete traffic study it cannot be determined that the list of roadway improvements proposed for the IBC is complete and accurate. The phasing plan that is proposed is also unclear and subject to reprioritization by the City of Irvine. Improvements in the City of Tustin are all scheduled to occur in Stage II and III, we believe that improvements should be reprioritized to Stage I, rather than Stages II and III, where funding for improvements is not currently available.

Section 15147 of the Public Resources Code requires an EIR to include summarized technical data, maps, plot plans, diagrams and similar relevant information sufficient to permit full assessment of significant environmental impacts. The following items are not adequately addressed in the DEIR:

1. The recirculated DEIR fails to provide the requested comprehensive traffic analysis of intersections and links within the impact area of the City of Tustin. Without this analysis, information on significant environmental traffic impacts of the IBC to the City of Tustin can not be sufficiently assessed.

2. CEQA requires that when significant environmental impacts are identified that they be mitigated to a level of insignificance. The IBC EIR does recognize that there will be

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significant traffic/circulation impacts to areas outside of the City of Irvine. In addition, roadway improvement mitigation measures proposed for the City of Tustin are not feasible. Mitigation measures must be reasonable and implementable, those shown for the City of Tustin are not and therefore should not be considered adequate mitigation for the IBC project.

3. Land Use assumptions have been generalized for IBC. For example, the maximum IBC average daily trips (ADT's) per square foot is 14.9 ADT/S.F. in comparison to adjacent cities who identify office use at higher ADT/S.F. This penalizes other cities while underassigning traffic generation of IBC at a lower rate.

The IBC DEIR has also been reviewed against standards for adequacy of an EIR. Section 15151 of the Public Resources Code requires an EIR to contain a sufficient degree of analysis to provide decision-makers with information enabling them to make a decision taking account the environmental consequences of an action. The IBC EIR fails to provide sufficient analysis on traffic and circulation impacts to the City of Tustin; feasible traffic mitigation measures, funding sources to accommodate shortfall revenues for implementing roadway improvements, as well as items identified in Attachment A. The specific following items are not adequately addressed:

1. The City has reviewed the IBC traffic/circulation mitigation measures. We have continually requested that the DEIR address the constraints and feasibility of the mitigation measures identified within the City of Tustin. As an example, the DEIR includes the widening of Red Hill Avenue from six to eight lanes between Barranca Parkway and Edinger Avenue as a mitigation measure and Red Hill Avenue/Barranca Parkway future lanage. Due to a variety of potential constraints Red Hill Avenue and Red Hill Avenue/Barranca Parkway roadway improvements in Tustin may not be feasible. The DEIR must identify non-feasible mitigation measures and provide alternatives.

2. Revenue sources proposed to fund the traffic mitigation improvements are questionable, and the method of funding the identified shortfall of approximately $100 million needs to be developed as part of the DEIR.

3. The City believes that "trip budget" method proposed by the City of Irvine as a method to establish development intensity for each non-residential parcel in the IBC planning area is a worthy idea in concept. However regulating and monitoring total number of AM and PM peak hour trips allocated to and generated by each parcel in the IBC would be a costly and

HCG 08588

unmanageable task. This could only be accomplished by conducting regular or at a minimum annual driveway counts for each parcel. CEQA requires a mitigation monitoring program, the DEIR fails to adequately describe a monitoring process which will guarantee that peak hour trips per parcel are not exceeded, as well the DEIR does not address the consequences/penalties for a development project exceeding their allocated trip budget.

4. The City has continued to oppose the concept "traffic shares analysis" which the City of Irvine proposes as a traffic/circulation mitigation measure. We believe the City of Irvine must identify and mitigate IBC traffic/circulation impacts and that surrounding cities should not be responsible for sharing in the expense of studies or transportation improvements created by the IBC project (as recommended by mitigation #10, page IV.A-47).

CEQA is intended to be interpreted in such a manner as to afford the fullest possible protection of the environment within a reasonable scope of statutory language; that environmental considerations should not become submerged by chopping a larger project up into little ones, each with a minimal impact, which cumulatively would have disastrous consequences. The term "project" under 15378 of the Public Resources Code means the whole of the action which has a potential for resulting in physical change in the environment, directly or ultimately. The lead agency must also consider both primary or direct and secondary or indirect consequences of a project. The DEIR proposes to defer the comprehensive traffic/circulation study which would determine the circulation impacts resulting from the IBC project to a later date (within twelve (12) months of the adoption of the IBC GPA/Rezoning). By deferring this study, the EIR only addresses a portion of the impact, the full picture is not available for review. The City of Irvine is "chopping up" its

HCG 08589

approval process for projects which will cumulatively have a significant environmental impact on surrounding areas.

In addition to the above concerns, Attachment A, lists additional comments from the City of Tustin regarding the Draft EIR and technical appendices. These comments should be addressed and appropriate revisions made to the environmental document.

Thank you for providing the City of Tustin with the opportunity to review and comment on the IBC and the Draft EIR.

Sincerely yours,

Charles E. Puckett
Mayor

CEP:ibc\johnson.ltr

HCG 08590

ATTACHMENT A
DRAFT (RECIRCULATED) PROGRAM EIR
FOR THE IRVINE BUSINESS COMPLEX
GENERAL PLAN AMENDMENT AND REZONING PROJECT

Description of Environmental Setting, Impacts and Mitigation Measures

A. Circulation and Traffic

1. In our previous comments on the Notice of Preparation and Draft EIR, it was identified that link analysis should be performed for the following streets:

   a. Red Hill Ave - Barranca Pkwy/Dyer Road to El Camino Real
   b. Barranca Pkwy - Red Hill Ave to Jamboree Road
   c. Jamboree Road - Barranca Pkwy to I-5 Frwy
   d. Proposed Tustin Ranch Road - Edinger Ave to I-5 Frwy
   e. Edinger Ave - Harvard Ave to SR-55 Frwy
   f. Newport Ave - (Proposed Extension) from SR-55 Frwy to the I-5 Frwy

   Only a partial analysis has been performed on Red Hill Avenue and Jamboree Road north of Barranca Pkwy. However, for the remaining portions of these streets as well as the other noted streets, the link analysis should be completed. Conclusions should be drawn and mitigation measures identified. 4c

2. In our previous comments on the Notice of Preparation and Draft EIR, the City of Tustin requested that A.M. and P.M. peak hour ICU analysis should be performed for a list of identified intersections for proposed opening year and year 2010. Although this was done, the peak hour ICU analysis should be comprehensive, this includes drawing conclusions and identifying mitigation measures. 4d

3. We had also previously requested that all proposed mitigation should be reviewed with the responsible Agencies to assure that the proposed mitigation is feasible, and the percent contribution by Irvine Business Complex Rezoning is equitable.

   The DEIR contains numerous traffic improvements as mitigation measures, many of which affect the City of Tustin. City of Irvine staff has been informed that these may not be feasible due to existing roadway configuration and other right-of-way constraints. The recirculated DEIR continues to be proposed non-feasible improvements within the City of Tustin as mitigation measures. 4e

   As an example, Mitigation Measure "k." on page IV.A-42 states that Red Hill Avenue will be widened from the existing six lanes to eight lanes between Barranca Parkway and Edinger Avenue. Since widening cannot be achieved north of Edinger - this will for all practical purposes, create an immediate

HCG 08591

bottleneck. Further analysis is required to explain what happens to traffic north of Edinger Avenue. As noted in comment No. 1 above, Red Hill Avenue needs to be analyzed from Edinger Avenue to El Camino Real just north of the I-5 Freeway. Tustin does not support eight lanes for Red Hill. 4e

4. In our previous comments on the Notice of Preparation and Draft EIR, we identified that the following proposed projects in the City of Tustin should be considered in the Infrastructure Analysis for the Irvine Business Complex Rezoning:

a. Moulton Parkway Super Street
b. Pacific Center East
c. Eastern Transportation Corridor
d. Bedford Properties. 4f

Although it appears that this document did consider Pacific Center East and Bedford Properties, it should also include the Moulton Parkway Super Street and the Eastern Transportation Corridor in the analysis (including recommended alternative alignments and how these impact traffic volumes).

5. The original DEIR did not adequately address the City of Irvine's Traffic Demand Management Program (TDM), Appendix F, Traffic Study discusses the Traffic Demand Management Program. The traffic study assumes a change in driving habits that will result in a 15% reduction in AM and PM peak hour IBC commuter trips based on enforcement of the South Coast Air Quality Management Districts Regulation XV program, and staggered work hours. While the 15% reduction is a goal that all cities are striving to achieve, it has not been shown that the City of Irvine is presently or can in the immediate future realize the 15% reduction. According to a recent article in the ITE Journal, August 1991, "Evaluating the Effectiveness of Travel Demand Management," by Ken Orski, it is stated that "The analysis so far suggest that travel demand management can have a negligible impact on regional levels of VMT, congestion, and automotive emissions. Further research remains to be done, and much more experience needs to be acquired before we can conifidently regard TDM as the primary instrument of attaining and maintaining our congestion reduction and air quality goals." The City of Tustin feels that taking a 15% trip reduction may be premature and somewhat extreme and should not be used as the maximum achievable for every new trip in this analysis without a track record. 4g

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6. Jamboree Road and Edinger Avenue are identified as part of the Orange County Congestion Management Highway System. Traffic analysis for these streets should be performed in accordance with the adopted Orange County Congestion Management Program guidelines. 4h

7. Jamboree Road: In Table 5 "IBC Roadway Improvements - Current General Plan (GP) Network" Jamboree Road - Irvine Center Drive (ICD) to Barranca is identified to be an 8-lane roadway. This conflicts with Table 9 "IBC Roadway Improvements - 1935 Mitigation Program" in which the program to widen Jamboree Road to 8-lanes has been reduced to 6-lanes only. Then in Table 10 "IBC Roadway Improvements - 1991 Mitigation Program," Jamboree Road in this stretch has dropped out completely. Please explain this, as this facility is vital to mitigating traffic from the Irvine Business Complex. 4i

The future laneage of Jamboree Road north of Barranca Pkwy and Edinger Avenue has to be compatible with the plans for the Eastern Transportation Corridor. Future expansion of the Jamboree Road laneage north of Barranca Pkwy needs to be coordinated with the expansion of adjacent north-south arterials such as Harvard Avenue and Tustin Ranch Road. Please provide a complete analysis of this and also identify any other impacts to the adjacent north-south arterials: Tustin Ranch Road and Harvard Avenue. 4j

8. Mitigation Measure #10, on page IV.A-47, the City has taken a position in numerous previous correspondence opposed to the use of the 5-City Study as the basis for identifying and mitigating IBC impacts. (See our letters on 5 city Study/Nexus to Irvine. What your EIR calls the Nexus Study to be performed within 12 months of adoption of this document.) We continue to maintain the position that the IBC project under CEQA should identify at this time and mitigate all of its adverse impacts to the surrounding communities. 4k

9. Appendix A, pg. 55 -57, the cover letter to the City of Irvine regarding the Notice of Preparation and the Initial Study is missing here, but it is included as pages 92 and 93. These two documents should be rearranged to reflect that pages 55-57 are an attachment to pages 92-93. 4l

10. Intersection Analysis, Group A - Red Hill/Barranca/Dyer, on page IV.A-4 and Exhibit 7, the ICU maximum value should be LOS 4m

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D, and not LOS E, since this is a shared intersection with the Cities of Santa Ana and Tustin. 4m

11. Although the DEIR represents that the implementation of an Advanced Traffic Management Systems (ATMS) system in the subject area may produce a six percent improvement in traffic flow, it will not increase roadway capacity and has limited experience . Furthermore, we are curious as to what happens to this IBC traffic when it reaches adjacent cities that do not have an ATMS system. It appears that any benefits derived from an ATMS system in Irvine will be lost in adjacent communities that do not have an ATMS system. Justification of any improvements derived from the implementation of an ATMS system should be provided and the 6% reduction should not be added to traffic as it moves into adjacent cities. 4n

12. Thus far this document has not identified any impacts due to capacity constraints of the freeway system on arterial streets. Please analyze this situation and provide suitable mitigation to offset any adverse impacts. 4o

13. IBC roadway improvements have been prioritized into three stages. Stages I and II roadway improvements will serve the interim phase level of development for IBC, the remainder of the City of Irvine and adjacent cities. The EIR defines interim as short range which includes entitled and existing development projects. Stage III adds the improvements needed for buildout. The DEIR states that the City of Irvine can make minor deviations over time and adjust the hierarchy of improvements. The City of Tustin does not agree that the City of Irvine should be able to adjust the timing/phasing of improvements and in addition does not agree with the prioritization of improvements which put all the improvements in adjacent cities in Stage II. It is also unclear as to how the improvements are prioritized within each Stage. Are we to assume that the order of intersection and arterial improvements within in stage is the prioritization ranking, please clarify. 4p

"Roadway Improvement Phasing," page IV.A-30 and Appendix F, Chapter VI, "Interim Phase Analysis." Identify the mechanism that determines the implementation of Stage I, II, III improvements. How are these going to be prioritized? Provide additional discussion to clearly demonstrate that future impacts will be appropriately mitigated when they occur.

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14. We are concerned that the implementation of a "Trip Budget" concept provides the opportunity for a change in the mix of land uses thereby presenting the possibility of exceeding the trip generation levels in the analysis. Furthermore, a mix in land uses could also alter trip distribution patterns. Additional information on this concept needs to be provided. 4q

15. Appendix F, Table VII-4, "Incremental ICU Contributions," please revisit and correct intersection ICU's that show A.M. peak hour ICU's substantially higher than P.M. peak hour ICU's. This requires further analysis. The intersections in question are: Jamboree Road & I-5 NB Ramps, Jamboree Road & I-5 SB Ramps, Jamboree Road & Walnut Ave, Red Hill Ave & Edinger Ave, and Red Hill Ave & Warner Ave. 4r

16. "Traffic Shares Analysis," Appendix F, page VII-9 and Table VII-6, also referenced in text on page IV.A-21, "Impact on Adjacent Cities." Provide methodology for the traffic shares analysis. From the information provided, it is difficult to determine the equitability of the analysis. 4s

B. Land Use

1. In our previous comments we requested expanded discussion and definition of what constituted "approved development". The Recirculated DEIR responds that approved development includes all Vesting Maps, Development Agreements, Conditional Use Permits, Master Plans, Zoning Compliance and building permits within the IBC. There are ten (10) major IBC projects that constitute these "approved developments", and they account for approximately seven (7) million square feet of additional development above existing conditions. The Draft EIR does not respond to what actions can or should be taken to reduce the intensity of these "approved developments". The City of Irvine staff in response has indicated that they legally are prohibited from reducing square footages of existing agreements, entitlements or approvals. The alternatives section of the DEIR should respond to reduction of approved intensities and/or revocation of "approved developments" and entitlements. 4t

2. The DEIR states that for purpose of determining build-out a building intensity of 0.25 Floor Area Ratio (FAR) of office equivalent development will be applied to identified vacant/underutilized parcels, but does not identify the number or locations of these parcels considered vacant/underutilized. 4u

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The DEIR has a table indicating an increase of 2.308 million square feet of zoning potential over and above the entitled development, it is assumed that this zoning potential refers to the vacant/underutilized parcels, although the DEIR is not clear on this point, please clarify. 4u

3. Page IV.B-3 of the DEIR provides discussion of existing surrounding land uses, the description is brief and there is no substantial discussion or evidence regarding compatibility of adjacent existing land uses in other cities and the proposed project, this should be included in the DEIR. 4v

On Page IV.B-7 there is a statement that no significant land use impacts are anticipated to commercial/industrial land uses adjacent to the IBC, as these are considered substantially compatible with proposed IBC uses. Light and glare impacts from high-rise buildings and electromagnetic interference has been identified as maybe having a significant impact on John Wayne Airport and United States Marine Corps Air Station, Tustin. 4w

C. Employment and Housing

The DEIR provides a relatively extensive discussion on the jobs/housing balance issues. The City of Irvine is considered a jobs rich/housing poor city, development of the IBC Rezoning and General Plan Amendment project will result in worsening this imbalance by providing more employment. The entire buildout of the IBC project proposes a total of 153,673 jobs this includes an additional 39,646 jobs through implementation of the proposed general plan amendment and rezoning action and 3,896 dwelling units resulting in a jobs housing ratio of 1.76. The jobs/housing balance ratio established for the southeast Orange Subregion is 1.44. In order for the City of Irvine to achieve a jobs/housing balance of 1.44 and additional 19,403 dwelling units would need to be constructed. 4x

The City of Irvine's Housing Element will not account for the full 19,403 additional units therefore other areas and adjacent cities will be impacted by providing housing opportunities for employees of the IBC. Please provide more discussion on the effect to the City of Tustin on providing housing for IBC employees.

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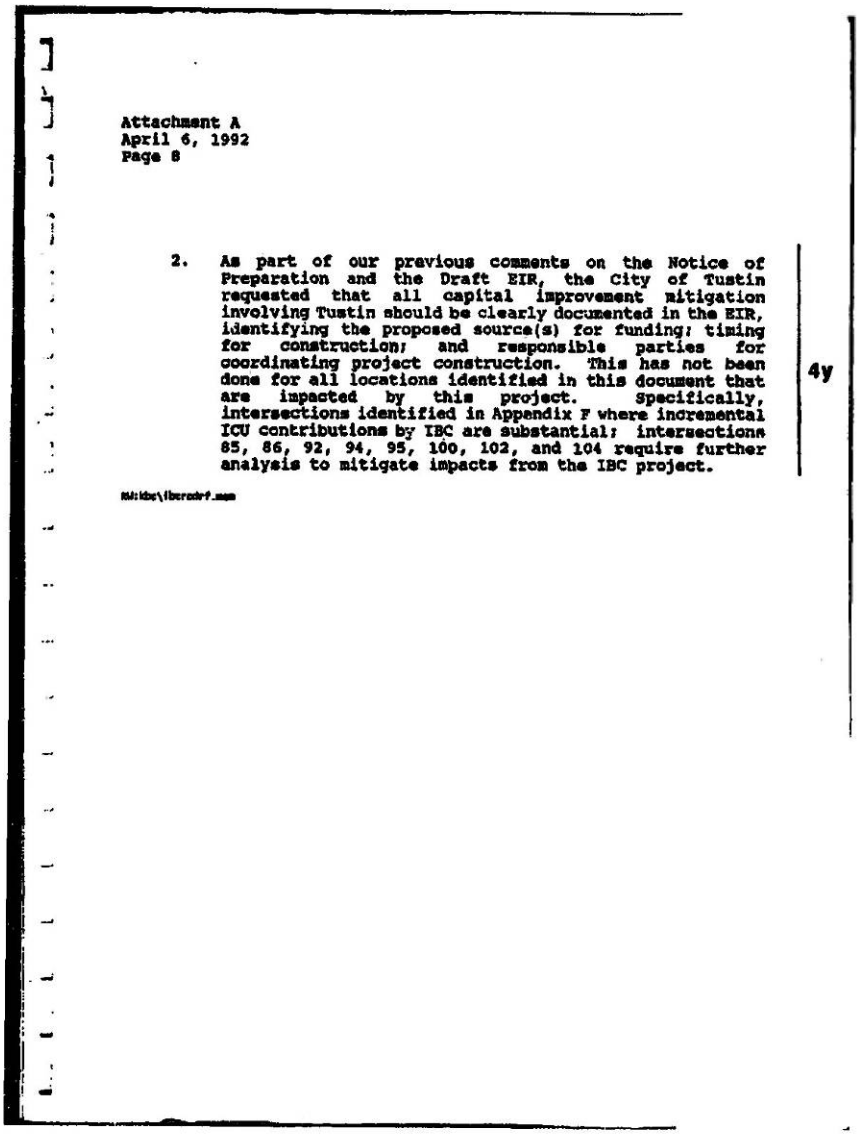
D. Funding Program

1. Traffic Mitigation improvements for the IBC projects is estimated at a cost of $250 million (1991 dollars including a 15% - 20% contingency). Included in the $250 million is a cost of $35 - $45 million for circulation mitigation program improvements in surrounding jurisdictions Appendix D, IBC Circulation Improvements Funding Program discusses funding sources to provide revenue for the implementation of the circulation improvements. The funding program consists of a new IBC Development Fee Program, Local, Regional and Federal Grant programs, a Benefit Assessment District and/or other alternative funding mechanisms. There is currently approximately $30 million available through previously collected fees, it is estimated that the new IBC Development Fee Program will generate an additional $80 million over the life of the IBC Project, an estimated additional $11 million generated by vested projects which have not yet received their building permits and an estimated approximate $31 million through local, regional and federal sources (Measure M, Arterial Highways Finance Program, Proposition 111 and Combined Road Program). Assuming that these revenue projections are correct, there will still be a $98 million dollar circulation improvement shortfall. This shortfall is anticipated to be covered by either the establishment of a Benefit Assessment District or an Advanced Payment Program whereby developers could make a cash payment or post surety of their share of funding shortfall allowing them to bypass a development phasing program. It should be noted that the City of Tustin does not agree with the revenue projections anticipated from local, regional and federal sources ($31 million). There are too many variables that could affect revenues from these sources already the estimated Measure M revenues to cities has dramatically decreased because of the current economic recession and the continued viability of other federal and state programs are uncertain at this time. In addition there is no basis to estimate that revenue from alternative funding sources (Benefit Assessment District, Advanced Payment) can cover the shortfall. The DEIR states that the studies to determine the exact amount and allocation of funds required by the Assessment District has not been completed at this time. CEQA requires all impacts and mitigation measures must be identified.

4y

HCG 08597



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2. As part of our previous comments on the Notice of Preparation and the Draft EIR, the City of Tustin requested that all capital improvement mitigation involving Tustin should be clearly documented in the EIR, identifying the proposed source(s) for funding; timing for construction; and responsible parties for coordinating project construction. This has not been done for all locations identified in this document that are impacted by this project. Specifically, intersections identified in Appendix F where incremental ICU contributions by IBC are substantial; intersections 85, 86, 92, 94, 95, 100, 102, and 104 require further analysis to mitigate impacts from the IBC project. 4y

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COMMENT NO. 20

CITY OF NEWPORT BEACH

P.O. BOX 1768, NEWPORT BEACH, CA 92659-1768

PLANNING DEPARTMENT (714) 644-3225

April 21, 1992

Ms. Seda Yaghoubian
Principal Planner
City of Irvine
Community Development Department
One Civic Center Plaza
Irvine, CA 92713

RE: IRVINE BUSINESS COMPLEX DRAFT EIR

Dear Ms. Yaghoubian,

Thank you for the opportunity to review the recirculated DEIR for the Irvine Business Complex General Plan Amendment and Zone Change. I apologize for submitting these comments after the official close of the public comment period; however, in recognition of the significance of this project I hope our concerns will be entered into the record and addressed as part of the public hearing process.

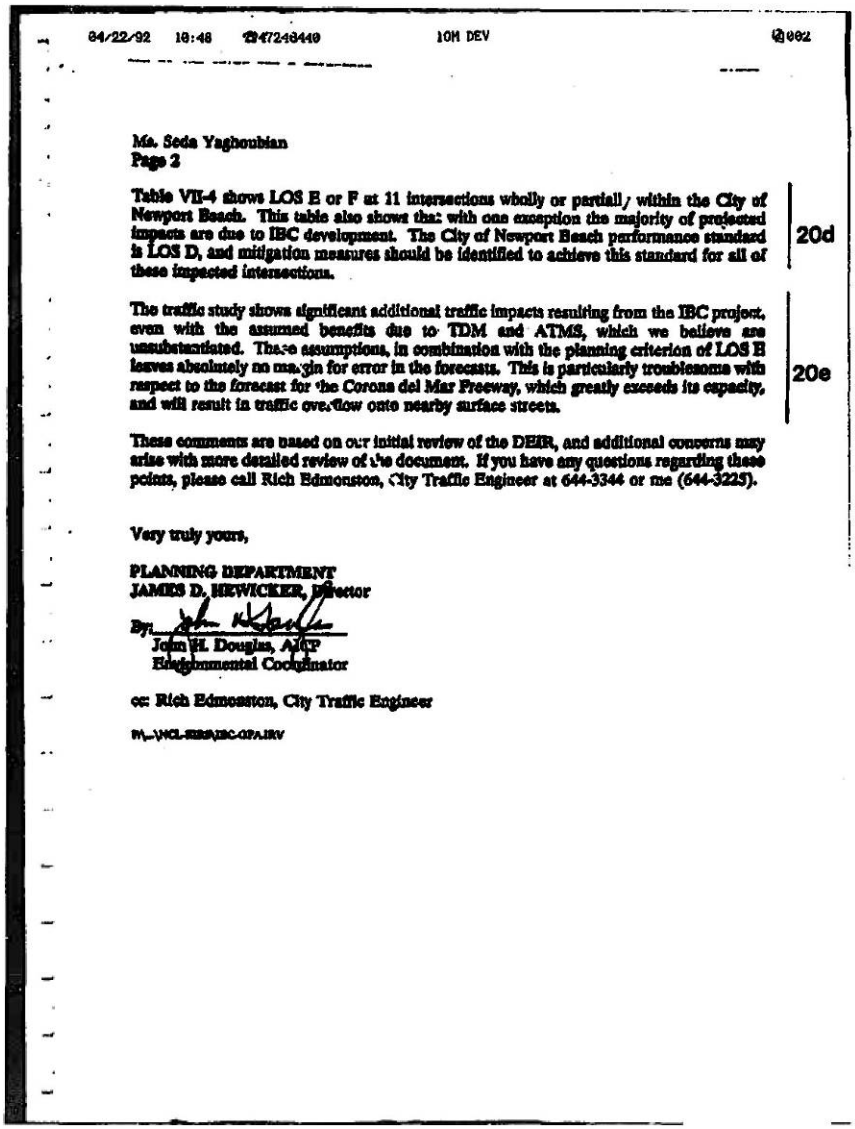
The City of Newport Beach has recently completed extensive new traffic modeling, including projections for post-2010. Figure IV-1 of the Traffic Study includes some projections that are substantially different from our forecast, and could significantly affect congestion within Newport Beach. Examples include the SR-73 between SR-55 and Redhill (236,000 ADT vs. 146,000 in the Newport Beach traffic analysis model) and Jamboree north of Campus (45,000 ADT vs. 53,000 in the NBTAM). Differences of this magnitude need to be resolved in order to accurately evaluate the impacts of the proposed project on Newport Beach. 20a

The increased capacity assumed due to the "Advanced Traffic Management System" does not appear to be justified. The ICU methodology assumes optimum signal timing for each intersection. While signal coordination typically can reduce overall delay, it also typically causes less than optimum operation for individual signals. 20b

Intersection Group C should include Bristol N and Campus, Bristol N and Birch, Bristol and Campus/Irvine, and Bristol and Birch. These four intersections are impacted by IBC traffic accessing the freeway system via Route 73. In addition, the performance objective for this group should be 0.90 since the majority of these intersections are wholly or partly within the City of Newport Beach. This revision would show this intersection group as deficient, requiring additional mitigation. 20c

3300 Newport Boulevard, Newport Beach

HCG 08729



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Ms. Seda Yaghoubian
Page 2

Table VII-4 shows LOS E or F at 11 intersections wholly or partially within the City of Newport Beach. This table also shows that with one exception the majority of projected impacts are due to IBC development. The City of Newport Beach performance standard is LOS D, and mitigation measures should be identified to achieve this standard for all of these impacted intersections. 20d

The traffic study shows significant additional traffic impacts resulting from the IBC project, even with the assumed benefits due to TDM and ATMS, which we believe are unsubstantiated. These assumptions, in combination with the planning criterion of LOS E leaves absolutely no margin for error in the forecasts. This is particularly troublesome with respect to the forecast for the Corona del Mar Freeway, which greatly exceeds its capacity, and will result in traffic overflow onto nearby surface streets. 20e

These comments are based on our initial review of the DEIR, and additional concerns may arise with more detailed review of the document. If you have any questions regarding these points, please call Rich Edmonston, City Traffic Engineer at 644-3344 or me (644-3225).

Very truly yours,

PLANNING DEPARTMENT
JAMES D. HEWICKER, Director

By: _____
John H. Douglas, AICP
Environmental Coordinator

cc: Rich Edmonston, City Traffic Engineer

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HCG 08730

CITY OF NEWPORT BEACH

January 19, 2006

Ms. Pam Davis, AICP
Senior Planner
P. O. Box 19575
Irvine, CA 92612

Notice of Preparation of Draft SEIR for Alton Parkway Residential Project

Dear Ms. Davis:

Thank you for the opportunity to comment on the Notice of Preparation for the DSEIR for this project.

Section 2.3 Determination indicates that some impacts of the project were addressed and mitigated in an earlier document, and the EIR to be prepared for this project will analyze only the effects that remain to be addressed. This section does not identify the earlier environmental document, and the DSEIR should do so. For purposes of the comments in this letter, it is assumed that the earlier document is EIR No. 88-ER-0087, or the "IBC EIR."

The City of Newport Beach requests that the DSEIR pay particular attention to three areas that could result in impacts in Newport Beach: recreation, transportation/traffic and cumulative impacts.

3.14 Recreation

The DSEIR should recognize that recreation impacts were not reduced to a level of non-significance in the IBC EIR, even with a residential cap that has been exceeded and continues to be exceeded with one General Plan Amendment for residential development after another. The analysis in the DSEIR should not be limited to the impacts from the subject project, but should also consider the impacts of the approximately 5,023 residential units already approved in IBC and the approximately 5,134 units pending. (These unit counts are from the IBC

D-25-001124

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D-25-00012(

Residential Project List updated January 6, 2006 and available on the City of Irvine website.)

3.15 Transportation/Traffic

This section indicates that the project will require the transfer of development rights of additional a.m. peak hour, p.m. peak hour and daily gross vehicle trips from a sending site in IBC. The DSEIR should more fully explain the reason for this transfer requirement. More importantly, the sending site needs to be identified as part of the analysis; without this information, it will not be possible to understand the impacts of the transfer.

In addition, the cumulative impacts from other transfers of development rights and other residential development in IBC, above the cap set in the IBC EIR, should be analyzed.

3.16 Mandatory Findings of Significance

The City of Newport Beach is pleased to see that the DSEIR will address the cumulative impacts of this residential project of 170 units and its interaction with other reasonably foreseeable future projects. In our view, this is one of the most important sections of the DSEIR, given the previously cited large numbers of residential units already approved and pending approval in IBC, and the IBC EIR's findings of significant unmitigated impacts in the areas of recreation and traffic/transportation for a much lower number of residential units than exist and are proposed in IBC today.

Please contact me at 644-3222 if you have any questions regarding Newport Beach's comments, and send the DSEIR to my attention when it is completed.

Sincerely

Sharon Wood

Sharon Wood
Assistant City Manager

cc: Newport Beach Mayor and City Council
Environmental Quality Affairs Committee
Homer Bludau, City Manager

2

D-25-001125

D-25-00012

A11. Response to Comments from Remy, Thomas, Moose and Manley, LLP, dated May 14, 2009.

A11-1 The Recirculated DEIR contains minor revisions to the Project Description and a new traffic study based on discussions with various stakeholders with an interest in the IBC. Other revisions to the DEIR have been made based on other comments received on the previously circulated DEIR.

A11-2 See Response A11-1.

A11-3 Please refer to Section 3, *Project Description*, of the Recirculated DEIR for a complete description of the proposed project.

A11-4 In response to the commenter's comment, additional clarification has been provided to identify revisions to the Draft General Plan Amendment for IBC Residential Mixed Use Vision Plan and amendments to the Draft Zoning and Municipal Code and the Park Standards Manual. The revisions can be found in Appendices C and D in the Recirculated DEIR.

A11-5 The 1.3 persons per household figure would apply to any density above 31.0 dwelling units (du)/acre, rather than the current cap of 50 du/acre, which is consistent with the US Census data and updated form State Department of Finance Data, as required by the State Quimby Act for park land dedication. In response to the commenter, the survey conducted by Alfred Gobar Associates in 2005 and 2007 is discussed in Section 5.12, *Recreation,* of the Recirculated DEIR.

A11-6 The DEIR has been revised to address the commenter's comments as shown in Sections 4, *Environmental Setting,* and 5.13, *Transportation and Traffic,* of the Recirculated DEIR.

A11-7 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation,* of the Recirculated DEIR.

A11-8, -9 The DEIR has been revised to address the commenter's comments as shown in Chapter 3, *Project Description*, and Section 5.8, *Land Use*, of the Recirculated DEIR. Tables A-1 and A-3 have also be clarified accordingly.

A11-10 Section 5-8-2 of the Proposed Zoning Code has been modified and included as Appendix D in the Recirculated DEIR.

A11-11 Section 9-36 of the Proposed Zoning Code has been modified and included as Appendix D in the Recirculated DEIR.

A11-12 Section 3-37-28.1(D)(3) of the Proposed Zoning Code has been modified and included as Appendix D in the Recirculated DEIR.

A11-13 The DEIR for the IBC Vision Plan is a programmatic DEIR that evaluates impacts associated with changes to land uses within the IBC Vision Plan area. The DEIR evaluates the maximum intensity of the IBC Vision Plan area, which includes growth associated with projects under construction, approved projects, pending projects,

and future projects within the IBC Vision Plan area. The existing environmental setting is also described and analyzed in each topical section evaluated.

A11-14 A description and analysis regarding the recently adopted Accessory Retail Business designation has been incorporated into Chapter 4, *Environmental Setting*, of the Recirculated DEIR. It should be noted that the traffic study prepared by Parsons Brinkerhoff Associates did not assume a reduction in trips or vehicle miles traveled (VMT) associated with internal trip capture from mixed-use development in the IBC Vision Plan area.

A11-15 See response to Comment A10-1.

A11-16 The Recirculated DEIR evaluates impacts of the proposed project compared to existing conditions in the IBC Vision Plan area in accordance with CEQA Guidelines Section 21065. The EIR evaluates the maximum intensity of the IBC Vision Plan area, which includes growth associated with projects under construction, approved projects, pending projects, and future projects within the IBC Vision Plan area. Section 3.3.3, *Subsequent Development Pursuant to the Proposed Project*, of the Recirculated DEIR provides a detailed description of the proposed development projects.

A11-17 The DEIR has been revised to address the commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. Additionally, water quality requirements related to the IBC are provided in the Water Quality Technical Report and regulations to control discharges from existing industrial facilities are also provided in the report.

A11-18 See responses to Comments A7-6 and A7-7.

A11-19 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-20 The comment states that Section 5.11, *Public Services,* of the DEIR ignores the park issue entirely; however, as stated in the opening paragraphs of this section, park services are addressed in Section 5.12, *Recreation*, of the previously circulated and Recirculated DEIR.

A11-21 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-22 An inventory of neighborhood parks that currently serve the IBC area has been included in Section 5.12, *Recreation,* of the Recirculated DEIR. Additionally, Table 5.12-1 in Section 5.12 was revised to indicate the existing park distances from the IBC.

A11-23 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-24 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-25 Section 5-5-1004 (D) of the Irvine Subdivision Ordinance has been amended and is provided in Appendix D of the Recirculated DEIR. As stated in response to Comment A11-5, the 1.3 persons per household figure would apply to any density above 31.0 dwelling units (du)/acre, rather than the current cap of 50 du/acre, which is consistent with the US Census data and updated form State Department of Finance Data, as required by the State Quimby Act for park land dedication.

A11-26 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-27 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-28 The need for community parks and neighborhood parks is discussed in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-29 The need for community parks and neighborhood parks is discussed in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-30 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-31 The DEIR prepared for the Irvine Business Complex is a Program EIR, which is appropriate for a series of related actions that are characterized as one large project or program (CEQA Guidelines Section 15168). The degree of specificity required in an EIR will correspond to the degree of specificity involved in the activity described in the EIR. An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a specific plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific recreation facilities, such as the creekwalk, that might follow (CEQA Guidelines Section 15146). However, all future development projects will be subject to CEQA, therefore requiring more specific environmental analysis, which would be conducted in accordance with existing federal, state, and local environmental regulations and further mitigation measures would be required, if deemed necessary. This issue is further discussed in Section 5.12, *Recreation,* of the Recirculated DEIR.

A11-32 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-33 The Recirculated DEIR evaluates potential traffic impacts on the roadway network for the study area, which includes cities adjacent to the IBC Vision Plan area.

A11-34 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-35 The proposed project's traffic study has been updated accordingly (see Appendix N of the Recirculated DEIR).

A11-36 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-37 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-38 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-39 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-40 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-41 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-42 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-43 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-44 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-45 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-46 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-47 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-48 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-49 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-50 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-51 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-52 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-53 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-54 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-55 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-56 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-57 The Irvine Transportation Analysis Model (ITAM) Version 8.4 was developed in accordance with the Orange County Transportation Authority Subarea Modeling Guidelines and is consistent with the Orange County Transportation Analysis Model (OCTAM). Land use assumptions include input from the development community. Traffic counts were provided by the various jurisdictions and incorporated into the model. Future forecast volumes from ITAM are post-processed based on standard techniques that use existing count volumes as the basis for development of future daily and peak hour forecast volumes. The post-processing methodology, which applies the growth between the existing and future year model forecasts to existing count volume to develop future year forecast volumes, is consistent with standard practices and OCTAM methodology. Therefore, the results of the traffic analysis provide an accurate assessment of future traffic impacts associated with the project.

A11-59 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-60 As show in Appendix D of the Recirculated DEIR, setbacks in the 5.0 Mixed Use District are as follows:

1. Freeways, transportation corridors:

Residential uses: 40 feet (30 feet from I-405 right-of-way (5.0A))

Nonresidential uses: 25 feet

2. Major highways:

Nonresidential uses: 25 feet

3. Primary highways:

Nonresidential uses: 20 feet

4. Secondary highways:

Nonresidential uses: 20 feet

5. Commuter highways and local streets:

Nonresidential uses: 15 feet

6. Private drives: 10 feet

7. Building to building setbacks: 10 feet

8. Side setbacks: 10 feet

9. Rear setbacks:

Nonresidential uses: 5 feet

A11-61 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-62 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-63 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-64 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-65 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-66 Per your request, Section 9-36-14 of the Zoning Code has been updated to replace the reference to 1992 IBC GPA/rezoning to the 2009 Vision Plan DEIR (See Appendix D)

A11-67 Comment noted. No further response is necessary.

A11-68 The previous circulated and the Recirculated DEIR adequately evaluate cumulative impacts of the project in the individual topical sections in Chapter 5 of the DEIR.

A11-69 See response to Comments A10-1 and A11-15.

A11-70 The Recirculated DEIR adequately evaluates cumulative impacts of the project in the individual topical sections in Chapter 5 of the DEIR.

A11-71 The Recirculated DEIR adequately evaluates the cumulative recreation impacts of the project in Section 5.12, *Recreation*.

A11-72 The Recirculated DEIR adequately evaluates the cumulative traffic impacts of the project in Section 5.13, *Transportation and Traffic*.

A11-73 The Recirculated DEIR adequately evaluates the cumulative traffic impacts of the project in Section 5.13, *Transportation and Traffic*.

A11-74 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-75 Alternatives selected for the analysis were based on their ability to reduce or eliminate the project's significant environmental impacts. The Recirculated DEIR provides additional analysis to support the determination that the alternatives do not meet the objectives cited. Additionally, the Recirculated DEIR adequately evaluates the recreation impacts of the project in Section 5.12, *Recreation*.

A11-76 As shown on Figure 3-6 of the Recirculated DEIR, the Overlay Zone Regulating Plan has been revised to concentrate the additional residential development north of I-405. While some residential developments within the IBC would be located south of the I-405, new development for the most part would be concentrated in the northern portion of the IBC Vision Plan area.

A11-77 The DEIR for the IBC Vision Plan has been Recirculated.

A11-78 See Response A11-57.

A11-79 Comment noted. As stated in Section 3.3.2.8 of Recirculated DEIR, the City of Irvine must initiate an MPAH Amendment by entering into a cooperative study with OCTA and the affected local agencies to determine the feasibility of the proposed MPAH amendments before any changes can be made.

A11-80 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-81 Comment noted. Though not related to CEQA or the DEIR, the Cities of Irvine and Tustin are in discussions regarding various traffic issues including the existing Settlement Agreement.

A11-82 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-83 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-84 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-85 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-86 See Response A11-57.

A11-87 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

A11-88 The proposed project's traffic study has been updated accordingly (see Appendix N).

A11-89 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N). The City of Tustin will be informed of additional environmental documents and notices for public hearings concerning the IBC Vision Plan when they become available.

A11-90 The Recirculated DEIR includes additional clarification on the description for the IBC Vision Plan. The DEIR for the IBC Vision Plan evaluates changes in the existing physical environment in accordance with CEQA Guidelines Section 21065. The EIR evaluates the maximum intensity of the IBC Vision Plan area, which includes growth associated with projects under construction, approved projects, pending projects, and future projects within the IBC Vision Plan area. It should be noted that the interim year has been revised to year 2015 as a result of the economic downturn.

A11-91 The IBC Vision Plan project is not trip neutral. The Transfer of Development Rights (TDR) is a mechanism by which the intensity of non-residential land uses can be compared to residential land uses. However, trips associated with each individual land use vary throughout the course of the day. The traffic study prepared by Parson Brinkerhoff has been revised to clarify the increase in trips associated with the

proposed project compared to existing conditions, and compared to future scenarios without the project (cumulative baseline) and compared to the existing General Plan (see Appendix N).

A11-92 Comment noted.

A11-93 Comment noted.

A11-94 Comment noted.

A11-95 Comment noted.

A11-96 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-97 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-98 Comment noted. Future traffic studies will be required for any project involving a TDR which transfers trips from one TAZ to another TAZ, which differs from the assumptions contained in the IBC Vision Plan traffic study.

A11-99 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-100 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-101 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-102 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-103 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-104 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-105 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-106 As outlined in Section 9, References, of the traffic study, the City of Newport Beach General Plan was used as a reference (see Appendix N).

A11-107 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-108 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-109 The Recirculated DEIR evaluates the increase in impacts associated with the change in the physical environment from existing conditions in accordance with Section 21065 of the CEQA Guidelines. The project description in the Recirculated DEIR has been amended to clearly describe all components of the project.

A11-110 The commenter is incorrect. Actual absorption rates are determined by market conditions. In previous years, demand for new residential land uses in the IBC Vision Plan area was high. Since the housing market crash, demand for new housing in the IBC Vision Plan area has severely declined, so much so that the Recirculated DEIR now assumes an interim buildout year by 2015. The IBC Vision Plan places a cap on total development in the IBC Vision Plan area. Pursuant to the proposed project, this cap includes a 15,000 unit cap plus 2,038 bonus units resulting in a maximum intensity of 17,038 residential units and 48,787,662 square feet of non-residential land uses.

A11-111 Considering the depressed nature of the current residential real estate market, it is highly unlikely that all 15,000 dwelling units would be developed by 2015.

A11-112 Please refer to Section 3 of the Recirculated DEIR for a complete description of the project.

A11-113 Please refer to Section 3.3.2.6 of the Recirculated DEIR for a complete description of the land use assumptions for the project.

A11-114 The Irvine Business Complex Redevelopment Sub-Area Master Plan (SAMP) analyzed the domestic water and wastewater collection systems based on a total of 19,552 dwelling units in the IBC (consisting of 14,552 "redevelopment project" units with specific locations and an additional 5,000 units with general locations). The additional 5,000 dwelling units were analyzed as a part of a sensitivity analysis to evaluate the water system's performance with additional growth. The sensitivity analysis is further discussed in Section 5-14, *Utilities and Service Systems*.

A11-115 The traffic study has been revised at the request of the commenter to be consistent with the buildout assumptions contained within the Recirculated DEIR. The traffic study is included as Appendix N.

A11-116 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-117 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-118 The Recirculated DEIR has been revised at the request of the commenter to evaluate and address impacts associated with the change in the physical existing environmental conditions. See also response to Comment A11-112 with regards to project buildout.

A11-119 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-120 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-121 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-122 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-123 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-124 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-125 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-126 Comment noted. The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-127 The traffic study has been revised in response to comments made by the commenter and is included in Appendix N of the Recirculated DEIR.

A11-128 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-129 Comment noted. No further response necessary.

A11-130 Please refer to Appendix N of the Recirculated DEIR for a complete copy of the revised traffic study.

A11-131 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-132 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-133 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-134 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-135 The EIR includes technical information as it is necessary to disclose environmental impacts of the project. Some impacts, like traffic, air quality, and noise are inherently more technical and require some details on the quantification of impacts compared to impacts associated with aesthetics. In fact, the majority of commenters have requested that specific information from the technical modeling be incorporated into the EIR in order to disclose assumptions inherent with modeling efforts. This technical information is included in the appendices.

A11-136 A description and analysis regarding the recently adopted Accessory Retail Business designation has been incorporated into Chapter 4, *Environmental Setting*, of the Recirculated DEIR. It should be noted that the traffic study prepared by Parsons Brinkerhoff Associates did not assume a reduction in trips or vehicle miles traveled (VMT) associated with internal trip capture from mixed-use development in the IBC Vision Plan area.

A11-137 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A11-138 The Recirculated DEIR has been revised to address the need for recreational uses within the IBC Vision Plan area at the request of the commenter. See Section 5.12, *Recreation,* in the Recirculated DEIR.

A11-139 Though the proposed guidelines provide more flexibility as to how much parkland must be provided on-site, each project must comply with the City's parkland

dedication ordinance to ensure that adequate parkland to serve future IBC residents is provided.

A11-140 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-141 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-142 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-143 The IBC General Plan Element has been revised to outline the correct acreage for the IBC (approximately 2,800 acres), as shown in Appendix C of the Recirculated DEIR, and consistent with the acreage outlined in Chapter 3, *Project Description*, of the DEIR.

The reduction in neighborhood park requirements for residential uses in the IBC is addressed in Section 5.12, *Recreation*, of the Recirculated DEIR.

Per the commenter's request, Section 5.12, *Recreation*, of the Recirculated DEIR has been revised to address how the additional required recreational facilities are planned to be provided and where.

A11-144 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-145 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-146 According to Appendix G of the CEQA Guidelines and as stated on page 5.12-5 of Section 5.12, *Recreation*, of the DEIR, the threshold states if the project would increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. As stated in Section 5.12 of the DEIR, the proposed project would increase the use of existing neighborhood and regional parks or other recreational facilities. However, with any future projects, project applicant would be required to dedicate park land and/or fees in lieu. All park fees are paid directly to the City Cashier prior to the issuance of any residential building permits for the building site or sites from which fees are to be derived. These fees are used only for developing new or rehabilitating existing park or recreational facilities to serve the subdivision.

A11-147 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-148 See response to Comment A11-5.

A11-149 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-150 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-151 The DEIR has been revised to address the commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

A11-152 Section 5.12, *Recreation*, has been revised and is included in the Recirculated DEIR.

LETTER A12 – City of Santa Ana (2 pages)

MAYOR
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MAYOR PRO TEM
Claudia C. Alvarez
COUNCIL MEMBERS
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May 14, 2009

Bill Jacobs, AICP, Principal Planner
City of Irvine
Community Development Department
P.O. Box 19575
Irvine, CA 92623-0575

via Facsimile (949) 724-6440

RE: NOTICE OF AVAILABILITY AND NOTICE OF COMPLETION OF THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE IRVINE BUSINESS COMPLEX VISION PLAN MIXED USE OVERLAY ZONE

Dear Mr. Jacobs:

Thank you for the opportunity to review and comment on the draft EIR for the IBC Vision Plan Mixed Use Zoning Overlay. The City of Santa Ana Public Works Agency, Traffic Division, is working with the City of Irvine to mitigate various traffic impacts identified in the EIR at various intersections in Santa Ana. The City of Santa Ana offers the following comments pertaining to the proposed project:

Striping and signal comments:

SR-55 NB Ramp and Dyer Road

- Need 13' #2 (curb) right turn lane.
- $195,800 for traffic signal cost estimate (item 15). This signal modification will impact communications and a red light camera.

A12-1

Bristol Street and Segerstrom Avenue

- What is the intent of the 8' space on the southeast corner? If intended for a free turn, extend it further back.
- The lane drop on the north leg for northbound traffic will need to comply with MUTCD figure 3B-12.
- Need 13' curb lane.
- $283,300 for traffic signal cost estimate (item 15). This signal modification will impact a red light camera.

A12-2

Grand Avenue and Warner Avenue

- Need 13' curb lane or right turn pocket.
- Remove the westbound right turn lane on Warner Avenue at Wright Street. Stripe in a through lane.
- $130,450 for traffic signal cost estimate (item 15).

A12-3

MacArthur Blvd between Main Street and the SR-55 SB On-Ramp

- Need 13' curb lane or right turn pocket.
- Do not show a crosswalk on the east leg of the intersection. Pedestrian crossings are prohibited on the east leg.
- Need to coordinate the plans with the SR-55 SB improvement project that shows two lanes for the SR 55 SB On-ramp and 4 eastbound lanes on MacArthur Blvd.

A12-4

We appreciate the opportunity to review and provide comments on this project. Should you have any questions feel free to Shahir Gobran, Senior Transportation Analyst at (714) 647-5615?

Sincerely,

Wm O Apple

Bill Apple
Associate Planner

BA:ba
environmental 2009 \other city's CEQA documents\Irvine\DEIR IBC Area 36 SCH 20070110249

A12. Response to Comments from Bill Apple, Associate Planner, City of Santa Ana, dated May 14, 2009.

A12-1 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A12-2 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A12-3 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A12-4 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

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LETTER A13 – Santa Ana Unified School District (2 pages)

Santa Ana Unified School District

Facilities & Governmental Relations
Joe Dixon, Assistant Superintendent
1601 E. Chestnut Avenue
Santa Ana, CA 92701
(714) 480-5349 Office; (714) 480-5362 Fax; E-mail: joe.dixon@sausd.us

May 13, 2009

Bill Jacobs, AICP, Principal Planner
City of Irvine
Community Development Department
PO Box 19575
Irvine, CA 92623-0575

Re: **Draft Environmental Impact Report (DEIR) -Irvine Business Complex, Planning Area 36**

Dear Mr. Jacobs:

The Santa Ana Unified School District (SAUSD) appreciates the opportunity to provide the following comments with respect to the Draft Environmental Impact Report ("DEIR") for the Irvine Business Complex project. The proposed project consists of the implementation of development policies and infrastructure improvements. The project would allow up to 15,000 new residential units.

The DEIR proposes that "payment of the adopted fees would provide full and complete mitigation of school impacts" and acknowledges "those fees are seldom adequate to accommodate the true costs incurred by affected districts to construct new facilities." SAUSD occupies the largest geographic area within the IBC and is proposed to receive the greatest number of residential units while having the lowest developer fee rates of all school districts within the IBC - having to do more with less. The District has an obligation to serve students generated in the project area. The District's School Facilities Master Plan finds student generation factors as follows:

School Level	Multi-Family Attached Units
Elementary (K-6)	.3649
Middle School (7 & 8)	.1695
High School (9-12)	.1678

A13-1

There is a potential of 2,233 residential units in the Santa Ana Unified School District (SAUSD) portion of the IBC a potential 1,568 students. Given the current and future demands facing the District, the District anticipates that it will need two to three school sites at expected development levels. The District's preferred location for a new school site is in the project area within 1.5 miles of the residential development in the IBC project area within SAUSD boundaries. The district employs a 'neighborhood school' policy which limits bussing and encourages walking and other forms of transportation to and from school sites. Servicing from this area with additional bus and van routes generates a $163,080 annual impact to the district.

A13-2

BOARD OF EDUCATION
José Alfredo Hernández, President • Rob Richardson, Vice President •
Audrey Yamagata-Noji, Ph.D., Clerk • John Palacio, Member • Roman Reyna, Member

The DEIR suggest that "SAUSD will need to place relocatable classrooms at each of the schools in this project's assigned attendance area and may need to study boundary changes and the need for new facilities to accommodate this development." Schools that currently serve the IBC are either at or over capacity and additional temporary leased classrooms at these sites are not feasible logistically or financially for these sites. An analysis of adjacent sites and attendance areas shows similar issues of overcrowding negating any relief that might be achieved through boundary adjustments. Also if it were logistically possible to locate additional temporary housing at sites that currently serve the IBC the cost to the district would be $459,427 annually. Integrated planning for needed school services would better serve the students and residents of the IBC. A13-3

School sites are community assets. Usage of school sites via community groups and extracurricular activities will generate impacts on weekends and other non-instructional hours. It is unclear from the DEIR if the traffic and cumulative impacts that would be generated by multiple school sites, and multiple districts with nighttime and weekend hours of operation have been fully and adequately analyzed. Furthermore draft EIR should have included a project alternative that identified the location of potential future school sites in contrast to the preferred alternative to better compare traffic impacts of various alternatives. The District remains concerned that the project implementation could have a number of significant direct and indirect impacts on the School District and the community. A13-4

The EIR should fully recognize that schools must be treated as a sensitive land use given the concentration of young children within and around these facilities for many hours of the school day and during after-school activities. We maintain the request that the EIR recognize and acknowledge the unique nature of school facilities as provided by California law. Schools are one of the most protected land uses. The development of new schools and expansion and modernization of existing schools trigger various special requirements, and finding adequate school sites very difficult. These regulations require review by the California Department of Education, the Department of Toxic Substances Control and various other agencies, and often trigger special studies to confirm that stringent standards are met. Such studies may involve various agency consultations and oversight and the use of rigorous study protocols. This very high level of review creates great difficulty in constructing school facilities. That is why an integrated planning approach that identifies potential future school sites within the IBC is a preferred approach to a project of this scale. A13-5

We request that the project's potential indirect impacts on the School District pursuant to the requirements established in Title 5, California Code of Regulations (CCR) be addressed in the General Plan, zoning and municipal codes, and other pertinent master plan documents. District requests that the project clearly and specifically identify the locations of proposed public facilities, including school sites. This includes not only the main components of the project, but also any infrastructure or utilities that would extend to the site (especially power lines and pipelines) or other support facilities. A13-6

All correspondence should be sent to the attention of Joe Dixon, Assistant Superintendent of Facilities & Governmental Relations.

Sincerely,

Joe Dixon, Assistant Superintendent, Facilities and Governmental Relations

A13. Response to Comments from Joe Dixon, Assistant Superintendent, Santa Ana Unified School District, dated May 13, 2009.

A13-1 Comment noted. No further response necessary.

A13-2 The project's potential impact on Santa Ana Unified School District is discussed in further detail in Section 5.11, *Public Services*. However, SB 50 (Chapter 407 of Statutes of 1998) sets forth a state school facilities construction program that includes restrictions on a local jurisdiction's ability to condition a project on mitigation of a project's impacts on school facilities in excess of fees set forth in Education Code Section 17620. These fees are collected by school districts at the time of issuance of building permits for commercial, industrial, and residential projects. Although those fees are seldom adequate to accommodate the true costs incurred by affected districts to construct new facilities the Legislature has declared that the payment of those fees constitutes full mitigation for the impacts generated by new development, per Government Code Section 65995.

A13-3 The analysis provided in Section 5.11, *Public Services,* of the Recirculated DEIR related to school services uses generation factors provided by the Santa Ana Unified School District (SAUSD), even though studies have shown the students generated by high-density, urban projects are much less than single-family development. As stated in Section 5.11, SB50 has been found by the Legislature to constitute "full and complete mitigation of the impacts" on the provision of adequate school facilities. As a result, the City of Irvine cannot require any additional mitigation beyond SB50 fees. The City of Irvine will work with the SAUSD, Irvine Unified School District, and Tustin Unified School District to identify appropriate school sites within the IBC to serve future residents. No additional analysis is necessary.

A13-4 The project's project-specific and cumulative impacts on schools are discussed in Section 5.11, *Public Services,* of the Recirculated DEIR. Additionally, alternatives are selected based on their ability to reduce significant project impacts, and therefore, an alternative that identifies the location of potential future school sites as suggested by the commenter is not required, as impacts to school facilities was not considered significant in the DEIR.

A13-5 Refer to response A13-3.

A13-6 Refer to response A13-2.

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LETTER A14 – Southern California Association of Governments (6 pages)

SOUTHERN CALIFORNIA
ASSOCIATION of GOVERNMENTS

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Mike Ten, South Pasadena

May 14, 2009

Mr. Bill Jacobs, AICP
City of Irvine
Community Development Department
PO Box 19575
Irvine, CA 92623-0575
bjacobs@ci.irvine.ca.us

RE: SCAG Comments on the Draft Environmental Impact Report for the Irvine Business Complex (IBC) Residential/Mixed Use Vision Plan and Overlay Zone (Planning Area 36) [SCAG No. I20090069]

Dear Mr. Jacobs,

Thank you for submitting the **Draft Environmental Impact Report for the Irvine Business Complex (IBC) Residential/Mixed Use Vision Plan and Overlay Zone (Planning Area 36) [SCAG No. I20090069]** to the Southern California Association of Governments (SCAG) for review and comment. SCAG is the authorized regional agency for Inter-Governmental Review of Programs proposed for federal financial assistance and direct development activities, pursuant to Presidential Executive Order 12372 (replacing A-95 Review). Additionally, pursuant to Public Resources Code Section 21083(d) SCAG reviews Environmental Impacts Reports of projects of regional significance for consistency with regional plans per the California Environmental Quality Act Guidelines, Sections 15125(d) and 15206(a)(1). SCAG is also the designated Regional Transportation Planning Agency and as such is responsible for both preparation of the Regional Transportation Plan (RTP) and Regional Transportation Improvement Program (RTIP) under California Government Code Section 65080 and 65082. As the clearinghouse for regionally significant projects per Executive Order 12372, SCAG reviews the consistency of local plans, projects, and programs with regional plans. This activity is based on SCAG's responsibilities as a regional planning organization pursuant to state and federal laws and regulations. Guidance provided by these reviews is intended to assist local agencies and project sponsors to take actions that contribute to the attainment of regional goals and policies. A14-1

SCAG staff has reviewed this project and determined that the proposed project is regionally significant per California Environmental Quality Act (CEQA) Guidelines, Sections 15125 and/or 15206. The Irvine Business Complex is located on 2,800 acres in the western portion of the City of Irvine. The Mixed Use Vision Plan and Overlay Zone consists of several changes, the most notable of which is to establish a cap of 15,000 dwelling units for the IBC area with an offsetting reduction of non-residential office equivalency square footage.

We have evaluated this project based on the policies of SCAG's Regional Transportation Plan (RTP) and Compass Growth Vision (CGV) that may be applicable to your project. The RTP and CGV can be found on the SCAG web site at: http://scag.ca.gov/igr. The attached detailed comments are meant to provide guidance for considering the proposed project within the context of our regional goals and policies. We also encourage the use of the SCAG List of Mitigation Measures extracted from the RTP to aid with demonstrating consistency with regional plans and policies. Please provide a copy of the Final Environmental Impact Report (FEIR) for our review. If you have any questions regarding the attached comments, please contact Bernard Lee at (213) 236-1800. Thank you.

Sincerely,

Jacob Lieb, Manager
Assessment, Housing & EIR

DOCS# 151596

The Regional Council is comprised of 83 elected officials representing 189 cities, six counties, five County Transportation Commissions, Imperial Valley Association of Governments and a Tribal Government representative within Southern California.

5.11.09

May 14, 2009 SCAG No. I20090069
Mr. Jacobs

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE IRVINE BUSINESS COMPLEX (IBC) RESIDENTIAL/MIXED USE VISION PLAN AND OVERLAY ZONE (PLANNING AREA 36) [SCAG NO. I20090069]

PROJECT LOCATION

The proposed project is located within the western portion of the City of Irvine in south/central Orange County. The IBC is generally bounded by the former Tustin Marin Corps Air Station (MCAS) to the north, the San Diego Creek channel to the east, John Wayne Airport and Campus Drive to the south, and the Costa Mesa Freeway (SR 55) to the west.

PROJECT DESCRIPTION

The proposed project consists of the following components:

- A General Plan Amendment to adopt the IBC Mixed Use Community Vision Plan objectives and policies, and establish a cap of 15,000 dwelling units for the IBC area (excluding a potential for 1,191 density bonus units pursuant to state law), with an offsetting reduction of non-residential office equivalency square footage in General Plan Table A-1, for units under the cap that have not yet been approved. The General Plan/Zoning cap for the IBC is 9,401 residential units; therefore, a unit cap of 15,000 units would provide for a potential of 5,599 additional dwelling units (of which 2,522 are currently in process) in the IBC beyond that which is already existing or approved. The total 5,599 additional new units (either potential or in process) remaining under the 15,000 unit cap will be offset by a reduction of 2,715,062 sq. ft. of non-residential office equivalency square footage. Other minor amendments to implement Vision Plan Policies are also proposed.

- A Zoning Ordinance Amendment to add new Chapter 5-8 to adopt the IBC Residential Mixed Use Overlay Zone, update Chapter 9-36 provisions regarding the IBC traffic mitigation fee program, and revise the statistical analysis in Section 9-36-5 to establish a cap of 15,000 dwelling units for the IBC area (excluding density bonus units pursuant to state law), with an offsetting reduction of non-residential office equivalency square footage, for units under the cap that have not yet been approved, consistent with the proposed General Plan Amendment. Other minor zoning code amendments to implement Vision Plan Policies are also proposed.

- A Municipal Code Amendment to revise Division 5, Subdivisions, Chapter 10, Dedications; Reservations to incorporate new urban park standards into the City's park dedication requirements for the IBC.

- An Amendment to the City's Park Standards Manual to incorporate new urban park standards for the IBC.

- A program of optimizing land uses in the IBC for remaining unbuilt IBC Zoning Potential and Approvals, within existing IBC vehicle trip allocations by Traffic Analysis Zone (TAZ).

- An amendment to the City's Local Coastal Plan to reference the IBC Vision Plan for a small portion of the IBC located within the Coastal Zone.

- A program of Infrastructure Improvements to improve walkability and connectivity within the IBC.

- A set of design criteria, applicable to new residential mixed use projects in the IBC.

- Changing the name of the Irvine Business Complex as directed by the City Council (not a part of required CEQA action for project, but included for informational purposes).

DOCS# 151596
Page 2

May 14, 2009 **SCAG No. I20090069**
Mr. Jacobs

CONSISTENCY WITH REGIONAL TRANSPORTATION PLAN

Regional Growth Forecasts
The DEIR should reflect the most current SCAG forecasts, which are the 2008 Regional Transportation Plan (RTP) Population, Household and Employment forecasts, adopted May 2008. The forecasts for your region, subregion, and city are as follows:

Adopted SCAG Regionwide Forecasts[1]

	2010	2015	2020	2025	2030	2035
Population	19,418,344	20,465,830	21,468,948	22,395,121	23,255,377	24,057,286
Households	6,086,986	6,474,074	6,840,328	7,156,645	7,449,484	7,710,722
Employment	8,349,453	8,811,406	9,183,029	9,546,773	9,913,376	10,287,125

Adopted OCCOG Subregion Forecasts[1]

	2010	2015	2020	2025	2030	2035
Population	3,314,948	3,451,757	3,533,935	3,586,285	3,629,540	3,653,988
Households	1,039,201	1,071,810	1,088,375	1,102,370	1,110,659	1,118,490
Employment	1,755,167	1,837,771	1,897,352	1,933,058	1,960,633	1,981,901

A14-2

Adopted City of Irvine Forecasts[1]

	2010	2015	2020	2025	2030	2035
Population	235,633	256,721	264,222	265,965	268,246	269,802
Households	82,479	90,937	93,098	93,421	93,498	94,168
Employment	247,713	272,183	292,558	309,741	324,848	341,977

1. The 2008 RTP growth forecast at the regional, subregional, and city levels was adopted by the Regional Council in May 2008.

SCAG Staff Comments:

In Section 5.10, Population and Housing, the Draft EIR utilizes growth forecasts from the Center for Demographic Research at California State University, Fullerton. The forecasts for OCCOG Population and Employment and City of Irvine Employment are identical to SCAG's 2008 RTP growth forecasts, adopted May 2008. The City of Irvine Population forecasts are slightly different than SCAG's 2008 RTP growth forecasts.

The **2008 Regional Transportation Plan (RTP)** also has goals and policies that are pertinent to this proposed project. This RTP links the goal of sustaining mobility with the goals of fostering economic development, enhancing the environment, reducing energy consumption, promoting transportation-friendly development patterns, and encouraging fair and equitable access to residents affected by socio-economic, geographic and commercial limitations. The RTP continues to support all applicable federal and state laws in implementing the proposed project. Among the relevant goals and policies of the RTP are the following:

A14-3

Regional Transportation Plan Goals:
RTP G1 *Maximize mobility and accessibility for all people and goods in the region.*
RTP G2 *Ensure travel safety and reliability for all people and goods in the region.*
RTP G3 *Preserve and ensure a sustainable regional transportation system.*
RTP G4 *Maximize the productivity of our transportation system.*

DOCS# 151596
Page 3

May 14, 2009 **SCAG No. I20090069**
Mr. Jacobs

RTP G5 *Protect the environment, improve air quality and promote energy efficiency.*
RTP G6 *Encourage land use and growth patterns that complement our transportation investments.*
RTP G7 *Maximize the security of our transportation system through improved system monitoring, rapid recovery planning, and coordination with other security agencies.*

SCAG Staff Comments:

SCAG staff finds that the proposed project meets consistency with RTP goals G1, G4, and G6, and cannot determine consistency with RTP G5. RTP goals G2, G3, and G7 are not applicable to this project. SCAG staff's comments are consistent with the analysis in Table 5.8-3 (SCAG's 2008 Regional Transportation Plan Goals Consistency Analysis) for the following RTP goals: G1, G4, and G6.

The proposed project meets consistency with goal RTP G1. Mobility pertains to the speed at which one may travel and the delay, or difference between the actual travel time and travel time that would be experienced if a person traveled at the legal speed limit. Accessibility measures how well the transportation system provides people access to opportunities, such as jobs, education, shopping, recreation, and medical care. According to page 5.13-252, all impacted intersections except one will be mitigated to an acceptable level of service. With regard to accessibility, the proposed project site, as described on page 5.8-1, has a high concentration of commercial uses and is located just south of the Tustin Legacy project which will offer a range of residential, commercial, office, industrial, institutional, and urban-regional uses. A14-3

The proposed project meets consistency with goal RTP G4. Productivity is a system efficiency measure that reflects the degree to which the transportation system performs during peak demand conditions. As mentioned previously, all intersections except one will be mitigated to an acceptable level of service.

SCAG staff cannot determine consistency with goal RTP G5. Table 5.2-9 (Year 2030 Operational Phase Regional Emissions) indicates that operational emissions would exceed SCAQMD thresholds for VOC, NO_x, CO, and $PM_{2.5}$. According to page 5.2-28, after mitigation measures are applied to Impact 5.2-3, the impact would remain significant and unavoidable.

The proposed project meets consistency with goal RTP G6. The proposed districts, outlined on page 3-11, envision a mixture of uses and less reliance on the automobile by taking advantage of other modes such as existing public transit (OCTA, *i* Shuttle), biking, and walking.

GROWTH VISIONING

The fundamental goal of the **Compass Growth Visioning** effort is to make the SCAG region a better place to live, work and play for all residents regardless of race, ethnicity or income class. Thus, decisions regarding growth, transportation, land use, and economic development should be made to promote and sustain for future generations the region's mobility, livability and prosperity. The following "Regional Growth Principles" are proposed to provide a framework for local and regional decision making that improves the quality of life for all SCAG residents. Each principle is followed by a specific set of strategies intended to achieve this goal. A14-4

Principle 1: Improve mobility for all residents.
GV P1.1 *Encourage transportation investments and land use decisions that are mutually supportive.*
GV P1.2 *Locate new housing near existing jobs and new jobs near existing housing.*
GV P1.3 *Encourage transit-oriented development.*

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Page 4

May 14, 2009 **SCAG No. I20090069**
Mr. Jacobs

GV P1.4 *Promote a variety of travel choices*

SCAG Staff Comments:

SCAG staff is in agreement with the analysis in Table 5.8-3 (SCAG's 2008 Regional Transportation Plan Goals Consistency Analysis) that the project meets consistency with Growth Visioning Principle 1.

A14-4 cont'd.

Principle 2: Foster livability in all communities.

GV P2.1 *Promote infill development and redevelopment to revitalize existing communities.*
GV P2.2 *Promote developments, which provide a mix of uses.*
GV P2.3 *Promote "people scaled," walkable communities.*
GV P2.4 *Support the preservation of stable, single-family neighborhoods.*

SCAG Staff Comments:

A14-5

SCAG staff is in agreement with the analysis in Table 5.8-3 (SCAG's 2008 Regional Transportation Plan Goals Consistency Analysis) that the project meets consistency with Growth Visioning Principle 2.

Principle 3: Enable prosperity for all people.

GV P3.1 *Provide, in each community, a variety of housing types to meet the housing needs of all income levels.*
GV P3.2 *Support educational opportunities that promote balanced growth.*
GV P3.3 *Ensure environmental justice regardless of race, ethnicity or income class.*
GV P3.4 *Support local and state fiscal policies that encourage balanced growth*
GV P3.5 *Encourage civic engagement.*

SCAG Staff Comments:

A14-6

SCAG staff is generally in agreement with the analysis in Table 5.8-3 (SCAG's 2008 Regional Transportation Plan Goals Consistency Analysis) that the project meets consistency with Growth Visioning Principle 3. The only principle that does not meet consistency is GV P3.1, due to the fact that the proposed project does not intend to include any affordable housing. If the project will include affordable housing, please indicate that in the Final EIR. Also, SCAG staff finds that GV P3.5 is not applicable to this particular project.

Principle 4: Promote sustainability for future generations.

GV P4.1 *Preserve rural, agricultural, recreational, and environmentally sensitive areas*
GV P4.2 *Focus development in urban centers and existing cities.*
GV P4.3 *Develop strategies to accommodate growth that uses resources efficiently, eliminate pollution and significantly reduce waste.*
GV P4.4 *Utilize "green" development techniques*

A14-7

SCAG Staff Comments:

SCAG staff is in agreement with the analysis in Table 5.8-3 (SCAG's 2008 Regional Transportation Plan Goals Consistency Analysis) that the project meets consistency with Growth Visioning Principle 4.

DOCS# 151596
Page 5

May 14, 2009 **SCAG No. I20090069**
Mr. Jacobs

CONCLUSION

The proposed project generally meets consistency with SCAG Regional Transportation Plan Goals and Growth Visioning Principles.

All feasible measures needed to mitigate any potentially negative regional impacts associated with the proposed project should be implemented and monitored, as required by CEQA. Refer to the SCAG List of Mitigation Measures for additional guidance, which may be found here: http://www.scag.ca.gov/igr/documents/SCAG_IGRMMRP_2008.pdf

A14-8

When a project is of statewide, regional, or areawide significance, transportation information generated by a required monitoring or reporting program shall be submitted to SCAG as such information becomes reasonably available, in accordance with CEQA, Public Resource Code Section 21018.7, and CEQA Guidelines Section 15097 (g).

DOCS# 151596
Page 6

A14. Response to Comments from Jacob Lieb, Manager, Assessment Housing and EIR, Southern California Association of Governments, dated May 14, 2009.

A14-1 Detailed analyses of the proposed project's consistency with Southern California Association of Governments (SCAG's) Regional Transportation Plan (RTP) and Compass Growth Vision (CGV) are provided in Section 5.8, *Land Use and Planning*, of the DEIR. A copy of the FEIR will be submitted to SCAG for review.

A14-2 A comparison of the growth estimates of SCAG and the proposed project are included in Section 5.10, *Population and Housing*, of the Recirculated DEIR.

A14-3 The Recirculated DEIR has been revised to quantify emissions reductions from business-as-usual to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The recirculated GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions. Please refer to Section 5.15, *Global Climate Change*, for a detailed analysis on project emissions.

A14-4 Comment noted. No further response necessary.

A14-5 Comment noted. No further response necessary.

A14-6 SCAG staff is generally in agreement with the project's consistency with CGV Principal 3. SCAG determined that the project is inconsistent with GV P3.1, which is associated with affordable housing. However, the proposed project includes incentives for affordable housing units. The IBC Vision Plan caps development at 15,000 residential units. However, the City allows a density bonus for affordable units in the IBC Vision Plan area. The City's density bonus provisions allow a potential additional 2,038 units within the IBC Vision Plan area. A discussion of proposed affordable units is included in Section 5.10, *Population and Housing*, in the Recirculated DEIR.

A14-7 Comment noted. No further response necessary.

A14-8 This comment is noted and will be forwarded to the City Council for their consideration. With regard to the mitigation measures in the cited documents, plans, programs, or policies (PPPs) and project design features (PDFs) that pertain to the significant and unavoidable impacts of the IBC Vision Plan are duplicates of PPPs and PDFs discussed in the DEIR; statues, regulations, and rules that would apply to project-level proposals; and/or are descriptive of the general processes that the City would follow in the CEQA analysis of specific-project proposals. Adoption of these mitigation measures is therefore not required.

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LETTER A15 – Southern California Gas Company (1 page)

Southern California Gas Company

A Sempra Energy utility℠

1919 S. State College Blvd.
Anaheim, CA 92806-6114

RECEIVED

APR 06 2009

COMMUNITY DEVELOPMENT
CITY OF IRVINE

April 3, 2009

City of Irvine
P.O. Box 19575
Irvine, CA 92623-0575

Attention: Bill Jacobs

Subject: EIR for Irvine Business Complex (IBC) SCH#2007011024.

Thank you for providing the opportunity to respond to this E.I.R. Document. We are pleased to inform you that Southern California Gas Company has facilities in the area where the aforementioned project is proposed. Gas service to the project can be provided from an existing gas main located in various locations. The service will be in accordance with the Company's policies and extension rules on file with the California Public Utilities Commission when the contractual arrangements are made.

This letter is not a contractual commitment to serve the proposed project but is only provided as an informational service. The availability of natural gas service is based upon conditions of gas supply and regulatory agencies. As a public utility, Southern California Gas Company is under the jurisdiction of the California Public Utilities Commission. Our ability to serve can also be affected by actions of federal regulatory agencies. Should these agencies take any action, which affect gas supply or the conditions under which service is available, gas service will be provided in accordance with the revised conditions.

A15-1

This letter is also provided without considering any conditions or non-utility laws and regulations (such as environmental regulations), which could affect construction of a main and/or service line extension (i.e., if hazardous wastes were encountered in the process of installing the line). The regulations can only be determined around the time contractual arrangements are made and construction has begun.

Estimates of gas usage for residential and non-residential projects are developed on an individual basis and are obtained from the Commercial-Industrial/Residential Market Services Staff by calling (800) 427-2000 (Commercial/Industrial Customers) (800) 427-2200 (Residential Customers). We have developed several programs, which are available upon request to provide assistance in selecting the most energy efficient appliances or systems for a particular project. If you desire further information on any of our energy conservation programs, please contact this office for assistance.

Sincerely,

Mike Harriel
Technical Services Supervisor
Pacific Coast Region - Anaheim

MH/mc
eir02.doc

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A15. Response to Comments from Mike Harriel, Technical Services Supervisor, Pacific Coast Region, Anaheim, Southern California Gas Company, dated April 3, 2009.

A15-1 The project's impact on SCGC is discussed in Section 5.14, *Utilities and Service Systems,* in the Recirculated DEIR.

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LETTER A16 – State of California Department of Transportation (3 pages)

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894
Tel: (949) 724-2267
Fax: (949) 724-2592

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To Bill Jacobs | From John Xu
Co./Dept. COI | Co. Caltrans
Phone # | Phone # 949-724-2338
Fax # 949-724-6440 | Fax #

May 12, 2009

Mr. Bill Jacobs
City of Irvine
Community Development Department
P. O. Box 19575
Irvine, California 92623-0575

File: IGR/CEQA
SCH #: 2007011024
Log #: 1817B
I-405, I-5, SR-55,
SR-73, SR-261

Subject: Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code

Dear Mr. Jacobs:

Thank you for the opportunity to review and comment on the **Draft Environmental Impact Report (DEIR) for the Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code Project.** The proposed project includes a General Plan Amendment and a Zoning Ordinance Amendment to allow for an increase in the cap of total units from 9,401 to 15,000, excluding a potential for 1,191 density bonus units. The 15,000 unit cap will be offset by a reduction of 2,715,062 square feet of non-residential office equivalency square footage, and would provide for a potential of 5,599 additional dwelling units, of which 2,522 units are currently in process. The 2,800-acre IBC comprises Planning Area 36, and is generally bounded by the former Tustin Marine Corps Air Station to the north, the San Diego Creed channel to the east, John Wayne Airport and Campus Drive to the south, and the Costa Mesa (SR-55) Freeway to the west in the City of Irvine.

The California Department of Transportation (Department), District 12 is a responsible agency on this project, and has the following comments:

1. For any future individual projects within the IBC Area, additional environmental documentation may be required to address impacts not discussed in the this DEIR, and should be submitted to the Department for review and comment. A16-1

2. Prepare HCM Analysis for following intersections: A16-2

   - SR-55 ramps at Paularino Avenue
   - Paularino Avenue at Red Hill Avenue
   - SR-55 ramps at Baker Street
   - SR-55 ramps at MacArthur Boulevard
   - SR-55 ramps at Dyer Road
   - Grand Avenue at Warner Avenue
   - SR-55 ramps at McFadden Avenue
   - I-405 ramps at Culver Drive

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- I-405 ramps at Jamboree Road
- Jamboree Road at Main Street
- Jamboree Road at Michelson Drive
- I-405 ramps at MacArthur Boulevard
- I-5 ramps at Newport Avenue
- I-5 ramps at Redhill Avenue
- I-5 ramps at Tustin Ranch Road
- I-5 ramps at Jamboree Road
- I-5 ramps at Culver Drive

A16-2 cont'd.

3. Provide a summary table that illustrates the results of an HCM analysis for "With & Without Project" and under existing, 2013, and post-2030 scenarios. An independent appendix should be created with just HCM analysis and related results under all scenarios. A16-3

4. A backup data source should be provided to support the mainline volumes used in the analysis for the calculation of Density factor. The volumes applied should relate to observed speeds as well as the speeds used (to be reflected) in the analysis for the mainline density calculations. A16-4

5. For ramp analysis, density is no longer a factor in determining ramp performance. Instead, the ramp storage capacity, merge/diverge movement, and ramp volumes are the determining factors for ramp performance evaluation in the analysis. Analyze ramps using these factors. A16-5

6. HCM Version 5.3 has been used for the analysis in the Traffic Study after the scope of work was signed. Check the density analysis to ensure consistent results are achieved using the most recent version of HCM (Version 5.4). A16-6

7. Check the percentage differences shown on Table 5.9 (page 209 of Traffic Study) as well as similar tables throughout the document. The percentages need to be recalculated using the correct base numbers. A16-7

8. The ratio of 1.30 persons per unit (apartments & condominiums) provided in the footnote of Table 7-2 of the DEIR (Volume I IBC Draft EIR, Chapter 07 Alternatives, page 7-7) appears low. Provide documentation and show 2000 U.S. Census tables used to calculate this estimate. We strongly recommend the inclusion of this documentation in the DEIR because population variable is an important factor in determining trip generation. A16-8

9. On page 5.13-253 of the DEIR, it is stated that "implementation of the transportation improvements to the Caltrans facilities is the primary responsibility of Caltrans", and "neither Caltrans nor the State has adopted a program that can ensure that locally-contributed impact fees will be tied to improvements to freeway mainlines." Note that under the California Environmental Quality Act (CEAQ), it is the Lead Agency's responsibility to mitigate a project's significant environmental impacts. A Traffic Mitigation Agreement -- Fair Share Deferment agreement has been developed between The Department and the City of Irvine (City) in the past to mitigate cumulative impacts to freeway mainlines from the Planning Area 18, 33 (Lot 109), 34 and 39 General Plan Amendment and Zone Change project. The City has agreed to collect fair share contributions from the project proponent and pay toward mainline improvement projects. A similar methodology should be employed to determine appropriate mitigation measures for cumulative impacts on State Transportation Facilities from this IBC Vision Plan and Mixed Use Overlay Zoning Code project. The methodology A16-9

for calculating the project's fair share contribution should follow the one outlined in the Department's "Guide for the Preparation of Traffic Impact Study" available at: http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf.

A16-9 cont'd.

Continue to keep us informed of this project and any future developments, which could potentially impact the State Transportation Facilities. If you have any questions or need to contact us, do not hesitate to call Zhongping (John) Xu at (949) 724-2338.

Sincerely,

CHRISTOPHER HERRE
Branch Chief, Local Development/Intergovernmental Review

c: Terry Roberts, Office of Planning and Research

"Caltrans improves mobility across California"

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A16. Response to Comments from Christopher Herre, Branch Chief, Local Development\Intergovernmental Review, State of California Department of Transportation, dated May 12, 2009.

A16-1 At the request of the commenter, the California Department of Transportation (Caltrans) will be included on the mailing list for future projects in the IBC Vision Plan area.

A16-2 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A16-3 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A16-4 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A16-5 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A16-6 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A16-7 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A16-8 The 1.3 persons per household figure has nothing to do with the trip generation factors used in the ITAM model. Therefore, the persons per household factor does not affect the traffic analysis prepared for the project.

A16-9 Comment noted. The City anticipates that a mitigation agreement similar to those used for other Planning Areas will be negotiated with Caltrans for impacts associated with the IBC Vision Plan and Mixed Use Overlay Zoning Code project.

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LETTER A17 – State Clearinghouse (2 pages)

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT

ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR

May 18, 2009

Bill Jacobs
City of Irvine
P.O. Box 19575
Irvine, CA 92623-9575

Subject: Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36)
SCH#: 2007011024

Dear Bill Jacobs:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on May 14, 2009, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

> "A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

A17-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2007011024
Project Title Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36)
Lead Agency Irvine, City of

Type EIR Draft EIR

Description The proposed project would allow for an increase in total units within the irvine Business Complex (Planning Area 36) from 9,401 units to 15,000 units. In addition, a total of 1,191 density bonus units would be allowed in accordance with State Law for a total 16,191 units. The current General Plan allows for 53,461,052 square feet of office equivalency in Planning Area 36. The total 5,599 additional new units (either potential or in process) remaining under the 15,000 unit cap would be offset by a reduction of 2,715,062 square feet of non-residnetial office equivalency square footage, reducing the number to 50,899,418 square feet. If approved, the proposed project would allow for the development of 6,380,955 non-residential square feet and 458 hotel based on the existing trip caps for the area.

Lead Agency Contact

Name Bill Jacobs
Agency City of Irvine
Phone 949-724-6521 **Fax**
email
Address P.O. Box 19575
City Irvine **State** CA **Zip** 92623-9575

Project Location

County Orange
City Irvine
Region
Lat / Long 33° 41' 42" N / 117° 50' 42" W
Cross Streets Planning Area 36 - Irvine Business Complex (IBC)
Parcel No.
Township 5/6S **Range** 9W **Section** **Base** Tustin

Proximity to:

Highways I-405, SR-55
Airports John Wayne Airport
Railways
Waterways San Diego Creek
Schools Westpark, Culverdale
Land Use Office, Light Industrial, Retail, Residential / 5.1 IBC Industrial, 5.3 IBC Residential/Urban and Industrial

Project Issues Air Quality; Agricultural Land; Archaeologic-Historic; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Landuse; Biological Resources; Coastal Zone; Cumulative Effects; Economics/Jobs; Growth Inducing

Reviewing Agencies Resources Agency; Department of Fish and Game, Region 5; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 12; Department of Housing and Community Development; Integrated Waste Management Board; Regional Water Quality Control Board, Region 8; Department of Toxic Substances Control; Native American Heritage Commission

Date Received 03/27/2009 **Start of Review** 03/27/2009 **End of Review** 05/14/2009

Note: Blanks in data fields result from insufficient information provided by lead agency.

A17. Response to Comments from Terry Roberts, Director, State Clearinghouse, dated May 18, 2009.

A17-1 The letter acknowledges that the City of Irvine has complied with State Clearinghouse review requirements for the IBC Vision Plan DEIR, pursuant to CEQA. No response is required. It should be noted that the DEIR was Recirculated in response to comments.

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LETTER A18 – University of California Irvine (3 pages)

UNIVERSITY OF CALIFORNIA, IRVINE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

OFFICE OF CAMPUS & ENVIRONMENTAL PLANNING

750 UNIVERSITY TOWER
IRVINE, CALIFORNIA 92697-2325
(949) 824-6316
(949) 824-1213 Fax

May 14, 2009

Mr. Bill Jacobs, AICP
Principal Planner
City of Irvine
One Civic Center Plaza
P.O. Box 19575
Irvine, California 92623-9575

Re: Irvine Business Complex Residential/Mixed Use Vision Plan and Overlay Zone
Draft Environmental Impact Report (SCH No. 2007011024)

Dear Mr. Jacobs:

Thank you for providing the University of California, Irvine ("UCI") with the opportunity to review the City of Irvine's proposed Irvine Business Complex Residential/Mixed Use Vision Plan and Overlay Zone ("Project") and accompanying Draft Environmental Impact Report ("DEIR").

In commenting on the two Initial Study and Notice of Preparation documents (dated January 2007 and October 2008) circulated by the City for the Project, UCI requested that the Project's environmental analysis consider UCI's Long Range Development Plan ("LRDP") which includes the North Campus development area located at Jamboree Road and Campus Drive adjacent to the Project. The LRDP and its accompanying Program EIR describe UCI's projected growth through the 2025-26 horizon year. (The Regents of the University of California adopted the current version of the LRDP in November 2007.) In its comment letters, UCI identified Project transportation and traffic as the key issue potentially affecting the North Campus as well as UCI's implementation of the overall LRDP development program. As described in the 2007 LRDP, the North Campus is planned to accommodate about 950,000 square feet of office and/or research and development space plus 435 multi-family dwelling units. Existing facilities on the North Campus include academic and support facilities, the UCI Arboretum, and the Child Development Center. A18-1

UCI has the following comments and questions regarding the Project and the DEIR. We are interested in confirming that the analyses in the DEIR fully considered UCI's projected growth as described in the LRDP and that the Project would not significantly impact our ability to implement the LRDP, including the North Campus development program.

1. The DEIR provides no information regarding what UCI land use and trip generation assumptions were used in Project traffic forecasts and analyses. Please identify assumptions for UCI that were utilized in the Project traffic analyses for the Baseline, 2013, and 2030 conditions. The analyses should include 2007 LRDP EIR land use data and traffic generation projections for all UCI traffic analysis zones. Please confirm that the 2007 LRDP data were utilized in the analyses and provide a table or other listing of land use assumptions and trip generation factors for UCI zones. A18-2

2. Please confirm whether the updated IBC Transportation Mitigation Fee program will fully fund the identified Project traffic mitigation measures or if other funding sources will be required to implement these improvements. A18-3

3. Please confirm whether the IBC Improvement Fee Program established to provide pedestrian ways and other improvements would be the source of funding for the pedestrian/ bicycle bridges identified in the IBC Vision Plan. A18-4

4. The Project traffic mitigation program identified a third southbound left-turn lane at University Drive and California Avenue (Intersection #192). Please identify whether additional improvements would be required on California Avenue on the UCI campus in order to provide additional receiving lanes to accommodate the triple left-turn lanes. A18-5

5. The IBC Vision Plan provides for a network of new connector streets to reduce block size and to promote walkability. How will the addition of many new streets impact Project traffic distribution, impacts, and mitigation? A18-6

6. Please identify what assumptions were used in the Project analysis regarding traffic access/ egress points to UCI's North Campus. A18-7

7. The "Applicable Plans and Regulations" subsection in the Land Use section of the DEIR does not list the UCI LRDP as a document that was considered and analyzed as part of the Project. Please identify the level to which the LRDP land use, circulation, and other elements were considered in the Project analysis. A18-8

8. Please identify whether Project street and pedestrian improvements for areas bordering the UCI campus would require the acquisition of rights-of-way or other coordination from UCI. A18-9

9. The Project includes a "creekwalk" concept to provide an enhanced pedestrian and open space system along the San Diego Creek. UCI encourages the City to expand this concept to include the San Diego Creek channel to the MacArthur Boulevard bridge which would provide stronger pedestrian linkages between the IBC and the UCI campus and encourage greater use of this regional amenity. A18-10

10. The proposed "creekwalk" concept along San Diego Creek identifies a system of pedestrian/bicycle bridges to provide connections to the Creek area. Figure 3-4 in the DEIR appears to identify a proposed pedestrian/bicycle bridge crossing the San Diego Creek in the vicinity of Fairchild Road, but the diagram is unclear. Please clarify whether this bridge is a part of the Project as it would strengthen pedestrian and bicycle linkages at the southern end of the Project. A18-11

11. The Project includes two distinct land areas, the primary IBC area and a geographically separate smaller land area at Jamboree/Fairchild. The Vision Plan does not identify specific pedestrian and bicycle linkages connecting this smaller area to other areas of the IBC. Does the Project contemplate pedestrian or bicycle linkages between these two separate areas and, if so, would these connections involve the use of UCI North Campus property? A18-12

12. As a part of the consultation process for the 2007 LRDP, the City of Irvine recommended that the North Campus development area be designed as a "gateway" element consistent with the principles of the Draft IBC Vision Plan. As the current Draft Vision Plan does not identify the Jamboree/Campus area as a gateway, does the City still support this planning recommendation? A18-13

13. As suggested by proposed General Plan Policy N-3(a), we recommend that the route for the iShuttle Route C be revised to include a stop adjacent the UCI North Campus. A18-14

UCI looks forward to continuing to work cooperatively with the City to ensure that future North Campus planning and development are compatible with neighboring IBC development. Please contact me at (949) 824-6316 if you require additional information or would like to meet to discuss these issues in more detail.

Sincerely,

Richard Demerjian
Director

c: Wendell Brase
Richard Orr

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A18. Response to Comments from Richard Demerjian, Director, University of California Irvine, dated May 14, 2009.

A18-1 Land use and trip generation associated with the University of California, Irvine (UCI) associated with the 2007 Long Range Development Plan (LRDP) EIR has been updated in the Recirculated DEIR. This information is discussed in Sections 5.8, *Land Use and Planning*, and 5.13, *Transportation and Traffic,* of the Recirculated DEIR.

A18-2 The DEIR has been revised to address your comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A18-3 As described in Mitigation Measures 5.13-1 and 5.13-2, an AB 1600 Nexus Study has been completed for the project which identifies funding sources to fully fund project-related traffic mitigation.

A18-4 The IBC Improvement Fee program will be the source of funding for the pedestrian/bicycle bridges identified in the IBC Vision Plan.

A18-5 Please refer to Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR, which indicates that a third southbound left-turn lane is no longer necessary.

A18-6 The DEIR has been revised to address the commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

A18-7 No changes to existing access points for UCI's North Campus were assumed as part of the project.

A18-8 Per your request, Chapter 4, *Environmental Setting*, and Section 5.8, *Land Use and Planning,* of the Recirculated DEIR have been updated to include reference to the UCI LRDP as a document that was considered and analyzed as part of the project. Additionally, Section 5.8 includes an analysis of the proposed project's consistency with the LRDP.

A18-9 None of the traffic or infrastructure improvements identified in the Recirculated DEIR appear to require additional right-of-way affecting UCI's property.

A18-10 Expanded pedestrian connections beyond those outlined in the IBC Vision Plan are not a component of the proposed project and is not analyzed in the DEIR. However, the City will take this comment under advisement.

A18-11 No pedestrian bridges are planned in the vicinity of Fairchild Road.

A18-12 No additional pedestrian/bicycle connections beyond the existing on-street bike lane are proposed as part of the project. The proposed project does include sidewalk and parkway enhancements for Jamboree Road.

A18-13 The IBC Vision Plan will be clarified to include the southern entry to the City as a gateway. The revised IBC Vision Plan will be included in the Recirculated DEIR.

A18-14 Comment noted. However, rerouting **The *i* Shuttle** routes is not a component of the proposed project.

LETTER I1 – William Treseau (2 pages)

William Halligan

From: Bill Jacobs [bjacobs@ci.irvine.ca.us]
Sent: Friday, May 15, 2009 8:16 AM
To: William Halligan; Douglas Williford; Brian Fisk; Lisa Thai; Sun-Sun Murillo; Jeff Melching; Konnie Dobreva
Subject: FW: IBC EIR Response

One more.
-Bill

From: William Treseau [mailto:willytreseau@gmail.com]
Sent: Thu 5/14/2009 7:18 PM
To: Bill Jacobs
Cc: William Treseau
Subject: IBC EIR Response

May 14, 2009

Response to Draft IBC EIR

Mr. Jacobs:

The release of this EIR seems to be part of a continued effort to obfuscate and mislead the community. My comments are summarized as follows. We also note that there is no cutoff time listed in the Cities posted request for comments:

1. Where are the Mitigation measures (other than traffic mitigations) associated with the comprehensive plan, and where, are the mitigations associated with individual projects that are being proposed, including mitigations associated with the soil and groundwater contamination identified in the Environmental Data Report? I1-1

2. Where is the funding program to pay for the roadway improvements? We should be able to review how you plan to pay for the roadway improvements. Especially since the courts have said there is an issue associated with unmitigated impacts in the 1992 EIR. If you can't pay for the impacts, it means that they are effectively unmitigated. The funding plan, including any fees and analysis should be presented for review in the zoning and land-use sections of the EIR, or minimally in the appendices. I1-2

3. How will you pay for Traffic mitigations being proposed in other jurisdictions? Are there agreements in place? Have those jurisdictions approved the mitigations? If not, won't they remain unfunded, and as a consequence be unmitigated impacts? I1-3

4. The Planning data seems to have discrepancies with the traffic modeling data. Does this mean that the traffic mitigations are underreported and under analyzed? I1-4

5. The Cities Urban Neighborhood district is still close in many locations to Industrial Users (no buffer) and the City seems to be artificially creating densities in areas that it believes important to I1-5

1

its Vision Plan like the Jamboree corridor. For example, the TAZ Zone Methodology shows that TAZ Zone 535 is fixed as Residential, but Appendix 9 of the vision plan methodology doesn't acknowledge any residential in the zone? So, presumably, residential wasn't analyzed for the Zone? It is further confusing that the Vision Plan Summary for TAZ 535 shows 566,000 sf of Office, 39,000 sf of commercial, 168,947 sf of Hotel equating to 350 rms which is well in excess of the 580,000 sf of zoning potential listed in a previous TAZ land use table?? Where are the "mostly Residential" uses proscribed in the General Plan and Vision Plan document? This seems designed to mislead industrial users about the true intended purpose for this and other TAZ zones. In fact, the only uses not mentioned for this TAZ are the warehouse/manufacturing uses that were existing until they were torn down a few months ago. These uses had a low traffic generating rate and a total footprint of is about 230,000 sf which compares to the Data Set from the 1992 EIR. We can't find any information supporting the densities by way of TDR's or approvals beyond the original manufacturing uses, and it appears that the City is manufacturing data and densities that it couldn't otherwise substantiate, and creating a mess of impacts to adjacent users like Allergan, and adjacent Cities like Newport Beach.

I1-5 cont'd.

6. There seems to be continued confusion over whether the City will aggregate and transfer unused trips in TAZ zones. The movement or aggregation of trips doesn't seem to be analyzed, and it is unclear from the planning/zoning information how the program will be implemented.

I1-6

2

I1. Responses from William Treseau, dated May 14, 2009.

I1-1 As shown in Section 1.2.2, *Type and Purpose of this DEIR*, the DEIR has been revised to include a program-level analysis for the IBC Vision Plan and a project-level analysis for the pending individual projects listed in Chapter 3, *Project Description*. As noted in Chapter 3, the pending development projects are evaluated in the DEIR to the extent that specific development project information, including density bonus units, is available. Please refer to the individual topical sections in Chapter 5 of the Recirculated DEIR for a program- and project-level evaluation of each topic. Mitigation measures have been crafted to apply to all future development within the IBC, including the individual pending projects outlined in Chapter 3. Future development projects within the IBC Vision Plan area would be required to adhere to the mitigation measures outlined in the DEIR.

The measure regarding soil and/or groundwater contamination as outlined in the Environmental Data Resources report (see Appendix J) has been included as Project Design Feature 6-8 in Section 5.6, *Hazards and Hazardous Materials*.

I1-2 New development within the IBC Vision Plan is required to pay traffic impact fees (TIF). These fees are established based on the City's Capital Improvement Program (CIP), which is updated every year, and would include traffic improvements associated with the traffic mitigation in the EIR. The City's CIP is available at the City for review.

I1-3 The City of Irvine has existing agreements with the affected jurisdictions. As part of project implementation, these agreements may be amended. However, as stated in Section 5.13, *Transportation and Traffic,* the City of Irvine cannot guarantee implementation of the proposed mitigation in other jurisdictions. As a result, the Recirculated DEIR identifies traffic impacts in other jurisdictions as a Significant Unavoidable Adverse Impact.

I1-4 The DEIR has been revised to address commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

I1-5 The DEIR has been revised to address commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

I1-6 The DEIR has been revised to address commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

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LETTER O1 – Gabrielino~Tongva Tribe (5 pages)

GABRIELINO-TONGVA TRIBE
A California Indian Tribe historically known as San Gabriel Band of Mission Indians

501 Santa Monica Blvd., Ste. 500, Santa Monica, CA 90401-2490
www.gabrielinotribe.org • tel: (310) 587-2203 • fax: (310) 587-2281

RECEIVED
APR 09 2009
COMMUNITY DEVELOPMENT
CITY OF IRVINE

April 6, 2009

Bill Jacobs, AICP
Principal Planner
City of Irvine
Community Development Department
P.O. Box 19575
Irvine, CA 92623-0575

Reference: Irvine Business Complex
Native American Monitoring/Most Likely Descendant

Dear Bill:

The Environmental Impact Report for the above referenced project states the project has potentially significant impacts to archaeological resources, paleontological resources and burial sites. Due to the fact that the proposed project is in a cultural sensitive area it is our concern that the City of Irvine appoints Native American Monitors from the largest faction of the Tribe to represent this project. O1-1

We are the largest faction of the Gabrielino-Tongva Tribe, with over 85% of descendants of the historic Gabrielino Tribe. We have approximately 1,600 members and the next largest faction has less than 150 members. A membership Table is enclosed to help guide you through the various factions of the Tribe. O1-2

We strongly recommend the City of Irvine hire Native American monitors approved by our faction. The contact information for the six approved six monitors is enclosed. Their work is arranged through our administrative headquarters which is staffed fulltime.

The Tribe has had continuing problems in the past with Native American monitors that are not approved by the Tribe, including Anthony Morales, Sam Dunlap & Robert Dorame.

Native American Monitoring projects under the supervision of monitors not approved by our Tribe have been delayed, have caused controversy, and have lead to difficult inter- and intra-tribal relationships. O1-3

In particular, the above stated individuals and other Most Likely Descendents misrepresent our Tribe by failing to consult with our Tribe on sensitive archaeological findings and reburial issues. These controversies have been extremely painful for our elders who were not invited to participate in reburials for our ancestors.

Tribal Council

Hon. Bernie Acuna
Hon. Charles Alvarez
Hon. Linda Candelaria
Hon. Martha Gonzalez Lemos
Hon. Felicia Sheerman
Tribal Administrator: Barbara Garcia
Tribal Controller: Steven K. Johnson

Please also see the attached most updated NA Contact List from the Native American Heritage Commission. We're requesting the City of Irvine in making the ethical choice in selecting a Native American Monitor/MLD for your project. O1-4

Sincerely,

Felicia Sheerman, Tribal Councilwoman
Gabrielino-Tongva Tribe

Enclosures

From left to right: Councilman Charles Alvarez, Councilwoman Linda Candelaria, Councilwoman Martha Gonzalez, Councilwoman Felicia Sheerman, Councilman Bernie Acuna

Name of Tribal Faction (Updated on January 29, 2009)	Class B Members (BIA documentation)	Class C Members (no documentation)
Gabrielino-Tongva Tribe, a California Indian Tribe historically known as San Gabriel Band of Mission Indians (www.gabrielinotribe.org) (1630 members, 85.7% of all members)	**646 (87 %)**	**984 (85%)**
Gabrielino/Tongva Nation (Sam Dunlap, Virginia Carmelo, www.tongvatribe.net) (238 members, 12.5% of all members)	65 (9%)	173 (15%)
Gabrielino-Tongva Indians of San Gabriel Band, (Anthony Morales, www.tongva.com) (28 members, 1.5% of all members)	28 (4%)	None (0%)
Beaumont Group (no formal name, no website) (6 members, 0.32% of all members)	None (0%)	6 (1/2%)
Coastal Gabrielinos & Dieguenos (no formal name, no website)	Unknown	Unknown
Totals (1902 All Members)	**739 (100%)**	**1163 (100%)**

List of Approved Native American Monitors/Most Likely Descendant

1) Robert Dominguez
2) Bernie Acuna
3) Charles Alvarez
4) Linda Candelaria
5) Martha Gonzalez Lemos
6) Felicia Sheerman

Please use the following contact information for all Monitors:

Gabrielino-Tongva Tribe
501 Santa Monica Blvd, Suite 500
Santa Monica, CA 90401
Phone: (310) 587-2203
Cell: (310) 428-7720
Fax: (310) 587-2281

Most Likely Descendant Approved by the Native American Heritage Commission:

Bernie Acuna, Gabrielino-Tongva, Most Likely Descendant

Please use the following contact information for MLD:

Gabrielino-Tongva Tribe
501 Santa Monica Blvd, Suite 500
Santa Monica, CA 90401
Phone: (310) 587-2203
Cell: (310) 428-7720
Fax: (310) 587-2281

Native American Contact
Los Angeles County
March 26, 2009

Ti'At Society
Cindi Alvitre
6515 E. Seaside Walk, #C Gabrielino
Long Beach , CA 90803
calvitre@yahoo.com
(714) 504-2468 Cell

Gabrielino Tongva Indians of California Tribal Council
Robert Dorame, Tribal Chair/Cultural Resources
P.O. Box 490 Gabrielino Tongva
Bellflower , CA 90707
gtongva@verizon.net
562-761-6417 - voice
562-925-7989 - fax

Tongva Ancestral Territorial Tribal Nation
John Tommy Rosas, Tribal Admin.
, Gabrielino Tongva
tattnlaw@gmail.com
310-570-6567

Gabrielino-Tongva Tribe
Felicia Sheerman
501 Santa Monica Blvd, # 500 Gabrielino
Santa Monica , CA 90401
(310) 587-2203
(310) 428-7720 - cell
(310) 587-2281
fsheerman1@GabrielinoTribe. or g

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693 Gabrielino Tongva
San Gabriel , CA 91778
(828) 286-1262 -FAX
(626) 286-1632
(626) 286-1758 - Home
(626) 286-1262 Fax

Gabrielino Tongva Nation
Sam Dunlap, Tribal Secretary
P.O. Box 86908 Gabrielino Tongva
Los Angeles , CA 90086
samdunlap@earthlink.net

(909) 262-9351 - cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed Telecommunications Facility Project No. IE25736-A; located in the City of Walnut; Los Angeles County, California for which a Sacred Lands File search and Native American Contacts list were requested.

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O1. Responses from Felicia Sheerman, Tribal Councilwoman, Gabrielino~Tongva Tribe, dated April 6, 2009.

O1-1 Please refer to PPP 4-2 in the Recirculated DEIR for the requirements relating to the accidental discovery or recognition of human remains.

O1-2 Comment noted. No further response necessary.

O1-3 See Response O1-1.

O1-4 Comment noted. See Response O1-1.

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LETTER O2 – Industrial Environmental Association (36 pages)

INDUSTRIAL ENVIRONMENTAL ASSOCIATION

May 11, 2009

Mr. Bill Jacobs
City of Irvne
P. O. Box 19575
Irvine, CA 92623-0575

Via E-Mail: bjacobs@ci.irvine.ca.us

Re: Comments on Draft Environmental Impact Report (DEIR) for the Irvine Business Park

The Industrial Environmental Association (IEA) has represented industrial facilities throughout California for the past 25 years on a wide range of environmental, regulatory, permitting, operational and facility issues. Our organization has significant technical and practical experience in interfacing with local, state and federal regulatory agencies on issues that affect industrial facilities, as well as land use background working with the cities of Chula Vista, San Diego, Los Angeles, San Jose and the Ports of San Diego, Long Beach and Los Angeles on general plan updates, project specific approvals and transition zone issues and policies. IEA also has worked extensively with neighborhoods and community-based organizations on a wide array of impacts and concerns with regard to the proximity of residences to industrial facilities. IEA has been a member of state and local working groups to develop policies and land use guidance documents that directly address industrial and residential co-location impacts and concerns. O2-1

We are submitting comment regarding the Draft Environmental Impact Report (DEIR) for the Irvine Business Complex (IBC). We are very disappointed that a number of serious concerns that we consistently raised during the development of the IBC plan and on the notice of preparation of the EIR on the effects of co-location of industrial and residential uses have still not been adequately addressed in the DEIR. The co-location of residential and industrial uses in the IBC will begin a process of industrial decline in the IBC. The first stated goal of the IBC to retain the job base cannot be achieved without a fair and predictable land use planning process that precludes the co-location of residential in the IBC. It is recognized by other land use jurisdictions throughout California and other states that industrial uses and residential uses are "incompatible." The incompatibility of industrial and residential uses was codified by AB 1533 (Keeley, Chapter 762, 2001, that specified the state prepare general plan guidelines for local governments to address providing for the location of new schools and residential dwellings in a manner that avoids proximity to industrial facilities. The California Office of Planning and O2-2

Research issued that land use guidance to municipalities in 2003 that states "It is important to recognize that there are certain industrial uses that will always be incompatible with residential and school uses." Residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust) and exposure to hazardous materials." The DEIR does not address that inherent incompatibility. O2-2 cont'd.

While smart growth approaches recommend the integration of land uses and flexibility in land use designations and zoning as useful tools, mixing those use types should be limited to industrial, office, commercial and possibly some retail. Integration of land uses is contraindicated when incompatible industrial and residential uses occur. Smart growth and flexibility in land uses cannot replace the basic tenet of zoning to separate incompatible land uses. O2-3

These and a number of other issues previously raised have been ignored altogether or others categorized as non-significant, and therefore, we object to the findings and conclusions of the DEIR unless the "No Project Alternative" is adopted. O2-4

SECTION 5 – ENVIRONMENTAL ANALYSIS:

*Neighborhood Character:

Historically, in urban areas throughout the country, whenever residential uses have encroached on industrial uses, the result has been the incremental exodus of industry which occurs on a permit-by-permit, piece-of-equipment and operation-by-operation basis until ultimately facilities pick up stakes and move to areas more conducive to allowing the flexibility that businesses need to quickly modify their activities and operations to meet constantly changing production demands. The alternatives in the IBC represent a drastic change in character to the industrially-zoned area. Industries need to be clustered together to create synergies, shared programs, such as mutual aid agreements, have like facilities suitable in size and location, operate freely from neighborhood complaints and have no additional regulatory constraints. They thrive with interaction, they want their operations consolidated – not fragmented. They don't want to be isolated or separated, and they want growth capacity. All of this will change if the IBC alternatives are approved. O2-5

*Hazardous Materials:

Industrial facilities commonly and routinely use and have hundreds – in some cases thousands – of chemicals in their business plan inventory. Many of these products are considered hazardous due to their potential health and environmental impacts. Because industrial facilities use, handle, store, treat and emit hazardous emissions, they are regulated by numerous governmental agencies, including fire authorities. Facilities develop and implement multiple programs to protect their workers from exposure to chemicals in compliance with rules and regulations O2-6

enforced by these agencies, including the Hazard Communication Program, Injury and Illness Prevention Plan, Emergency Response/Action Plan, Site Vulnerability Assessment Plan, California Accidental Release Program, Respiratory Protection Program and Anti-Terrorism standards for chemicals. The site's Business Emergency Plan stipulates procedures for employees to follow in the event of an incident involving any hazardous material. As part of the plan, employees are trained and provided with safety information to help control any spill or release. Other related plans maintained at the facility, include an Emergency Contingency Plan and Emergency Evacuation Plan. There are, however, no regulatory requirements or comparable procedures for adjacent residents. Facility employees regularly receive training in emergency, health and safety procedures to minimize potential risks associated with the use of hazardous materials. This training includes, fire extinguisher operation; use of personal protective equipment; hazard communication; hazardous waste and environmental responsibility; and evacuation and disaster preparedness. These government control and oversight and regulatory programs are designed to protect worker health and not the health and/or safety of adjacent residents. O2-6 cont'd.

Colocation, particularly of the high density residential uses proposed for the IBC, needs to address these public safety and security concerns. Further, the onsite hazardous materials are continually changing to reflect new research, development of products or new processes in an industrial setting and cannot be adequately addressed by a particular point in time adjacency study. O2-7

There is also an added burden on the company being considered in the adjacency analysis to conduct their own study to validate information obtained and used in conclusions of the study – all at additional great cost and burden to the company. Specifically, any new residential that places additional burdens, such as a collocation, increased costs or operating change mandates on businesses should be required to pay for the costs borne by existing industrial users, just like the city is reimbursed its costs of application review. O2-8

Other issues that come up with regard to hazardous materials is that the use and storage can take place in all areas of an industrial site covered by a permit including outside buildings and storage and extending to loading docks and walking paths between the buildings of a multi-facility site. More considerations include:

-Facilities must have absolute control and be able to maintain the right to prohibit access to any portion of its facilities for the safety and security of its employees and the general public. O2-9

-Health and Safety Code Section 25534.1 (RMPP) requires consideration of proximity of industrial facilities for residential areas. O2-10

-Title 40 CFR Chapter 1, part 68.1, Subchapter C (RMP) requires an owner or operator or a stationary source that has a threshold quantity of a regulated substance to prepare a Risk Management Plan which describes the planning and response appropriate to mitigate a possible release of a regulated substance. O2-11

-Infectious materials included in the CDC/YSDA Select Agency list, NIH and CEC guidelines for use of biohazardous agents requiring a laboratory designation of biosafety level 2,3, or 4. O2-12

-Vivarium facilities require special surety risk planning associated with public protect and extremism. O2-13

-Drug Enforcement Administration regulations for scheduled substances or chemicals that could be diverted and/or used in illicit drug productions and narcotics. O2-14

-Proposition 65 regulated chemicals requires the state to publish annually a list of chemicals known to the state to cause cancer or reproductive toxicity. Within a workplace environment where Prop 65 chemicals are frequently used, there are regulatory requirements for the use of personal protective equipment and ventilation to protect workers for potential exposures. O2-15

-Deliveries, removal and transport occurring at night as an aggravation to noise is inconsistent with common principles of health and safety, where trucks will be delivering hazardous materials and chemicals though local residential neighborhoods. O2-16

The DEIR analysis of facilities with certain types of permits is based on only one point in time as industrial facilities frequently change their chemical inventories. While facilities routinely meet all of the above requirements in an industrial setting, their ability to do becomes more difficult, burdensome and costly if residential uses are located in close proximity. O2-17

As residential uses develop in close proximity to industrial uses, the cost of future compliance with state and federal regulatory schemes may increase dramatically, because industrial uses will likely be required to come into compliance based on new, stricter requirements as laws and regulatory programs are constantly being ratcheted down. O2-18

*Air Quality:

Health & Safety Code 44300 requires industrial users of listed substances to apply for an authority to construct the operation and maintain a permit for operation for numerous activities and associated emissions. When required by the agency, the report must also include information on the proximity of the substances sources may emit to potential receptors. An example is that industrial facilities typically have on-site numerous emergency diesel generators. Each generator is required to be permitted, but in addition must conduct a risk assessment study, at great added expense and time to the business, if the generator is within 1,000 feet of a residence or school. O2-19

*Visual:

With the growth of the high-tech industry, the use of minor and major telecommunication facilities and satellite antennas is growing. Even antenna siting has become controversial whenever a neighborhood can see that antenna. Rules are applied depending on the zoning of O2-20

the property, installation methods, size and height of the antenna and in some areas, other limitations also apply in the ability to site antennas depending upon the type of facility and proposed location. Facilities are required to comply with federal standards for RF radiation in accordance with the Telecommunications Act of 1996. However, municipalities have the authority to ask for proof of compliance if discretionary permits are applied for. These use permits are often challenged by neighborhoods. O2-20 cont'd.

*Public Nuisances:

Health & Safety Code Section 41700 states that no person shall discharge from any source any air contaminant which causes nuisance or annoyance to any considerable number of persons of the public or endangers the comfort, health or safety of such persons or public. This law gives wide latitude to regulatory agencies and municipalities to respond to complaints from neighbors. Regulatory agencies are "blind" to land use decisions. By law, they must and do respond to these public nuisance complaints and have the authority to place mitigation measures and demands on permitted industrial sources. In turn, demands such as facility modifications, limitations on operating hours, restrictions on activities, etc, occur which may jeopardize the ability of a company to operate. Public complaints drive costly mitigation measures to the industrial facility and place a burden on public agencies and public officials to address and respond to problems after the land use incompatibility has already occurred. Prevention of the incompatibility should be addressed in the DEIR so that residents, industrial activities and public agencies are not left to sort out eh problems and deal with the uses after bad land use decisions have been made that result in the incompatibility. O2-21

-Odors: Odors are a natural occurrence at many industrial facilities because of the nature of the hazardous materials on site. Organic solvents, many recognizable because of their strong odor or peculiar smell, are employed in industrial processes. Odors are the most common source of complaints to air districts and municipalities. In addition to being an annoyance, odors can exacerbate underlying medical conditions and cause stress-induced illnesses. The odor discussion in the DEIR is inadequate. Odors from industrial sources are not addressed at all. The DEIR simply states that "because proposed office, commercial, hotel and residential land uses typically do not generate substantial odors, no significant impacts would occur. Impacts would be less than significant." O2-22

-Noise: Because of the ingress and egress of shipping and receiving trucks typically associated with industrial facilities, there will be a greater level of noise to which the resident is aware of being exposed. Facilities also commonly generated noise for testing equipment and products or may have or consider constructing their own combined heat and power self-generation power plants. Noise standards in industrial zones are higher than residential zones in the City of Irvine, and businesses should not be limited. O2-23

-Lighting: Exterior lights are maintained throughout the night at most industrial facilities as a security measure. As a result, both daily operational lighting and evening lighting could potentially adversely impact nearby residents. O2-24

-Fencing: As with lighting, fencing is a basic security measure and not attractive in a residential setting. O2-25

-General Safety and Security Concerns: Industrial facility activities can include a wide array of activities such as trucking, shipment and equipment movement, intense lighting and security fencing as noted above. Experience has also shown that residential use near industrial facilities, despite the danger of these activities or preventative measures taken by businesses, nearby residential will generate unauthorized and unsafe use of parking lots and outdoor areas for a variety of purposes (i.e., skateboarding, etc.) O2-26

All of these types of public nuisance issues must be dealt with by the company and also places an additional burden on the city and regulatory agencies to address and resolve, sometimes at great additional cost to the business. O2-27

*Public Health & Welfare:

The land use changes proposed from industrial to residential do not promote public health, safety or welfare. Placing incompatible land uses within close proximity to industrial use is detrimental to the public welfare and certainly does not enhance the expectations that Irvine residents have for a high quality of life. Allowing residential in proximity to residential without adequate transitioning, such as with office or commercial, creates numerous and long-term issues for residents. O2-28

It should be emphasized that no amount of real estate disclosure will change the outcome that over time residents will complain to the city about the industrial user, challenge permits of the industrial facility and put a burden on the municipality and regulatory agencies to deal with those complaints. Real estate disclosures, avigation easements or other tools are totally disregarded and not legally binding if public health and safety concerns are registered with regulatory agencies; they are only protective of the project developer. Both industrial facilities and public agencies must continue to manage environmental issues and community conflicts that have resulted from industrial/residential collocation at enormous costs in terms of time and resources. O2-29

Numerous examples of complaints from residents to public agencies and municipalities regarding the operations of industrial uses in close proximity to their home can be documented from case files of regulatory and municipality records that involve a wide spectrum of issues as noted above. In fact, the genesis of California's environmental justice laws and programs regarding the impacts of industry on low income, minority communities emanated from the historical mix of industrial and residential land uses that have resulted in years of controversies and serious conflicts over industrial operations in neighborhoods. Environmental justice laws and California state guidelines have been developed to prevent this incompatible mix of industry and residential from occurring in the first place during the land use process. O2-30

SECTION 6 – SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS:

Land use compatibility is an important component of the well-being of communities, especially in urban areas where population densities are high (West Oakland Environmental Indicators Project.) Because different land uses make different demands upon urban space, a mixture of land uses can generate a high degree of conflict among the different users. Two land uses are particularly difficult to harmonize: residential and industrial. People enjoy living in quiet, clean, "attractive" places, with many amenities. The presence of industry close to residences changes not only people's perception of the attractiveness of their neighborhood (particularly architectural and visual cues) but also affect residents' day-to-day living conditions. Even low levels of risk from industrial facilities are universally unacceptable to communities. O2-31

Industry is also greatly impacted by the conflicts generated by the close proximity of residential areas, and this greater burden on facilities cannot be ignored in the DEIR. They experience greater levels of scrutiny of their activities. Complaints are registered forcing facilities to change and incur costs in such ways as additional reporting and permitting requirements, mandates for controls and technologies, restriction of operational hours, and higher insurance costs because of the potential for added off-site consequences. O2-32

While the DEIR acknowledges that there are significant and unavoidable impacts by locating within 500 feet of a freeway (5.6.2), it does not expand on the complexities associated with establishing appropriate separation of incompatible land uses like industrial and residential as proposed in the IBC. Further explanation in this section regarding significant and unmitigable adverse impacts should reference that any analysis or assessment of the potential hazards for co-locating residential and residential can only be conducted as a "brief snapshot in time." Industry is very dynamic and constantly changing to compete globally and to meet contract demands. Permitting for facilities is based on a continuum of changing facility, operational, resource, material and permitting needs. For land use and planning purposes, it simply is not possible to accurately portray, identify or categorize all of the uses for off-site impacts that a facility might have on residential in close proximity. Any analysis must involve complex interpretations and highly-technical issues that are in constant change. In addition, the cumulative impacts of several industries located together and the total emissions from those facilities and their emissions taken together, plus emissions from other sources, such as freeways, have not been addressed at all as significant unavoidable adverse impacts. O2-33

Studies from traditional manufacturing areas have shown that industrial displacement occurs when land in and near manufacturing districts begin to be used in ways that are incompatible with industrial development. Neighborhoods don't easily coexist with neighboring industry. Industry then becomes hesitant to invest in the area as its future viability for the operation of their company will be increasingly called into question. Residential is not the highest and best use of the vacant land in the IBC if the goal of the IBC is to maintain a job base and provide an atmosphere conducive for providing a stable and predictable industrial environment. Escalating costs of land will make it prohibitive for industry to purchase additional land to protect their operations or to expand. All of these factors are the underlying reason why industrially-zoned areas are zoned and separated from incompatible uses. O2-34

In some industrial areas, industry has been forced to relocate through a combination of litigation pursued by residents, local, county and state officials, even though the business had all appropriate permits and were in full compliance with all regulatory agencies. This has happened in two cases in the San Diego area with companies in the plating industry. Another business, a semi-conductor manufacturer sited a new facility in a high tech industrially-zoned area of San Diego. After the company had been in operation for several years, a condominium project was proposed next door. The new homeowners litigated against the manufacturer, with a judgment against them requiring them to install more than $100,000 to address visual impacts of the facility. In another case, in an area zoned for research and development, a condominium project was also approved after the biotech facility was operating. The new residents complained until the city required the facility to prohibit night-time activities. Adverse impacts also occur when facilities may have to transfer a specific operation off-site. This has occurred in companies using thermal spray as the state adopted a new Air Toxic Control Measures prohibiting such an activity within a certain distance of an operation at the time of re-permitting their operation. These are just a few examples of the many and diverse situations that an industrial facility can occur when residential is sited near their facilities. O2-35

SECTION 7 – ALTERNATIVES TO PROPOSED PROJECT:

No Project Alternative:

The "no project" alternative failed to provide any type of analysis on the potential build-out or growth of industrial uses in the IBC if the IBC plan wasn't implemented. The DEIR assumes that industry in the IBC is "static" or unchanging. This is problematic for several reasons. While the face of industry is changing from more traditional manufacturing, the IBC has retained significant, well-developed and successful companies in core base sector industries that are poised for continued growth and that have expansion plans. The result of the introduction of new land use categories and encroachment by incompatible land uses on existing facilities were not identified or addressed as negative and unmitigable impacts. Therefore, it cannot be presumed as in Section 7.2.2 that "employment would remain at existing levels, which is approximately 90,000 jobs." O2-36

Further, the no project alternative does not even consider the impacts on the IBC for those businesses that have plans to expand and grow. Whenever an industrial facility proposes to expand or change their facilities or uses, which is a common and day-to-day occurrence in any industrial area, both current and new residents within the IBC will surely mount opposition to such a change. Just as no responsible land use agency would propose an industrial business in a residential setting, the situation should be considered in reverse with residential not allowed to intrude into an industrial area. Public perception lacks understanding of and trust in risk assessment and even when presented with very low levels of risk from industrial facilities, communities are universally unacceptable. O2-37

The DEIR no project alternative did not address the city's ability to maintain a solid business base or to view the IBC as the only place in the city for opportunities to encourage and develop new information-age and green technology companies. This is the time and place when the no project alternative should be used to evaluate the need for the City of Irvine to update and adopt an Economic Prosperity Element for the IBC plan, to preserve and protect current industrial users and also to assess future opportunities that can benefit the City of Irvine. O2-38

The "no project" alternative fails to address another IBC plan goal to "incorporate sustainable provisions into the implementation of the IBC Vision Plan." The three basic elements of sustainability are: the environment, the economy and social responsibility. Sustainable development should meet the needs of current generations without compromising the ability of future generations to meet their own needs (State of California General Plan Guidelines). Yet, the added residential in the IBC will in the long-term negatively impact city facilities and services, like schools, social services, parks and infrastructure. Industrial areas contribute to the city's tax base and provide more tax dollars than they use in government services, while housing generally does the opposite. The sacrifice of industrial jobs and the consequent shortfalls in city revenue eventually will strain the City of Irvine. O2-39

The DEIR also cannot ignore that future residents of the IBC will have high expectations and standards they will set for the protection of their quality of life. The ensuing conflicts that have been historically and repeatedly documented to occur whenever industrial uses come in too close proximity to residential will affect the city's ability to uphold a sustainable model. O2-40

Project Alternatives (Section 7):

All of the alternative projects include some residential. The DEIR does not even evaluate co-location of industrial and residential as the land use/planning tool being used in project alternatives. Co-location is a situation that occurs from the juxtaposition of industrial uses with incompatible non-industrial uses when such uses share the same property line and are not otherwise separated or "buffered" from each other by land uses which do not allow either incompatible non-industrial uses. While "smart growth" approaches and transportation-oriented development can be useful tools, the mixing of uses should be limited to compatible office, commercial and possible some retail users. Integration of land uses is contraindicated when incompatible industrial and residential uses occur. Smart growth and flexibility in mixing of land uses cannot replace the basic principal of zoning for transition and separation of incompatible types of uses. O2-41

The serious impacts and direct consequences on the industrial businesses in the IBC with this dramatic shift in land use as recommended in several of the project alternatives to include and expand residential uses simply cannot be mitigated. If residentially-zoned uses are allowed to locate and increase in density in the IBC, the result will be an incremental process that will have drive industrial facilities out of the IBC, commonly known as "urbanized industrial flight." Once industrial users are gone, they are gone permanently. The IBC violates one of the basis O2-42

tenets of economic prosperity policies to set aside "contiguous and cohesive" tracts of land for businesses to site, thrive off the synergies of similar businesses and provide a protected industrial zone for expansion without concern for impacts of incompatible land uses created by residential and sensitive receptors. O2-42 cont'd.

All of the alternatives, with the exception of the "no project" alternative, are inconsistent with the stated goal of the IBC plan to protect the existing job base. All jobs are not the same -- service and support jobs cannot be substituted with industrial jobs, and the same outcome expected. Industrial jobs are unique: they represent high wage positions, a skilled workforce, offer company benefit plans and provide the opportunity for advancement. In addition, industrial jobs have a multiplier effect of 2.5 jobs for every industrial job (Milliken Institute study); 3.5 multiplier effect for every job in the life sciences sector (California Healthcare Institute Annual Report). The replacement job base that would occur with the loss of industrial businesses in the IBC will be service sector and support jobs, which represent lower paying and lower skilled workers in the commercial, retail and service sectors is not defined or addressed, and this loss and shift in the job base must be recognized as part of the DEIR evaluation. Without the essential protections in place to prevent incompatibilities that drive industries out of urban centers as proposed in all of the project alternatives, the IBC goal of preserving the job base cannot be met and therefore the project alternatives should be rejected. The IBC Vision Plan limits the ability of new industry to come in and in fact encourages those existing businesses to leave. The Project is creating a retail and service industry job base that can't support people who want to live in Irvine. There simply won't be enough high-earning potential for a sustainable job base. O2-43

The long-term socio-economic impacts to the City of Irvine will be (1) increased costs to the city and 92) increased costs to the existing businesses. Businesses are subject to constantly changing laws and requirements, which progressively and incrementally become more stringent, in such areas as public notifications, risk reductions, emissions inventories and health risk assessments. By placing incompatible residential uses in close proximity to industrial facilities a situation is created that will trigger new permitting requirements, new control equipment, new best available control technology requirements and changes in operating conditions. All of these scenarios create real, bottom-line costs to businesses which have not been considered in the DEIR. O2-44

Project alternatives should also have included the feasibility of buffers around the existing businesses and how the plan would look with appropriate buffers. In the City of San Diego, the requirement for buffer analysis has changed one residential development application for a high-density housing project which would have been adjacent to a warehouse operation to instead be converted to office condominiums. In a project in Chula Vista, a small peaker plant tried to site on appropriately industrially-zoned land, however, that city's buffer zone has been used to stop approval of the plant because of adjacent residential. At the Port of San Diego, the Port's transition zone policy for 1,000 feet has been used to change planned residential projects to other uses. In a City of San Diego high tech and R&D area, an apartment complex was changed instead to office condominiums based on buffer requirements in the city's general plan update. All of these are just a few examples of how municipalities are taking a proactive approach, using tools such as buffer or transition areas, to prevent the incompatible land uses from occurring. O2-45

SUMMARY:

In conclusion, a broad array of issues have been identified above which clearly cannot be mitigated or even adequately analyzed through a colocation analysis . The land use options and the conclusions of the DEIR are dependent on the report's wrong assumption that a colocation study can adequately to address and respond to the multiple and continuously changing issues that arise whenever an industrial facility is in proximity to residential uses. This is simply not a valid assumption, and the real-life circumstances of the effects on the quality of life, or "perceived quality of life" impacts of placing totally incompatible and different uses side-by-side is not addressed. The only reasonable alternative is the "No Project Alternative" until the IBC plan is modified to exclude residential uses. O2-46

Sincerely,

Patti Krebs

Patti Krebs
Executive Director

INDUSTRIAL ENVIRONMENTAL ASSOCIATION

Leaders of Environmental Responsibility

Non-Industrial Uses in or Near Industrial Zones

Background on the Industrial Environmental Association:

The Industrial Environmental Association (IEA) is a manufacturers' public policy trade organization. It is the organization's policy to advocate for the protection of existing manufacturing, scientific research, technology and industrial operations from the encroachment of incompatible non-industrial land uses and occupancies that can impede ordinary business operations or compromise the future economic viability of industrial-related enterprises. IEA represents diverse industry segments, including defense, aerospace, shipbuilding and repair, biotechnology, pharmaceutical, printing, sports, chemical, electronics, communications, coatings, printed circuit board, utilities, power generators, food processors, engine and turbine manufacturers, as well as warehousing, distribution and industrial suppliers, with facilities located throughout California.

Pressure for Conversion of Industrial Land:

With California's shrinking inventory of available land, particularly in urbanized areas, IEA recognizes the pressures to use areas zoned for industrial occupancies in different ways -- residential, churches, schools, public facilities, etc. However, it is IEA's position that land use planning agencies must not lose sight of how important manufacturing and industrial facilities are for the creation and preservation of good, high-paying jobs for a wide variety of skill-levels and occupations.

Areas of Incompatibility are Created:

Since industrial, research and development and technology companies often use large quantities of hazardous types of materials or products, generate air emissions and have operations that create concerns with regard to noise, dust, traffic, smells, visual impacts, 24-hour operations, truck deliveries, water chillers, co-generation plants, emergency generators, vapor clouds, screens, fencing or what the public considers unsightly or nuisance conditions. Incompatibilities occur with residential or other non-industrial uses that are placed in close proximity to industrial facilities.

Adverse Impacts of Incompatibilities on Industrial Facilities:

While industrial facilities in California have very stringent and extensive regulatory, permitting and oversight authorities governing these facilities, there are few protections to prevent non-industrial uses from encroaching upon established industrial facilities other than zoning reviews. When an incompatible land use does occur, the requirements of certain environmental regulations usually become more stringent, affecting the facility by adding to their permitting, regulatory and engineering costs through more stringent design criteria, costly control equipment, plus the imposition of more restrictive operating conditions.

Adverse Impacts of Incompatibilities on Public Agencies and Neighborhoods:

Californians value their quality of life and want to control over of their surroundings. When residential uses come in close proximity to industry, eventually conflicts will occur. Litigation frequently results, despite lengthy and specific disclosures or even avigation easements. Public agencies are impacted by increased emergency planning and response requirements. Community controversies and complaints to agencies must be managed on an ongoing basis at great expense to all concerned.

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Protecting Industrial Areas:

It is IEA's position that it is particularly important to protect large, contiguous areas zoned for manufacturing, industrial, research and technology uses, with appropriate separation and transition, or buffers, between industrial uses and residential and other non-industrial uses. It is of utmost importance to safeguard existing contiguous and cohesive industrially-zoned areas.

Unintended Consequences: California must not lose sight of how important manufacturing, industrial, research and development and technology facilities are for the creation and preservation of good, high-paying jobs for a wide variety of skill levels and occupations. Once an area has been broken up by non-industrial uses, significant limits on future industry may be an unintended consequence.

Recommendations to Protect Industrial Facilities:

Residential development and sensitive receptor use directly adjacent to industrial facilities should be prohibited. While over time some older industrial pockets will gradually transform, that transition should be accomplished with commercial and office uses that can successfully provide appropriate buffers. Zoning codes should be updated to eliminate residential uses in industrial zones.

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INDUSTRIAL ENVIRONMENTAL ASSOCIATION

Leaders of Environmental Responsibility

Industrial Facility Impact Assessment

Manufacturing, technology and scientific research and development (herein known as "industrial facilities") companies typically use hundreds -- and in some cases thousands -- of chemicals in their operations and laboratories. Many of these products are considered hazardous due to their potential health and environmental impacts. Because these types of facilities use, handle, store, treat and emit hazardous materials, they are regulated by a variety of governmental agencies, including fire authorities, the Air Pollution Control District, the Regional Water Quality Control Board, the California Department of Toxic Substances Control, Occupational Safety and Health Administration and the Environmental Protection Agency.

Facilities develop and implement multiple programs to protect their workers from exposure to chemicals in compliance with rules and regulations enforced by these agencies, including the Hazard Communication Program, Injury and Illness Prevention Plan, Emergency Response/Action Plan, Site Vulnerability Assessment Plan, California Accidental Release Program and Respiratory Protection Program.

The site's Business Emergency Plan stipulates procedures for employees to follow in the event of an incident involving any hazardous material. As part of this plan, employees are trained and provided with safety information to help control any spill or release. Other related plans maintained at the facility include an Emergency Contingency Plan and Emergency Evacuation Plan.

There are no regulatory requirements, however, for comparable procedures for any adjacent residents.

Facility employees receive regular health and safety training to minimize the potential risks associated with the use of hazardous materials. Training topics include:

*Fire extinguisher operation
*Use of personal protective equipment
*Hazard Communication
*Hazardous Waste and Environmental Responsibility
*Evacuation and Disaster Preparedness

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Regulatory Gap:

These programs are designed to protect worker health and not the health and safety of adjacent residents. A "regulatory gap" was identified by the Air Resources Board (ARB) in 2004 in the case of assessing and addressing environmental, health and safety (EHS) impacts of non-regulated land uses, such as new residential developments that are in close proximity to pollution sources. The siting of a new residential development, for instance, does not require an air permit. The ARB views this particular situation as an opportunity for land use agencies to address this gap and assess whether there could be any air pollution or other environmental, health or safety impacts.

Incompatibility Identified:

The California State Office of Planning and Research (OPR) has stated in its General Plan Guidelines (2003) that residential uses "are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust) and exposure to hazardous materials" (AB 1533 (Keeley, Chapter 762, 2001) specified that the General Plan Guidelines, prepared by the California Office of Planning and Research propose methods for local governments to address "providing for the location of new schools and residential dwellings in a manner that avoids proximity to industrial facilities . . . " As such, the Guidelines further state "residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust) and exposure to hazardous materials."

Siting residential dwelling adjacent to the facilities present such an incompatible land use due to the hazardous materials used at and air emission emitted from the facility. The General Planning Guidelines state specifically that "cities and counties should provide the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce materials that, because of the quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety." Industrial facilities commonly use hazardous materials that are classified as Toxic Air Contaminants, explosive, regulated under Proposition 65, generate hazardous wastes, and have potentially nuisance causing activities on adjacent residents.

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Air Toxics:

Some products used in industrial facilities can be classified as air toxics. The California Air Resources Board (ARB), a California Environmental Protection Agency (CalEPA) Board, regulates air toxics and manages the Toxic Air Contaminant List (List). This list identifies 244 substances that have either been identified by the ARB as Toxic Air Contaminants (TACs) in California or are known or suspected to be emitted in California and have potential adverse health effects.

Hexavalent Chrome:

Chromium in the form of various alloys and compounds has been in widespread commercial use for over 100 years. In recent decades, chromium has also been widely used in chromium alloys and chrome plating.

Hexavalent chromium (commonly known as Chrome 6) is a known carcinogen that can enter the body by inhalation or ingestion. Inhalation of chrome 6 over an extended period of time can cause lung cancer. Chrome 6 compounds may also cause adverse affects to the skin, the respiratory tract and, to a lesser degree, the kidneys in humans.

Chrome 6 is on most national and international lists of high toxicity materials. In the United States it is regulated as a hazardous substance, hazardous air pollutant, hazardous waste, toxic chemical and a priority pollutant under the Clean Water Act. In California, it is also listed as a Toxic Air Contaminant, as defined in the California Health & Safety Code (CA H&SC) 393567 and 39660 "which may cause of contribute to an increase in mortality or an increase in serious illness or which may pose a present or potential hazard to human health (CA H&SC 39655).

Worker protection standards are required and implemented in industrial facilities in accordance with Occupational Safety and Health Act (OSHA) regulations. These standards, however, are designed to address short-term worker exposures. Cancer risk is typically scientifically regarded as proportional to lifetime dose. Therefore, a prudent public health policy measure would be to limit preventable exposures to chrome 6. More specifically, it would be prudent to avoid residential development adjacent to or in close to proximity where chrome 6 pigments are used in order to minimize any potential non-occupational exposure and reduce long-term cancer risk.

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Diesel:

Industrial facilities house shipping and receiving activities that enable the incoming delivery of raw materials and goods from suppliers and the outgoing distribution of its product to customers. As a result, diesel-fueled trucks travel in and out of facilities, in some cases 24 hours a day, to load and unload materials and pick-up product for distribution.

In addition, industrial facilities maintain diesel generators (in some cases, numerous generators) to maintain and protect their data centers, critical experiments and operational equipment to insure an uninterruptible power supply.

Diesel exhaust includes more than 40 substances that are listed by the United States Environmental Protection Agency (US EPA) as hazardous air pollutants and the ARB as Toxic Air Contaminants (TACs). Diesel particulate matter has been identified by the ARB as a TAC and represents 70% of the known potential cancer risk for air toxics in California (Office of Environmental Health Hazard Assessment (OEEHA), 2001.) Diesel particular matter contributes to particulate matter air pollution which has been shown to be associated with premature mortality and health effects such as asthma and aggravating heart and lung disease (ARB, 2005). Reducing diesel particulate emissions is in fact one of the ARB's highest public health priorities (ARB, 2005.)

In order to quantify the risk associated with diesel particular matter regulations, the ARB performed air quality modeling to estimate exposure and the associated potential cancer risk of onsite diesel-powered transport refrigeration units (TRU) for a typical distribution center (ARB, 2005). The assessment assumed a total onsite operating time for all TRUs of 300 hours per week. The estimated potential cancer risk was found to more than 100 in a million at 800 feet from the center of the TRU activity. This risk decreased to a 10-100 million range between 800 to 3,300 feet and fell off to less than 10 per million at approximately 3,600 feet. While TRU trucks do not typically frequent most industrial facilities, the data demonstrates the need to assess emissions from other diesel-fuel trucks.

The South Coast Air Quality Management District (SCAQMD) also performed diesel air monitoring from distribution center operations in Mira Loma. This study found about an 80 percent drop off in concentration of diesel particulate matter at approximately 1,000 feet (ARB, 2005.)

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In short, exposure decreases as distance increases. It is reasonable to conclude, therefore, that an adequate buffer between residences and industrial facilities would decrease non-occupational exposure to diesel. It is also reasonable to conclude, based on the air studies, that a buffer of 1,000 feet would sufficiently reduce exposure to diesel.

Proposition 65-regulated Chemicals:

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop 65) was enacted as a ballot initiative in November 1986. The proposition was intended by its authors to protect California citizens and the state's drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm and to inform citizens about exposures to such chemicals. Prop 65 requires the Governor to publish, at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. This list, which must be updated at least once a year, has grown to include approximately 750 chemicals since it was first published in 1987.

Within a workplace environment where Prop 65 chemicals are used, there are regulatory requirements requiring the use of personal protective equipment and ventilation to protect workers from potential exposures. These requirements, however, do not address sensitive receptors, such as residents, dwelling adjacent to or in close proximity to industrial facilities.

While it could be argued that the exposure to the Prop 65-listed chemicals adjacent residential dwellings would be lower than those at the industrial facilities, there are studies that indicate that low level exposure to chemicals can be a precursor to health effects. (Swedish study, Women's Health in the Lund Area, 2005.)

Hazardous Waste:

Industrial facilities are typically large quantity generators of hazardous waste as defined in 22 California Code of Regulations (CCR) 66262.10 in excess of 5,000 gallons These wastes are managed in accordance with EPA hazardous waste generator requirements and may also be permitted for temporary storage of hazardous waste through Fire agencies.

Certain liquid hazardous waste streams are also treated onsite in a fixed treatment unit (FTU) that operates under the Conditionally Authorized tier of the California Tiered Permitting requirements. Tiered Permitting (Chapter 6.5, Article 9 CA H&SC) refers to a graduated series of requirements applicable to hazardous waste generators conducting onsite treatment their own hazardous waste. California legislation (AB 1772) passed in 1992 established a five-tiered program for authorizing hazardous waste treatment and/or storage at many businesses that are required to have a state permit or authorization to do so. The new tiers were added to make permitting easier for businesses that treat hazardous waste onsite within their normal operations. Under the tiered permit system, the level of regulation is scaled to the relative risk and complexity involved under each treatment tier. In ascending order, the tiers are: conditional exemption (CE); conditional authorization (CA); and permit by rule (PBR) (California Code of Regulations, Title 22, Division 2, Chapter 4.50.

Under the CA and PBR tiers, facilities are required to take certain measures to prevent unknown entry to the site and to minimize the possibility of the unauthorized entry of persons onto the facility, and industrial facilities implement these measures to address security issues.

However, these security requirements as stipulated in 22 CCR 66265.14 and CA H&SC 25200.3 do not adequately address the situation where a CA FTU is located adjacent to residential dwellings where there ma be children or adolescents that may want to satisfy their curiosities abut a neighboring industrial facility and attempt to gain entry to the site by scaling a fence or locked gate which constitute acceptable security measures for CA FTUs in the regulations.

Hazardous Materials Safety and Security Concerns:

Hazardous materials use and storage can take place in all areas of a site covered by a permit including areas outside buildings and extending to loading docks and walking paths between the buildings of a multi-building site.

Companies need to maintain the right to prohibit access to any portion of its facilities for the safety and security of its employees and the general public. This controls the risk of frivolous lawsuit and the risks from industrial "terrorists" harassing employees and or monitoring on-site activities.

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Radiological or Infectious Materials:

Definition of storage and use of hazardous radiological or infectious materials that may affect the public's safety includes:

*Permits under Section 105.8 of the California Fire Code by exceeding any of the quantities of hazardous materials listed in Tables 105-A, 105-B or 105-C.

*Radioactive materials license with the State of California Radiological Health Branch or Nuclear Regulatory Commission. Besides license limitations, including security requirements, there is a specific concern that radioactive waste and materials may be targeted for theft and diversion for terrorism activities.

*Infectious materials includes research with materials potentially infectious to humans, including but not limited to:

-CDC/USDA Select Agent List

-NIH and CDC guidelines for use of biohazardous agents requiring a laboratory designation of biosafety level 2, 3, or 4

*Animal Research Facilities: A commercial vivarium has a special security risk associated with being targeted by extremist organizations.

*Drug Enforcement Administration (DEA) registered facilities for narcotics and other scheduled substances and listed chemicals targeted for diversion and use in methamphetamine and other illicit drug production.

These requirements for safety and security indicate that residential adjacent to or in close proximity to industrial facilities is not appropriate.

Antenna Siting:

With the growth of the technology industry in California, antenna siting rules are continuing to evolve. In general, municipal codes regulate the placement of communication antennas. Generally, antennas are classified as:

*Minor telecommunication facilities
*Major Telecommunication Facilities
*Satellite Antennas

Rules are applied depending on property zone, installation method, and size of antenna. In some areas, other limitations also apply in the ability to site antennas depending upon type of facility and proposed location.

Facilities are required to comply with federal standards for RF radiation in accordance with the Telecommunication Act of 1996. Municipalities have the authority to ask for proof of compliance and have discretionary authority to issue permits.

Municipal codes establish the process for siting antennas in all zones, including residential zones. Depending on the specific zone and proposed use, a permit may be granted as a "Neighborhood Use Permit," a "Conditional Use Permit," or the use may be allowed without additional permit under limited circumstances ("Limited Use.). These permits follow a "Process Three" Public Review process with a Hearing Officer as the decision maker. These matters can be appealed to the Planning Commission. There are some zones where antennas are now allowed however.

Other Nuisance:

Odors: Odors are a natural occurrence at many industrial facilities because of the nature of the hazardous materials on site. Organic solvents, many recognizable because of their strong or peculiar smell, are employed in industrial processes. Odors are the most common source of air pollution complaints from residents (ARB, 2004). In addition to being an annoyance, odors can exacerbate underlying medical conditions and cause-stress-induced illness. One way to minimize odor complaints is to require adequate buffers between odor sources and the public.

Noise: Because of the entrance and exit of diesel-fuel trucks typically associated with industrial facilities, there will be more noise to which a resident would be exposed. Facilities may also generate noise for testing equipment and products or increasingly generate noise from power generating facilities. With the volatile price of energy, many facilities are evaluating the additional of combined heat and power (co-gen) plants on site to provide their own reliable and uninterrupted source of electricity.

Lighting: Exterior lights are maintained throughout the night at most industrial facilities as a security measure. As a result, both daily operating lighting and evening light could potentially impact adjacent residents.

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Buffer Zones:

Recent monitoring and health-based studies indicate that air quality impacts from incompatible land uses can contribute to the increases risk of illness, missed work and school, a lower quality of life and higher agency costs to manage and respond to public health concerns and challenges during permit processing. As a result, several California public agencies have addressed the issue of providing adequate distances between industrial land uses and land uses that involve sensitive individuals such as homes and schools.

The California Office of Planning and Research's General Plan Guidelines identifies buffer zones as a broad approach to land use compatibility. Buffer zones can be managed in two ways: (1) a specific distance may be set or (2) transitional land uses (such as open space, office, or commercial uses) may be used.

State law requires that school districts identify potential sources of toxic air pollutant releases within a quarter mile radius of the proposed school site. The ARB suggests that "planning agencies could use a similar approach to identify air toxics sources in the vicinity of proposed new housing or other types of projects frequented by sensitive individuals" (ARB, 2004.)

The ARB has stated that because living or going to school too close to diesel emission sources may increase both cancer and non-cancer health risks, it recommends that proximity be considered in the siting of new sensitive land uses (ARB, 2005.)

Trends to Consider Distance Separations:

Public health and safety regulatory agencies are addressing the issue of buffering in numerous ways. Some examples:

ATCM for Thermal Spray: On December 9, 2004, ARB adopted a new Air Toxic Control Measure (ATCM), Section 93102.5, Title 17, California Code of Regulations (17 CCR 93102.5) that mandates a 500 foot buffer zone between new (or re-permitted) thermal spraying operations and residential uses. This is the first mandatory regulatory residential buffer zone.

Stationary Diesel-Fueled Engines: Under the 2005 San Diego Air Pollution Control Stationary Diesel-Fueled Engine permit application rules, facilities are required to report receptor data, a description of the receptor and the distance to the nearest nearest school ground (ATCM Engine Data Report.)

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California Accidental Release Program: The Governor's Office of Emergency Services, California Code of Regulations, Title 19, Public Safety, Charter 4.5 addresses accidental releases (CalARP) and requires the facility to submit data on receptors within the radius of an off-site consequence of a release.

Rulemaking Proceedings: The California Air Resources Board, announced as part of its action plan for 2006, that they would engage in rulemakings for diesel risk reduction to portable equipment and utility truck fleets. They have also announced they intend to include diesel engines in the AB 2588 "Toxic Hot Spots" emission reporting program which requires notification to the community.

Summary:

Based on the above, it is apparent that there are a broad-range of issues and requirements that need to be addressed when siting residential development adjacent to or in close proximity to industrial facilities. While most facilities will be found to have excellent compliance history and plans and programs in place to prevent environmental, health and safety risks associated with its operations, these plans and programs are designed to protect workers and not adjacent residents.

INDUSTRIAL ENVIRONMENTAL ASSOCIATION

Leaders of Environmental Responsibility

Safety/Security Concerns with Non-Industrial Uses on Industrial Lands

Hazardous materials use and storage can take place in all areas of site covered by a permit including areas outside buildings and extends to loading docks and walk paths between the buildings of a multi-building site.

Company needs to maintain right to prohibit access to any portion of its facilities for the safety and security of its employees and the general public. This controls the risk of frivolous lawsuits and the risks from industrial "terrorists" harassing employees and/or monitoring on-site activities.

Definition of storage and use of hazardous radiological or infectious materials that may affect the public's safety includes:

- Requirement to be permitted under Section 105.8 of the California Fire Code by exceeding any of the quantities of hazardous materials listed in Tables 105-A, 105-B, or 105-C (copies attached.)

- Radioactive materials license with the State of California Radiological Health Branch or Nuclear Regulatory Commission:

  * Besides license limitations, including security requirements, there is a specific concern that radioactive waste and materials may be targeted for theft and diversion for terrorism activities

- Infectious materials includes research with materials potentially infectious to humans, including but not limited to:

  * CDC/USDA Select Agent List

  * NIH and CDC guidelines for use of biohazardous agents requiring a laboratory designation of biosafety level 2, 3, or 4.

- Animal research facilities

  * A commercial vivarium has a special security risk associated with being targeted by extremist organizations (one San Diego company was threatened with a bombing and employees have been harassed and attacked)

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- Drug Enforcement Administration (DEA) registered facilities for narcotics and other scheduled substances and listed chemicals targeted for diversion and use in methamphetamine and other illicit drug production.

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Office of Planning and Research:

- It is important to recognize that there are certain industrial uses that will always be incompatible with residential and school uses. Residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust) and exposure to hazardous materials.

- The compatibility problem can also operate in reverse and harm a business in the form of higher mitigation costs or the curtailment of economic activities.

- Residential and school uses in proximity to industrial facilities and other uses that, even with the best available technology, will contain or produce materials that, because of their quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety.

INDUSTRIAL ENVIRONMENTAL ASSOCIATION
Leaders of Environmental Responsibility

Environmental Regulations Relevant to Hazardous Materials, Industrial Uses and Proximity to Non-Industrial Land Uses

The following environmental regulations may be applicable to manufacturing, research and development, biotechnology, high technology and industrial facilities.

Some of the regulations are applicable depending upon materials present or type or amount of emissions, regardless of neighboring uses. Others, however, such as RMPP, RPM and APCD compliance requirements change depending upon proximity of schools or residential populations to regulated facilities.

Health & Safety Code Section 25534.1 (Re: RMPP Preparation)

Requires consideration of proximity of facility to schools, residential areas, hospitals, long-term health care facilities and day care facilities. This code does not define 'proximity'. However, some counties have indicated that a day care facility within one-quarter mile (1,320 feet) would trigger a required notice of an RMPP (Risk Management and Prevention Program) plan.

Title 40 CFR Chapter 1, part 68.1, Subchapter C. (RMP)

An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must prepare a Risk Management Plan (RMP) which describes the planning and response appropriate to mitigate a possible release of a regulated substance.

Health & Safety Code Section 42301.6 (Re: Hazardous Air Emission Permits/Water's Act Compliance

Requires the applicant within 1,000 feet of a school to distribute a public notice of the permit application to parents or guardians of children enrolled in any school (K-12) public or private, within one-quarter mile and to each address within a radius of 1,000 feet.

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Health & Safety Code Section 42301.7 (Re: Threat of Air Contaminant Release)

Requires air pollution control officer to notify the administering agency having jurisdiction over a school within 1,000 feet if there is a reasonably foreseeable threat of a release. Administering agency may then require preparation of or modification to a Risk Management Plan (if required under Title 40 FAR Chapter 1, part 68.1, Subchapter C.) or a state-required Risk Management and Prevention Program (RMPP). Also provides provisions for air pollution control officer to issue an immediate order to prevent the release or mitigate the release.

Health & Safety Code 44300 (Re: Air Toxics "Hot Spots" Information Act of 1987)

Requires manufacturers or users of listed substances (above a certain threshold quantity) to prepare a site-specific inventory of toxic inventory of toxic substance air emissions. When required by the agency, the report must include information on the proximity of the substance source to potential receptors, including those at schools.

Health & Safety Code Section 25407.10 (Re: Acutely Hazardous Materials Release)

Requires emergency response personnel to advise the superintendent having jurisdiction over a school within one-half mile of a release or threatened release of an acutely hazardous material.

Health & Safety Code Section 25221 and 25232 (Re: Hazardous Waste Disposal Site)

Defines 'hazardous waste property' as a site where a "significant disposal of hazardous waste has occurred" and a "border zone property" as one within 2,000 feet of a hazardous waste property. Prohibits residences, hospitals, schools for persons under 21 years of age, day care or any permanently occupied human habitation other than those used for industrial purposes on land that is designated a "hazardous waste property" or a "border zone property."

Health & Safety Code Section 25149 (Re: Hazardous Waste Facility Operations)

Requires that no city, county or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law license or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment or recovery of resources from wastes at that facility unless, after public notice and hearing, the operation of the facility is deemed to pose an imminent and substantial endangerment to the health and the environment.

Page 3

Health & Safety Code Section 41700 (Re: Public Nuisance)

States that no person shall discharge from any source any air contaminant which causes nuisance or annoyance to any considerable number of persons of the public or endangers the comfort, health or safety of such persons or public.

California Regulations Title 22, Division 4.5, Chapter 16, Section 66266.8 (Re: Series B Resource Recovery Facility Permit)

Requires consideration of proximity of facility to public structures and recreational facilities, businesses private recreational facilities, hospitals, schools and residences in determining whether to solicit public participation in the issuance of a Series B Resources Recovery Facility Permit. This code does not define "proximity."

Public Resources Code Section 21151.4 (Re: Environmental Impact Reports and Hazardous Materials)

Requires written notification to, and consultation with, the school district before approval of an environmental impact report of negative declaration for construction or alteration of a facility involving reasonable anticipation of air emissions or handling of acutely hazardous material within one-quarter mile of a school.

Education Code Section 39003 (Re: Acquisition of School Sites)

Prohibits the governing board of a school district from approving a project involving acquisition of a school site by a school district if the site is a current or former hazardous or solid waste disposal site, a "hazardous substance release site" or a site containing under or above ground piping carrying hazardous substances, acutely hazardous materials or hazardous wastes. Further requires consultation with any air pollution control district or air quality management district having jurisdiction to identify and make specific findings concerning facilities within one-quarter mile of the proposed school site which might reasonably be anticipated to emit hazardous air emissions or to handle hazardous or acutely hazardous materials, substances or waste.

County Hazardous Waste Management Plans (Required under AB 2948-Tanner)

Siting criteria for hazardous waste treatment facilities mandated under the "Tanner Bill" require a 2,000 foot buffer zone between an industrial transfer/storage/treatment facility and any immobile populations, such as schools, hospitals, convalescent homes, prisons, facilities for the mentally ill, etc.

Page 4

Air Resources Board, Title 17, Section 93115

Emergency standby engines located at or near schools not permitted to conduct maintenance and testing operation during school hours (January 2005)

Title 49 of the Code of Federal Regulations (49 CFR) Section 117.825 (Re: Designated Hazardous Materials Shipping Routes)

49 CFR 177.825 identified the guidelines for use in preparation of hazardous materials shipping routes. Routes are not limited to highways but include designated surface streets or portions thereof. Locating a school nearby could affect the approved shipping route for materials.

Precautionary Principle Ordinance (San Francisco)

Public trust doctrine establishes a general duty to take precautionary action and requires preventive action in the face of uncertainty and to prevent harm in the face of complex and uncertain risks.

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May 18, 2006

Mr. Michael Haack, Manager of Development Services
Community Development Services
One Civic Center Plaza
P. O. Box 19575
Irvine, CA 92623-9575

Re: IBC Vision Plan

Dear Mr. Haack:

The Industrial Environmental Association ("IEA") is an organization of manufacturing, technology and scientific research and development companies, including several Orange county members, working with businesses throughout the state on their permitting, regulatory, operational and facility-related issues. We are active participants with local, state, and federal regulatory agencies in evaluating industrial activities along with calculating associated risk assessments and potential impacts on public health and safety.

We are submitting these comments on the IBC ordinance, dated May 8, 2006, registering our concerns with this ordinance and areas that need further study:

Inadequate Buffers: Our major objection to the ordinance, as proposed, is the lack of adequate buffers to separate industrial activities from sensitive receptors, which include children, seniors, and the infirm. We respectfully ask that you consider a **mandatory minimum buffer of 1,000 feet.**

During the past few years, the State of California has conducted extensive research involving technical and scientific experts, along with broad-based community outreach meetings to develop planning guidelines which recommend transition and separation between residential and industrial uses. The State Office of Planning and Research has issued planning guidelines to local land use jurisdictions recognizing that there will always be certain types of industrial activities and residential, school or other sensitive receptor uses that will be incompatible. In addition, the California Air Resources Board (ARB) published specific guidelines that recommend the avoidance of residential uses within 1,000 feet of industries using chromium.

Work continues on a statewide basis to further refine statutes and regulations that area already in place that require separations and specific distances. Examples of this are that the ARB adopted a mandatory 500 foot buffer zone between residential and thermal spray operations. This year, the ARB adopted a new Air Toxics Control Measures under the AB 2588 Air Toxics Hot Spots Program that brought stationary diesel emergency generators (numerous generators are commonly found in industrial facilities) that require an evaluation of the generator's impact on residents, public notification and possible mitigation or control measures (such as the ability to operate a limited number of hours.)

Legislation was introduced this session, AB 2824 (Ruskin) that proposes a state law defining a "high risk facility" as "any stationary source with a potential to generate, emit or discharge any emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the state board or by an air pollution control officer."

The trend is clear: more definition of incompatibilities, more restrictions on industrial operations and a higher degree of regulation if those incompatibilities occur. That is why it is imperative, in order to preserve an industrial base in an urban setting, such as in the City of Irvine, that land use authorities recognize this trend and address the existence and potential for incompatibilities by adopting adequate buffer zones.

Integration of Land Uses: While smart growth approaches recommend integration of land uses and flexibility in land use designations and zoning as useful tools, this mixing of uses should be limited to office, commercial and retail as compatible with residential. Integration of land uses is contraindicated when incompatible industrial and residential uses may occur. Smart growth and flexibility in land uses cannot replace the basic tenet of zoning to separate incompatible land uses.

Alteration of Neighborhood Character: Historically, in urban areas throughout the country, whenever residential uses have encroached on industrial uses or gentrification has occurred, industry leaves. The incremental flight of industry occurs permit-by-permit, piece-of-equipment by piece of equipment and operation-by-operation, until ultimately facilities pick up stakes and move to areas more conducive to allowing the flexibility that businesses need to quickly modify their activities and operations to meet changing production demands.

Upset of Jobs/Housing Balance: This vision plan -- if implemented without adequate protection and buffers to the industrial activities -- will jumpstart an industry exodus from the City of Irvine, and permanently alter the character and economic jobs/housing balance of the city.

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It is generally estimated that after 12 years residential development projects no longer pay for themselves but instead become a drain on the municipal system. To the contrary, industrial uses continuously provide a steady stream of property tax revenue to the municipality, a steady return of sales tax on products produced and a jobs base.

Quality of Life Issues: Despite any kind of acknowledgement , real estate agreement or other disclosure tools that a resident may sign prior to moving into a residential unit in an industrial area, they will eventually challenge the operations or activities of that industrial facility.

Public nuisance laws give broad discretionary authority to regulatory agencies to address such issues as noise, lighting, odors, truck traffic, etc. Regulatory agencies are "blind" to land use decisions. By law, they must respond to these public nuisance complaints and have the authority to place mitigation measures and demands on permitted industrial sources.

In turn, demands such as facility modifications, operating hours, limitations on activities, etc., occur which may jeopardize the ability of a company to operate. Public complaints drive greater demands and many times costly mitigation measures to the industrial facility. It also places a burden on public agencies and public officials to address the problem after the incompatibility occurs. Residents, industrial activities and public agencies are left to sort out the issues and deal with problems after land use decisions that result in incompatibilities occur.

Summary: In summary, we would like to urge your consideration of moving this ordinance forward by protecting and preserving the cohesive and contiguous industrial area and specifying a mandatory minimum buffer of 1,000 feet. We believe, if adopted, this ordinance would serve as a signal for the City of Irvine's commitment to its industrial and jobs base and also serve to attract new industrial facilities to a city that recognizes the importance of land use decisions to its industrial future.

Thank you for your consideration of our comments.

Sincerely,

Patti Krebs
Executive Director

February 13, 2006

Mr. Bill Jacobs
Principal Planner
Community Development Department
City of Irvine
One Civic Center Plaza, PO Box 19575
Irvine, CA 9263-9575

Subject: City of Irvine Business Complex
Draft Vision

Dear Mr. Jacobs:

The Industrial Environmental Association is a Southern California public policy trade association representing manufacturing, technology and scientific research and development companies in Los Angeles, Riverside, Orange, Imperial and San Diego counties on a wide variety of environmental, regulatory, energy and land use issues.

Increasingly, we are seeing the pressures of housing forcing the curtailment, or in some cases, the relocation of industrial operations outside of urban areas.

This is of great concern to industry as a whole because industrial facilities provide a very important role to local economies:

*Import money from outside of the area
*Bring stability to the local economy
*Create secondary and support businesses; 2.5 support jobs are created for every one industrial job -- the highest multiplier of any sector;
*Generate high quality jobs that typically pay $25,000 more than the average service job, offer upward mobility, and provide insurance benefits and skills training.

In addition, industrial facilities provide a stable and ongoing source of property tax revenue to the local city; whereas, after 12 years, residential projects become a substantial drain on the infrastructure and services of a municipality.

While it is our position that increased supply and density of housing is appropriate in office and commercial employment areas, the negative impacts and community conflicts that occur when residential is placed in close proximity or adjacent to industrial operations will result in detrimental effects to the local job base and economy.

Our major concerns with the draft vision plan are as follows:

* **Larger buffers are needed to separate incompatible land uses:** In situations where a developer chooses to initiate a neighborhood transition by building new residential units in an industrial neighborhood, special care needs to be taken to separate and buffer the residential uses from their existing industrial neighbors. The typical distance at which additional study, data

analysis and special considerations occur from the regulatory agency perspective is 1,000 feet. We would recommend a mandatory, minimum buffer of 1,000 feet.

* **Lack of analysis of mixing of the new uses:** Altering the zoning and community plan designations in the Irvine Business Park creates drastic change for this area. If in fact it is determined that some transition should occur from industrial to residential, impacts from such a change need to be identified and mitigated. The stark contrast between industrial and residential uses present ongoing community conflicts when such incompatible uses occur, which ultimately results in a drain on the resources of public agencies to address.

* **Negative Declaration fails to properly address land use and traffic impacts:**

The use of a Negative Declaration fails to properly address the following potential impacts:

* The dangers associated with locating two very types of traffic mix next to one another by placing families in close proximity to heavy truck traffic or the inherent conflicts between diesel emissions and homes;

* The incompatibility of the bulk and scale are a substantial alternation to the existing character of the area; incompatibility of use and alternation of neighborhood character must be presumed rather than dismissed out of hand;

* Altering the zoning and community plan designations create substantial change for the business park and the neighborhood. Acceptance of the transition of this neighborhood from industrial to residential would appear to be assumed and encouraged with a negative declaration.

* **Both Residential and Industrial Uses Suffer when Co-located:**

* Residential is affected by adverse impacts of mixed use in numerous ways:
  - -24-hour operations
  - -truck traffic/delivery bays
  - -noise
  - -lighting
  - -dust
  - -odor
  - -air emissions
  - -use and storage of hazardous materials and chemicals
  - -general public health, safety and welfare concerns.

* Businesses are also affected in a variety of ways when residential encroaches near their operations:
  - -higher insurance costs
  - -calls to reroute trucks and deliveries
  - -limitations on operating hours
  - -additional site security considerations
  - -mitigation of visual impacts
  - -demands for noise controls
  - -nuisance complaints filed with public agencies and elected officials
  - -challenges to permits or business expansions
  - -revisions to emergency response plans
  - -extensive time and monetary costs associated with residential neighbor policies

In conclusion, in situations were collocation has occurred, numerous problems have resulted and continue to the extent that it is ultimately the industrial facility that will scale back

hours, limit access to their facility, move out processes or operations, expand in other locations and in some situations simply relocate.

The Irvine Business Park is a thriving, vital contributor to the City of Irvine, and we respectfully request your consideration to conduct a more thorough analysis, particularly with respect to appropriate transitioning, separation and buffering between any new areas proposed for residential.

Sincerely,

Patti Krebs
Executive Director

O2. Responses from Patti Krebs, Executive Director, Industrial Environmental Association, dated May 11, 2009.

O2-1 Comment noted. No further response necessary.

O2-2 While certain residential projects may be generally incompatible with existing industrial activities, a review of site-specific conditions (e.g. proximity, the actual quantity and type of hazardous material stored/handled) may indicate that co-location of residential and industrial land uses will not result in health and safety issues. The IBC Vision Plan seeks to incorporate residential land uses in the IBC where such uses are compatible. As outlined in PDF 6-4, the Proposed Overlay Zoning Code (Section 5-8-4, Special Development Requirements) would require that project proponents submit sufficient data, as determined by the Director of Community Development, so that the City may evaluate compatibility between industrial and residential land uses. Factors to be considered would include noise, odors, truck traffic, hazardous materials storage/handling, air emissions, and soil/groundwater contamination. Relevant site-specific conditions would include, but would not be limited to proximity to industrial facilities, the hazardous materials involved, and the quantity and manner in which the hazardous materials are used, emitted, and disposed of. The Proposed Overlay Zoning Code would allow for case-by-case determinations.

As described in Section, 5.2, *Air Quality*, of the revised and Recirculated DEIR, new developments are required to assess potential hazards associated with proximity to air toxics. Future developments are also required to assess potential noise impacts through the submittal of an acoustical report (see PPP 9-2). Additionally, all discretionary applications for residential or residential mixed use would be required to include as a condition of approval a disclosure to residents which clearly outlines the issues associated with living in a mixed-use environment (see PDF 6-2). At the request of the commenter, the discussion of land use compatibility with regards to air quality and hazards has been updated in Sections 5.2, Air Quality, 5.6, *Hazards and Hazardous Materials*, and 5.9, *Noise*, of the Recirculated DEIR.

Furthermore, the development of school facilities would trigger certain requirements to ensure that students and faculty are protected from hazards that might be associated with industrial activities. Those requirements are codified in Title 5 of the California Code of Regulations, Section 14010, Standards for School Site Selection, and California Education Code, Section 17213. More specifically, they would require rigorous analyses of air toxics emissions and historical hazardous substance releases. Such analyses would be subject to review and comment by agencies such as the South Coast Air Quality Management District (SCAQMD) and Department of Toxic Substances Control (DTSC).

O2-3 See Response O2-2. Additionally, the City seeks to allow new residential development where such development is shown to be compatible with the surrounding neighborhood. The proposed residential development in the IBC Vision Plan is high density, characteristic of an urban neighborhood. The proposed project is the City's vision plan for a transition to a more urban neighborhood in this area of the City. As part of the development plan review, proposed zoning restrictions in the

IBC will require new development to carefully evaluate whether new residential is located in proximity to hazards.

O2-4 Comment noted. The DEIR has been revised and recirculated to address the issues and comments raised by the commenter.

O2-5 This issue is discussed in Chapter 4, *Environmental Setting*, and Section 5.8, *Land Use and Planning*, of the of the Recirculated DEIR.

O2-6 The comment regarding the protection of workers from hazardous materials is noted. However, there are also existing regulatory programs that are aimed at protecting the public and environment from hazardous materials, as outlined in Section 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

The California Accidental Release Program (CalARP) is mentioned in this comment. CalARP is a merging of the federal and state programs for the prevention of accidental releases of certain toxic and flammable substances, and satisfies Title III of the Superfund Amendments and Reauthorization Act (SARA), also known as the "Community Right-To-Know" Act. This law was designed to protect the public and environment, rather than employees, from chemical hazards. One of the many requirements of CalARP, is that facilities handling regulated chemicals above threshold quantities are required to provide an inventory of toxic chemicals to local and state officials, and prepare a Risk Management Plan that contains measures to prevent chemical releases and procedures for responding to releases or threatened releases. OCFA is responsible for administering CalARP in the County of Orange, California. It should be noted that CalARP is not exclusive to residences, but applies to a variety of land uses. Title 19 of the California Code of Regulations, Chapter 4.5, CalARP, defines a "public receptor" as offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed..."

As stated above in Response O2-2, residential projects planned in the vicinity of any industrial facility handling hazardous materials, which would include those that are regulated through the CalARP program, would be required to submit data to the City's Director of Community Development to determine if there would be an incompatibility issue. Although not mentioned in Response O2-2 or the Proposed Overlay Zoning Code, the determination would be based upon the review of the regulated facility's offsite-consequence analysis and an estimate of the distance of impacts as a result of an accidental release of a hazardous material. If the residential project was determined to be adversely impacted by a release from the facility, the following decision would be made: 1) the project would not be approved, or 2) appropriate and practical mitigation measures would be incorporated. Therefore, residential receptors would not face significant impacts as the result of a hazardous material release from a CalARP-regulated facility.

There are additional programs that are meant to protect the public and environmental from chemical hazards. Among them are the Hazardous Materials Disclosure and Business Plan Program, which requires businesses to complete and file a chemical inventory with OCFA, the local Certified Unified Program Agency

(CUPA). This disclosure information assists emergency responders in planning for and handling emergencies which involve hazardous materials.

O2-7 The City understands that hazardous materials used at a particular facility will change over time in response to technological advances. However, certain regulations may account for process changes that occur. SCAQMD issues permits involving the installation, construction, modification, replacement, or relocation of equipment that emit air pollution. Typically, a permit would not be issued for emissions of non-attainment status air pollutants unless they are offset, which is generally through the purchase of emission reduction credits in the open market. Additionally, facilities are generally required to pay fees for emissions of ambient air quality standard pollutants and toxic air contaminants. Consequently, businesses are continually seeking processes, equipment, and products that are less polluting.

The management of hazardous materials and waste, including pollution prevention policies, is a highly regulated activity with oversight by various agencies, including but not limited to the OCHCA, DTSC, and the Regional Water Quality Control Board. Releases of hazardous substances to the soil or groundwater are not as likely to occur in the current regulatory environment, but any releases and subsequent cleanup would be conducted with oversight and direction from the designated agency.

More importantly, there is a trend towards the stricter regulation of hazardous materials, in terms of how they are transported, handled, emitted, and/or disposed, regardless of proximity to residences.

In consideration of the facts stated above, a point in time land use compatibility study is likely to be conservative with respect to hazardous materials use.

O2-8 Existing businesses that store or handle hazardous materials would not be required by the City to evaluate compatibility. It would be the burden of the project proponent to provide data to the City in accordance with the Proposed Overlay Zoning Code. In most cases, the industrial facilities have collected, organized, and submitted data to agencies during the normal course of work. OCFA requires data pertaining to the storage and handling of hazardous substances in accordance with the Hazardous Materials Disclosure and Business Plan Program and CalARP. SCAQMD requires certain data regarding the type, quantity, and manner of hazardous air emissions prior to issuing a permit to construct/operate. Updates are required on routinely by both agencies. Consequently, a financial burden would not be borne by industrial land users.

O2-9 The City recognizes that hazardous materials use can occur at any place within an industrial site, including outside buildings and storage, and may extend to loading docks and walking paths between structures at a multi-facility site. The City is in concurrence and has no objection to a business' right to control and prohibit access to any portion of its site to ensure that employees and the general public are protected.

O2-10 Comment noted. In accordance with Health and Safety Code, Section 25534.1, proximity of residences to industrial facilities preparing Risk Management Plans

(RMPs) would be considered when determining if a residential development is compatible with existing industrial facilities.

O2-11 Comment regarding RMPs is noted. No further response necessary.

O2-12 Comment regarding biohazardous agents is noted. No further response necessary.

O2-13 Comment regarding vivariums is noted. No further response necessary.

O2-14 Comment regarding substances and chemicals that could be diverted and/or used in illicit drug productions is noted. No further response necessary.

O2-15 Comment regarding Proposition 65 regulated chemicals is noted. As stated in Response O2-2, according to PDF 6-4, the Proposed Overlay Zoning Code would require that proponents submit sufficient data, as determined by the Director of Community Development for the City, so that the City may evaluate compatibility between industrial and residential land uses.

O2-16 Comment regarding transport of hazardous substances by truck is noted. As stated in Response O2-2, according to PDF 6-4, the Proposed Overlay Zoning Code would require that proponents submit sufficient data, as determined by the Director of Community Development, so that the City may evaluate compatibility between industrial and residential land uses.

O2-17 See Response O2-7.

O2-18 See Response O2-7.

O2-19 Comment regarding the requirements of California Health and Safety Code Section 44300 is noted. No further response necessary.

O2-20 Comment regarding the requirements for the installation of telecommunication facilities and satellite antennas for industrial uses is noted. No further response necessary.

O2-21 Comment regarding the discharges of contaminants is noted. This issue is discussed in Sections 5.2, *Air Quality*, and 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

O2-22 Comment regarding odor impacts is noted. This issue is discussed in Sections 5.2, *Air Quality*, and 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

O2-23 Comment regarding noise impacts is noted. This issue is discussed in Section 5.9, *Noise*, of the Recirculated DEIR.

O2-24 Comment regarding lighting impacts is noted. This issue is discussed in Section 5.1, *Aesthetics*, of the Recirculated DEIR.

O2-25 Comment regarding fencing impacts is noted. No further response is necessary.

O2-26 Comment regarding general safety and security concerns is noted. This issue is discussed in Section 5.6, *Hazards and Hazardous Materials,* of the Recirculated DEIR.

O2-27 See Responses O2-1 through O2-27.

O2-28 See Response O2-2.

O2-29 As described in Sections 5.6, *Hazards and Hazardous Materials*, and 5.2 Air Quality, applicants for new residential developments would be required to ensure that health risk is within acceptable levels (PDF 6-5). In addition, applicants for new development would also be required to mitigate noise from adjacent industrial uses pursuant to PPP 9-2.

O2-30 Comment noted. See Response O2-29.

O2-31 Comment noted. Land use compatibility issues are discussed in Sections 5.6, *Hazards and Hazardous Materials*, and 5.8, *Land Use and Planning*.

O2-32 See Response O2-8 and O2-29.

O2-33 See Response O2-7. Additionally, The DEIR has been revised to address the comments contained herein as shown in Sections 5.2, *Air Quality*, and 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

O2-34 See Response O2-2 and O2-3.

O2-35 Comment noted. Land use compatibility issues are discussed in Sections 5.6, *Hazards and Hazardous Materials*, and 5.8, *Land Use and Planning*.

O2-36 In response to the commenter, the No Project Alternative outlined in Section 7.2.2 is an alternative that was considered and rejected during the scoping/planning process, and therefore a detailed analysis of the various environmental impacts that could occur as a result of this alternative is not necessary. As stated in Section 7.2.2, this alternative assumes that ***no*** additional development and growth within the IBC area would occur beyond what is already approved. Therefore, the statement that employment would remain at existing levels under this alternative, which is approximately 90,000 jobs, is correct. Additionally, the No-Project/Existing General Plan Alternative assumes that the existing General Plan would continue to guide development of the IBC into the future, including the development of industrial uses.

O2-37 See Response O2-36.

O2-38 See Response O2-36.

O2-39 See Response O2-36. Additionally, the proposed project's environmental impacts, including those on public services and facilities and parks and recreation, are detailed in the various topical sections (Section 5.1 through 5.15) of the Recirculated DEIR.

O2-40 See Response O2-8 and O2-29.

O2-41 CEQA requires that an EIR include a discussion of reasonable project alternatives that would "feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any significant effects of the project, and evaluate the comparative merits of the alternatives" (CEQA Guidelines Section 15126.6). The alternatives analyzed in Chapter 7, *Alternatives*, of the DEIR were selected in accordance with the provision outlined in this section of the CEQA Guidelines. Additionally, an alternative that envisions no residential uses would not meet the majority of the proposed project's objectives, which would therefore not be in accordance with Section 15126.6 of the CEQA Guidelines. Furthermore, from the five alternatives analyzed, the No Project/Existing General Plan Alternative would not include the development of additional residential units beyond those that are under construction (1,892) or approved and not yet under construction (2,552), as shown in Table 3-1, *IBC Development Summary*, of Chapter 3, *Project Description*, of the DEIR. See also Responses O2-8 and O2-29 with regards to land use compatibility.

O2-42 The IBC Vision Plan retains the Business Complex designation. Furthermore, in the Urban Neighborhood, applicants for new residential development would be required to evaluate compatibility of the project with the industrial neighborhood by ensure air quality, noise, and hazards are mitigated (see PPP 9-2 and PDF 6-5).

O2-43 The IBC Vision Plan protects the existing job base through the incorporation of the Business Complex designation for a large portion of the IBC and various protections incorporated into the proposed zoning. Please refer to Section 5.6, *Hazards and Hazardous Materials,* of the Recirculated DEIR for a description of the various PPPs and PDFs intended to protect the existing job base.

O2-44 See Responses O2-2, O2-3, and O2-8.

O2-45 No significant impacts were identified with regard to noise, air quality, or hazards. Applicants for new development would be required to assess compatibility of residential land uses within industrial areas (PPP 9-2, PDF 2-1, PDF 2-4 and PDF 6-5). Therefore, incorporation of the 1,000 foot buffer alternative is not considered necessary.

O2-46 Please refer to Responses O2-1 through O2-45.

LETTER O3 – Law Offices of Robert C. Hawkins (56 pages)

LAW OFFICES OF ROBERT C. HAWKINS

May 14, 2009

Via e-mail (bjacobs@ci.irvine.ca.us) and Messenger

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Re: **The City of Irvine's (the "City" or "Irvine") Draft Environmental Impact Report ("DEIR") for the Draft Irvine Business Complex ("IBC") Vision Plan and Mixed Use General Plan and Zoning Code Amendments, and Infrastructure Improvements (the "Project")**

Greetings:

Thank you for the opportunity to provide further comments on the Project and the Draft Environmental Impact Report ("DEIR") for the Draft IBC Vision Plan and Mixed Use General Plan and Zoning Code Amendments, and Infrastructure Improvements (the "Project"). Please include these comments as well as our earlier comments in the administrative record for the environmental documents including the DEIR for the Project as well as in the administrative record for any other Environmental Impact Reports for any other residential project within the IBC.

O3-1

As we have indicated before, this firm represents Deft Incorporated located at 17451 Von Karman Ave. in the City of Irvine. Deft produces and manufactures wood finishes for the consumer market and specialized industrial coatings for aerospace and military customers. In its manufacturing of such coatings, Deft uses many hazardous materials including flammable liquids including nitrocellulose, hazards materials including cancer causing agents hexavalent chromium (Cr^{+6}) and barium chromate.

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This letter supplements our earlier comments on the Draft Negative Declaration for the Project, our June 27, 2006 and July 24, 2006 comment letters on the Project, and our comments on other projects in the IBC. Further, we incorporate herein the comments from others on the Project and the environmental documents including the DEIR.

Finally, we incorporate our earlier comments and the attachments to our comments on the NOP for the DEIR including the April 24, 2008 Minute Order in Allergan v. City of Irvine, OCSC Case No. 07CC01264, the April 24, 2008 Minute Order in Allergan v. City of Irvine, OCSC Case No. 07CC1268, the May 23, 2008 Statement of Decision in Allergan v. City of Irvine, OCSC Case No. 07CC1264, and the May 23, 2008 Statement of Decision in Allergan v. City of Irvine, OCSC Case No. 07CC1268. O3-1 cont'd.

In compliance with the requirements of the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and on behalf of Deft, we offer the following comments on the DEIR.

I. Summary of Concerns.

1. The DEIR fails to comply with Judge Sundvold's orders; it must be revised to do so. O3-2
2. The DEIR's Introduction is incorrect and fails to accomplish its purpose; it should be revised and recirculated. O3-3
3. The DEIR's Project Description is inaccurate and must be revised. O3-4
4. The DEIR's discussion of the Environmental Setting fails to use the appropriate Project baseline condition; the DEIR should be revised and recirculated with a true pre-Project baseline. O3-5
5. The DEIR's discussion of air quality impacts including provision of a 1,000' buffer for chrome plating facilities is incomplete and requires revision. O3-6
6. The DEIR's analysis of Project impacts on soils and geology fails to analyze fully Program and project level impacts. O3-7
7. The DEIR's analysis of Project impacts on hazards and hazardous materials is flawed and incomplete, and fails to provide a buffer between existing industrial users and new residential uses. O3-8
8. The DEIR fails to analyze adequately the Programmatic and Project level impacts on hydrology and water quality. O3-9

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9. The DEIR fails to analyze completely and to propose adequate mitigation for the Project's land use impacts. O3-10

10. The DEIR's analysis of the Project's noise impacts is incomplete and its proposed mitigation is impermissibly deferred. O3-11

11. The DEIR fails to analyze adequately the Project's transportation and traffic impacts and defers mitigation of those impacts. O3-12

12. The DEIR's analysis of recreational impacts is incomplete and must be revised. O3-13

13. The DEIR's discussion of significant and irreversible impacts fails and requires revision. O3-14

14. The DEIR's analysis of the Project's growth inducing impacts is incomplete and inadequate; it must be revise and recirculated. O3-15

II. Introduction: EIR Standards.

An EIR constitutes the heart of CEQA, Public Resources Code sections 21000 et seq. CEQA Guidelines section 15149(b) states:

> ". . serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects."

See California Public Resources Code section 21003(b) (requiring that the document must disclose impacts and mitigation so that the document will be meaningful and useful to the public and decision-makers.)

O3-16

Further, CEQA Guidelines section 15151 sets forth the adequacy standards for an EIR:

> "An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which takes account of the environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith attempt at full disclosure."

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Further, "the EIR must contain **facts and analysis**, not just the agency's bare conclusions or opinions." Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association. (1986) 42 Cal. 3d 929, 935. (Emphasis supplied.)

An agency's determination in connection with an EIR must be supported by substantial evidence. Public Resources Code sections 21168 and 21168.5. "[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Public Resources Code section 21080(e)(1). However, "[r]elevant personal observations such as [personal observations about noise] can constitute substantial evidence." Oro Fino Gold Mining Corp. v. County of Del Oro (1990) 225 Cal. App. 3d 872, 882.

In addition, an EIR must specifically address the environmental effects and mitigation of the Project. But "[t]he degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." CEQA Guidelines section 15146. The analysis in an EIR must be specific enough to ensure that the public and decisionmakers will understand the Project and its impacts, and make informed decisions about the project, the EIR and project mitigation. The EIR must produce sufficient information and analysis to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned. See Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal. 3d 376.

O3-16 cont'd.

Also, to the extent that an EIR proposes mitigation measures, it must provide specific measures. It cannot defer such measures until some future date or event. "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process." Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 308. See Bozung v. Local Agency Formation Com.(1975) 13 Cal.3d 263, 282 (holding that "the principle that the environmental impact should be assessed as early as possible in government planning."); Mount Sutro Defense Committee v. Regents of University of California (1978) 77 Cal. App. 3d 20, 34 (noting that environmental problems should be considered at a point in the planning process "where genuine flexibility remains"). CEQA requires more than a promise of mitigation of significant impacts: mitigation measures must really minimize an identified impact.

"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 omitted.) On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. (Citation omitted.)" Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276.

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III. Introduction of Comments.

A. The DEIR Fails to Comply with Judge Sundvold's Rulings for the IBC.

Judge Sundvold ruled that the City must perform a complete environmental review and analysis of the residential transformation of the IBC. This analysis must include a programmatic evaluation of the entire Project– the residential transformation of the IBC– including projects which have been built, approved, pending and future residential projects in the IBC and all project related impacts.

> "Since the adoption of the IBC EIR, the IBC has been transformed and continues to be transformed into a mixed residential area which did not exist and was not addressed by the IBC EIR. **That transformation had and has potentially far reaching environmental impacts. These impacts were not anticipated nor analyzed in the IBC EIR, nor were they addressed in the City's review of the previous individual residential projects in the IBC, in the form of addenda, performed since 1992. Nor, finally, were these impacts addressed in the Project SEIR.**
>
> "The City contends that the Project EIR analyzed the environmental impacts of the transition of the IBC from commercial/residential to residential. The City has not cited any evidence in the Record to support that position. **The result is that the City has approved individual projects: including this Project, in a piece-meal fashion, that has transformed the IBC into a mixed-use residential area, without ever having performed the required comprehensive analysis of the potential environmental impacts of such a transformation**."

O3-17

Martin St. Minute Order, page 4 (Emphasis added.) As discussed below, the DEIR fails to perform this "required comprehensive analysis of the potential environmental impacts of [the residential transformation of the IBC]." The City must revise the DEIR to accomplish this task.

Further, pursuant to Judge Sundvold's order, the DEIR should be revised to analyze the entire IBC residential transformation including all past project approvals. The City has never performed a comprehensive analysis of the potential environmental impacts of this residential transformation; the DEIR fails to do this. The DEIR fails to analyze the impacts of three quarters of the residential transformation of the IBC which is the Project. As discussed below, the DEIR should be revised to analyze the Project impacts from the conditions on the ground that existed prior to the Project. As discussed below, the DEIR fails to use the appropriate baseline conditions: the appropriate baseline conditions are those that existed in the IBC immediately after the approval of the 1992 IBC Program EIR ("1992 EIR"). The baseline would include the 3,896 dwelling units allowed by the 1992 EIR. However, it would not include the rest of the approved and existing residential units.

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B. The DEIR Fails to Include a New Traffic Analysis and Explanation of Trips as Required by Judge Sundvold.

Importantly, Judge Sundvold held that the City's system of accounting for traffic trips in the IBC and tranferring those trips to other sites, the so-called or transfer of development rights ("TDR") program, was improper and that a new traffic analysis must be worked out. Specifically, he held that:

> "The Project EIR failed to adequately analyze and disclose the environmental effects that could be caused **by transferring development rights from one area of the IBC to another**. Furthermore, because the Project EIR relied upon the development caps managed through the TDR program, and because the IBC EIR conducted the only comprehensive review of the TDR program, **the Project EIR improperly failed to acknowledge the unmitigated traffic impacts identified in the IBC EIR**."

O3-18

Martin St. Minute Order, Page 4 (Emphasis added). As we indicated in our comments on the NOP and Initial Study, the Project must include an overall revision of the TDR program, and the DEIR must include a entirely new traffic analysis for the Project including an analysis which considers and analyzes the previously approved residential projects as well as the Project. Such an overall analysis is necessary to comply with Judge Sundvold's rulings.

Unfortunately, the DEIR fails to do this. As discussed more fully below, the DEIR simply changes the names of the units and fails to provide any explanation or clarification of the methodology and the system. The DEIR merely pours the old wine into new bottles with the expected failure. The City must revise the DEIR to explain fully and fairly the traffic analysis and the traffic accounting system to understand Project related traffic.

IV. Section 1, the Executive Summary, Mischaracterizes the DEIR.

Section1, the Executive Summary, states that the DEIR is a "program DEIR" prepared under CEQA Guidelines section 15168 which provides that a program EIR is:

> "an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:
>
> (1) Geographically,
>
> (2) A logical parts in the chain of contemplated actions,
>
> (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

O3-19

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(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(c) Use with Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required."

O3-19 cont'd.

Unfortunately, the DEIR's Project Description identifies and includes a series of pending individual projects which the City has withheld from hearing after Judge Sundvold's rulings. Those projects have received project level environmental review which are subject to the errors identified by Judge Sundvold. Now, the City proposes to include those projects in this Program DEIR. That is, the City proposes to approve those projects in connection with their compliance with the General Plan and the Zoning Code by amending the General Plan and the Zoning Code for such projects and others.

However, as discussed below, because the City has already prepared project level environmental documents, the DEIR must include the project level analysis for the Project and its individual projects. The DEIR does not include such analysis and must be revised.

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V. Section 2, the "Introduction," Fails to Accomplish its Purpose.

Section 2, the Introduction, discusses the scope and extent of the DEIR. Among other things, Section 2 discusses the notices of preparation of the previous environmental documents and the comments on those documents. See Table 2-1. However, the Introduction fails to discuss all of those environmental documents and the City's responses to such comments. Moreover, those responses and the DEIR fail to address those comments. The DEIR should be revised to address such comments and issues raised.

First, on January 26, 2006, the City released a Negative Declaration for the Project. The City received loads of comments including from Deft and from this office for other clients. Ultimately, the City decided not to follow through with the ND and to publish the DEIR. However, the DEIR fails to mention this important step in the environmental review of the Project and the comments thereon. By this comment, we incorporate our comments on the ND. The DEIR should be revised to incorporate the ND as well as the comments on it. O3-20

Second, the DEIR which as Mr. Jacobs has said is an informative document, distorts and argues with comments on the various NOPs for the DEIR. See Table 2-1. The DEIR should not distort, mischaracterize, or argue with comments or analysis. The DEIR must be an objective document which simply states the facts. See Public Resources Code section 21061; CEQA Guidelines section 15003. The DEIR should be revised to comply with these CEQA requirements. O3-21

Third, Section 2 attempts to incorporate by reference earlier documents including EIRs for the IBC. Although it references the 1988 DEIR which established various open space requirements for the City, it fails to reference the 1992 EIR which established the current development caps and limits. (Interestingly, the DEIR uses the 1988 DEIR's requirements for open space to eliminate some alternatives. It is unclear that this discussion is relevant given that the DEIR seeks to amend the General Plan itself.) As discussed below, the 1992 EIR is important for other reasons including establishing the Project background. O3-22

VI. Section 3, the Project Description" Is Inadequate and Must be Completely Revised.

Section 3 attempts to describe the Project. Section 3.2 discusses the Project's objectives. These include:

"• Provide for the on going development of the IBC consistent with the City's General Plan Urban and Industrial land use designations and the City's adopted Vision Plan Goals, which are: O3-23

  • Protect the existing job base.

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- Develop mixed-use cores."

DEIR, 3-1. Unfortunately, the DEIR fails to explain how the Project advances these objectives. Indeed, as discussed throughout these comments, the Project will bring fifteen thousand (15,000) residential units (together with 1,191 density bonus units) also known as sensitive receptors into the IBC, an existing industrial area. These residential users, these sensitive receptors, are incompatible with the existing industrial users. In order to protect the existing job base, the Project must provide protections for existing industrial users including providing adequate buffers between the new residential users and existing industrial users.

In part, the Project recognizes this incompatibility. For instance, Appendix D sets forth the Project's proposed Zoning Code Amendments. Section 5-8-4A4.e provides: O3-23 cont'd.

"Residential structures shall be located outside of the distances to the following stationary air pollutant sources:

- 1,000 feet from an existing chrome plating operation."

Appendix D, page 12. Deft is similar to chrome plating facilities. See Land Use Compatibility White Paper: Hazardous Materials Assessment by Global Environmental Consulting Company., Inc., Attachment A, attached hereto; and the May 11, 2009 Letter from Global Environmental Consulting Company., Inc. to the Law Offices of Robert C. Hawkins, Attachment B, attached hereto. Indeed, chrome plating operations use hexavalent chromium (Cr^{+6}) for its operations. Deft also uses hexavalent chromium (Cr^{+6}) . Each–chrome plating operations and Deft– has the potential for hazardous emissions. Hence, Deft and other users of hexavalent chromium (Cr^{+6}) should receive similar separation requirements. O3-24

In addition, this protection is oddly worded with its limitation to "Residential structures." However, the entire residential development should be separated from such users by 1,000 feet. The DEIR and Appendix D should be revised to make this change. O3-25

Second, the Project does not provide any mixed use cores. Earlier in the Project's public review process, the City considered developing mixed use cores or Town Centers in various locations including along the Jamboree Corridor. In a February 27, 2007 presentation, the City's consultants, EDAW, recognized that, although ad hoc placement of residential units in the IBC such as the Project may facilitate market forces, its disadvantages are large, many and significant: O3-26

"• Ad hoc, unfocused development patterns
- Trip-capture/intensification opportunities go unexploited
- Reduces "clustering" of residential and therefore leads to more extended/ adverse edge condition with remaining industrial uses
- Less chance for effective transit"

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In this presentation, EDAW recommended that the Project implement the mixed use cores. Unfortunately, the DEIR ignores this recommendation. O3-26 cont'd.

As discussed below, the Project suffers from these problems: development is isolated and unfocussed, and without residential cores which will ensure vibrant residential uses.

Section 3.3.1 discusses the Project background. It is extremely misleading:

> "The intensity budgets [established in the 1988 General Plan amendment] were measured in units called 'trips.' Beyond indicating the maximum potential development intensity for a parcel, however, those trips are no longer used by the City to reflect the amount of traffic generated on a specific parcel. The City's development intensity management mechanism allowed **market forces to dictate how and where development intensity would ultimately be utilized through the Transfer of Development Rights (TDR) provisions established in the Zoning Code.**" O3-27

Unfortunately, market forces do not accommodate appropriate planning. The 1992 EIR noted that prior development and environmental review was inadequate. The 1992 EIR stated:

> "In 1987, the City discovered that the IBC approvals exceeded the level studied in the 1989 (sic) Supplemental EIR. After completing a detailed analysis of existing ordinance provisions and determining that approved development exceeds infrastructure capacity, the City Council enacted Interim Urgency Ordinances in 1987 in an attempt to limit development within the IBC to a level more commensurate with the existing and projected transportation system." O3-28

IBC EIR, page III-6. Although the 1992 EIR cannot be used to explain or justify the residential transformation of the IBC, it is part of the history of that project. The DEIR must reference it and discuss how the DEIR avoids, if it does, the problems identified in the 1992 EIR. Unfortunately, the City has only repeated those mistakes. As indicated in Judge Sundvold's rulings, in the IBC, market forces swung way out of control and the caps established in 1988 and again in 1992 were ignored. The City approved more than 9,466 without any general environmental review.

Section 3's description of the Project in Section 3.2.2 is inadequate. Table 3-1 attempts to show the Project development summary. However, it errs as to the existing number of units. The existing number of units– the existing of number of dwelling units before the Project, i.e., the residential transformation of the IBC, and as allowed under the 1992 EIR– was 3,896 dwelling units, not the existing plus Project of 9,446 dwelling units which includes 4,524 existing dwelling units, 2,111 dwelling units under construction and 2,766 dwelling units already approved. As discussed more fully below, the DEIR must regard all of these additional units O3-29

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together with all infrastructure improvements over the 3,896 dwelling units allowed under the 1992 EIR and the existing infrastructure in 1992 as the Project and analyze the Project impacts on the environment. The DEIR fails to do this. O3-29 cont'd.

(As noted above, the DEIR fails to reference the 1992 EIR at all and as noted throughout, this leads to an inaccurate view of the development history of the IBC. Instead, the DEIR refers to the 1988 EIR which as indicated above was inadequate and even criticized in the 1992 EIR Interestingly, the residential development cap established in the 1988 EIR was 3,455 dwelling units which was increased in the 1992 EIR to 3,896 dwelling units. Obviously, the City believes that the 1988 EIR and its Project is part of the administrative record for the DEIR.) O3-30

Moreover, Table 3-1 demonstrates how market forces have run wild in the IBC. The Project proposes a residential development cap of 15,000 dwelling units ("du(s)") (together with 1,191 bonus density units). However, the City has already approved 60% of those projects. Over a majority of the Project dwelling units have already been approved and/or built without the necessary infrastructure projects proposed by the Project. See Figure 3-5. Hence, the Project will unfairly burden the remaining 40% of the unapproved projects with the infrastructure costs. O3-31

Moreover, it is unclear that the DEIR's Project Description is problematic regarding the density bonus units. This requires a specific application which would qualify for such units. The DEIR considers no such applications. Unless the City has such specifics, the DEIR should not consider such bonus density units.

Further, the Project proposes to establish three districts in the IBC:

(1) The Multiuse District would include ". . . the portions of the IBC with large existing multiuse development on sites that may allow for more intensification." DEIR, 3-11 O3-32

(2) The Urban District would "include(s) the mixed-use core IBC (generally between Jamboree Road and Von Karman Avenue) and allows a range of land uses and buildings at varying heights." Id.

(3) The Business District " . . . would be applied to portions of the IBC characterized by existing, longstanding industrial uses that are expected to remain." Id.

Figure 3-6 attempts to depict these districts. However, it differs from the DEIR's description. The Urban District extends to Armstrong Ave. which is well beyond Von Karman Ave. However, Von Karman Ave. currently has no existing residential developments. The DEIR should be revised to address these issues. O3-33

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The Project also includes, as a part of the General Plan Amendment, removal of the maximum density cap of 52 dwelling units per acre and insert a minimum of 30 dwelling units per acre as part of the Land Use Element Table A-1. However, these changes are significan,t because eliminating the maximum cap provides no limit on the density allowed to a site and will likely increase traffic and parking impacts. O3-34

The Project also includes nine (9) individual projects for which the City has already drafted project level DEIRs. All of these projects are included in the Project and all have Project level design features, elements and other specifics. Indeed, these projects have already received much of this analysis.

However, the DEIR does not include or reference that analysis. Instead, as discussed below, the DEIR provides only project summaries and Section 4 which includes the environmental impact analysis contains no project level environmental analysis. Interestingly, the discussion of the project summaries in Section 3 notes that only three or four of the projects include subterranean parking structures. As discussed below, the DEIR's analysis of the impacts of such subterranean parking structures are not analyzed in the DEIR. Likely other project level impacts are also unanalyzed. O3-35

Finally, Judge Sundvold ordered the City to cease processing project in a "piecemeal fashion." However, to this day, the City continues to process IBC projects in a piecemeal fashion. For instance, in March 2009, the City adopted amendments to the Zoning Code to correct alleged scrivener's errors which included creation of a new retail category and zone for "Accessory Retail Business" uses. These uses are subject to a square footage limitations to the "accessory" retail uses. However, such restrictions allow for retail square footage to 2% of the total gross square footage of an office and/or residential development. Also, the Code amendment also exempts these accessory retail uses for "additional regulatory vehicle trip limitations and parking." See Ordinance 09-02, Exhibit B, Sec. 3-5-2(b) (for residential). See also Sec. 3-5-2(B) (exempting only regulatory vehicle trip limitations".) The City adopted these regulatory changes under the CEQA common sense exemption. Most of the examples of such accessory retail uses are in the IBC. O3-36

However, these regulatory changes will have significant environmental impacts for development in the IBC, both for projects already built and those approved, as well as for the Project. Moreover, this proposed change for accessory retail uses is part of the Project and should be analyzed in the DEIR.

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VII. Section 4, the "Environmental Setting," Is Inaccurate and Requires Substantial Revision.

The environmental setting serves as the base condition against which the impacts of the Project are measured. CEQA Guidelines section 15125(a). As such, the environmental setting is key to the analysis. Inaccurate or skewed conceptions of the environmental setting undercut the environmental analysis.

CEQA Guidelines section 15125(a) provides:

> "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."

However, as noted above, Judge Sundvold held that the City has never performed an overall environmental review of the Project, the residential transformation of the IBC:

> "The City contends that the Project EIR analyzed the environmental impacts of the transition of the IBC from commercial/residential to residential. The City has not cited any evidence in the Record to support that position. **The result is that the City has approved individual projects: including this Project, in a piece-meal fashion, that has transformed the IBC into a mixed-use residential area, without ever having performed the required comprehensive analysis of the potential environmental impacts of such a transformation.**"

O3-37

Martin St. Minute Order, page 4 (Emphasis added.) The DEIR and Section 4 fail to provide any appropriate analysis or discussion of the environmental setting before the Project, that is, before the City commenced the residential transformation of the IBC. As the baseline for the Project, the DEIR should analyze the environmental setting prior to all recent projects, i.e. prior to all residential projects in excess of the 3,896 dwelling units established as the residential development cap in the 1992 EIR. 1992 EIR, III-13 (Table 1).

Rather, the DEIR uses the existing General Plan with 4,569 dus already built, 2,111 dus under construction and 2,766 dus approved for a total of 9,446 dwelling units. That leaves only 6,725 new dwelling units for the Project plus 1,191 density bonus units for a grand total of 16,191 dwelling units. See Tables 4-2 and 3-1 (which appear to be the same table). This will not measure the true impacts of the Project, because more than 60% of the Project is assumed in the baseline, rather than analyzed as part of the Project. The DEIR should be revised to include the appropriate baseline condition for the Project: the residential development cap of 3,896

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established by the 1992 EIR. Or the City could use the development cap which it recognizes in the 1988 EIR of 3,455 dwelling units. Either way the baseline should reflect conditions on the ground before the entire Project, the conditions on the ground before the residential transformation of the IBC. O3-37 cont'd.

VIII. Section 5, "Environmental Analysis," is Inadequate and Must be Revised.

Section 5 attempts to analyze the environmental impacts of the Project. It has many such impacts. However, Section 5 fails to analyze these impacts fully and completely. Hence, Section 5 and the entire DEIR must be revised and recirculated. O3-38

A. Section 5.1, "Air Quality," Fails to Analyze the Project's Full Air Quality Impacts.

Section 5.1 tries to analyze the Air Quality impacts of the Project. It fails from several perspectives.

First, Section 5.1 inaccurately describes "sensitive receptors" as limited to "[s]ensitive population groups include children, the elderly, the acutely ill, and the chronically ill, especially those with cardiorespiratory diseases." DEIR, 5.2-8. Unfortunately, all residents, all human beings, are sensitive receptors for the purpose of assessing the Project's air quality analysis. The DEIR should be revised to discuss fully and completely the sensitive receptors who may be affected by the air quality impacts of the Project. O3-39

Second, the DEIR attempts to discuss air pollutants and toxic air contaminants. However, it fails to discuss hexavalent chromium (Cr^{+6}) at all. As indicated in the Land Use Compatibility White Paper: Hazardous Materials Assessment by Global Environmental Consulting Company (attached hereto), Deft uses hexavalent chromium (Cr^{+6}) which is known to cause cancer. The DEIR should be revised to discuss and analyze the Project's air quality impacts by exposing sensitive receptors to hexavalent chromium (Cr^{+6}). O3-40

Third, the DEIR includes several "Project Design Features" (PDF(s)). PDF 2-1 states:

"As described in the proposed zoning for the project and based on the recommended buffer distances of the California Air Resources Board, applicants for new residential developments in the Irvine Business Complex shall place residential structures outside of the recommended buffer distances to the following stationary air pollutant sources: O3-41

- 1,000 feet from the truck bays with an existing distribution center that accommodates more than 100 trucks per day, more than 40 trucks with operating

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transport refrigeration units, or where transport refrigeration unit operations exceed 300 hours per week.

- 1,000 feet from an existing chrome plating facility."

DEIR, 5.2-12. In earlier environmental documents including those prepared for pending projects which are part of the Project as well as earlier projects, the City did not include this PDF. Indeed, the City failed to analyze the impacts of emissions generated by such facilities. O3-41 cont'd.

However, the DEIR continues this failure. The DEIR provides no explanation or discussion of PDF 2-1 or its restrictions. Although we support the buffer for facilities which use hexavalent chromium (Cr^{+6}) , the DEIR must analyze the impacts to ensure that the buffer is adequate and sufficient.

Moreover, the DEIR must explain the basis for such buffers and the nature of the buffer. As indicated above and in the Global Environmental Consulting Company, Inc.'s White Paper and its May 11, 2009 letter to this firm, Deft is similar to a chrome plating facility. Hence, PDF 2-1 should include Deft and other facilities which use hexavalent chromium (Cr^{+6}) . Further, the DEIR should explain the full nature and extent of the buffer including all other facilities which satisfy the restrictions for such facilities. The DEIR should be revised to address these issues and be recirculated for public review and comment. O3-42

Further, Impact 5.2-5 requires revision. Impact 5.2-5 addresses the Project's potential to expose sensitive receptors to air quality emissions. Unfortunately, the DEIR's analysis of Impact 5.2-5 is limited to nitrogen oxides, carbon monoxide, fine and coarse inhalable particulate matter (PM_{10}), and fine inhalable particulate matter ($PM_{2.5}$). However, it fails to include a discussion of the potential to expose sensitive receptors to other potential contaminants. O3-43

In addition, although Impact 5.2-6 states that residential uses may be sited within California Air Resources Board ("CARB") recommendations, as noted above, the Project requires that residential uses be sited outside of such restrictions. This raises several problems. First, the DEIR must be revised to reflect the Project: residential uses must be sited outside of the CARB limits. Second, although the Impact 5.2-6 references the CARB 1,000 foot buffer for chrome plating facilities, it contains no discussion of such a restriction. O3-44

Indeed, regardless of the Project and the CARB's limitation to chrome plating facilities, the DEIR recognizes that facilities with similar chemicals and emissions require a 1,000 foot buffer in order to avoid a significant air quality impact by exposing sensitive receptors to such emissions including hexavalent chromium (Cr^{+6}) . Deft has similar emissions and qualifies for a 1,000 foot buffer from any residential uses, not as the Project indicates, residential structures.

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Section 5.1 must be substantially revised to reflect the Project, to explain any and all buffers including buffers for chrome plating facilities, and to fully and fairly all air quality impacts of the Project including the potential to expose residents to hexavalent chromium (Cr^{+6}) emissions. O3-45

B. Section 5.5, "Geology and Soils, Fails to Analyze Program and Project Impacts.

Section 5.5 tries to address the Project's impacts on IBC's geology and soils. It fails. First, Section 5.5 fails to discuss fully and completely the Project's impacts on soils including liquefaction. The depth to groundwater in IBC is shallow, DEIR, 5.5-7, and in portions of IBC including areas near Deft, it is less than four feet below ground surface. With such shallow groundwater which is not recognized in the Section 5.5, the DEIR must be revised to discuss the potential for liquefaction due to the Project.

More importantly and more recurring, Section 5.5 fails to discuss the Project's, rather the Program's impacts, on the Project levels including the nine (9) pending projects. As indicated above, the Project, Program, is subject to liquefaction. However, Impact 5.5-2 finds a potential impacts due to liquefaction, DEIR, 5.5-11, due to impacts relating to seismically induced lateral spreading, id., and due to impacts relating to seismically induced settlement, subsidence, and/or collapse, id.

Despite these potentially significant impacts, Section 5.5.5, which addresses Level of Significance Before Mitigation, finds that:

> Upon implementation of the PPPs listed above, the following impacts would be less than significant: 5.5-1, 5.5-2, 5.5-3 and 5.5-4. O3-46

Unfortunately, the DEIR is incorrect. None of these existing plans, programs, or policies (PPPs) lessen the Project impacts. These PPPs only defer analysis. For instance, PPP 5-3 provides:

> "In accordance with the City of Irvine Grading Code (Municipal Code Title 5, Division 10) and Grading Manual, detailed geotechnical investigation reports for each Rough Grading Plan shall be submitted to further evaluate faults, subsidence, slope stability, settlement, foundations, grading constraints, liquefaction potential, issues related to shallow groundwater, and other soil engineering design conditions and provide site-specific recommendations to mitigate these issues/hazards. The geotechnical reports shall be prepared and signed/stamped by a Registered Civil Engineer specializing in geotechnical engineering and a Certified Engineering Geologist. The City of Irvine Geotechnical Engineer/Engineering Geologist shall review the rough grading plan to ensure conformance with recommendations contained in the reports."

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DEIR, 5.5-9.

This may be acceptable for a full program EIR: such EIRs are by their nature general. However, as discussed above, the Project includes nine (9) individual projects for which the City has prepared DEIRs, has project level specifics but have been deferred for this Program DEIR and pursuant to Judge Sundvold's orders.

Unfortunately, the DEIR fails to include any project level features for these nine (9) individual projects. As indicated above, three of the pending projects which are part of the Project–Program include subterranean features. These features vary in depth with the lowest below ten feet below ground surface. These project may intercept groundwater. The DEIR must analyze the impacts of the Project and these individual projects on geology and soils including their potential for liquefaction at those individual project sites.

O3-46 cont'd.

C. Section 5.6, "Hazards and Hazardous Materials," Fails from Several Perspectives Including an Adequate Buffer for Existing Industrial Uses from New Residential Uses.

Section 5.6 proposes to address the Project's impacts on Hazards and Hazardous Materials. As before, it is inadequate for several reasons.

First, the Section 5.6 recognizes that:

"Based on the FIND database query, there are approximately 511 regulated facilities in or in the immediate vicinity of the IBC. Of these, 14 are identified as Title V facilities (see Figure 5.6-1)."

DEIR, 5.6-8. According to Section 5.6,

"Title V applies to major sources. USEPA defines a major source as a facility that emits or has the potential to emit any criteria pollutant or hazardous air pollutant at levels equal to or greater than the major source thresholds. There are no public or private K–12 schools in the IBC; however, the project will create a mixed residential and industrial environment that may result in compatibility issues when siting residential developments within or adjacent to areas that may be impacted by existing facility emissions."

O3-47

Id. Unfortunately, this discussion creates several problems.

First, Figure 5.6-1 identifies only eight (8) Title V facilities, not fourteen (14). The DEIR should be revised to address the other six (6) facilities. Second, Section 5.6 contains no discussion of the nature or types of hazardous materials stored, processed, manufactured or

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shipped in these fourteen (14) facilities. Third, Section 5.6 contains no discussion of buffers necessary for residential users who may be near such facilities. As noted above, Section 5.2 included a 1,000' buffer for certain facilities including chrome plating facilities. Fourth, Section 5.6 fails to discuss how many chrome plating facilities or similar facilities such as Deft are located within the IBC.

Most importantly, although Section 5.6 recognizes that the Project will result in incompatibility of residential and industrial users, it fails to develop a program or mitigation for such incompatibility. Indeed, it even fails to reference or analyze the 1,000' buffer between residential users and chrome plating facilities required by Section 5.2.

O3-47 cont'd.

The DEIR must be revised and recirculated to address all of these issues including the internal incompatibility of Sections 5.2 (1,000' buffers between residential and chrome plating facilities) and Section 5.6 (no buffers or other mitigation to lessen the incompatibility issue between the Project's new residential users and the IBC's existing industrial users including the 14 Title V facilities.

O3-48

In addition, Section 5.6 fails to discuss any of the nine (9) individual projects and their potentially significant impacts relating to hazards and hazardous materials. The City has Project level details of these projects and the DEIR includes Project level summaries of these details. Yet, Section 5.6 contains no detail whatsoever. The DEIR should be revised to include project level analysis on the nine (9) individual projects which are part of the Project.

O3-49

D. Section 5.7, "Hydrology and Water Quality," Fails to Address and Mitigate Programmatic and Project Level Impacts.

Section 5.7, "Hydrology and Water Quality," focuses on the Project's potential impacts on hydrology and water quality. Unfortunately, it fails on several fronts.

First, Section 5.7.1 continues the DEIR's confusion over its nature:

"Local drainage impacts will be evaluated at the development of the individual projects within the Irvine Business Complex, in accordance with applicable City and OCFCD standards.'

O3-50

DEIR, 5.7-2. However, the Project includes individual projects which must be analyzed in the DEIR as indicated in the above quotation. Unfortunately, the DEIR fails to do this.

Second, Section 5.7.1 states:

"This [Santa Ana RWQCB] order only covers short-term discharges, such as intermittent discharges and/or one year or less in duration. For discharges of

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longer durations, dischargers are required to apply for coverage under Order No. R8-2006-0004. Alternatively, long-term or permanent discharges from groundwater extraction or dewatering activities may require a separate individual permit issued by the RWQCB."

DEIR, 5.7-11. As indicated above, the Project includes at least three (3) individual projects with subterranean garages. Such garages are below the groundwater levels for the IBC area. The garages will intercept groundwater and will discharge it, apparently, into San Diego Creek and/or Newport Bay. The Project thus will require individual permits for such discharges. However, the DEIR fails to recognize or note this requirement. O3-51 cont'd.

Third, Section 5.7.1 also discusses the character and uses for IBC surface waters. The DEIR notes that:

[T]here are intermittent beneficial uses for the various tributaries to San Diego Creek, such as San Diego Creek, such as Peters Canyon Wash, Bonita Creek, Sand Canyon Wash, and other tributaries. These intermittent beneficial uses are:

- Groundwater Recharge(GWR)
- Contact water recreation . . ." O3-52

DEIR. 5.7-13. However, it is unclear, in fact and in the DEIR, that these tributaries are part of any groundwater recharge facility. Neither the City nor the Irvine Ranch Water District have groundwater recharge facilities. Indeed, as the DEIR notes, it is unclear, in an area with high groundwater and without any substantial groundwater basin, that groundwater recharge facilities actually work and/or are beneficial. Further, it is unclear over what groundwater basin such facilities would lie.

Fourth, as indicated above, the depth to groundwater in IBC is shallow, DEIR, 5.5-7, and in portions of IBC near Deft, it is less than four feet below ground surface. However, Section 5.7.1 fails to discuss shallow groundwater in the IBC. This fact is important in connection with the IBC hydrology and water quality. However, the DEIR is silent on the issue. O3-53

As indicated above, the depth to groundwater is important to the individual projects which are part of the Project. Three of these projects have subterranean garages which may impact high groundwater areas.

Fifth, Existing Plans, Programs and Policies 5.7-1 requires that:

"Prior to the issuance of precise grading permits, the applicant shall submit a groundwater survey of the entire site." O3-54

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DEIR, 5.7-21. However, as indicated above, the Project, at least the three (3) individual projects with subterranean garages, will affect groundwater. The DEIR should include this survey. O3-54 cont'd.

Sixth, the Section 5.7 includes many best management practices including bioswales and other water conservation facilities which also serve to threat surface waters. Unfortunately, such facilities increase surface water percolation into groundwater areas. As noted above, the IBC is subject to areas of high groundwater. The Project's water treatment and conservation facilities may adversely affect the area's high groundwater. The DEIR must be revised to analyze the impacts of these Project features. O3-55

Seventh, Impact No. 5.7-1 fails to analyze correctly the Project's impacts on groundwater. It states:

> ***"DEVELOPMENT PURSUANT TO THE PROPOSED PROJECT WOULD NOT INCREASE THE AMOUNT OF IMPERVIOUS SURFACE ON THE SITE AND WOULD THEREFORE NOT IMPACT OPPORTUNITIES FOR GROUNDWATER RECHARGE. (THRESHOLD HYD-2)"*** O3-56

DEIR, 5.7-41. This conclusion fails to understand that nature and extent of the threshold of significance HYD-2: it refers to depletion of groundwater resources as well as affecting groundwater recharge. As indicated above, the Project and 3 of the individual projects will affect groundwater resources. The DEIR fails to analyze the impacts of the Project on such groundwater resources.

To address all of these issues, the City should review and revise the DEIR, and recirculate it for public review and comment. O3-57

E. Section 5.8, "Land Use and Planning," Fails to Analyze Fully the Project's Land Use Impacts.

Section 5.8 addresses the Project's impacts on land use and planning. The analysis is incomplete and runs awry. Importantly, Section 5.8 fails to appreciate the incompatibility between existing industrial land uses and the new residential uses. O3-58

Section 5.8.1 the environmental setting including existing land uses. Although Section 5.8.1 recognizes the priority of office and industrial uses in the IBC, it mischaracterizes the residential uses: the 1992 EIR limited residential units to 3,896 residential units; the rest – 5,550 dwelling units– have all been approved through piecemeal analysis and individual project General Plan amendments and changes to the Zoning Code. Further, Section 5.8.1 fails to state the correct number of existing and approved units as set forth in Tables 4-2 and 3-1. These failings and omissions undercut Section 5.8's analysis of the Project's land use impacts and require its revision. O3-59

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Section 5.8.1 also discusses the regulatory framework for the land use analysis. Among other things, Section 5.8.1 recognizes a regional framework including Southern California Association of Governments (SCAG"). However, Section 5.8.1 fails to note that the City has sued SCAG over its allocation of affordable housing units. The DEIR should be revised to discuss and analyze this issue. O3-60

Section 5.8.3 contains the environmental analysis and begins with a discussion of existing plans and project development features ("PDF"). PDF 8-2 provides:

> "As described in the proposed zoning code relating to compatibility with surrounding uses, the IBC mixed-use environment is an urbanized area, and land use compatibility issues are expected to occur. Therefore, applications for new residential and/or residential mixed-use development shall submit data, as determined by the Director of Community Development, for the City to evaluate compatibility with surrounding uses with respect to issues including, but not limited to: noise, odors, truck traffic and deliveries, hazardous materials handling/storage, air emissions, and soil/groundwater contamination." O3-61

However, PDF 8-2 fails to discuss the Project's early requirement for an Industrial Adjacency Assessment. More importantly, PDF 8-2 recognizes the potentially significant land use impact caused by siting residential uses near existing industrial uses. Yet, the DEIR fails to mitigate this impact fully and completely. The DEIR should be revised to analyze and discuss these issues and provide adequate mitigation.

One way to limit the impact of this incompatibility is to establish a substantial buffer or set back between existing industrial uses and new residential uses. As indicated throughout, this buffer should be 1,000' between existing industrial uses and new residential uses. This buffer would protect and ensure that existing industrial uses such as Deft may flourish and expand in the IBC. At the same time, this substantial buffer would ensure that new residential uses are protected and limited to exposure from existing industrial uses. The City should include an 1,000' buffer between existing industrial uses and new residential uses. The DEIR should be revised to analyze the impacts of this buffer project feature or mitigation measure. O3-62

Further, Impact 5.8-1 concludes that the Project will not physically divide an existing community. However, the analysis fails to support this conclusion, and this conclusion is simply wrong: the Project will divide the existing industrial community. Impact 8.2-1 recognizes that the Project has the potential to divide the existing industrial community, see DEIR, 5.8-9, but maintains by establishing the 3 districts including an industrial district will avoid this impact, id. Unfortunately, the Business Complex District which the DEIR suggests would protect Deft and other key industrial uses, lies outside of where the key businesses (what the City formerly called the important existing industrial uses in the IBC) are located including Deft. Section 5.8 states that the Business Complex District will allow IBC industrial businesses to flourish and expand. O3-63

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Unfortunately, the entire IBC was supposed to be such an area and now the City is moving and restricting it. This is a significant land use impact, and the DEIR must recognize and mitigate such impact. O3-63 cont'd.

In addition, Impact 5.8-2 concludes that the Project may conflict with applicable land use plans. However, its discussion does not support this conclusion. Table 5.8-1 provides a matrix which attempts to show that the Project is consistent with a broad spectrum of regulatory frameworks including the City's General Plan and Zoning Code as well as regional frameworks from, e.g., SCAG. However, this discussion is wrong on particulars and is incomplete.

For instance, General Plan , Land Use Element, Objective A-1, Policy (a) provides that development provide for ". . . .identifiable City edges, pathways, entry points, and landmarks. . .." General Plan, Land Use Element, A-10. Among other things, as indicated above, the City considered establishing mixed use cores to further its planning efforts. The City rejected these mixed use cores and proposed ad hoc development which has many disadvantages as noted above. The Project is not constant with the General Plan. O3-64

In addition, Policy (b) provides: "Use building masses and landscaping to create a sense of unity for the various components throughout the City." General Plan, Land Use Element, A-10. However, the City has rejected establishing mixed use residential cores; the City has chosen ad hoc mixed use development. This conflicts with massing buildings and uses. The DEIR should be revised to analyze and discuss this inconsistency and propose necessary mitigation. O3-65

Further, Land Use Element, Objective A-2 provides that the City will "[p]romote viable commercial centers, successful manufacturing areas, and dynamic employment centers." Policy(a) provides that by implementing Object A-2, the City will seek to "[r]etain and attract manufacturing and industrial uses within designated business centers .residential." General Plan, Land Use Element, A-11. As indicated above, without substantial buffers of greater than 1,000', the City will not retain and attract manufacturing and industrial uses. Indeed, the Project requires that large and existing industrial land uses may have to move to the Business Complex District for full protection under the Project. O3-66

Also, Land Use Element Objective A-4 provides for balanced land uses. Among other things, Implementing Policy (d) provides that the City's planning will "[r]educe expenditures for public services and facilities by clustering residential development." General Plan, Land Use Element, A-13. However, as indicated above, the Project will not cluster residential/mixed use projects in residential cores but simply allow the market forces to determine where in the business complex such mixed use developments are built. As indicated by the City's own consultants, EDAW, this ad hoc approach conflicts with good planning and with the General Plan, and will create bad land use results. O3-67

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Further, Policy (b) of Objective A-4 provides that the City will "[u]se building masses and landscaping to create a sense of unity for the various components throughout the City." General Plan, A-13. However, as indicated above, the Project conflicts with this General Plan requirement: the Project does not cluster buildings or plan and site development; rather the Project simply always market forces to work in an ad hoc fashion. O3-68

In addition, Land Use Element Objective A-6, "Land Use Compatibility," attempts to achieve balanced development in the City. However, the Project conflicts with this Objective: the Project attempts to insert incompatible new residential uses in an existing industrial area. The Project also conflicts with its Policies. For instance, Policy (a) has two consistent goals: ensuring that approvals for industrial uses do not adversely affect residents; and ensuring that siting residential uses will not adversely affect existing industrial uses including those that handle, generate, and/or transport hazardous substances as defined by federal and state regulations. General Plan, A-15. Policy (b) includes similar protections for residential users. Policy (c) provides similar protections for new residential developments from industrial users which handle hazardous materials. O3-69

However, the Project conflicts with all of these policies and goals: it sites incompatible residential uses near existing industrial uses including Deft which handles hazardous substances. The Project protects neither existing industrial users nor new residential users. Rather the Project exacerbates the incompatibility of such uses without any mitigation. O3-70

In addition, the DEIR notes that the City proposes to require that developers provide notice to new residential buyers, require similar provisions in CC&Rs, and provide for residential releases. All of these mechanisms do not address the land use incompatibility. These devices seek to shift potential liability back to the residential users; that shift does not solve the incompatibility of new residential uses in the existing industrial area that is the IBC. O3-71

Policy (i) allows new residential uses in an area with hazardous materials only when such materials are adequately analyzed and mitigated. See General Plan A-17. Although the DEIR notes that the Orange County Fire Authority has a dedicated hazardous materials team to address any hazardous releases. However, that is not mitigation. The appropriate mitigation is a buffer. O3-72

As noted above, the Project includes a 1,000' buffer between residential uses and a chrome plating facility. Deft and other industrial users use materials similar to chrome plating facilities and have similar emissions. The Project should include a buffer for facilities which are similar to chrome plating facilities such as Deft. O3-73

Policy (j) provides: O3-74

"Residential areas and sensitive uses shall be protected from the encroachment of incompatible activities or land uses which would cause a hazard or substantial

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nuisance or otherwise create a negative impact upon sensitive uses or residential living environment."

General Plan, A-17. The Project does not protect the Project's new residential areas and sensitive uses from their encroachment on existing industrial uses which are incompatible; rather, the Project creates the encroachment and incompatibility. The Project brings residential areas and sensitive uses into an existing industrial area. The Project itself constitutes the prohibited encroachment. The DEIR should be revised to address this impact and propose necessary mitigation. O3-74 cont'd.

As for the Circulation Element, the DEIR maintains that the Project is consistent with this element of the General Plan. However, the Project includes smaller and new streets in the IBC. Objective B-1 provides that the roadway system accommodate projected local and regional needs. Policy (n) provides that roadways should provide for safe and efficient flow of traffic. However, IBC currently fails to satisfy this Policy. Moreover, the Project will introduce more streets and intersections, and will compromise the safety of the IBC roadway system. O3-75

Further, Policy (d) of the Circulation Element provides that the City must evaluate incremental additions to the roadway system through its transportation model. However, Section 5.8 fails to provide such an analysis or even any discussion of the incremental additions in the Project. We offer further comments in connection with the traffic analysis in Section 5.13 which is discussed below. O3-76

As for recreational impacts, Section 5.8 provides only a truncated discussion. Our comments are more fully set forth below. However, the Project is inconsistent with the Recreational Element because the Project fails to provide adequate recreational opportunities for the residents of the Project's 15,000 dwelling units together with 1,191 bonus density units. O3-77

Relating to Project impact in connection with John Wayne Airport and the Airport Environs Land Use Plan ("AELUP"), the DEIR concludes that, due to portions of the Project within the 65 dBA CNEL noise contour lines, the Project may have a significant and unavoidable impacts. However, the DEIR fails to limit the Project to areas outside this noise contour. The DEIR should be revised to address this impact and provide adequate mitigation. O3-78

The DEIR further discusses the Project's consistency with SCAG's advisory requirements including the Air Quality Action Plan. As the DEIR notes, the Action Plan provides that residential uses should not be sited within 1,000' from chrome plating facilities. However, as discussed above and in the White Paper, Deft handles similar chemicals and has similar emissions to chrome plating facilities. Because of this, the DEIR should be revised and the Project should be revised to establish a 1,000' buffer between existing industrial users such as Deft and the new residential uses. O3-79

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Based upon the above, the DEIR should be revised to address these issues and other, provide an appropriate analysis of the land use impacts of the Project and propose any and all necessary mitigation. O3-80

Section 5.8.4 attempts to discuss the cumulative land use impacts of the Project. Because of its truncated focus, the DEIR and Section 5.8.4 fail to provide this analysis. For instance, Section 5.8.4 states:

> "Since the early 2000s, a large number of development applications have been filed to convert existing sites in the IBC from nonresidential uses to high-density, urban-style residential and mixed-use developments, including future development projects in accordance with the IBC Vision Plan. Many of these residential and mixed-use development projects have been constructed, are under construction, or have been approved and have not yet commenced construction."

DEIR, 5.8-51. However, Section 5.8.4 fails to recognize that the "large number of development applications" are part of the Project. Further, it states:

> 'Cumulative intensification of various land uses in the IBC has the potential to result in land use compatibility impacts related to hazards/hazardous materials, air quality, noise, and traffic."

DEIR, 5.8-51. However, Section 5.8 concludes that such cumulative intensification will not have such affect because:

O3-81

> ". . . each residential development application in the IBC is reviewed by the City of Irvine and other agencies, such as OCFA, the Irvine Police Department, and ALUC (when deemed necessary), for compatibility with surrounding land uses."

Id. However, the City of Irvine has shown little or no constraints in approving such applications. Indeed, the City rejected the town centers or mixed cores precisely because the City wanted no constraints on residential development in the IBC. Indeed, the DEIR and the 1992 DEIR both show that the City has shown no restraint in approving such cumulative intensification.

The DEIR should be revised to address the above issues, analyze all such impacts, and propose any and all necessary mitigation.

F. Section 5.9, Noise Impacts of the Project, Fails to Address the Core Noise Issues.

O3-82

Section 5.9 tries to address the Project's noise impacts. Unfortunately, Section 5.9 fails to discuss such impacts in a full and complete manner as required by CEQA.

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First, Table 5.9-4 sets forth the requirements of the City's Noise Ordinance. It illustrates the problem of introducing noise sensitive uses in an industrial area. The City's Noise Ordinance limits exterior noise levels for residential uses at night as follows: 50 dBA for 30 minutes; 55 dBA for 15 minutes; 60 dBA for 5 minutes; 65 dBA for 1 minute; and 70 dBA maximum. However, Code allows industrial uses to emit noise at the following levels 24 hours a day: 70 dBA for 30 minutes; 75 dBA for 15 minutes; 80 dBA for 5 minutes; 85 dBA for 1 minute; and 90 dBA maximum. However, this 20 dBA increase for industrial uses is significant when residential uses are located near in the vicinity. It is particularly problematic when residential uses are allowed near existing industrial uses.

However, Section 5.9 contains little discussion of these noise impacts as a result of the Project. For instance, Impact 5.9-4 addresses statutory noises generated by land uses within the IBC. It concludes that such noise would comply with the Noise Ordinance. However, as noted above, the standards differ for residential and industrial uses. When new residential uses are sited near existing industrial uses, compliance with the Noise Ordinance will be problematic. Moreover, Impact 5.90-4 fails to discuss and analyze this potentially significant impact. Rather, it merely draws the conclusion of "no impact" without any analysis. The DEIR should be revised to address these noise impacts and incompatible standards, and propose necessary mitigation. O3-82 cont'd

Impact 5.9-5 also attempts to address such noise impacts. It purports to discuss and analyze the potential Project impacts of potentially exposing sensitive receptors to exterior noise levels above 65 dBA CNEL from transportation and stationary sources. By combining the analysis of transportation and stationary noise sources, the DEIR focuses upon airport noise. The Project proposes to site new residential uses within the 60 dBA CNEL noise contour. However, as indicated above, a similar problems arises by siting new residential in the vicinity of existing industrial uses which may emit significant noise from, e.g. jet engines.

Impact 5.9-5 concludes that the Project may have significant noise impacts for sensitive receptors. Moreover, Section 5.9.7 concludes that these Project related impacts may remain significant and unable to be mitigated. DEIR, 5.9-87. However, this conclusion raises several concerns. First, this conclusion conflicts with the analysis of Impact 5.9-6: O3-83

> "The City of Irvine considers residential uses in the vicinity of the John Wayne Airport to be normally acceptable with the airport noise environment so long as they do not extend into the 65 dBA CNEL noise contour."

Nonetheless, Section 5.9.7 concludes that one of the significant and unmitigated noise impacts of the Project is that it would expose sensitive receptors to noise levels at or in excess of 65 dBA CNEL. The DEIR should be revised to resolve this conflict and fully explain the nature and extent of the Project's noise impacts.

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Second, the DEIR fails to consider the obvious solution for both impacts: distance. For airport related noise, the Project should be modified to locate residential uses outside the 60 dBA CNEL noise contour line. For industrial related noise, the Project should include a substantial buffer between existing industrial uses and new residential uses. As we have argued, the buffer should be 1,000' between such uses.

Interestingly, Impact 5.9-5 includes a statement similar to others in the DEIR:

"The exact locations of residential developments have not yet been determined and therefore specific impacts cannot be ascertained." O3-84

DEIR, 5.9-80. However, as indicated above, the Project includes nine (9) individual projects which are located specifically. The DEIR should include specific analyses for these individual projects. Without such specific analysis, the DEIR fails to address the impacts of these nine (9) projects.

The DEIR should be revised to analyze fully these noise impacts further, explain and resolve all conflicts, and provide adequate mitigation akin to our suggestion or something else which would fully mitigate the impacts.

Impact 5.9-6 concludes that the Project would expose sensitive receptors, i.e. residents, to interior noise levels in excess of 60 dBA CNEL from airport related noise. Section 5.9 notes that, although exterior noise levels may not exceed 65 dBA, DEIR, 5.l9-81, interior noise levels could exceed 60 dBA. However, as we have argued above, the Project should simply locate residential uses outside of the 60 dBA CNEL noise contour.

As indicated above, the DEIR cannot simply defer mitigation to another day: if the impact is recognized, adequate mitigation must be proposed. The DEIR should be revised to comply with this requirement. O3-85

Moreover, although Section 5.9 states that the Project will not site residential uses within the 65 dBA CNEL noise contour, see DEIR, 5.9-81, Figure 5.9-2 shows that the Project lies within the 65 dBA CNEL noise contour. The DEIR should be revised to correct its representations regarding the 65 dBA CNEL noise contour, analyze the Project's full noise impacts and propose any necessary mitigation.

Finally, as indicated above, Section 5.9.6 addresses mitigation measures for Project related noise impacts. For Impact 5.9-5, Section 5.9.6 concludes that, although the Project will not locate sensitive receptors within the 65 dBA CNEL noise contour, nonetheless the Project may expose residents to such noise levels for outdoor patios and recreational areas.

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As indicated above, such noise impacts can be mitigated by moving the Project boundaries beyond the appropriate noise contours. The DEIR should be revised to discuss fully such impacts, propose adequate mitigation, and recirculate the revised DEIR for public review and comment. O3-86

G. Section 5.12, Recreation Impacts of the Project, Fails to Discuss Fully and Analyze the Project's Recreational Impacts.

Section 5.12 addresses the Project's impacts on recreational resources. It concludes that the Project will have no such impacts. However, as discussed in Section 5.12, this is incorrect or at least incomplete.

Impact 5.12-1 states:

> "Historically, residential developments in the IBC have met community park requirements by payment of in-lieu fees. Community park in-lieu fees are allocated to the IBC community park account to be used to provide and/or improve community parks available to IBC residents. Neighborhood park requirements have been met by incorporating on-site recreational amenities such as swimming pools, fitness centers, community rooms, and tot lots."

DEIR, 5.12-5. As indicated above, the Project includes almost 9,500 dwelling units which are either existing, under construction or approved. Yet, Section 5.12 states: O3-87

> "There are **no** community parks within the immediate vicinity of the site. However, Bill Barber Community Park is approximately 0.5 mile east of the IBC."

With over 60% of the residential projects built, under construction or approved and presumably 60% of the in-lieu park fees collected, the City has yet to construct even one community park within the Project site. This is incredible. Given that the City has not built **one** community park after collecting over 60% of Project in-lieu park fees, the DEIR must be revised to address feasible and enforceable mitigation for Project related recreational impacts.

Moreover, it is unclear what Section 5.12 means by "within the immediate vicinity of the site." The DEIR states that it has no specifics and is a programmatic analysis. What is the site?

The DEIR must be revised to address the above impacts and mitigation measures, and be recirculated for public review and comment.

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H. Section 5.13, the Project's Transportation and Traffic Impacts, Fails to Comply with Judge Sundvold's Orders, Fails to Discuss Fully and Analyze Completely the Project's Traffic Impacts, and Fails to Propose Adequate Mitigation.

Section 5.13 attempts to analyze the Project's transportation and traffic impacts. However, Section 5.13 fails in this analysis and continues the errors which Judge Sundvold found and barred.

Section 5.13.1.4 discusses existing traffic conditions in the IBC. It states that:

> "The current setting for land use is focused on the IBC as a major employment center and office park complex. Recent development patterns have been slowly transforming the IBC into a mixed-use community, through integration of residential and supporting land uses."

DEIR 5.13-19. However, this stands in stark contrast to Section 3's discussion of the Project background and area. For instance, it states:

> "The IBC was then envisioned to be the 'urbanized' area in Irvine, taking advantage of the nearby John Wayne Airport to attract businesses and the synergies associated with urban development."

DEIR, 3-2. Section 3 continues later to explain this urban development: O3-88

> "Continuing a process that began in the late 1980s, the City renewed its efforts to ensure proper planning for residential uses in the IBC in 2004. At that time, the City embarked on a process to create a comprehensively planned mixed-use neighborhood to maintain a high quality of life for both residents and employees."

DEIR, 3-9. The DEIR is internally contradictory: for much of the analysis, it is important to characterize the IBC as an urban village with increased residential uses so that the Project– the residential transformation of the IBC – won't seem significant. However, when it comes to traffic, it is important to offer a markedly different characterization, that of "a major employment center" so that the traffic impacts and traffic patterns of the Project will mistakenly appear less than they actually are.

Correlatively, Section 5.13's discussion of the baseline land uses conflicts with the baseline used in the DEIR. For a baseline, Tables 3-1 and 4-2 uses the existing General Plan with 4,569 dus already built, 2,111 dus under construction and 2,766 dus approved for a total of 9,446 dwelling units together with non-residential square footage of 44,518,463. Instead of

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considering and analyzing the total of 9,446 dwelling units, Table 5.13-7 fails to include 2,111 dus under construction and 2,766 dus already approved together with non-residential square footage of 42,159,902. That is, Table 5.13-7 considers as the baseline only the 4,569 dus which are already built and 42,159,902 square feet of non-residential uses.

It is unclear why the DEIR uses two baselines for its analysis. The DEIR should explain this difference, employ a single baseline, and resolve the conflict. Further, given that these additional units under construction and units already together with the Project's additional units constitute a change in current land use, the conversion of the traffic numbers from existing commercial/industrial to residential will skew the DEIR's traffic analysis.

Indeed, one need only consider the difference in timing, direction, and distribution of trips between the proposed Project with its additional residential units and the existing uses industrial uses. See, e.g., Table 5.13-9. The morning peak hour trips for industrial uses in the IBC will be inbound and in the evening outbound. However, the proposed Project will be just the opposite: residential uses will be outbound from the IBC in the morning and in bound in the evening. However, because the DEIR undercounts the residential uses for the traffic analysis, the Project's impacts on traffic will be understated and incorrect. O3-88 cont'd.

The DEIR must be revised to resolve these inconsistencies, provide a clear discussion of the baseline, discuss the full nature and extent of the Project's traffic impacts and propose necessary mitigation.

Later on, Section 5.13.3.3 attempts to clarify the problems created by Table 5.13-7. However, Section 5.13.3.3 fails to provide any explanation of the figures used in Table 5.13-7. As indicated above, Section 5.13 should be revised to describe clearly the transportation baseline and the land uses in the Project.

Section 5.13.2 addresses the thresholds of significance. Threshold 4 provides:

"Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)."

Although the Project brings sensitive receptors to the IBC with hazardous materials which are delivered on roadways, Section 5.13.2 concludes that this threshold is not significant and the DEIR does not analyze this potentially significant impact. The DEIR should be revised to address this threshold, analyze the Project's potential to "substantially increase hazards due to . . . incompatible uses," and if necessary, propose adequate mitigation including residential cores. O3-89

Section 5.13.3, the impacts analysis, begins with a discussion of existing plans, programs and policies. PPP 13-1 is the IBC Development Fee Program. However, this program is not successful: the fees are inadequate and the City has failed to develop a realistic system to O3-90

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accomplish the infrastructure improvements. Further, many existing projects, those under construction and those approved have not paid appropriate fees for the infrastructure improvements. The majority of those costs will fall on the developments under the Project.

Section 5.13.3 also discusses one Project Design Feature which is a proposal to development a "Transportation Management Association," which will develop traffic counts and strategies for the IBC. Although the Association has many other duties, it is unclear how the City will pay for this Association.

O3-90 cont'd.

As for the impacts analysis, much of it is problematic. Section 5.13.3 repeats the statement that the IBC is mainly an employment center: this observation anchors the DEIR's traffic analysis. See DEIR, 5.13.82.

Moreover, Section 5.13.3 states:

> "The number of residential units and anticipated locations of the additional units have been determined by the City of Irvine and are included in the 2013 and post-2030 forecasting sections: The following table demonstrates the land uses by type within the IBC area."

Id. Table 5.13-16 is the following table and is entitled "2013 Approved With Project Land Use Summary." However, Table 5.13-16 is confusing and incorrect: For residential units (condominiums and apartments, the existing with project equals 16, 191 dus; however, 2013 approved with project equals 12,033 dus. The DEIR fails to explain the reduction or analyze the impacts of the demolition of more than 3,000 dus. As discussed below, this error continues through throughout Section 5.13 and is ultimately reflected in the DEIR's prediction regarding 2013 with Project traffic.

O3-91

Further, Section 5.13.3 discusses the 2013 assumptions. Among other things, it considers the 2013 Pending No Project scenario. About this scenario, Section 5.13.3 states:

> "The cumulative impact analysis, hereafter referred to as pending, evaluates the proposed IBC Vision project with projects currently on file with the City that are likely and foreseeable at the time the analysis was completed. Only pending projects with sufficient information, (such as Transfer Development Rights sending sites) were evaluated. In the 2013 Pending No Project scenario, the ITAM model was run with the land uses of pending projects within the IBC area without the proposed IBC Vision included. As address that the least, the timing of the traffic trips and the direction of those trips needs to be considered and analyzed."

DEIR, 5.13-100. This is confused: the Project includes the pending individual projects. It is unclear how the traffic analysis can include a Pending No Project analysis given that the Project

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includes the pending projects. Moreover, it is unclear what the point of such an analysis would be. Further, although it is possible that Section 5.13 considers this as alternative, Section 7, the Alternatives Analysis, does not include this as a Project alternative.

The analysis of 2013 Project traffic continues this misunderstanding of the Project's scope. Table 5.13-21 identifies the 2013 Pending No Project units as a total of 9,446 dus which appear to be the existing, approved and under construction units. However, the 2013 with Project units equal 12,033 dus which is simply the pending units. So, Table 5.13-21 fails to reflect the full Project traffic. Indeed, it may be that the pending projects as part of the Project will be built by 2013. However, given that the City has sought to approve 2,500 dus within the past two years. Between 2002 and 2006, the City approved over 5,000 dus. It is not likely that by 2013, the Project with pending will be limited to pending. Likely, the 2013 traffic should reflect full buildout of the 15,000 plus density bonus units. The DEIR fails to do this. O3-91 cont'd.

Moreover, the 2030 Project traffic shows a substantial increase in IBC traffic. Table 5.13-27 shows substantial trips in the am departures and pm arrivals. With little increases for am arrivals and pm departures. Presumably, this is because the existing base of industrial users is so significant at these time frames: at employment centers such at the IBC, am arrivals and pm departures are significant. Residential centers are just the reverse. However, the DEIR fails to consider the full impact of the Project with its substantial existing residential users including approved. The DEIR should be revised to address these users. O3-92

Further, the 2030 analysis suffers a similar feat. For instance, Table 5.13-28 "Post-2030 Pending No Project Land Use Summary" indicates that the total dwelling units for 2030 Pending No Project total 9,446. However, 9,446 dus is the total for existing, approved and under construction dwelling units. The pending projects total approximately 2,500 dwelling units which do not appear to be a part of the 2030 Pending No Project analysis although these units were a part of the 2013 Pending No Project analysis. The DEIR must clarify these issues and explain the nature of the No Project analysis. O3-93

In addition, the Traffic Study undercuts the Project's program of the transfer of development rights. The Traffic Study contains no discussion of the Project's use of the transfer of development rights or how this transfer project works. With the exception of the pending projects which may use transfers of development rights or trip transfers, the DEIR is likewise silent on this program. Yet this program is at the heart of the Project. The DEIR should be revised to discuss the traffic impacts of the transfer program. O3-94

Regarding the Project's traffic impacts, the projected deficiencies for Von Karman from Barranca to Alton and further to Main are of particular concern. Table 3.4 shows that this segment functions at level of service ("LOS") C. However, beginning in 2013 with the Project, the Von Karman segment functions at deficient levels. Although the proposed traffic cure for these deficiencies is widening Von Karman, the Project proposes the exact opposite: narrowing O3-95

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streets to allow for pedestrian access. The DEIR predicts that Von Karman will continue to function at deficient levels, LOS E or F, with the Project. The DEIR must provide adequate mitigation or project level features so that the Von Karman segments will function properly. The DEIR must be revised to provide these measures. O3-95 cont'd.

IX. Section 6, "Significant and Unavoidable Impacts" Conflicts with the Impacts Analysis, Is Incomplete and Inadequate, and Must be Revised.

Section 6 attempts to summarize and identify impacts which Section 5 has concluded remain significant and unmitigated after the Impact Analysis. Unfortunately, it fails due to its incomplete and cryptic statements.

For instance, for Impact 2.6 which addresses air quality impacts of residential uses in the vicinity of toxic air emissions including highways and chrome plating facilities, Section 6 concludes:

> "No mitigation measures are feasible that would reduce exposure of people to elevated concentrations of air pollutants within 500 feet of a freeway in an outdoor environment. Consequently, Impact 5.2-6 would remain significant and unavoidable." O3-96

DEIR, 6-2. However, this applies air pollutants from freeways. Air pollutants from other sources, e.g. existing distribution centers, chrome platers, dry cleaners, or gas stations, may be mitigated by siting residential uses outside of the buffers recommended by the Air Resources Board. Section 6.1 should be revised and clarified that the only significant and unmitigated impact is that of air quality impacts due to freeway hazardous emissions.

Further, Section 6.3, Significant Noise Impacts, states that Impact 5.9-5 concludes that the Project will have significant and unmitigated noise impacts due to exterior noise in the vicinity of the airport or stationary noise in IBC. However, as discussed above, such impacts may be mitigated: separating residential uses from stationary noise sources. O3-97

Moreover, Section 6.4, Significant Traffic Impacts, discusses the significant and unmitigated impacts identified in Impact 5.13-1. Such impacts are unmitigated due to "cost, right-of-way concerns, or community opposition." The improvements include:

> ". . . the addition of a third eastbound left and restriping of the southbound approach to get a third southbound left from the southbound through movement." O3-98

DEIR, 6-4. According to the DEIR, these improvements may conflict with City standards and may result in unsafe roadways. However, such improvements may be designed to accommodate

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such concerns. The DEIR notes that cost, right of way and community opposition prevent such mitigation.

However, such concerns do not render mitigation for an impact infeasible. Indeed, the Project could be modified to lessen such impacts. For instance, three of the corners are improved with Vision Plan projects. As part of the Project, these could be modified, moved, or changed to allow for the necessary traffic improvement. O3-98 cont'd.

Because the City failed to plan the Project appropriately, these individual projects are already built and affect traffic levels of the Project. This is not infeasible: this is poor planning. The Project should be revised and downsized to accommodate the traffic of the downsized Project alternative. O3-99

X. Section 7, "Alternatives," Is Incomplete and Must be Revised.

Section 7 identifies Project alternatives including alternative sites. Section 7 rejects the alternative sites due to its conflict with the 1988 EIR, the Open Space Initiative, and GPA 16. Because of these commitments, the City has no other sites because of the City's open space requirements.

The other alternatives include:

"• No Project/Existing General Plan Alternative
• Reduced Residential (12,033 du) Alternative
• Increased Residential (20,000 du) Alternative
• Increased Residential (25,000 du) Alternative
• Reduced Urban Neighborhood Alternative" O3-100

DEIR, 7-4. Surprisingly, due to the significant and unmitigated impacts, the increased residential alternatives do not lessen the significant and unmitigated impacts of the Project and will have fewer vehicular air quality impacts due to an alleged decrease in vehicle mile trips. The No Project Alternative suffers a similar impact due to the DEIR's assumption that increased housing in the IBC would eliminate some vehicle trips due to Project residents walking to work. The DEIR simply assumes this fact. However, given that much of the Project is already built, the DEIR should be revised to show this trend that residents work in the IBC.

The increased residential alternatives suffer similar impacts. However, Section 7 fails to discuss the full scope of these Alternatives and to discuss and analyze fully the inconsistency of these impacts with the General Plan and the Project objectives in that both include requirements to protect existing business and job base. As to the full scope of these alternatives, the Increased (20,000) Residential Alternative and the Increased (25,000 du) Residential Alternatives fail to consider and analyze the density bonus units to which each may be entitled. The Project at O3-101

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15,000 dus adds 1,191 density bonus units for a total of 16,191. The Increased (20,000 du) Residential Alternative must add probably at least 2,000 density bonus units; the Increased (25,000 du) Residential Alternative must add at least 2,500 density bonus units. These figures substantially increase the size of the Alternative projects and substantially increase their impacts. However, Section 7 fails to identify these as impacts or failings of these Alternatives. O3-101 cont'd.

Section 7 identifies the reduced intensity residential project alternative as the environmentally superior alternative. This Reduced Residential proposes only those residential dwelling units which are approved and pending. Although this Alternative will have similar impacts to the Project, it will lessen important impacts including traffic, air quality, land use and noise impacts. However, as compared to the Project, the Reduced Residential Alternative is superior. However, the City must analyze each of the individual pending projects to understand the significant impacts of such projects which are part of the Project. O3-102

In addition, Section 7 also analyzes the Reduced Urban Neighborhood Alternative which proposes to move residential development north of I-405 and freeze residential development south of I-405. Section 7.8.15 states that:

> "[T]he Reduced Urban Neighborhood Alternative would reduce impacts associated with hazards and hazardous materials, and land use and planning . . . [and] does reduce potential conflicts with existing key businesses." O3-103

DEIR, 7-30. This is incorrect. Although the Reduced Urban Neighborhood Alternative may reduce certain impacts and reduce conflicts with some key businesses, it shifts these impacts to other areas of the IBC which also house key businesses including Deft. Shifting these impacts from select key businesses to other key businesses does not lessen the impact. The incompatibility of new residential amid existing industrial users remain and may even be heightened if it affects more key businesses. The DEIR fails to identify these key businesses and fails to address fully the impacts of the Project and the Alternatives on such businesses.

The DEIR should be revised to discuss fully each of the Alternatives, to analyze fully the Reduced Alternative and to determine that the Reduced Alternative is the appropriate and preferred Alternative over the Project. O3-104

XI. Section 9, "Significant Irreversible Changes," Requires Additional Analysis and Revision.

Section 9 attempts to comply with the requirements of CEQA Guidelines section 15126.2(c) which requires EIR to analyze any significant irreversible environmental changes caused by the Project. Section 9 notes: O3-105

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> "Project development is a long-term irreversible commitment of the land. After the 50- to 75-year structural lifespan of the buildings is reached, it is improbable that the project area would revert to its current condition due to the large capital investment that would already have been committed. that would be caused by the proposed project should it be implemented."

This conclusion cuts two ways. First, the City may have already made such an irreversible commitment that the Project approval is not open to question; that it is already predetermined. That is, the Project includes development of 15,000 dwelling units (plus 1,191 density bonus units) and a corresponding reduction of non-residential square footage. As indicated above, the City has already approved and/or permitted to built almost 60% of this allotment. This 60% of the Project is itself a significant irreversible effect. If so, then the DEIR should be revised to analyze the full Project before this irreversible commitment– before the 1992 DEIR.

O3-105 cont'd.

Second, the IBC itself under its current configuration and entitlement represents a significant irreversible commitment: Deft's land and improvements which are specially built for Deft's coatings operations represent a significant investment. Other key businesses have made similar or greater investments. Yet, despite these investments, the Project seeks to ignore these investments and site incompatible uses adjacent to these existing industrial businesses. The DEIR must fully analyze the current irreversible commitment and the Project related impacts on such commitments.

XII. Section 10, "Growth Inducing Impacts," Requires Substantial New Analysis and Must be Revised.

Section 10 addresses the Grow Inducing Impacts of the Project. However, it is stilted and incomplete. Regarding the Project's tendency to remove obstacles for growth, Section 10 concludes that the Project does not have such a tendency because the Project will offset existing non-residential entitlements with new residential entitlements. However, this is incorrect and incomplete.

First, the IBC is an industrial area with many existing industrial uses. The Project – the residential transformation of the IBC– has removed substantial obstacles and facilitated the Project. Currently, about 60% of the Project is built and/or approved. The Project has had substantial growth inducing impact which have gone unchecked and created substantial impacts on land use, hazards and hazardous materials, hydrology and traffic. These must be analyzed and mitigated.

O3-106

Second, replacing current non-residential entitlements with residential entitlements requires additional growth including additional service facilities and retail uses. Staff, the Planning Commission and the City Council have already recognized this tendency and need for

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additional retail and service uses, and have encouraged the development of such uses. Section 10 recognizes this, and its is a growth inducing impact which it should address.

As to the Project's facilitation of other economic effects, as noted above, the Project will increase new retail and service uses in the IBC. Section 10 notes that although this may be growth inducing, it **may** improve air quality and traffic by limiting vehicular trips outside of the IBC. However, it is unclear that those benefits will be appreciated within the IBC given that more residents will live, work and drive in the IBC. Moreover, this alleged benefit does nothing to limit or lessen the land use impact of this growth inducing aspect of the Project. The DEIR should be revised to address and mitigate these issues.

As for the Project's tendency to create a precedent setting action, Section 10 states that:

> "[A]lthough the project may be considered a precedent-setting action, the impacts of subsequent similar actions would require environmental analysis and associated mitigation to ensure that such subsequent impacts would not significantly affect the environment."

O3-106 cont'd.

DEIR, 10-2. This is incorrect in so many ways. First, the Project–the residential transformation of the IBC– was a precedent setting action: it essentially removed residential caps from the IBC which were established in the 1992 DEIR and GPA. Second, the City has done little environmental analysis for these individual projects which were the early parts of the Project. Indeed, as Judge Sundvold noted, the City handled many of the early projects through Addendums which alleged the residential increases in the IBC were consistent with the 1992 EIR. As Judge Sundvold found, this was incorrect and the City's environmental review process found sorely wanting.

The DEIR must be revised to address all of the growth inducing impacts of the Project and, if necessary, propose adequate mitigation.

XIII. Conclusion: The DEIR Must Be Revised to Analyze Fully the Project and Must Address and Mitigate Project Impacts including Establishing a Buffer for Existing Industrial Users.

The DEIR fails to explain fully the Project and all of its aspects including the individual projects. Although the DEIR purports to be a program level DEIR, it attempts to satisfy programmatic aspects of the Project as well as individual projects which are currently pending. It fails to analyze the full program and fails to analyze the impacts of the Program as well as those of the individual projects. Further, it fails to provide adequate and necessary mitigation.

O3-107

Importantly, although the DEIR recognizes that the Project will have important air quality, land use and hazardous materials impacts, it proposes Project features–a 1,000 foot

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buffer between existing chrome plating facilities and new residential uses– for uses such as chrome plating facilities which do not exist in the City. However, it fails to provide similar mitigation for facilities such as Deft which have similar emissions and impacts as chrome plating facilities. The DEIR must be revised to provide this protection for all facilities including Deft which use hazardous materials that may adversely affect new residential uses.

O3-107 cont'd.

Again, thank you for the opportunity to provide these comments. Please include Deft and this office on all notices, documents, responses to comments and other items in connection with the Project and the DEIR.

Of course, should you have any questions, do not hesitate to contact me.

Sincerely,

LAW OFFICES OF ROBERT C. HAWKINS

By: Robert C. Hawkins

RCH/kw
Attachments as indicated above

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Attachment A

Land Use Compatibility White Paper: Hazardous Materials Assessment
by Global Environmental Consulting Company., Inc.

Land Use Compatibility White Paper:
Hazardous Materials Assessment
Proposed 2323 Main Street Development

Prepared for:

Deft, Inc.
17451 Von Karman Avenue
Irvine, CA 92614

by:

GECCo Inc.
Global Environmental Consulting Company

May 16, 2006

Land Use Compatibility White Paper: Hazardous Materials Assessment
Proposed 2323 Main Street Development

Executive Summary

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GECCO inc.
Global Environmental Consulting Company

Executive Summary

This white paper reviews the land use compatibility of the proposed 2323 Main Street development project with the industrial operations located near the property to be developed. Based on the findings, it is concluded that the industrial manufacturing operations at the Deft Inc. facility are incompatible with nearby residential development due to the potential health and safety hazards that could be posed to residents in the proposed development from the following industrial activities at the Deft facility:

- The use of over 450 hazardous materials at the Deft facility
- The emissions of two toxic air contaminants; Cr^{+6} and diesel, both known to cause cancer
- Storage and use of nitrocellulose, a highly flammable and explosive compound, storage
- Storage, use and processing of Proposition 65-listed chemicals known to the State of California to cause cancer and birth defects
- 90-day storage of hazardous waste
- Other nuisances such as odors, noise and lighting

While the Deft facility has an excellent compliance history and has obtained regulatory permits and implemented plans and programs to prevent environmental, health and safety risks associated with its operations; these plans and programs are designed to protect Deft workers, not nearby residents.

A buffer, or set-back distance, of 1,000 feet could be used to separate residential land uses from the Deft manufacturing operations. This buffer would maximize the distance between sensitive receptors in a residence and hazardous chemicals thus minimizing the potential for exposure and long-term health effects.

1.0 Introduction

Deft, Inc. (hereinafter referred to as "Deft") manufactures paints and coatings for the consumer market and the government. The company is located at 17451 Von Karman Avenue, Irvine, CA 92614. The site, which is approximately 6 ½ acres, consists of one approximately 100,000 ft^2 building which houses administrative offices; production areas which include paint mixing; warehouse space; packaging, shipping and receiving areas; and quality laboratories. This building was reportedly built in 1975 for Deft Inc.

Physically, the site is located between McGraw Avenue and Main Street, just north of the railroad tracks. The City of Irvine is currently considering the construction of a 445 unit residential condominium complex within 1,000 feet of the Deft facility.

2.0 Hazardous Materials Impact Assessment

Deft uses over 450 chemical products in and manufactures wood finishes for the consumer market and specialized industrial coatings for aerospace and military customers. Many of these products are considered hazardous due to their potential health and environmental impacts. Because Deft handles, uses, stores, treats and emits hazardous materials, it is regulated by a variety of government agencies. These include, but are not limited to, the Orange County Fire Authority, the South Coast Air Quality Management District, Regional Water Quality Control Board, California Department of Toxic Substances Control, Occupational Safety and Health Administration, and the Environmental Protection Agency. Deft has developed and implemented multiple programs to protect its workers from exposures to these chemicals in compliance with rules and regulations enforced by these agencies. These programs include Hazard Communication Program, Injury and Illness Prevention Plan, Emergency Response/Action Plan, and Respiratory Protection Program.

The site's Business Emergency Plan stipulates procedures for employees to follow in the event of an incident involving any hazardous material. As part of this plan, employees are trained and provided with safety information to help control any spill or release. Other related plans maintained at the facility include an Emergency Contingency Plan and Emergency Evacuation Plan. There are no regulatory requirements however, for comparable procedures for any nearby residents.

Deft employees also receive health and safety training to minimize the potential risks associated with the use of hazardous materials. Training topics include:

- Fire extinguisher operation
- Use of personal protective equipment
- Hazard Communication
- Hazardous Waste and Environmental Responsibility
- Evacuation and Disaster Preparedness

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Although Deft employs industry best management practices and operates at the highest safety levels, these programs are designed to protect worker health and not the health and safety of nearby residents. A "regulatory gap" (ARB, 2004) exists in the case of assessing and addressing environmental, health and safety (EHS) impacts of non-regulated land uses such as new residential developments that are in close proximity to pollution sources. The siting of a new residential development for instance, does not require an air permit. The ARB sees this particular situation as an opportunity for land use agencies to address this gap and assess whether there could be any air pollution or other EHS impacts

The California State Office of Planning and Research (OPR) has stated in its General Plan Guidelines (2003) that residential uses "are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust) and exposure to hazardous materials" (AB 1533 (Keeley, Chapter 762, Statutes of 2001) specified that the General Plan Guidelines, prepared by the California Office of Planning and Research propose methods for local governments to address "providing for the location of new schools and residential dwellings in a manner that avoids proximity to industrial facilities..." As such, the Guidelines further state "residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust), and exposure to hazardous materials."

Siting residential dwellings nearby to the Deft facility would present such an incompatible land use due to the hazardous materials used at and air emissions emitted from the facility. The General Planning Guidelines state specifically that "cities and counties should provide for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce materials that, because of their quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety." The Deft facility uses hazardous materials in its paint manufacturing operations that are classified as Toxic Air Contaminants, explosive, regulated under Proposition 65, hazardous wastes, and as potentially nuisance causing for nearby residents. These issues are more specifically discussed in the sections below.

Given the nature of the hazardous materials used at the Deft facility, there is the potential for health impacts upon residents of an nearby residential development. The proposed residential land development project is incompatible with the existing Deft manufacturing operations.

2.1 Air Toxics

Several of the products used at the facility are classified as air toxics. The California Air Resources Board (ARB), a California Environmental Protection Agency (Cal-EPA) Board, regulates air toxics and manages the Toxic Air Contaminant List ("List"). This List identifies 244 substances that have either been identified by the ARB as Toxic Air Contaminants (TACs) in California or are known or suspected to be emitted in California and have potential adverse health effects. Two products used and emitted at Deft

respectively, contained on this List, are of particular concern given the proposal to construct residential units near to the site: hexavalent chrome and diesel.

2.1.1 Hexavalent Chrome

Chromium in the form of various alloys and compounds has been in widespread commercial use for over 100 years. Early applications included chrome pigments and tanning liquors. In recent decades, chromium has also been widely used in chromium alloys and chrome plating. The pigments used at Deft contain chromium in its hexavalent form. One of the occupational situations in which high exposure to hexavalent chromium has been documented to occur is in the chrome pigment manufacture (IARC, 1990).

Hexavalent chromium (Cr^{+6}) is a known carcinogen that can enter the body by inhalation or ingestion. Inhalation of Cr^{+6} over an extended period of time causes lung cancer. Epidemiological studies carried out in the Federal Republic of Germany, France, the Netherlands, Norway, the UK and the USA of workers in the production of chromate pigments have consistently shown excess risks for lung cancer (IARC, 1990). Cr^{+6} compounds may also cause adverse effects to the skin, the respiratory tract and, to a lesser degree, the kidneys in humans

Cr^{+6} is on most national and international lists of high toxicity materials. In the United States alone, Cr^{+6} is regulated as a Hazardous Substance, Hazardous Air Pollutant, Hazardous Waste, Toxic Chemical, and a Priority Pollutant under the Clean Water Act. In California, it is also listed as a Toxic Air Contaminant, as defined in the CA H&SC 39567 and 39660 et seq., "which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health" (CA H&SC 39655). The ARB has concluded that Cr^{+6} is a human and animal carcinogen and it should be treated as a substance without a carcinogenic threshold (ARB Staff Report, 1985).

Worker protection standards and industry best management practices are required and implemented at the Deft facility in accordance with OSHA regulations. These standards however, are designed to address short-term exposures. Cancer risk is typically scientifically regarded as proportional to lifetime dose. Therefore, a prudent public health measure would be to limit preventable exposures to Cr^{+6}. Specifically, it would be prudent to avoid residential development near the Deft facility, where Cr^{+6} pigments are manufactured, in order to minimize any potential non-occupational exposure and reduce long-term cancer risk.

2.1.2 Diesel

The Deft facility houses shipping and receiving activities that enable the distribution of its products to its customers throughout the U.S. As a result, diesel-fueled trucks travel in and out of the facility all day long to unload materials and pick-up product for distribution.

Diesel exhaust includes over 40 substances that are listed by the U.S. EPA as hazardous air pollutants and by the ARB as TACs (OEHHA, 1998). Diesel particulate matter has been identified by the ARB as a TAC and represents 70 percent of the known potential cancer risk from air toxics in California (OEHHA, 2001). Diesel particulate matter contributes to particulate matter air pollution which has been shown to be associated with premature mortality and health effects such as asthma exacerbation and hospitalization due to aggravating heart and lung disease (ARB, 2005). Reducing diesel particulate emissions is in fact one of the ARBs highest public health priorities (ARB, 2005).

In order to quantify the risk associated with diesel particulate matter regulations, the ARB performed air quality modeling to estimate exposure and the associated potential cancer risk of onsite diesel-powered transport refrigeration units (TRU) for a typical distribution center (ARB, 2005). The assessment assumed a total onsite operating time for all TRUs of 300 hours per week. The estimated potential cancer risk was found to be over 100 in a million at 800 feet from the center for the TRU activity. This risk decreased to a 10 to 100 million range between 800 to 3,300 feet and fell off to less than 10 per million at approximately 3,600 feet. While TRU trucks do not typically frequent the Deft facility, the data are useful as emissions from other diesel-fueled trucks could be similar.

The SCAQMD also performed diesel air monitoring from distribution center operations in Mira Loma. This study found about an 80 percent drop off in concentration of diesel particulate matter at approximately 1,000 feet (ARB, 2005).

In short, exposure decreases as distance increases. It is reasonable to conclude, therefore, that an adequate buffer of not less than 1,000 feet between residences and the Deft manufacturing operations would decrease non-occupational exposure to diesel to acceptable levels.

2.2 Nitrocellulose

The Deft utilizes nitrocellulose, a highly flammable compound, in its manufacturing operations in accordance with its permit from the Orange County Fire Authority. The nitrocellulose is brought onsite in 55-gallon drums and dispensed to one of two tanks; 500 gallon and 900 gallon for processing. It is mixed with resins and solvents to make the company's clear wood finish product.

Nitrocellulose is a hazardous substance that is both flammable and reactive. Its primary physical danger is from fire or explosion and has been known to ignite or explode without warning when dry. Nitrocellulose burns fiercely when ignited, so attempts to control or extinguish a fire must be made from a safe distance. The lids of drums or tanks are liable to be blown off during a fire which could present a hazard to residents near the Deft facility. In addition, burning nitrocellulose gives off highly poisonous nitrous fumes which are considered a lung irritant with delayed action.

2.3 Proposition 65-regulated Chemicals

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, (Prop. 65) was enacted as a ballot initiative in November 1986. The Proposition was intended by its authors to protect California citizens and the State's drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm, and to inform citizens about exposures to such chemicals. Prop. 65 requires the Governor to publish, at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. This list, which must be updated at least once a year, has grown to include approximately 750 chemicals since it was first published in 1987.

Prop. 65-listed chemicals found in products used at Deft such as toluene, lead, and cadmium are known as teratogens[1] by the state of California. Listed chemicals such as ethylbenzene, benzene, and ethyl acrylate are known carcinogens[2].

Under Prop. 65, Deft is required to provide "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, or publishing notices in a newspaper. It is important to understand however, that Prop. 65 does not prohibit a business from exposing people to listed chemicals (OEHHA Fact Sheet). Within a workplace environment, there are other regulatory requirements requiring the use of personal protective equipment and ventilation that would protect workers from potential exposures. These requirements, however, do not address sensitive receptors, such as residents, dwelling in a nearby home or apartment complex.

While it could be argued the exposure to Prop. 65-listed chemicals in nearby residential dwellings would be lower than those at the Deft facility, there are studies that indicate that low level exposure to chemicals could be a precursor to severe health effects. For example, an ongoing population-based Swedish study, Women's Health in the Lund Area, was expanded to include low-level cadmium exposure (Åkesson, Lundh et al., 2005). Analysis of the data collected revealed a small but significant kidney response to low-level cadmium exposure. This suggests that low-level cadmium exposure may pose a significant public health risk. The researchers speculate that effect levels might be even lower for people with diabetes. These data raise concern when potentially sensitive receptors may be living adjacent to a manufacturing facility that uses products containing cadmium.

2.4 Hazardous Waste

Deft is a large quantity generator of hazardous waste as defined in 22 CCR 66262.10. As such, the facility generates approximately 5,000 gallons of liquid hazardous waste and approximately 50 55-gallon drums of solid hazardous waste every 3 months. The types of wastes generated include approximately 500 lbs/yr of wastes with chromium

[1] Teratogens are substances that may cause birth defects.
[2] Carcinogens are substances that may cause cancer.

compounds; 400 lbs/yr of xylene; 2,000 lbs/yr of methyl isobutyl ketone; and 4,000 lbs/yr of sec-butyl alcohol. These wastes are managed in accordance with EPA hazardous waste generator requirements. The site is also permitted for the temporary storage of hazardous waste through the Orange County Fire Authority.

2.3.1 Waste Treatment and Security

Certain liquid hazardous waste streams are also treated onsite in a fixed treatment unit (FTU) that operates under the Conditionally Authorized tier of the California Tiered Permitting requirements. Tiered Permitting (Chapter 6.5, Article 9 CA H&SC) refers to a graduated series of requirements applicable to hazardous waste generators conducting onsite treatment their own hazardous waste. California legislation (AB 1772) passed in 1992 established a five-tiered program for authorizing hazardous waste treatment and/or storage at many businesses that are required to have a state permit or authorization to do so. The new tiers were added to make permitting easier for businesses that treat hazardous waste onsite within their normal operations. Under the tiered permit system, the level of regulation is scaled to the relative risk and complexity involved under each treatment tier. In ascending order, the tiers are: conditional exemption (CE); conditional authorization (CA); and permit by rule (PBR) (California Code of Regulations, Title 22, Division 2, Chapter 4.5).

The Deft facility treats hazardous waste as a CA facility under the Tiered Permitting requirements. Under the CA tier, the facility is required to take certain measures to prevent unknown entry to the site and to minimize the possibility of the unauthorized entry of persons onto the facility. Deft has indeed implemented measures to address these security issues. However, these security requirements as stipulated in 22 CCR 66265.14 and CA H&SC 25200.3 do not address the situation where a CA FTU is located near residential dwellings where there may be children or adolescents that may want to satisfy their curiosities about a neighboring manufacturing facility and attempt to gain entry to the facility by scaling a fence or locked gate which constitute acceptable security measures for CA FTUs in the regulations.

2.5 Other Nuisance

Odors are a natural occurrence at any paint or coating manufacturing facility because of the nature of the hazardous materials that are being mixed to prepare the coatings. Organic solvents, many recognizable because of their strong or peculiar smell, are employed in the paint manufacturing operation. Odors are the most common source of air pollution complaints from residents (ARB, 2004). In addition to being an annoyance, odors can exacerbate underlying medical conditions and cause stress-induced illness. One way to minimize odor complaints is to utilize adequate buffers between odor sources and the public.

Because of the entrance and exit of the many diesel-fueled trucks into and out of the facility, there will be more noise to which a resident would be typically accustomed between the hours of 6 am and 6 pm. Exterior lights are maintained throughout the

evening as a security measure. As a result, daily operating lighting and evening lights could potentially impact nearby residents.

3.0 Buffer Zones

Recent monitoring and health-based studies indicate that air quality impacts from incompatible land uses can contribute to increases risk of illness, missed work and school, a lower quality of life, and higher costs for public health and pollution control. As a result, several California public agencies have addressed the issue of providing adequate distances between industrial land uses and land uses that involve sensitive individuals such as homes and schools.

The California Office of Planning and Research's General Plan Guidelines identifies buffer zones as a broad approach to land use compatibility. Buffer zones can be managed in two ways; a specific distance may be set on a case-by-case basis, or transitional land uses (such as open space, office uses, or commercial uses) may be used.

A review of the literature demonstrates that Cr^{+6} emissions can exist in the atmosphere at measurable levels at great distances from their sources. Grohse (1988) estimated that Cr^{+6} species exist at measurable levels at distances of up to 0.5 miles or greater from chromium emission sources. This is of particular concern given the proposed construction of residential units within 1,000 feet of a facility that uses Cr^{+6} in its manufacturing operations.

State law requires that school districts identify potential sources of toxic air pollutant releases within a quarter mile radius of the proposed school site. The ARB suggests that "planning agencies could use a similar approach to identify air toxics sources in the vicinity of proposed new housing or other types of projects frequented by sensitive individuals" (ARB, 2004). In this case, the siting of a residential development that will house sensitive individuals such as children or the elderly could have potential public health impacts given the Deft facility is a permitted emission source of Cr+6.

The ARB has stated that because living or going to school too close to diesel emission sources may increase both cancer and non-cancer health risks, it recommends that proximity be considered in the siting of new sensitive land uses (ARB, 2005). Analyses performed by both the ARB (2005) and the South Coast Air Quality Management District (date) indicate that providing a separation of 1,000 feet would substantially reduce diesel particulate matter concentrations and public exposure downwind of a distribution center. As a result, the ARB has recommended a separation of 1,000 feet based on the combination of risk analyses done for TRUs and the decrease in exposure predicted by the SCAQMD modeling (ARB, 2005).

Other municipalities are also in the early stages of setting policy with respect to management of incompatible land uses with the use of buffers. For instance, the City of San Diego has currently proposed a 1,000 foot buffer to separate industrial facilities that

are a source of toxic air contaminants or toxic substances and residential land uses (Economic Prosperity Element, The City of San Diego General Plan, July 2005).

3.1 Master Plating Case Study

In 2000, EPA and San Diego's nonprofit Environmental Health Coalition started a Federal Interagency Environmental Justice Demonstration Project to assist the Barrio Logan neighborhood[3] of San Diego, Calif. The goal was to mobilize all levels of government, as well as the community and local industry, to improve Barrio Logan's air quality and public health. EPA and community leaders established a partnership involving residents, government agencies, community groups, businesses, and nonprofits.

One focus of the partnership was incompatible land uses, which expose neighboring residents to excessive pollution levels. Master Plating, for example, a chrome-, nickel-, and cadmium-plating facility next door to homes, was a contentious issue in the community for years. Barrio Logan residents urged state and local agencies to look for "hot spots" where pollutants were concentrated. Master Plating turned out to be such a "hot spot" with high levels of airborne Cr^{+6} just outside the facility. While the business had been cited several times for violating laws regarding storage and disposal of hazardous materials, of additional concern was the fact that high levels Cr^{+6} had been detected in air samples taken from within the neighborhood

In March 2002, the County of San Diego sought a Temporary Restraining Order to close Master Plating. A settlement was negotiated between the County of San Diego and Master Plating which required that the business shut down on or before October 15, 2002; remove equipment; clean and decontaminate the facility; and completely remove all hazardous waste and materials under the supervision of the San Diego County Department of Environmental Health by November 15, 2002.

Chrome plating establishments had been a permitted land use within the Barrio Logan community for many years. A tailored zoning ordinance, the Barrio Logan Planned District Ordinance (PDO), was created in 1983. This PDO accommodated residential, commercial and industrial development but contained minimal development regulations to buffer incompatible land uses. As a result, the Barrio Logan PDO permitted residential development alongside heavy industrial uses, such as chrome plating. This lack of buffers between residential and industrial activities contributed to the unfortunate relationship between Master Plating and its neighborhood residents. The co-location resulted in potential exposure of neighboring residents to Cr+6 and the permanent closure of a local business.

[3] Barrio Logan is an inner city San Diego neighborhood of roughly 6,000 residents, 85% of them Latino. The community is a mix of homes, commercial buildings, and industry, including a waterfront industrial and naval complex.

4.0 Conclusions

Based on the findings, it is concluded that the industrial manufacturing operations at the Deft Inc. facility are incompatible with nearby residential development due to the potential health and safety hazards that could be posed to residents in the proposed development from the industrial activities at the Deft facility. While the facility has an excellent compliance history and has implemented plans and programs to prevent environmental, health and safety risks associated with its operations; these plans and programs are designed to protect Deft workers and not nearby residents.

The incompatibility of this siting is further evident in the ARB's Draft Air Quaity and Land Use Handbook (2004). This document cites an example of a potential incompatible land use scenario that could result from the placement of new residential areas in close proximity to polluting sources. The example is "a proposed site for new housing is downwind of a permitted small business or light-industrial facility that will emit a small amount of highly potent air toxic, such as hexavalent chrome." The second example listed is "a newly proposed residential area or school that would be near an existing warehousing complex that induces a great deal of diesel truck traffic." Both of these examples are similar to the situation faced by Deft given the proposal to develop residential units near its manufacturing operations.

Given the nature of the operations associated with the paint manufacturing activities at the Deft manufacturing facility, and the recent experience in Barrio Logan, California; it would be prudent to adequately separate any new residential development projects from the Deft facility. Based on ARB studies and data, the most appropriate public health approach to this separation would be to establish a buffer of 1,000 feet between the manufacturing and any residential dwellings.

5.0 Limitations

This document is intended for the sole usage of Deft and the parties designated by GECCo. Use of this white paper is subject to the agreement between GECCo and Deft. Any unauthorized misuse of or reliance upon the document shall be without risk or liability to GECCo. This document is to be considered a white paper. It is an educational document that expounds on a particular industry issue – in this case, the potential incompatible land use that would result from the construction of residential units nearby the Deft facility. This document serves as a position paper. It is a document that presents Deft's position or philosophy about a social, political, or other subject, or a not-too-detailed technical explanation of an architecture, framework, or product technology. It is not meant to serve as a scientific study or scientific research paper. Factual information regarding operations, conditions and test data were obtained from Deft and have been assumed by GECCo to be correct and complete. Since the facts stated in this document are subject to professional interpretation, they could result in differing conclusions.

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OEHHA, Proposition 65 Fact Sheet for Tenants,
http://www.oehha.ca.gov/prop65/pdf/Prop65tenants.pdf

OEHHA, The Health Effects of Diesel Exhaust, A fact sheet from OEHHA and the American Lung Association, May 21, 2001
http://www.oehha.ca.gov/public_info/facts/dieselfacts.html

Attachment B
May 11, 2009 Letter from Global Environmental Consulting Company., Inc.
to the Law Offices of Robert C. Hawkins

GECCo Inc.
Global Environmental Consulting Company

11502 Alborada Drive
San Diego, CA 92127
858.674.9686/9697 tel/fax

May 11, 2009

Robert C. Hawkins, Esq.
Law Offices of Robert C. Hawkins
110 Newport Center Dr., Ste. 200
Newport Beach, California 92660

RE: Use of 1,000 foot buffer to separate sensitive resources from Deft industrial manufacturing activities

Dear Mr. Hawkins:

The Land Use Compatibility White Paper, dated May 16, 2006, states a 1,000 foot buffer between Deft and sensitive resources (residences) would minimize the potential for exposure and long term health effects associated with hazardous materials use at the facility. This letter has been prepared to reinforce the recommendation that a 1,000 ft buffer be utilized to separate sensitive resources from Deft Inc, an industrial manufacturing facility which utilizes hexavalent chromium (Cr^{+6}).

Cr^{+6} is a potent known carcinogen. It is regulated as a toxic air contaminant in California under AB 1807 (1983) and federally as hazardous air pollutant under the Clean Air Act Amendments of 1990. Cr^{+6} has a unit risk factor of 1.5×10^{-1} ug/m^3 which means that a person's chance of developing cancer due to exposure to one ug/m^3 of hexavalent chromium over a 70 year lifetime would be about 146,000 chances per million people exposed. California Air Resources Board (ARB) modeling scenarios have shown that as little as two grams of annual emissions of Cr^{+6} would yield an estimated cancer risk of ten per million people exposed (at about 20 meters based on volume source). Dioxin is the only other air toxic that is known to be more toxic than Cr^{+6}. As such, the ARB has worked diligently to set policy and promulgate rules and regulations to minimize Cr^{+6} emissions from stationary sources into the atmosphere.

Air Toxic Control Measures (ATCMs) have been established that regulate Cr^{+6} emissions from cooling tower water, thermal spraying, and chrome plating and chromic acid anodizing facilities. The latter ATCM was established to reduce chromium emissions from chromium plating and chromic acid anodizing facilities (17 CCR 93102 – 93102.16) and amended last on December 17, 2006. One of the prohibitions in the ATCM is that new chrome plating facilities may not operate inside, or within 1,000 of any area that is zoned for residential or mixed use.

GECCo, Inc.
Page 2 of 2

The ARB's Air Quality Land Use Handbook (April 2005) makes the following recommendation: Avoid siting new sensitive land uses within 1,000 feet of a chrome plater. It is evident this guidance document and the above-mentioned ATCMs do not specifically address the types of manufacturing activities that take place at the Deft facility. However, the primary concern and the reason for the policies are emissions of Cr^{+6} to the atmosphere.

Because Deft utilizes Cr^{+6} in its coating manufacturing operations, there is the potential for Cr^{+6} to be emitted to the atmosphere. As such, from a land use planning perspective, there is sufficient similarity between the emissions from a chrome plating facility and the Deft facility to treat them with similar restrictions including a 1,000 foot separation from residential and mixed uses.

Thank you for your inquiry. If I may be of further assistance, please let me know.

Sincerely,

Jennifer L. Kraus, MPH, PhD
jkraus@gecco-inc.com

O3. Responses from Robert C. Hawkins, Law Offices of Robert C. Hawkins, dated May 14, 2009.

O3-1 Comment noted. No further response necessary.

O3-2 Please refer to Responses O3-17 and O3-18 below.

O3-3 Please refer to Section 1 of the Recirculated DEIR.

O3-4 Please refer to Section 3 of the Recirculated DEIR.

O3-5 Please refer to Response O3-37.

O3-6 Please refer to Responses O3-39 through O3-45 as they pertain to Section 5.2, *Air Quality*.

O3-7 Please refer to Response O3-46 as is pertains to Section 5.5, *Geology and Soils*.

O3-8 Please refer to Responses O3-24, O3-40, O3-47 through O3-49, O3-70, O3-72, and O3-89 as they pertain to Section 5.6, *Hazards and Hazardous Materials*.

O3-9 Please refer to Responses O3-50 through O3-57 as they pertain to Section 5.7, *Hydrology and Water Quality*.

O3-10 Please refer to Responses O3-58 through O3-81 as they pertain to Section 5.8, *Land Use and Planning*.

O3-11 Please refer to Responses O3-82 through O3-86 as they pertain to Section 5.9, *Noise*.

O3-12 Please refer to Responses O3-88 through O3-95 as they pertain to Section 5.13, *Transportation and Traffic*.

O3-13 Please refer to Response O3-87 as it pertains to Section 5.12, *Recreation*.

O3-14 Please refer to Response O3-105 as it pertains to Chapter 9, *Significant Irreversible Changes*.

O3-15 Please refer to Response O3-106 as it pertains to Chapter 10, *Growth Inducing Impacts*.

O3-16 The summary of the requirements of an EIR as required by CEQA and the CEQA Guidelines are noted. The Recirculated DEIR has been prepared in accordance with CEQA and the CEQA Guidelines.

O3-17 As required by Section 15125(a) of the CEQA Guidelines, an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally

constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Consistent with Section 15125, Section 4 describes the environmental setting as it existed at the time the NOP was published.

O3-18 The DEIR has been revised to address commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-19 As shown in Section 1.2.2, *Type and Purpose of this DEIR*, the DEIR has been revised to include a program-level analysis for the IBC Vision Plan and a project-level analysis for the pending individual projects listed in Chapter 3, *Project Description*. As noted in Chapter 3, the pending development projects are evaluated in the DEIR to the extent that specific development project information, including density bonus units, is available. Please refer to the individual topical sections in Chapter 5 of the Recirculated DEIR for a program- and project-level evaluation of each topic.

O3-20 The IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR provides a present day analysis of the proposed project. The project as currently proposed is a different project than that which was being proposed in 2006. In addition, that Negative Declaration was never adopted by the City. As a result, it is not appropriate to incorporate the Negative Declaration that was released by the City on January 26, 2006 or the associated comments.

O3-21 Comment noted. The Recirculated DEIR has been prepared in accordance with CEQA and the CEQA Guidelines.

O3-22 The IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR does not rely on any portions of the 1992 IBC EIR. As a result, it is not appropriate to incorporate the 1992 IBC EIR by reference.

O3-23 The project description provided in Chapter 3 provides a complete and adequate description of the proposed project and all its related components and elements. See Response O2-2 and O2-3 with regards to land use compatibility.

O3-24 Please refer to Section 5.6, *Hazards and Hazardous Materials,* of the Recirculated DEIR which has been revised to provide additional analysis relating potential hazardous materials impacts. In addition, additional PDFs have been incorporated to protect existing businesses such as Deft, Incorporated from potential impacts related to land use incompatibility.

O3-25 See Response O3-24.

O3-26 The IBC Vision Plan does include mixed-use cores. As outlined in Chapter 3, *Project Description*, of the Recirculated DEIR, the IBC Vision Plan would create two districts (Urban Neighborhood and Business Complex), which would identify both a proposed mixed-use core and maintain a distinct core for existing businesses, each with its own unique identity and character. The Urban Neighborhood District would include the mixed-use core and would allow a range of land uses and buildings at varying heights. Generally, the neighborhoods within this district are envisioned to be primarily residential with retail, offices, and restaurants allowed on the first floor.

O3-27 See Response O3-26.

O3-28 The Recirculated DEIR provides a comprehensive analysis of the proposed project consistent with CEQA and the CEQA Guidelines.

O3-29 See Responses O3-22 and O3-23. Additionally, the existing number of units outlined in Table 3-1, *IBC Development Summary*, is correct, as it shows how many units presently exist within the IBC. The table is not a comparison of how many units were allowed under the 1992 IBC EIR and how many are proposed under the project. The table provides an existing versus proposed development summary.

O3-30 See Response O3-22.

O3-31 The commenter's opinion regarding the proposed project is hereby noted. No response is necessary.

O3-32 The 1,383 potential density bonus units outlined in Table 3-1, *IBC Development Summary*, is simply the number of potential units that could be developed. These units are not tied to any actual development project and are therefore not a part of a specific development application (e.g., Condition Use Permit), nor is such an application needed at this time for these units as they are potential units. They are, however, part of the overall programmatic analysis contained in the DEIR. Conversely, the density bonus units that are tied to the specific development projects outlined in Table 3-2, *Summary of Pending IBC Development Projects*, are included in the Conditional Use Permit applications related to these pending development projects, as described in Chapter 3 under the description of each of these pending projects.

In response to the comment about the project including three districts, please refer to the revisions contained in Chapter 3, *Project Description*, of the Recirculated DEIR. As noted in Chapter 3, the project would now consist of two districts (Urban Neighborhood and Business Complex).

O3-33 As noted in Chapter 3, the project would now consist of two districts (Urban Neighborhood and Business Complex). Figure 3-6, *Overlay Zone Regulation Plan*, has been modified accordingly.

O3-34 The elimination of the maximum density cap of 52 dwelling units per acre will not increase traffic and parking impacts beyond those that are identified, analyzed, and mitigated for in the Recirculated DEIR. The DEIR analyzes the maximum potential residential development (15,000 dwelling unit cap) that could occur within the IBC. As stated in Chapter 3, the minimum density of 30 units per acre would ensure the benefit of higher-density housing necessary to establish a vibrant mixed-use community.

O3-35 See Response O3-19.

O3-36 The Accessory Retail Business Ordinance is not part of the IBC Vision Plan project and was processed separately. However, it should be noted that the City of Irvine is

not currently processing any residential development applications until certification of the IBC Vision Plan EIR.

O3-37 Chapter 4, *Environmental Setting*, of the Recirculated DEIR describes the context of the existing setting that was used as the basis of the analysis in the DEIR.

O3-38 Please refer to Section 5, *Environmental Analysis,* of the Recirculated DEIR.

O3-39 Air quality impacts were evaluated in accordance with the South Coast Air Quality Management District (SCAQMD) methodology. Pursuant to SCAQMD's CEQA Air Quality Handbook, "residences, schools, playgrounds, child-care centers, convalescent centers, retirement homes, and athletic fields are defined as sensitive receptors."[1] These land uses were considered sensitive receptors in the DEIR. Please refer to Section 5.2, *Air Quality*, of the Recirculated DEIR.

O3-40 Hexavalent chromium (Cr^{+6}) is a toxic air contaminant (TAC). The California Resources Board (CARB) has designated 244 compounds as TAC since their last update in 1999. Discussion of this specific, individual TAC is not required as it is one of many TACs included on CARB's list. Furthermore PDF 2-1, PDF 2-4, and PDF 6-5 have been incorporated into the Recirculated DEIR which requires applicants for new residential land uses to evaluate health risk with regard to toxic air contaminants.

O3-41 PDF 6-5 has been included to ensure that residential land uses within 1,000 feet of a facility that generates TACs conducts a health risk assessment. If health risk can not be reduced below SCAQMD's incremental risk threshold of 10 in one million cancer risk through on- or offsite mitigation, residential development would be prohibited. Section 5.2, *Air Quality*, of the Recirculated DEIR has an expanded discussion on air quality compatibility. However, it should be noted that in the SoCAB, cancer risk is elevated. Average cancer risk in the SoCAB is 1,200 in a million. In the IBC Vision Plan Area, cancer risk is reported between from 830 to 1,233 in a million (SCAQMD 2009). The highest areas of risk are associated with proximity to freeways.

O3-42 See Response to O3-41. The buffer distances are based on CARB's handbook. The DEIR has been revised to include PDF 2-4, which requires applicants for new residential developments within 1,000 feet of a facility that emits TACs to ensure that health risk are within acceptable levels (10 in a million).

O3-43 Impact 5.2-6 also addresses the project's potential to expose sensitive receptors to substantial concentrations of air pollutants. Impact 5.2-6 assesses impacts of TAC on the project for industrial facilities and roadways.

O3-44 CARB does not require land uses to be located outside these recommended buffer distances. The proposed project includes PDFs for instances where applicants for new development projects proposed sensitive land uses within the recommended buffer distances. For residential areas within 500 feet of a freeway, units are required to include Minimum Efficiency Report Value (MERV) filters (PDF 2-2). For residential developments within the vicinity of facilities that emit TACs, these land uses would

[1] SCAQMD. 1993. CEQA Air Quality Handbook. pg 1-2.

be prohibited if health risk exceeded acceptable levels from the facility. In other instances, residential land uses would be prohibited (PDF 2-1).

O3-45 The DEIR has been revised to address commenter's comments as shown in Section 5.2, *Air Quality*, of the Recirculated DEIR.

O3-46 Please refer to Section 5.5, *Geology and Soils*, of the Recirculated DEIR. As described in Section 5.5, the existing Plans, Policies, and Programs are sufficient to reduce potential soils and geology impacts to a less than significant level.

O3-47 SCAQMD's FIND database was queried on September 9, 2008 using the detailed map search engine. A total of eight Title V facilities were identified within the boundaries of the IBC, as depicted in Figure 5.6-2. There were six facilities in the vicinity, but outside of the IBC boundaries, within the cities of Costa Mesa, Irvine, Santa Ana, and Tustin. Per this comment, Section 5.6-1 of the DEIR has been updated to indicate that there are 8 Title V facilities within the confines of the IBC.

A discussion regarding hazardous materials used and emitted by the Title V facilities would be exhaustive for the purposes of the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR. The proponent of a specific residential project would be required to evaluate this issue during the City's development review process. As stated in Response O2-2, according to PDF 6-4, the Proposed Overlay Zoning Code would require that project proponents submit sufficient data, as determined by the Director of Community Development for the City, so that the City may evaluate compatibility between industrial and residential land uses. Factors to be considered would include noise, odors, truck traffic, hazardous materials storage/handling, air emissions, and soil/groundwater contamination.

The same requirement applies to chrome plating facilities. During the City's development review process, a specific residential project would be evaluated for compatibility with any nearby facility emitting hexavalent chromium (Cr^{+6}). PDF 2-1 and PDF 2-4 have been incorporated into the Recirculated DEIR which requires applicants for new residential land uses to evaluate health risk with regard to toxic air contaminants.

The comment regarding the buffer distances mentioned in Section 5.2 is noted. They are based on the CARB's "Air Quality and Land Use Handbook", and are specific to air quality issues. PDF 2-1 has been incorporated into the Recirculated DEIR which requires applicants for new residential land uses to evaluate health risk with regard to toxic air contaminants based on CARB's recommended buffer distances.

O3-48 Please see Response O3-47.

O3-49 The DEIR has been revised to address commenter's comments as shown in Section 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

O3-50 The DEIR has been revised to address commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O3-51 The DEIR has been revised to address commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O3-52 The DEIR has been revised to address commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O3-53 The DEIR has been revised to address commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O3-54 As described in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR, the existing Plans, Policies, and Programs are sufficient to reduce potential groundwater impacts to a less than significant level.

O3-55 Due to the developed nature of the IBC, there are very few opportunities to construct detention basins or bioswales within individual project sites. Surface water treatment systems are more likely to be constructed within existing streamcourses such as San Diego Creek. As a result, these treatment systems are not anticipated to have any measurable effect on the existing groundwater table.

O3-56 See Response O3-54.

O3-57 As described above, the DEIR has been revised and recirculated to address the comments contained herein.

O3-58 Please refer to Section 5.6, *Hazards and Hazardous Materials,* of the Recirculated DEIR which has been revised to provide additional analysis relating potential hazardous materials impacts. In addition, additional PDFs have been incorporated to protect existing businesses such as Deft, Incorporated and future residents from potential impacts related to land use incompatibility.

O3-59 The number of existing and pending units outlined in the environmental setting discussion in Section 5.8, *Land Use and Planning*, reflect those outlined in Chapter's 3, *Project Description*, and 4, *Environmental Setting*, of the Recirculated DEIR.

O3-60 Please refer to Section 5.10, *Population and Housing* of the Recirculated DEIR.

O3-61 See Response O3-58.

O3-62 See Response O3-44.

O3-63 The proposed Urban Neighborhood District incorporates the area where most of the residential uses have been developed and is considered an area of transition to other residential communities such as Westpark. The proposed project maintains the Business Complex District over a significant portion of the IBC. As a result, the project does not physically divide an established community.

O3-64 The detailed analysis contained in Impact 5.8-2 does demonstrate that the proposed project would be consistent with the broad spectrum of regulatory frameworks including the City's General Plan, Zoning Code, and SCAG. With regards to mixed-use cores, see Response O3-26.

O3-65 See Response O3-26.

O3-66 See Responses O2-2, O2-3, and O3-44.

O3-67 See Response O3-26.

O3-68 See Response O3-26.

O3-69 See Response O2-2 and O2-3.

O3-70 See Response O3-47.

O3-71 See Responses O2-2 and O2-3.

O3-72 See Response O3-47.

O3-73 See Response O3-47.

O3-74 See Responses O2-2 and O2-3.

O3-75 Please refer to the analysis provided in Table 5.8-1, *General Plan Consistency Analysis*, with regards the proposed project's consistency with the circulation element. In addition, the analysis provided in Section 5.13, *Transportation and Traffic,* indicates that all IBC roadways will operate at acceptable levels of service with the exception of the Jamboree Road/Michelson Avenue intersection.

O3-76 Please refer to Section 5.13, *Transpiration and Traffic* of the Recirculated DEIR for a complete analysis of the proposed project's impacts on area roadways and intersections.

O3-77 Please refer Section 5.12, *Recreation*, of the Recirculated DEIR for a complete analysis of the project's impacts on recreational faculties.

O3-78 The Airport Land Use Commission (ALUC) for John Wayne Airport has determined that the proposed project is consistent with the adopted AELUP. The entire Urban Neighborhood District is located outside the 65 dBA CNEL noise contour.

O3-79 See Response O3-44.

O3-80 The DEIR has been revised and recirculated.

O3-81 The DEIR has been revised and recirculated.

O3-82 Impact 5.9-5 describes impacts associated with new residential land uses being located in the IBC Vision Plan area in terms of exterior and interior noise compatibility. PPP 9-2 requires that prior to issuance of building permits; the new noise-sensitive use is required to prepare an acoustic study to attenuate noise from adjacent properties, roadway, and aircraft activities.

O3-83 Impact 5.9-5 addresses noise compatibility from roadway and stationary sources while Impact 5.9-6 addresses noise compatibility associated with aircraft overflights. PDF 9-4 prohibits new noise-sensitive land uses within the 65 dBA CNEL noise contour of John Wayne Airport (Impact 5.9-6). However, noise levels could exceed 65 dBA CNEL from roadway and/or stationary sources (Impact 5.9-5). Stationary sources, including industrial uses that generate noise from manufacture and/or testing of jet engines would fall under Impact 5.9-5. PPP 9-2 requires that prior to issuance of building permits, the new noise-sensitive use is required to prepare an acoustic study to attenuate noise from adjacent properties, roadway, and aircraft activities. However, while interior noise levels are required to achieve the interior noise limits of 45 dBA CNEL for residential structures and 55 dBA CNEL for commercial structures, exterior noise levels may continue to exceed the 65 dBA CNEL noise compatibility criteria for the City despite exterior noise attenuation (i.e., walls and/or berms).

O3-84 Residential land uses are considered compatible in a noise environment up to 65 dBA CNEL. Prohibiting residential land uses within the 60 dBA CNEL contour is not warranted. PPP 9-2 ensure that impacts from industrial land uses adjacent to new residential land uses would be mitigated by applicants for new development. A 1,000 foot buffer for noise compatibility is not warranted. Pending projects would be required under PPP 9-2 to conduct an acoustic study that determines noise abatement required to ensure noise levels do not exceed the City's noise standards.

O3-85 The commenter is incorrect about the conclusion of Impact 5.9-6. PDF 9-4 prohibits noise sensitive residential and recreational development within the 65 dBA CNEL contour of the John Wayne Airport. Figure 5.9-2 in the Recirculated DEIR has been revised to reflect that residential land uses are not permitted in the 65 dBA CNEL noise contour. Noise is considered acceptable in a noise environment up to 65 dBA CNEL. Therefore, mandating residential land uses outside of the 60 dBA CNEL noise contour is not warranted. Title 21 requires new residential land uses within the 60 dBA CNEL contour to prepare an acoustic study to ensure interior noise levels achieve 45 dBA CNEL. Impact 5.9-5 concludes that exterior noise levels may continue to exceed the 65 dBA CNEL noise compatibility criteria for the City despite exterior noise attenuation (i.e., walls and/or berms) because of noise levels from roadways (see Response O3-83).

O3-86 See Responses O3-82 through O3-85.

O3-87 The DEIR has been revised to address commenter's comments as shown in Section 5.12, *Recreation*, of the Recirculated DEIR.

O3-88 The DEIR has been revised to address commenter's comments as shown in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-89 The analysis contained in the Initial Study with regards to Threshold 4 supports the conclusion that potential impacts related to hazards due to roadway design features are less than significant. As a result, this analysis has not been included in Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. However, potential

impacts related to the transport of hazardous materials is provided in Section 5.6, *Hazards and Hazardous Materials* of the Recirculated DEIR.

O3-90 Tables 2.11 and 2.12 in the traffic study (see Appendix N) describe the status of various IBC roadway improvements identified in the 1992 IBC EIR. As shown, the IBC Development Fee Program has been successful in funding various traffic improvements throughout the IBC. The funding for the Transportation Management Association identified in the DEIR will be the IBC Development Fee Program.

O3-91 Please refer to Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-92 Please refer to Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-93 Please refer to Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-94 Please refer to Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-95 Please refer to Section 5.13, *Transportation and Traffic*, of the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O3-96 The significant impacts outlined in Chapter 6, *Significant Unavoidable Adverse Impacts,* are consistent with those outlined in the individual topical sections of the Recirculated DEIR.

O3-97 See Responses O2-2 and O2-3 and the analysis contained in Section 5.2, *Air Quality* of the Recirculated DEIR.

O3-98 The conclusions outlined in Chapter 6 regarding significant traffic impacts are consistent with those outlined in Chapter 5.13, *Transportation and Traffic*, of the Recirculated DEIR.

O3-99 The project as proposed is described in detail in Chapter 3, *Project Description*. Revisions have been made to the project description and can be found in Chapter 3.

O3-100 Please refer to Section 7, *Alternatives*, of the Recirculated DEIR.

O3-101 Please refer to Section 7, *Alternatives*, of the Recirculated DEIR.

O3-102 Please refer to Section 7, *Alternatives*, of the Recirculated DEIR.

O3-103 Please refer to Section 7, *Alternatives*, of the Recirculated DEIR.

O3-104 Please refer to Section 7, *Alternatives*, of the Recirculated DEIR.

O3-105 Please refer to Section 7, *Alternatives*, of the Recirculated DEIR.

O3-106 The growth inducing impacts of the project are described throughout Section 5, *Environmental Analysis,* and Section 10, *Growth Inducing Impacts*, of the Recirculated DEIR.

O3-107 As described above, the DEIR has been revised and recirculated to address the comments contained herein.

LETTER O4 – Sheppard Mullin (7 pages)

SHEPPARD MULLIN
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April 15, 2009

VIA E-MAIL AND U.S. MAIL

Chair Shiva Farivar and Members of the
Community Services Commission
City of Irvine
1 Civic Center Plaza
Irvine, California 92623-9575

E-mail: cs@ci.irvine.ca.us

Re: Comments Respecting Community Services Issues Addressed by the Draft EIR for the IBC and the Vision Plan and Related Documents

Dear Chair Farivar and Members of the Community Services Commission:

This office represents the interests of Allergan, Inc. ("Allergan"), one of the largest employers in the City of Irvine ("Irvine"). As Allergan has headquartered its operations in the Irvine Business Complex ("IBC") for more than 40 years, Allergan is a stakeholder in Irvine's planning for the redevelopment of the IBC from a commercial/industrial complex to a residential-mixed use "village." Allergan appreciates Irvine's invitation to review and comment on the Draft Environmental Impact Report ("DEIR") for the IBC, released on March 27, 2009.

The "Project" reviewed by the DEIR, as described by Irvine, consists of:

(1) a general plan amendment to adopt the IBC Mixed Use Community Vision Plan (the "Vision Plan") objectives and policies, increase the IBC dwelling unit cap from 9,401 units to 15,000, together with an additional potential 1,191 density bonus units, and an "off-setting" reduction in the allowable non-residential intensity by 2,715,062 square feet;

(2) a zoning ordinance amendment to adopt a new chapter in the Zoning Ordinance for inclusion of the IBC Residential Mixed Use Overlay Zone (the "Overlay Code"), update the existing IBC traffic mitigation fee program, and revise the statistical analysis of land use intensities to increase allowable dwelling units and decrease allowable non-residential square footage consistent with the proposed General Plan Amendment;

(3) a municipal code amendment to incorporate new urban park standards into Irvine's park dedication requirements for the IBC;

(4) an amendment to Irvine's Park Standards Manual to incorporate new urban park standards for the IBC;

(5) a program for controlling development intensity within Traffic Analysis Zones (TAZ) based on existing IBC vehicle trip allocations;

(6) an amendment to Irvine's Local Coastal Plan to reference the Vision Plan for a small portion of the IBC located within the Coastal Zone;

(7) a program of infrastructure improvements to support the Vision Plan;

(8) adoption of Design Criteria for projects subject to the Vision Plan/Overlay Code; and

(9) changing the name of the area from "IBC" to "Jamboree Village."

This letter is intended to provide the Community Services Commission (the "Commission") with Allergan's preliminary comments on the Project respecting the areas of the Commission's concern for consideration by the Commission at its public hearing tonight. Specifically, these comments address the DEIR and the Project's provision for parks and recreation, as well as other public services such as police, fire, schools, and libraries. However, due to the short amount of time since the release of the DEIR, we have been unable to fully complete our review of the DEIR in advance of this hearing. Additional comments will be provided to Irvine upon completion of our review and throughout the public comment process. Allergan further incorporates by reference the comment letters of the Cities of Newport Beach and Tustin. Allergan now submits the following comments and concerns regarding the DEIR: O4-1

1. *Use of the 1.3 Population Generation Factor*

Despite our multiple comments to Irvine addressing this issue in the past, the DEIR persists with a population ratio of 1.30 residents per unit in analyzing the impacts of the Project to public services and parks and recreation. Since the actual number of residents per unit in the IBC is significantly higher, use of the 1.30 ratio significantly underestimates impacts and cumulative impacts, and results in the failure to adequately mitigate impacts.

In response to our past comments, Irvine has consistently stated that the 1.30 factor from the 2000 Federal Census and adopted and incorporated it into the General Plan and Subdivision Ordinance. Presumably, Irvine did so to comply with the Quimby Act (Government Code section 66477), which requires adoption of a set factor to use in calculating impacts for the purpose of imposing development impact fees for parks. However, there nothing in the Quimby Act or the Irvine General Plan or Subdivision Ordinance that requires a set population factor to be used to determine environmental impacts under CEQA. Further, use of the Federal Census O4-2

factor for calculating park impact fees is merely a rebuttable presumption that "the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census…." (Gov. Code, § 66477, subd. (a)(2).)

In September of 2005 and September of 2007, the City commissioned Gobar Associates to conduct a survey of IBC residents' lifestyle. The 2005 survey found that there is an average of 1.86 persons per household in the IBC, while the 2007 survey found the average to be 1.65. Both of these numbers are significantly higher than the 2000 Federal Census 1.30 ratio; therefore, the presumption relied upon by the General Plan in setting that number is rebutted. Moreover, the fact that a certain number must be used for impact fee calculations under the Quimby Act (or AB 50 for schools) does not mean that it is adequate to analyze impacts under CEQA. Irvine has not substantiated the adequacy of the 1.3 ratio for use in CEQA impacts analysis. Reliance on impact fees to adequately mitigate environmental impacts must be supported by substantial evidence. The DEIR's use of the 1.3 figure based on the 2000 Federal Census is not supported by substantial evidence in light of its surveys revealing that the statistic is actually 1.65 to 1.86 residents per unit.

Additionally, there is evidence that, due to the current economic crisis, people have consolidated their living arrangements by moving in with extended family members. This increases the number of persons that can be anticipated to reside per dwelling unit. The population generation factor should be reassessed in light of today's conditions.

In using the average number of persons per household based on a census of the entire U.S. taken 9 years ago, rather than based on a recent IBC-specific survey, the DEIR is based on outdated and inaccurate information to determine the Project's environmental impacts. By failing to determine impacts using the 1.65 factor, or 1.86 to be conservative, the DEIR underestimates both impacts and cumulative impacts. With a potential 6,745 more residential units added by the Project (including density bonus units), using the 1.30 factor, the DEIR estimates the project's population to be 8,769 people, whereas, using the IBC survey factors generate a population of 11,130-12,546. Thus, the project impacts from 2,361-3,777 people are not accounted for in the DEIR's analysis. Further, on a cumulative basis with build-out to 16,191 units (including density bonus units), using the 1.30 factor, the IBC would have a population of 21,048 people, whereas, using the IBC survey factors, it would have a population of 26,715-30,116 people. Thus, using the 1.30 factor results in unmitigated and unstudied impacts from an additional 5,667-9,068 people, which cumulatively could result in significant environmental consequences. Therefore, the DEIR must revise its analysis to use, at minimum, the 1.65 factor, but preferably the 1.86 factor to be conservative.

O4-2
cont'd.

2. *Cumulative Impacts and Mitigation*

This Project allows for a massive change in the character of the IBC from a primarily commercial and industrial complex into a "liveable community." This transition, however, has already begun and is, in fact, already approximately 60% completed. 9,401 residential units (plus an additional 45 density bonus units) have already been approved in the IBC, while the Project would increase the current development cap by 5,599 to permit 15,000 units (plus the potential for an additional 1,146 density bonus units) total in the IBC. Since the Project will only apply to new residential units, Irvine has lost its opportunity to provide comprehensive planning and impact mitigation for the IBC residential projects it has approved since the Vision Planning process was initiated in 2004.

The DEIR's cumulative impacts analysis and mitigation measures do not adequately address all of the residential projects that have already been approved for development in the IBC. The cumulative impacts analyses of public services (fire services, police services, schools, libraries) generally discuss increased regional demand and rely on the continued implementation of Irvine's existing plans, programs, and policies to mitigate the Project's impacts. This analysis is too generalized to determine whether the DEIR addresses the cumulative impacts of the previously-approved IBC residential development. As a result, the DEIR lacks sufficient information to support the conclusion that there are no cumulative impacts to public services.

O4-3

Further, the DEIR finds that regional growth will result in an increased demand for public services and facilities, which necessitates the expansion or construction of facilities and addition of service personnel. That finding exceeds the impact threshold for public services; accordingly, the DEIR should find cumulative impacts to public services.

The DEIR, however, concludes that there are no cumulative impacts to public services. It does so by applying the implementation of Irvine's existing plans, programs, and policies to the impact area before making a conclusion as to the effect of the Project itself. There is nothing, though, guaranteeing that the City will increase its facilities, personnel, and equipment to support Project impacts. Irvine may create and change allocations for public services at will through its "annual budget review process." CEQA requires mitigation measures be concrete and enforceable. Therefore, since the DEIR fails to provide any specific mitigation measure for the expansion of public services necessitated by the Project's increase in population, the DEIR's mitigation is inadequate.

Additionally, while Irvine cannot impose new conditions or fees on projects already approved, the city must ensure that its level of service standards for the provision of public services and parks and recreation are met by conditions and/or fees on future project applicants and improvements initiated by Irvine. To the extent that the remaining fees collected from the previously approved IBC residential projects and fees from new projects are insufficient to meet

the levels of service provided in Irvine's General Plan and Zoning Ordinance for such public services, Irvine must allocate other funds to IBC improvements to mitigate all the cumulative impacts of the IBC residential development. O4-3 cont'd.

3. *Lack of Public Parks in the IBC*

According to the DEIR, community park requirements would be met by the payment of in-lieu fees, and most of the neighborhood park requirements are met with on-site recreational uses (pool, fitness center, community room). However, the DEIR also states that "[t]he City is currently seeking an adequate site within the IBC for construction of a public neighborhood park." (DEIR, 5.12-5.) This does not require Irvine construct a public park in the IBC, and such a park is not provided for in an enforceable mitigation measure. There is nothing in the Project or DEIR that prevents Irvine from continuing to provide for parks as it has since the Vision Plan process began; that is, Irvine may still simply collect in-lieu fees for community and neighborhood parks and permit private facilities to satisfy parks requirements without ever creating any public park within the IBC.

The lack of a public park within the IBC is not only a detriment to the lifestyle of IBC residents and the liveability goals of the Vision Plan, but it also results in impacts to residents in other parts of Irvine, whose parks are over-utilized and will deteriorate faster as they must serve a greater population base. Such an impact requires mitigation under CEQA. Moreover, the lack of parks and recreational opportunities within the IBC will increase trips and vehicle miles traveled as IBC residents must travel outside of the IBC for public park access. The DEIR must also consider the impact on the parks and recreation facilities of adjacent cities Newport Beach and Tustin, as residents may also travel outside the IBC to use their facilities. O4-4

The DEIR should require the use of the parks fees collected from IBC residential projects to be used toward public facilities within the IBC in order to mitigate the impacts on parks and recreation from the increase in residents due to the Project. Further, the DEIR must include the construction of public parks within the IBC as an enforceable mitigation measure and/or as part of the Project description. If it is infeasible to provide a public community park and public neighborhood parks within the IBC, the DEIR should find impacts to parks and recreation facilities a significant and unavoidable adverse impact.

4. *School Services*

The IBC is divided into three sections for purposes of allocating students to school districts. Irvine, Santa Ana, and Tustin Unified School Districts ("IUSD," "SAUSD," and "TUSD," respectively) have boundaries within the IBC. Based on the DEIR's findings (see Tables 2-7 at 5.11), the Project would put the school districts *over capacity* by the following number of additional students from the Project area: 357 in IUSD grades K-6, 23 in IUSD grades O4-5

7-8, 242 in IUSD grades 9-12; 815 in SAUSD grades K-6, 378 in SAUSD grades 7-8, 375 in SAUSD grades 9-12; 105 in TUSD grades K-6, 1 in TUSD grades 7-8, and 112 in TUSD grades 9-12. The threshold of significance for impacts to schools is whether expansion or construction of new facilities is necessary to maintain acceptable levels of service. Since the Project contributes to the over-capacity of 9 schools, the Project must find impacts to school services under CEQA.

The DEIR, however, concludes that the project's addition of students to these schools will not have any impacts or cumulative impacts because Senate Bill 50 (Chapter 407 of Statutes of 1998) restricts a local jurisdiction's ability to condition a project on mitigation of a project's impacts on school facilities in excess of fees set forth in Education Code Section 17620. SB 50 does set forth the exclusive means for mitigating impacts to schools and prohibits local agencies from denying or conditioning a project based on impacts to schools. However, SB 50 does not absolve an agency from making an impact finding under CEQA. Since the Project will have significant unmitigable impacts to school facilities, it should make that conclusion so that the decision-makers and public are fully informed of the Project's impacts.

O4-5 cont'd.

5. *Library Services*

The DEIR states that "there is currently a shortage of 61,556 square feet of library facilities and 76,792 volumes to serve the existing population" of Irvine according to Irvine's standards of service for library facilities and the Department of Finance's population estimate for the City of Irvine in 2008. (DEIR, 5.11-7.) The DEIR finds, using a 1.3 population generation ratio, that the Project will result in an additional 8,769 residents, which contributes to the library services shortage by requiring an additional 4,385 square feet of library square footage and 21,923 additional volumes.

As with the other public services impact areas, the threshold of significance for impacts is whether expansion or construction of facilities is necessary to maintain acceptable levels of service. In order to determine whether there is an impact to library services under this dual standard of square footage or number of volumes, we need to know if there is available space at the existing facilities that would allow for the addition of the volumes needed. If not, then expanded facilities are necessary and there is an impact that must be mitigated.

O4-6

Additionally, the DEIR states that Irvine "would require developers to pay a library impact fee if such a fee is enacted," but this is contingent on a future action that may or may not ever happen. Mitigation measures must be enforceable. A library impact fee should be required as part of the Project and/or the DEIR should require payment of a library impact fee as a mitigation measure.

Conclusion

Thank you for this opportunity to address the Community Services Commission regarding Allergan's concerns with the Project's impacts on public services and parks and recreation. O4-7

Sincerely,

Jessica A. Johnson

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:3JAJ1\401493399.1

cc: (via email):
Bill Jacobs, City of Irvine Principal Planner
Jeffrey Melching, Assistant City Attorney for the City of Irvine
Whitman Manley, Special Counsel for the Cities of Newport Beach and Tustin

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O4. Responses from Jessica A. Johnson, Sheppard Mullin, dated April 15, 2009.

O4-1 Comment noted. No response required.

O4-2 The City of Irvine, as required by Government Code Section 66477 derives the average persons per household (city wide) based on the most recent Federal Census, with those factors codified in Municipal Code Section 5-5-1004-D. The City uses the 1.3 residents per unit value to estimate population, based on the approved 2000 Federal Census for the densities from 31.1 to 50 dwelling units per acre. This population generation rate has been adopted by the City consistent with state law relative to parkland dedication and has been incorporated into the City's Subdivision Code Section 5.5.1004-D. Accordingly, use of data derived from a survey other than a full census, would be in conflict with the Irvine Municipal Code as well as State Law. In addition, the Alfred Gobar surveys had a response rate between 5 and 10 percent. Therefore, the use of the adopted population factor of 1.3 persons per household from the 2000 Federal Census for this project is considered more accurate and is justified. This issue is addressed in Sections 5.11, *Public Service,* and 5.12, *Recreation,* of the Recirculated DEIR.

It should be noted that other than library impacts, none of the impacts addressed in Section 5.11, *Public Services* or Section 5.14, *Utilities and Service Systems* utilize population to assess impacts. Impacts for police, fire, water, sewer, electricity, natural gas, and solid waste were all based on the land uses proposed, not projected population. School impacts were based on the student generation rate per unit for each of the school districts serving the IBC. As a result, the 1.3 residents per unit has no affect on the analysis in the DEIR.

O4-3 The DEIR and associated technical studies (e.g., water supply assessment, sewer study, hydrology study, traffic study, etc.) identify the infrastructure necessary to serve full buildout of the IBC, not just the proposed increase in residential units. The necessary infrastructure will be funded through a combination of IBC Development Fees and sewer and water connection fees, as described in the Recirculated DEIR. As a result, the cumulative impact analysis adequately describes potential cumulative impacts and necessary mitigation.

O4-4 This issue is addressed in Section 5.12, *Recreation,* in the Recirculated DEIR.

O4-5 Senate Bill 50 (Chapter 407 of Statutes of 1998) (SB50) sets forth a state school facilities construction program that includes restrictions on a local jurisdiction's ability to condition a project on mitigation of a project's impacts on school facilities in excess of fees set forth in Education Code Section 17620. These fees are collected by school districts at the time of issuance of building permits for commercial, industrial, and residential projects.

As with the limitations on the police power in Government Code Section 65995, SB 50 makes its limitations on a city's or county's power under CEQA to mitigate school facilities impacts applicable to both adjudicative and legislative decisions. The new version of Government Code Section 65996 also recites that the development fees authorized by SB 50 are deemed to be "full and complete school facilities mitigation" for the purposes of CEQA or for any other reason. A local agency may not deny

approval of a legislative or adjudicative action under CEQA relating to real estate development on the basis of the inadequacy of school facilities.

O4-6 Impacts to library services are described in Section 5.11.4 of the Recirculated DEIR. Expansion of library facilities is funded through property tax revenue. Neither the Orange County Public Library system or the City of Irvine currently have an adopted fee assessment for library services. As a result, any future library expansions would continue to be funded through property tax revenue until such a time when a impact fee is adopted.

O4-7 Comment noted. No further response necessary.

LETTER O5 – Sheppard Mullin (5 pages)

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Our File Number: 17HC-144166

April 16, 2009

VIA E-MAIL AND U.S. MAIL

Kari A. Rigoni, Executive Officer, and
Members of the Airport Land Use Commission
3160 Airway Avenue
Costa Mesa, California 92626

E-mail: STanner@ocair.com

Re: *Agenda Item 1 for ALUC Meeting, April 16, 2009*
Comments Regarding Consistency of the IBC Vision Plan and Overlay Code with the Airport Environs Land Use Plan

Dear Ms. Rigoni and Members of the Airport Land Use Commission:

This office represents the interests of Allergan, Inc. ("Allergan"), which has its headquarters in the Irvine Business Complex ("IBC") near John Wayne Airport ("JWA"). Allergan is concerned with the compatibility of the residential uses the City of Irvine ("Irvine") intends to permit throughout most of the IBC with the existing commercial/industrial uses. Today, you are considering the Irvine's request for a consistency finding for its IBC Residential/Mixed Use Vision Plan and Overlay Zone, which would allow a great increase in residential intensity near JWA.

A Draft Environmental Impact Report ("DEIR") has been prepared for the adoption of Irvine's Vision Plan and Overlay Code and related documents and actions (the "Project"). The DEIR analyzes the impacts of the Project as they relate to airport operations in three areas: (1) hazards to aircraft in flight and people and structures on the ground (DEIR, § 5.6); (2) noise impacts from aircraft operations on residents (DEIR, § 5.9); and (3) land use impacts (DEIR, § 5.8). The Airport Land Use Commission's ("ALUC") staff report for today's agenda item no. 1 also addresses these issues raised in the DEIR. Allergan would like to take this opportunity to express its concerns regarding the impact of Irvine's plans on JWA and the health and safety of the future residents of the IBC. O5-1

1. *Hazards to Aircraft, People, and Structures*

Irvine concludes that there will be no hazard to people or structures on the ground for the following reasons: (a) building height limitations will be restricted by the ALUC and FAA's determination; (b) the recorded aviation easement restricts the construction of buildings and/or structures into air space above 203.68 feet amsl where it applies; (c) residential projects will be O5-2

required to comply with the Airport Environs Land Use Plan ("AELUP") standards for obstruction lighting, marking, signage, and proximity disclosures; (d) residential projects will be constructed in compliance with state seismic standards; (e) emergency responders would be available in case of an accident; and (f) general aviation aircraft collisions with buildings happen infrequently.

Irvine's analysis demonstrates a lack of concern for the safety of aircraft operators and residents of high rise buildings. In the past, Irvine has repeatedly sought – and obtained – consistency findings from ALUC that allow buildings, including residential, in the IBC to enter into the FAA 77 height limitations and the aviation easement height restriction. The DEIR allows Irvine to seek the same consistency findings in the future. In fact, the DEIR allows residential buildings up to 20 stories, thereby abrogating these height limitations. The DEIR references previous consistency findings for IBC residential projects, inferring that it would seek to obtain such consistency findings again based on a slippery slope argument. This should not be allowed to continue, as more lives would be put in danger with the additional 5,599 dwelling units that would be allowed to be constructed within the IBC. This is an opportunity to disallow the enshrining of past actions and enforce the providence of ALUC by requiring that Irvine abide by the AELUP height limitations.

Additionally, it is shocking that Irvine believes there will be no severe consequences to residents in the IBC in case of an aircraft crash into a building because the buildings will comply with seismic standards and emergency responders are nearby. This evidences Irvine's choice to advance the profits of developers and the city's tax base over the health and safety of its citizens. ALUC would be heroes to the citizens of Irvine in prohibiting IBC residential buildings from penetrating into the FAR Part 77 imaginary surfaces and/or the 203.68-foot amsl avigation easement area. This should be regardless of whether the FAA finds no hazard or obstruction. The AELUP, at page 13, provides that the FAA's "Determination of No Hazard to Navigation does not automatically equate to a Consistency determination by the ALUC." We hope that ALUC will look beyond the FAR Part 77 determination in determining whether a proposed project is not a hazard to aircraft or future residents.

O5-2 cont'd.

We also note that the increased high rise residential along the upwind (or downwind) traffic patterns could adversely affect the VFR (visual flight rules) general aviation operations by increasing the dangers faced by general aviation pilots and Irvine residents. General aviation aircraft generally fly at very low altitudes (800 ft. above GL while in pattern) and are often operated by inexperienced pilots. Given the topography and frequent occurrence of advection fog in the IBC, the increase in high rise residential in the IBC could drastically increase the risk of general aviation aircraft collisions with buildings. Additionally, consideration should be given to the impact on existing industrial uses, many of which have high levels of hazardous materials present, from a collision by an aircraft with neighboring high rise residential buildings.

The ALUC staff recommendation (page 6 of the staff report) supports inserting language into the Vision Plan and Overlay Zone that would prohibit buildings from "penetrat[ing] the FAR Part 77 imaginary surfaces for JWA." Staff also recommends that "[p]roposed projects within the IBC should be reviewed to determine if they are located within [the 203.68-foot amsl avigation easement] and meet this height restriction." (Staff Report, p. 7.) Allergan agrees with these recommendations and requests the Commission's vote to adopt staff's recommendation that ALUC "work with the City on additional language to be added to the… Vision Plan and Overlay Zone and return the item to the Commission for its next meeting." (Staff Report, p. 7.)

O5-2 cont'd.

2. *Noise Impacts*

Irvine and the AELUP employ the same standards for residential uses within the 60 dBA CNEL noise contour; that is, a 45 dBA CNEL interior noise level maximum and a 65 dBA CNEL exterior noise level maximum. While Irvine provides that projects within the 60 dBA CNEL noise contour must provide sound attenuation to meet that interior noise standard, the Irvine standard will allow residential uses in areas where the exterior noise level exceeds the 65 dBA CNEL outdoor noise standard. (That is the noise level due to aircraft operations, without consideration for traffic and ambient noise.) The Project would require residential uses provide recreational amenities to satisfy their park requirements, and the Project provides that there would be as many as 6 neighborhood parks throughout the IBC, as well as a possible community park. Residents and visitors to these parks will be impacted by the noise levels. Because the outdoor noise standard is exceeded, Irvine concludes that there is a significant unmitigated impact.

The ALUC staff report does not make a conclusion regarding the Project's consistency with outdoor noise standards within the 60 dBA CNEL noise contour. (See pages 5-6.) As conceded by the DEIR, the Project is inconsistent with that AELUP noise standard. Therefore, ALUC should find the Project inconsistent with the AELUP insofar as it permits residential uses within the 60 dBA CNEL noise contour.

O5-3

Further, it is vital to note that Irvine does not address JWA's potential expansion. Any expansion by JWA would push the noise contours out over the area of the IBC slated for residential development to a greater extent. As a result, more of the IBC would be covered by the 60 dBA CNEL noise contour and the 65 dBA CNEL noise contour may extend into these areas. Both the Project and the AELUP prohibit residential uses in the 65 dBA CNEL contour, so the Project is currently consistent with the AELUP, but it is ambiguous as to what happens when the JWA expands. ALUC should provide Irvine with the JWA's expansion plans and projected noise contours after the expansion, and require that Irvine add language to the Overlay Zone and DEIR that prohibits residential in the areas that will be within the 65 dBA CNEL noise contour after the expansion.

3. *Land Use Impacts*

As to land use impacts, Irvine repeats the noise and hazards impacts analyses (discussed above), and concludes that "the City of Irvine has determined that the proposed project is consistent with AELUP". (DEIR, p. 5.8-33.) Interestingly, while Irvine mentions in both the hazards and land use impacts sections that the Project is within JWA's Safety Zones 3, 4, 5, and 6, and explains that residential uses should be avoided or limited in Safety Zones 3, 4, and 5, Irvine makes no attempt to limit the presence of residential in those zones. Since the Project will permit high-intensity multi-family residential projects within those zones, the ALUC should find the Project inconsistent with the AELUP.

Section 3.2.1 of the AELUP provides that:

> Within the boundaries of the AELUP, any land use may be found to be Inconsistent with the AELUP which:
> (1) Places people so that they are affected adversely by aircraft noise,
> (2) Concentrates people in areas susceptible to aircraft accidents,
> (3) Permits structures of excessive height in areas which would affect adversely the continued operation of the airport, or
> (4) Permits activities or facilities that would affect adversely aeronautical operations.

O5-4

As discussed above, the Project will permit residential uses within the 60 dBA CNEL noise contour and residents will be adversely affected by unmitigated exterior noise levels from aircraft noise in excess of the AELUP and City of Irvine standards. The Project will also allow extensive additional residential development in the IBC in areas underneath the flight path. Further, based on Irvine's past projects, it is likely that residential buildings will be permitted above the FAR Part 77 imaginary surface and avigation easement areas, and this may adversely affect the continued operation of the airport as a greater number of towering buildings make air navigation more difficult, as discussed above. While any one of these reasons alone is enough for ALUC to find the Project inconsistent, since the Project creates all of those situations, ALUC should require changes to the Project to prevent such situations or proceed with an inconsistency finding.

Conclusion

We urge ALUC to commit additional time to study the consistency of Irvine's Project with the AELUP and JWA's plans for expansion. Irvine will be required to respond to public comments raised in the DEIR review, and ALUC should take this opportunity to tell Irvine the

O5-5

revisions to the Project it requires as necessary to ensure the compatibility of further of residential uses in the IBC with aircraft operations. We support ALUC's adoption of the staff's recommendation to continue this item, but we further recommend that ALUC's consistency finding be delayed until after the Final EIR is released for this Project, as the Project is still ambiguous in many respects and may change as a result of public comment through the DEIR process.

O5-5 cont'd.

Should you have any questions or comments, please do not hesitate to contact me at the number above.

Sincerely,

Jessica A. Johnson

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:3JAJ1\401494665.1

cc: (via email):
Bill Jacobs, City of Irvine Principal Planner
Jeffrey Melching, Assistant City Attorney for the City of Irvine
Whitman Manley, Special Counsel for the Cities of Newport Beach and Tustin

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O5. Responses from Sheppard Mullin, Jessica A. Johnson, dated April 16, 2009.

O5-1 Comment noted. No further response necessary.

O5-2 The Airport Land Use Commission (ALUC) for John Wayne Airport has determined that the proposed project is consistent with the adopted AELUP. The entire Urban Neighborhood District is located outside the 65 dBA CNEL noise contour and the requested changes by ALUC have been incorporated into the proposed zoning (see Appendix D of the Recirculated DEIR).

O5-3 See Response A1-5. Noise-sensitive residential and recreational areas are considered to be significantly impacted when noise levels exceed 65 dBA CNEL, not 60 dBA CNEL. In the previously circulated EIR, a very small area of the IBC was within the 65 dBA CNEL contour of JWA, located directly across from the entrance to the airport. The previously circulated DEIR incorrectly indentified that all residential areas within the IBC are located outside the 65 dBA CNEL noise contour of the JWA. The re-circulated DEIR has been revised. At the recommendation of ALUC and the commenter, the City of Irvine has proposed to incorporate language within Zoning Code Section 5-8-4.C that would prohibit residential and active recreational uses within the 65 dBA CNEL contour of the JWA (see Section 5-8-4.C. *Airport Restriction*, and Policy "B" of the City of Irvine General Plan Noise Element). This is included as PDF 9-4. Consequently, impacts would remain less than significant.

The City considers sensitive land uses within the 60 dBA CNEL noise contour to be compatible with the ambient noise environment. Noise-sensitive residential and recreational areas are considered to be significantly impacted when noise levels exceed 65 dBA CNEL, not 60 dBA CNEL. No impacts would occur as a result of placing residential or recreational land uses within the 60 dBA CNEL noise contour.

Noise impacts were based on noise contours provided by JWA based on the 1985 JWA Master Plan. JWA has indicated (see Comment letter A1) that these contours represent the future noise contours for the airport from which impacts should be based on. It should be noted that newer aircraft are generally quieter than older models as a result of Federal Aviation Administration (FAA) noise standards.

O5-4 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

O5-5 Comment noted. No further responses necessary.

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LETTER O6 – Sheppard Mullin (26 pages)

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Our File Number: 17HC-144166

April 30, 2009

VIA E-MAIL AND U.S. MAIL

Members of the Airport Land Use Commission, and E-mail: STanner@ocair.com
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3160 Airway Avenue
Costa Mesa, California 92626

Re: *ALUC Special Meeting, April 30, 2009, Agenda Item 2*
Further Comments Regarding Consistency of the IBC Vision Plan and Overlay Code with the Airport Environs Land Use Plan

Honorable Members of the Airport Land Use Commission and Ms. Rigoni:

On behalf of Allergan, Inc. ("Allergan"), we appreciate the opportunity to submit comments regarding the Airport Land Use Commission's ("ALUC" or "Commission") Agenda Item 2, *City of Irvine-IBC Project: General Plan Amendment and Zone Change for the proposed IBC Residential/Mixed Use Vision Plan and Overlay* ("IBC Vision Plan" or "Project"). Since its inception, Allergan has been headquartered in the Irvine Business Complex ("IBC") near John Wayne Airport ("JWA"). As we expressed at the Commission's April 16th regular meeting, Allergan is concerned with the compatibility of new, very dense residential uses the City of Irvine ("Irvine" or "City") proposes to permit within the planning area encompassed by the JWA Airport Environs Land Use Plan ("AELUP") (Planning Area No. 36).

We have reviewed the changes to the Project recently proposed by Irvine to address the consistency issues we raised at the Commission's April 16, 2009 meeting. This afternoon, you are considering Irvine's request, and staff's recommendation, that you find the Project consistent with the AELUP. However, before taking the recommended action, Allergan requests that the Commission consider our concerns regarding the public health, welfare and safety, and exercise its discretion by finding that the Project is inconsistent with the AELUP. If the Commission is not prepared to find the Project inconsistent with the AELUP, Allergan suggests that the proposed consistency finding be delayed until the Irvine City Council has approved the Project, Irvine's assurances to the ALUC can be confirmed, and all of the points below have been addressed. O6-1

I. Background:

As previously indicated, Irvine has prepared a Draft Environmental Impact Report ("DEIR") for the IBC Vision Plan Project. The DEIR analyzes the impacts of the Project as they O6-2

relate to airport operations in three areas: (1) hazards to aircraft in flight and people and structures on the ground (DEIR, § 5.6); (2) noise impacts from aircraft operations on residents (DEIR, § 5.9); and (3) land use impacts (DEIR, § 5.8). The staff report for today's Agenda Item 2 attempts to address these issues raised in our previous comment letter and in the DEIR, apparently based on assurances made by Irvine staff that certain modifications will be made to the IBC Vision Plan Project prior to its approval by the City. However, staff's recommended changes to the Project, even if they are ultimately made part of the Project, still do not alleviate or resolve Allergan's concerns. Consequently, Allergan would like to address its further concerns regarding the impact and potential impacts of Irvine's Project on JWA and the health and safety of the future residents of the IBC. Even with Irvine's proposed changes, a consistency finding would be tantamount to an exemption from the AELUP and State and Federal laws, standards and policies intended to protect the public health, safety, and welfare.

O6-2 cont'd.

II. AELUP Compatibility Analysis:

Even with Irvine's proposed changes to the Project, and despite staff's recommendation regarding consistency, Allergan still has procedural and substantive concerns regarding the proposed action. Our concerns are supported by the opinion of Richard K. Simon in correspondence dated April 30, 2009, and submitted to you today in support of Allergan's position. Each of these concerns must be addressed before the Commission proceeds with a finding that Irvine's Project is consistent with the AELUP. As outlined below, it is Allergan's position that the Project, as currently proposed by Irvine, is fatally inconsistent with the AELUP, and that a consistency finding would be both premature and contrary to the law and public policy.

O6-3

A. Procedural Issues

Allergan has identified at least three (3) procedural issues that must be addressed prior to any consistency finding made by the ALUC. These considerations warrant postponement of any proposed consistency finding by the Commission pending further review Based on the issues discussed below, Allergan believes the Commission is presently required to find that the Project is inconsistent with the AELUP.[1]

[1] An inconsistency finding by the ALUC would be consistent with the AELUP EIR and thus, no additional environmental review or delay would be necessary to support that finding. The burden would then shift to Irvine, under Public Utilities Code Section 21676, to override the ALUC decision by two-thirds vote by the Irvine City Council, by making specific findings that the Project is consistent with the purpose stated in Public Utilities Code Section 21670. As discussed more fully below, Irvine's finding of consistency, based on changes to the Project or otherwise, would have the effect of shifting liability from JWA to Irvine for damages to property

O6-4

1. Any Consistency Finding By The ALUC Is Premature

Irvine's request that the Commission determine that the Project is consistent with the AELUP is hasty and premature. Irvine's proposed changes, and the Project itself, have not yet been approved, and remain subject to further change and mitigation. Moreover, once the Commission has given Irvine its "consistency" stamp of approval based on Irvine's non-binding assurances, the Commission may be stuck with the results of the final Project approval, over which the Commission will have little or no control. A more reasoned approach would be for the ALUC to hold off on any consistency determination until the Irvine City Council has approved the Project.

O6-5

2. A Consistency Finding Could Be Considered A "Project" Under CEQA Warranting Environmental Review

A finding by the Commission that Irvine's IBC Vision Plan Project is consistent with the AELUP before Irvine has approved the Project could be considered a separate "project" warranting environmental review under the California Environmental Quality Act (Pub. Resources Code, § 2100 *et. seq.*) ("CEQA"). Under Public Resources Code Section 21065, a project is defined as follows:

> [A]n activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:
>
> (a) An activity which is directly undertaken by any public agency.
>
> (b) An activity 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.
>
> (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

O6-6

Accordingly, even actions that might be disparaged as mere "governmental paper-shuffling" can constitute projects, so long as they "culminate" in physical impacts to the environment. (*Bozung*

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or personal injury caused by or resulting directly or indirectly from Irvine's decision to overrule the ALUC. (Pub. Utilities Code, § 21678.)

v. Local Agency Formation Commission (1975) 13 Cal.3d 263, 277-281.) Thus, a discretionary agency action, such as the proposed consistency finding, constitutes a "project" whenever it is "necessary to the carrying out of some private project involving a physical change in the environment." (*Simi Valley Recreation & Park District v. Local Agency Formation Commission* (1975) 51 Cal.App.3d 648, 664.)

O6-6 cont'd.

The Commission should delay any finding that the Project is consistent with the AELUP until it has determined, through the preparation of an Initial Study, whether or not such an action would be considered a project subject to further environmental review under CEQA.

3. The ALUC Is A Responsible Agency Under CEQA

Additionally, the ALUC is likely a "Responsible Agency" for the purposes of Irvine's Project approvals and CEQA. (Pub. Resources Code, § 21167.3; CEQA Guidelines, § § 15233, 15050, subd. (c), 15052, 15096; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169.) A responsible agency must issue its own findings regarding the feasibility of relevant mitigation measures or project alternatives that can substantially lessen or avoid significant environmental effects. (CEQA Guidelines, § 15096(g)(1)-(2).)

The Responsible Agency designation is important to the ALUC for two reasons. First, the Commission must do more than simply make a consistency determination with respect to the Project and the AELUP. It must also make the requisite findings regarding the mitigation measures and project alternatives as required by CEQA. (CEQA Guidelines, § 15096(g)(1).) Second, if the Commission finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the Project would have on the environment, it cannot approve the Project as proposed. (CEQA Guidelines, § 15096(g)(2).) As discussed more fully below, the Commission may not find consistency with the Project as proposed, because a suggested Project alternative identified by Irvine (Reduced Urban Neighborhood Alternative), reduces the potential for inconsistency with the AELUP and still meets most of the Project objectives by limiting the potential 6,745 additional residential units to the north of the I-405 Freeway and outside of the JWA noise contours and safety zones.[2] (See Irvine DEIR, pp. 7-25-30.) The Commission must ensure it has fully satisfied its obligations as a Responsible Agency before proceeding with a finding that the Project is consistent with the AELUP.

O6-7

[2] The Martin Street Condominiums project and Irvine Technology Center project were approved by the ALUC before the full scope and intensity of the IBC Vision Plan Project was revealed to the Commission by Irvine.

B. AELUP Consistency Issues:

Generally, the ALUC reviews a proposed project's compliance with the AELUP using four broad criteria enumerated in Section 3.2.1 of the AELUP, which provides:

> Within the boundaries of the AELUP, any land use may be found to be Inconsistent with the AELUP which:
> (1) Places people so that they are affected adversely by aircraft noise,
> (2) Concentrates people in areas susceptible to aircraft accidents,
> (3) Permits structures of excessive height in areas which would affect adversely the continued operation of the airport, or
> (4) Permits activities or facilities that would affect adversely aeronautical operations.

O6-8

Despite ALUC staff recommendations, Allergan remains concerned that the Project is not consistent with the AELUP for at least the following three reasons: (1) the DEIR uses an Lmax (10) standard for interior noise rather than the CNEL standard required under the JWA AELUP[3]; (2) the Project expands and concentrates extremely dense residential developments under JWA aircraft operations and traffic patterns; and (3) the Project permits structures of excessive height in close proximity to JWA, which would adversely affect the continued operation of the airport and aeronautical operations. As addressed further below, a finding of consistency by the ALUC would unnecessarily allow Irvine to concentrate people and property in harm's way without assuming any of the risk or liabilities for its actions, and exempt the Project from compliance with the AELUP.

1. The DEIR Uses An $Lmax_{(10)}$ Standard For Interior Noise Rather Than The CNEL Standard Required By The JWA AELUP

As outlined in the letter submitted to the Commission for today's meeting by Allergan's consultant, Richard K. Simon, Esq. ("Mr. Simon"), "any use of a noise measurement methodology other than CNEL, except as a supplemental descriptor, is inconsistent with the AELUP." (Simon Letter, p. 3.) Thus, any reference to or use of the $Lmax_{(10)}$ standard in the Project DEIR is inconsistent with the AELUP and the DEIR requires either immediate revision by Irvine or a finding of inconsistency by the ALUC.

O6-9

[3] Irvine staff have represented that this will be changed in the Project and the DEIR; however this change has not yet been incorporated into the Project documents, and Irvine's assurances are certainly not binding, particularly while the DEIR is still in the public review and comment period, and has not been reviewed or approved at any level of City government.

2. The Project Concentrates Expanded, Exceedingly Dense New Residential Developments Under JWA Aircraft Operations And Traffic Patterns

Irvine's IBC Vision Plan Project ignores conventional wisdom regarding airport land use planning by encouraging exceedingly dense residential uses in close proximity to an active public airport and directly beneath the operational traffic patterns of general aviation aircraft. As Mr. Simon notes, "the DEIR proposal to convert existing commercial uses to high-density residential, including medium and high rise family developments, creates . . . safety risks inconsistent with the intent of the AELUP." (Simon Letter, p. 7.)

The staff report for today's meeting notes that "[a] portion of the proposed project is located within JWA Safety Compatibility Zones 2, 3 and 6." (ALUC Staff Report, p. 6; see also attachment 6 to ALUC Staff Report.) A comparison of the JWA Safety Compatibility Zone ("Safety Zone") Reference Map (attachment 6) and the Overlay Zone Regulation Plan (shown on pages 3-17 of the Vision Plan DEIR), reveals that the Project contemplates including multi-use districts and urban neighborhood districts within JWA Safety Zones 2, 3 and 6. While the residential density requirements for the multi-use and urban neighborhood districts is not set at a firm limit, the DEIR provides (at pages 3-12) that "future residential projects would not have a restriction on maximum density, but would have to comply with a minimum density of 30 units per acre to ensure the benefit of higher-density housing necessary to establish a vibrant mixed-use community." (Emphasis added.) Because buildings in the mixed-use and urban neighborhood districts could be as tall as 20 and 7 stories respectively, this could mean that several thousand Irvine residents could be living in very close proximity within Safety Zones 2, 3 and 6. O6-10

Table 9B of the AELUP, provides that residential uses are prohibited in Safety Zone 2, "except on large, agricultural parcels." (AELUP, p. 9-44.) Additionally, Safety Zone 3 is limited to residential uses of "very low densities." (*Ibid.*) Moreover, while Safety Zone 6 appears to allow residential uses, it specifically prohibits outdoor stadiums and "similar uses with very high densities." (AELUP, p. 9-45, emphasis added.) Contrary to the staff report's statement on page 7 that "[w]ithin Safety Zone 6, all residential uses are allowed," the additional restriction placed on "similar uses with very high densities" would seem to prohibit the extremely dense residential buildings proposed by the Project. Support for this assertion can be found in Mr. Simon's letter and the California Airport Land Use Planning Handbook ("Handbook"). (Simon Letter, pp. 7-8.) "The most direct means of limiting the potential consequences of an off-airport accident is to limit the intensity of use." (Handbook, pages 9-2 and 9-3.)

Because Irvine's Project proposes new, dense residential development within Safety Zones 2, 3 and 6 and directly under the traffic patterns for JWA, the Commission should exercise

its discretion and protect the public health, safety and welfare by finding the IBC Vision Plan Project inconsistent with the AELUP. O6-10 cont'd.

3. The Project Permits Structures Of Excessive Height In Close Proximity to JWA Which Would Potentially Affect Airport And Aeronautical Operations

As addressed in Mr. Simon's letter (at pages 5-7), the DEIR fails to address the Project's potential impacts on the operations of JWA as well as on aeronautical operations in the vicinity of JWA. Specifically, the AELUP relies on the FAA's FAR Part 77 standard as the criterion for determining whether a proposed structure within its planning area is or is not an obstruction to air navigation. (AELUP, p. 14.) Upon a finding of a hazard by the FAA, "[t]he ALUC considers projects that are a hazard to air navigation to be Inconsistent with the *AELUP for JWA*." (*Ibid.*)

However, the FAR Part 77 is not conclusive and the AELUP specifically reserves the right to utilize more stringent criteria and standards. (AELUP, pp. 13-14.) Consequently, FAR Part 77 surfaces are not the only criteria necessary to determine whether a proposed structure will constitute a safety risk for aircraft in flight. "An extremely important consideration is the obstacle clearance requirements contained in FAR Part 121, as they relate to the potential loss of an engine ("one-engine inoperative" or "OEI") on departure of an air carrier aircraft from an airport." (Simon Letter, p. 6.) Consequently, consideration of potential OEI conflicts with proposed projects clearly falls within the ALUC's mandate to safeguard airport operations and the welfare of the general public, and AELUP section 3.2.7(3), which provides that structures will be found to be inconsistent which would result in the diminution of "operational efficiency and capacity of the airport." O6-11

As a result, the failure of the DEIR to address FAR Part 121 is a significant inconsistency with the AELUP and a deficiency in the DEIR itself. Thus, the Project presents a potentially significant safety hazard to both aircraft using JWA and the future residents of Irvine who may occupy the proposed high rise, high density residential units.

C. Irvine Has Identified A Project Alternative That Prevents Project Inconsistencies With The JWA AELUP

As discussed above, the ALUC is likely a Responsible Agency under CEQA for the Project. "When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative . . . within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." (CEQA Guideline, § 15096.) As currently proposed, the Project is inconsistent with the AELUP for the reasons stated above and the reasons stated by Mr. Simon in his letter to the ALUC. Should the ALUC find the Project inconsistent, and "the Irvine City Council O6-12

overrides this finding by a two-thirds vote, a significant unavoidable impact would result . . . ." (Irvine DEIR, p. 5.8-33.) Thus, it is well within the ALUC's power to find inconsistency and propose that Irvine seek a feasible alternative to the Project.

Notably, Irvine has already identified a feasible alternative that "[r]educes potential for inconsistency with the AELUP for John Wayne Airport" and "[m]eets most of the project objectives." (Irvine DEIR, pp. 7-6 and 7-25-30.) The "Reduced Urban Neighborhood Alternative" only allows further residential development north of the I-405 Freeway. Under this alternative, the same quantity of residential units would be allowed, however they would only be allowed to be constructed north of the I-405 Freeway, which is outside of all of the JWA Safety Zones. This alternative alleviates any consistency issues between the Project and the JWA AELUP and meets most of Irvine's stated objectives. Thus, the ALUC must find the Project inconsistent with the JWA AELUP in light of the feasible alternative.

O6-12 cont'd.

D. The ALUC Should Not Assume Liability For The Project

If the ALUC finds the Project inconsistent with the JWA AELUP, Irvine may override this determination by two-thirds vote of the Irvine City Council if it makes specific findings that the Project is consistent with the purpose stated in Section 21670 of the Public Utilities Code. (Pub. Utilities Code, § 21676.) The purpose stated in Section 21670(a)(2) is:

> To protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards in areas around public airports to the extent that these areas are not already devoted to incompatible uses.

O6-13

If Irvine were to override the ALUC determination, then Irvine would absolve JWA from any liability for damages to property or personal injury caused by or resulting directly or indirectly from Irvine's decision to overrule the ALUC. (Pub. Utilities Code, § 21678.)

The ALUC should not take responsibility for Irvine's insistence on forcing new, dense high rise residential uses into an area adjacent to airport operations and the risks inherent in those actions. The IBC was historically zoned industrial/commercial for a reason. Dense residential uses simply have no place in airport environs and the ALUC should not give way to Irvine's doggedness. If Irvine wishes to persist in this course of action, it should be forced to face the potential consequences of its actions alone.

Conclusion

For the reasons set forth above, we urge the Commission to find that the Project, as proposed, is inconsistent with the letter and spirit of the AELUP. As we have pointed out, the Project seeks to bring new, very dense residential uses into an area which is inappropriate for such uses. Should the Commission not wish to consider an inconsistency finding at this time, we request that the Commission further continue the agenda item so that full consideration can be given to the concerns raised in this letter, and to the letter submitted by Mr. Simon. O6-14

Should you have any questions or comments, please do not hesitate to contact me at the number above.

Sincerely,

Geoffrey K. Willis

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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April 30, 2009

VIA E-MAIL AND U.S. MAIL

Kari A. Rigoni, Executive Officer, and
Members of the Airport Land Use Commission
3160 Airway Avenue
Costa Mesa, California 92626

E-mail: STanner@ocair.com

Dear Ms. Rigoni and Members of the Airport Land Use Commission:

I have been asked by Allergan, Inc. to review a Draft Environmental Impact Report ("DEIR") prepared for the City of Irvine's ("City") proposed Irvine Business Complex ("IBC") Residential/Mixed Use Vision Plan and Overlay Zoning Code with respect to its consistency with the Airport Environs Land Use Plan for the John Wayne Airport ("AELUP").

As is indicated in the attached *curriculum vitae*, I have been actively involved in airport development issues in Southern California and nationally for more than thirty years, having represented, and continuing to represent, a number of air carrier airports in a range of matters including those concerning the noise, safety and land use impacts of airports on surrounding communities.

The following comments are based primarily upon the information contained in the DEIR and the provisions of the AELUP, and are divided into three parts: noise measurement, flight safety and land use. Briefly summarized, it is my opinion that the DEIR's reliance on an Lmax(10) standard for interior noise, its failure to properly address Federal Aviation Regulations ("FAR") Part 77 height standards or to consider FAR Part 121 standards and its stated intention to convert existing industrial/commercial uses adjacent to the airport to residential uses without reference to existing airport flight operations all constitute significant inconsistencies with the AELUP. O6-15

I would also note preliminarily that all three of these concerns arise in the context of the DEIR's proposal to invite new high-density residential uses under arrival and departure paths regularly used by substantial numbers of general aviation aircraft at John Wayne Airport

("Airport"). As is discussed more fully hereafter, while it is not possible to eliminate all risks associated with airport-adjacent development, failure to recognize the existence of such risks and instead to promote intense residential uses in an area subject to aircraft overflights is, in my opinion, inconsistent with the goals of state and federal airport regulation and with the intent of the AELUP and its enabling legislation.

O6-15 cont'd.

Noise Measurement

Section 5.8.4C(2) of the March 2009 Draft Irvine Business Complex Residential Mixed-Use Overlay District, under the heading "Sound Attenuation," acknowledges that portions of the IBC's residential uses are located within the Airport's 65 and 60 dB(A) CNEL contours and further acknowledges that the AELUP prohibits residential uses in the former and requires mitigation of residential uses in the latter to achieve an interior noise level not to exceed 45 dB(A) CNEL. The section then goes on to state:

> "For all residential dwelling units within the 60 CNEL contour of John Wayne Airport, the maximum interior noise levels of the loudest 10 percent of single noise events (Lmax10) shall not exceed 65 dBA daytime a (7a.m. to 7 p.m.) and 55 dBA nighttime (7p.m. to 7a.m.)."

Chapter 5 of the DEIR, pages 5.9-80-81, further states:

> "Interior noise levels are required to achieve the interior noise limits of 45 dBA CNEL and 55 dBA Lmax (10) for residential structures . . . ."

O6-16

The DEIR's use of Lmax as an interior noise measure is completely inconsistent with the AELUP. It is likewise inconsistent with all applicable federal and California airport noise measurement methodologies and standards, is essentially unusable and impractical as well as vague and uncertain in its measurement criteria. Moreover, the DEIR's mix of the two standards (CNEL and Lmax) quoted above creates even more uncertainty as to how the City intends to comply with the AELUP's requirements.

1. Lmax is a single-event noise metric which measures in A-weighted decibels (dB(A)) the maximum noise level generated by a particular noise source, here the overflight of an aircraft, at a particular geographic location. When used, it is most often identified through actual noise monitoring equipment. Lmax(10), as described in the DEIR, is simply a designation of the loudest ten percent of a collection of single event measures (but see questions re methodology in paragraph 3 below).

CNEL is a cumulative metric, also using dB(A), which describes an average noise environment over a period of time, generally in 24-hour increments and generally focused on a particular source such as aircraft operations. CNEL weights noise during evening (7 p.m. to 10

p.m.) and nighttime (10 p.m. to 7 a.m.) hours to account for the greater impact of noise events during those times on human activity.

While each Lmax measurement is by definition limited to a single event at a single location, and even when multiple measurements are made and averaged Lmax is constrained in its usefulness, CNEL (or its federal equivalent, Ldn) is designed to describe noise events both over time and over a large geographic area using contours generated by a computer program (the Integrated Noise Model) created for the Federal Aviation Administration ("FAA"). Hence, while Lmax may answer the question "how loud was that airplane?" CNEL is used to depict the noise a community may experience over periods such as a month or a year.

Both the FAA and the California Department of Transportation Division of Aeronautics have long required that noise studies involving airports use Ldn and CNEL, respectively, as the primary noise descriptors (see, e.g., FARPart 150, FAA Order 5050.4B, California Public Utilities Code Article 3, Chapter 4, Part 1, Division 9 and the regulations set forth at 21 California Code of Regulations sections 5000 *et seq.*). Through the Federal Interagency Committee on Noise, the FAA in 1992 and thereafter reaffirmed that Ldn must be used as the primary metric for describing aircraft noise exposure, and that other metrics, such as Lmax, could optionally be used on a case-by-case basis to supplement Ldn to describe specific noise effects, such as interference with speech.

O6-16 cont'd.

Consistent with all of the foregoing, the California Airport Land Use Planning Handbook ("Handbook"), published by the California Department of Transportation Division of Aeronautics for use in developing and implementing airport land use plans, identifies CNEL as "the principal gauge against which to assess the noise compatibility of land uses near airports" (at page 7-1). In turn, the Airport Land Use Commission for Orange County, in Resolution No. 75-1, adopted CNEL as the sole methodology for use in describing noise environments in its AELUP .

In sum, any use of a noise measurement methodology other than CNEL, except as a supplemental descriptor, is inconsistent with the AELUP. The DEIR's use of Lmax (10) as the primary measure of interior residential noise is a major inconsistency.

2. Federal regulations (FAR Part 150), California regulations (Noise Standards 21 California Code of Regulations section 5014(a)(2))and the Handbook (page 7-35 *et seq.*) all identify 45 dB(A)Ldn or CNEL as the recognized standard for an acceptable residential interior noise level in the vicinity of airports. Indeed, I am not aware of any other measure of acceptability having been used in airport environmental studies or mitigation programs anywhere in the United States.

O6-17

The AELUP specifically adopts 45 dB(A) CNEL as the standard for maximum interior residential noise in the 65 and 60 dB(A) CNEL contours at John Wayne Airport (AELUP

sections 3.2.3 and 3.2.4). The DEIR's reliance on an Lmax standard for interior noise measurement is thus again inconsistent with the AELUP. O6-17 cont'd.

3. It is not clear from the DEIR how the City proposes to measure and apply Lmax(10). In particular, since this is not a methodology normally used in airport noise measurement, does the City intend to use an average of the highest ten percent (which would appear to leave some noise events louder than the level chosen), or some other method of selection? At what location (or if more than one, locations) within the Airport's 60 dB(A) CNEL contour would the City identify exterior Lmax noise levels? Does the City intend to use actual measured data (and if so, what techniques would it use), computer-generated data, a combination of both or will it rely on aircraft type certification data from FAR Part 36? O6-18

4. The DEIR does not make clear for what period of time measurements will occur or other data sources selected to define exterior Lmax(10). Does the City intend to determine the loudest ten percent of aircraft operations over a day, a month or a year? O6-19

5. It is likewise unclear how the City intends to determine compliance. Will it measure single events in each residence or residential location or in selected, purportedly representative, locations? O6-20

6. How does the City intend to determine if its Lmax standard conforms to the AELUP? While residences built to the DEIR standard might meet or exceed the AELUP's 45 dB(A) CNEL requirement, because what is proposed requires an "apples and oranges" comparison of single event and cumulative measures, with no standard means of correlation, it is essentially impossible to answer this question without measuring completed residential units using a CNEL scale, which means the Lmax values become meaningless in any event. O6-21

7. A great deal of knowledge and technology, both in California and nationally, is geared toward sound attenuation measures intended to achieve a 45 dB(A) interior noise level in various exterior noise environments. Thus an experienced contractor or developer will know, or have access to data regarding, the proper materials and techniques to sufficiently insulate a new residence to achieve that standard, and building departments and inspectors in airport environs are similarly knowledgeable. The result is that when a well-known criterion such as 45 dB(A) must be achieved, it is rarely necessary to conduct actual sound measurements upon completion of construction of new residential units; conformance to building standards and a competent inspection regime will produce the necessary result. When a different standard, such as that proposed by the DEIR, is adopted, actual post-construction noise measurement would be required. O6-22

8. Moreover, if, as is implied by the DEIR, the Lmax (10) 55dB(A) standard is actually more stringent than the 45 dB(A) standard, it is not clear how, or whether, a builder could achieve that interior sound level, what techniques and materials would be needed and what O6-23

the incremental cost of such measures would be. The 45 dB(A) standard has the virtue of established methods and materials and associated costs. O6-23 cont'd.

9. It is not clear from the DEIR whether the City intends to eliminate all residential components from its Mixed Use element within the Airport's 65 dB(A) CNEL contour. Obviously, failure to do so would result in a significant inconsistency with the AELUP. O6-24

For all of the foregoing reasons, I would conclude that the use of Lmax (10) as described in the DEIR is inconsistent with the AELUP as well as with all relevant federal and California criteria, and is impractical as means of insuring that acceptable interior noise levels in proposed residential uses near John Wayne Airport are achieved. O6-25

Flight Safety

1. The AELUP relies on the FAA's FAR Part 77 standard as the criterion for determining whether a proposed structure within its planning area is or is not an obstruction to air navigation. More specifically, the AELUP provides that "the results of an aeronautical study conducted by the FAA pursuant to FAR Part 77.13 will be utilized to help determine if a structure will have an adverse effect on the airport or on aeronautical operations" (AELUP, page 14). Upon a finding of hazard by the FAA, "[t]he ALUC considers projects that are a hazard to air navigation to be Inconsistent with the *AELUP for JWA*" (Id.).

The AELUP does reserve the right to utilize more stringent criteria, and to impose more stringent standards, than those resulting from an FAA FAR Part 77 determination (AELUP pages 13-14). Hence, FAR Part 77 serves as a minimum obstruction standard, but is not necessarily the final word.

The DEIR turns this on its head. In the section entitled "Potential Hazards to Aircraft in Flight," the DEIR states that individual development projects would not be permitted to exceed the height limitations described in FAR Part 77.25 unless "ALUC finds that the structure will not adversely affect aeronautical operations . . . ." (DEIR page 5.8-32) "Therefore, the type and intensity of developments would be regulated via the requirement for specific review by the ALUC together with the FAA determination." (Id.) O6-26

In short, the DEIR proposes that the ALUC act as an appellate reviewer of all FAA determinations with respect to hazards to air navigation and not simply as a body that may impose more stringent requirements. This is inconsistent with the AELUP and contrary to federal policy concerning air safety.

An FAA aeronautical study pursuant to the filing of a Form 7460-1 involves, particularly for large structures or projects, a complex and sophisticated process, utilizing a dedicated computer program and experienced personnel. A determination of whether proposed construction poses a hazard encompasses not only height, but electromagnetic and visual

impacts, the relationship of the proposed construction to existing structures and a number of other variables. While the AELUP correctly provides that the ALUC may determine that a project must be modified or abandoned even if the FAA issues a "no hazard" finding, it has neither the information nor the expertise to second-guess a finding of "hazard," as the DEIR intends.

O6-26 cont'd.

The DEIR must be modified or clarified in this respect before a finding of consistency can be made.

2. FAR Part 77 surfaces are not the only criteria necessary to determine whether a proposed structure will constitute a safety risk for aircraft in flight. An extremely important consideration is the obstacle clearance requirements contained in FAR Part 121, as they relate to the potential loss of an engine ("one-engine inoperative" or "OEI") on departure of an air carrier aircraft from an airport. Because an OEI situation means that a two-engine air carrier aircraft will be operating at half or less of its normal take-off power, its climb rate will be reduced and a different set of potential obstructions than those described in FAR Part 77 must be considered. Each air carrier must establish OEI procedures, subject to FAA approval, for use at each airport.

When obstacles exist or are created which impinge on the OEI surfaces, the remedy required by the FAA is the reduction of aircraft take-off weights to increase the ability of the aircraft to avoid such obstacles or the use of a different runway. Either remedy directly affects the capacity and utility of runways which are closest to the obstacles.

At the time the AELUP was adopted, most regions of the FAA included an analysis of OEI procedures and potential obstructions as part an FAR Part 77 aeronautical study. In the past several years, however, the FAA has removed any consideration of OEI from the FAR Part 77 process and has instead initiated a pilot program at a number of airports to test alternative methods of applying OEI standards to airport-vicinity construction. Pending completion of this pilot program, it is the responsibility of each airport to ensure that minimum OEI clearances are maintained.

O6-27

Thus while OEI criteria were originally included in the AELUP's consideration of building height restrictions through the FAR Part 77 process, even if not specifically identified, they now require separate analysis. Consideration of potential OEI conflicts with proposed projects clearly falls within the ALUC's mandate, as provided in section 21675 of the Public Utilities Code, to safeguard airport operations and the welfare of the general public, and within the ambit of AELUP section 3.2.7(3) which provides that structures will be found to be inconsistent which would result in the diminution of "operational efficiency and capacity of the airport."

Because FAR Part 121 standards have been decoupled from the FAR Part 77 process, the failure of the DEIR to address the impact of those standards on its project is a significant inconsistency with the AELUP as well as a deficiency in the DEIR itself. Absent

correction, in my opinion, the IBC project as described in the DEIR presents a potential safety hazard to aircraft using the Airport. O6-27 cont'd.

Land Use

Many airports are faced with the reality of close-in residential development, the product in most instances of residential growth preceding the development of airport facilities and/or the airport's accommodation of larger and faster classes of aircraft or more frequent operations. An entirely different situation arises where new residential development is proposed that conflicts with existing and projected airport operations. The former may not be curable and will always pose some degree of relative safety risk; in the latter case, the risk is preventable and should be prevented.

Displays of radar tracks (an example is found in the John Wayne Airport General Aviation Noise Abatement Guide ("Guide")) make it clear that a large number of general aviation aircraft, including turbojet aircraft, regularly approach Runway 19L via a downwind leg, and depart from that runway, directly over the area designated in the DEIR as Multi-Use and Urban Neighborhood, ie, residential. Intensive use of these arrival and departure tracks, which are identified in the Guide as "preferred" arrival and departure tracks for general aviation, is also evident from the noise contours shown in DEIR Figure 5.9-2.

While residential use in this area is contemplated by its designation in the AELUP as a Traffic Pattern Zone, the DEIR proposal to convert existing commercial uses to high-density residential, including medium and high rise multi-family developments, creates, in my view, safety risks inconsistent with the intent of the AELUP. O6-28

Chapters 8 and 9 of the Handbook focus on aviation accidents at or near airports, with emphasis on general aviation operations. To my knowledge, the Handbook represents the only authoritative source of such information. While the Handbook recognizes that aviation accident risks in airport vicinities cannot be eliminated entirely and need to be balanced against the development and other needs of surrounding communities, it also stresses the use of density limitations as a key tool in minimizing the consequences of accidents that occur:

> "Protecting people and property on the ground from the potential consequences of near-airport aircraft accidents is a fundamental land use compatibility planning objective. To accomplish this, some form of restrictions on land use are essential.
>
> * * * *
>
> "The most direct means of limiting the potential consequences of an off-airport accident is to limit the intensity of use."
>
> (Handbook, pages 9-2 – 9-3, emphasis supplied)

The Handbook also directly addresses the issue raised by the downwind approach to Runway 19L described above in the context of the AELUP's Airport Safety Zone designations:

> "The generic sets of compatibility zones shown in figures 9K and 9L may need to be adjusted to take into account various operational characteristics of a particular airport runway. Among these characteristics are the following:
>
> * * * *
>
> "*Circling Approaches* . . . . At airports where circling approaches are common, giving consideration to the associated risks when setting safety zone boundaries is appropriate.
>
> * * * *
>
> "*Nonprecision Approaches not Aligned with the Runway* ."
>
> Handbook, page 9-41

O6-28 cont'd.

The Handbook also notes the fact of a "substantial number of [general aviation] departure accident sites lateral to the runway." (At 9-24) All of these concerns are present in the Airport's general aviation arrival and departure patterns noted above.

The Handbook further suggests that where intense residential uses must occur in air traffic zones, steps should be taken to require more stringent building standards:

> "Although avoidance of intensive uses is always preferable, a concept which may be acceptable in some situations is risk-reduction special building design. This concept should be limited to airports which are situated in highly urbanized locations and are used predominantly by small aircraft. In these circumstances, consideration might be given to allowing higher numbers of people (no more than 1.5 to 2.0 times the basic intensity) in buildings which incorporate special risk-reduction construction features . . . ." (Handbook, page 9-53)

In sum, the Handbook makes it clear that the mere designation of areas such as Area 6 for residential use in an AELUP's indicated safety zones does not end the responsibility of the ALUC to insure compatibility with actual airport operations, nor does such designation make a consistency determination a simple mechanical process dictated by those zone definitions. This is especially the case where, as here, the proposed use in those zones involves a conversion from commercial and industrial to dense residential, precisely the circumstance where the Handbook urges caution.

U.S.C. § 4710) it must, through its grant programs, require grantee airports (of which the Airport is one) to fulfill specific mandates. Among these is Grant Assurance 21, incorporated into all FAA airport funding grants, entitled

"Compatible Land Use":

> "[The airport] will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including the landing and takeoff of aircraft."

O6-28 cont'd.

None of the foregoing authorities defines with specificity what uses are appropriate in an area such as the one proposed in the DEIR for high-density residential development. But in my opinion, the provisions of the AELUP must be viewed in the context of the issues raised by the Handbook's safety analysis, the FAA's requirement of compatibility of adjacent land uses and, frankly, common sense.

Inviting intense new residential uses under or adjacent to an active general aviation flight path currently operating over commercial and industrial sites creates an unnecessarily high risk of catastrophe to those new residents and exposes all concerned to enormous potential liability. I believe it is part of the ALUC's mission to insure that a consistency determination avoids such an outcome.

Sincerely,

Richard K. Simon, Esq.

Encl.

cc: Bill Jacobs, City of Irvine Principal Planner
Jeffrey Melching, Assistant City Attorney for the City of Irvine
Whitman Manley, Special Counsel for the Cities of Newport Beach and Tustin

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Education:
Claremont Men's College, BA 1966
University of Pennsylvania Law School, LLB 1969

Employment:
Kadison, Pfaelzer, Woodard, Quinn & Rossi, Los Angeles 1969-1987
Associate (1970-1975)
Partner (1975-1987)
McDermott, Will & Emery, Century City 1987-2005
Partner (1987-2004)
Counsel (2005)
Department Head, Los Angeles Trial Department (1990-2004)
Member, Firm Management Committee (1996-2003)
Member, Firm Executive Committee (1998-2003)
Chair, Firm New Business Committee (2001-2005)
Chair, McDermott, Will & Emery Charitable Foundation (2000-2005)

Community:
Member and Chair, Board of Trustees, Westside Neighborhood School (1996-2001), a private independent K-8 school
Member, Board of Trustees, Vistamar School (2004-present), a private independent high school
Faculty, California State University, Los Angeles, School of Engineering, Aviation Management Program (2005-present)

My law practice has been, and remains, divided into two primary areas. I am a business trial lawyer representing corporations and businesses in a range of matters and in diverse fields, including banking, real estate, entertainment and general corporate. In addition, for more than thirty years I have specialized in the representation of airports throughout the United States, and am nationally recognized as an authority in the field of airport law. I continue to counsel and represent airport clients, including several of the largest airports in the country, as well as a number of business clients in the Los Angeles area.

My work for airport clients includes, by way of example, representation in airport development projects, including oversight and defense of Environmental Impact Statements under the National Environmental Policy Act and Environmental Impact Reports under the California Environmental Quality Act, preparation of Part 150 and Part 161 studies, counsel on capacity and safety issues, including matters arising under Part 77 and Part 121, revenue diversion issues, the development of airport-adjacent land use regulations (both height and noise related), and the defense of airports in numerous inverse condemnation and nuisance damage suits.

Representative clients include Logan International Airport, Sky Harbor (Phoenix) International Airport, the Houston Airport System (Bush Intercontinental, Hobby and Ellington airports), Bob Hope Airport, Long Beach Airport and Reno-Tahoe International Airport. I have testified as an expert witness on issues concerning the impact of noise on airport-adjacent communities on behalf of San Francisco International Airport and have represented the Airports Council International, the representative organization for airport owners and operators, in a variety of matters. I have also worked extensively with the Federal Aviation Administration at both the regional and Headquarters levels.

For the past four years, I have taught aviation law, for which I developed the curriculum and materials, in the Aviation Management program of the Engineering and Technology Department at California State University Los Angeles.

Details of aviation clients, specific representations and references are available upon request.

John Wayne Airport Aviation Noise Abatement Guide

With Preferred Departure And Arrival Track Maps

1

Noise Limits

The Airport maintains ten permanent noise monitoring stations (NMS) located to the north and south of the Airport (see map on reverse side). The GANO specifies noise limits at each NMS that vary by time of day.

General Aviation Noise Limits:

Daytime Hours	Nighttime Hours	
NMS 1S 101.8 dB SENEL	NMS 1S	86.8 dB SENEL
NMS 2S 101.1 dB SENEL	NMS 2S	86.9 dB SENEL
NMS 3S 100.7 dB SENEL	All Others	86.0 dB SENEL

Daytime Hours are (local time):	Departures	Arrivals
Monday - Saturday	0700 to 2200	0700 to 2300
Sunday	0800 to 2200	0800 to 2300

All other hours are considered **nighttime** hours.
Compliance is determined by the clock at each NMS.

Description of Sanctions

Notice of Violation

In the event an aircraft exceeds the GANO noise limits at one or more locations, a "Notice of Violation" will be issued to the registered owner of the aircraft. The Notice of Violation applies to the aircraft owner, the aircraft operator, and the aircraft. Notices of Violation remain in effect for three years after the violation date.

Denial of Use

If three GANO violations occur within a three-year period, the aircraft owner, the aircraft operator and the aircraft are subject to denial of use of the Airport for a period of three years.

Warning

Based on available historical noise data gathered by the Access and Noise Office and as determined by the Airport Director, the following list of aircraft are presumed incapable of meeting noise limitations defined in the GANO and are not permitted to land, tie down, take off or be based at the Airport, except in an emergency (this list is periodically updated and is maintained by the Access and Noise Office, 949.252.5185):

Aircraft Presumptively Incapable of Nighttime Departure Operations:

HS125-1A-600 (Rolls Royce Viper engines)	Learjet 23, 24, 25, 28, 29
Gulfstream II, IIB, III	Jetstar II
Shooting Star T33/F80	Sabreliner 40, 60, 65, 70, 75

Aircraft Presumptively Incapable of Nighttime Arrival Operations:

HS125-1A-600 (Rolls Royce Viper engines)	Sabreliner 40, 60, 70, 75
Gulfstream II, IIB, III	Shooting Star T33/F80

Aircraft Presumptively Incapable of Any Operations at Any Time:

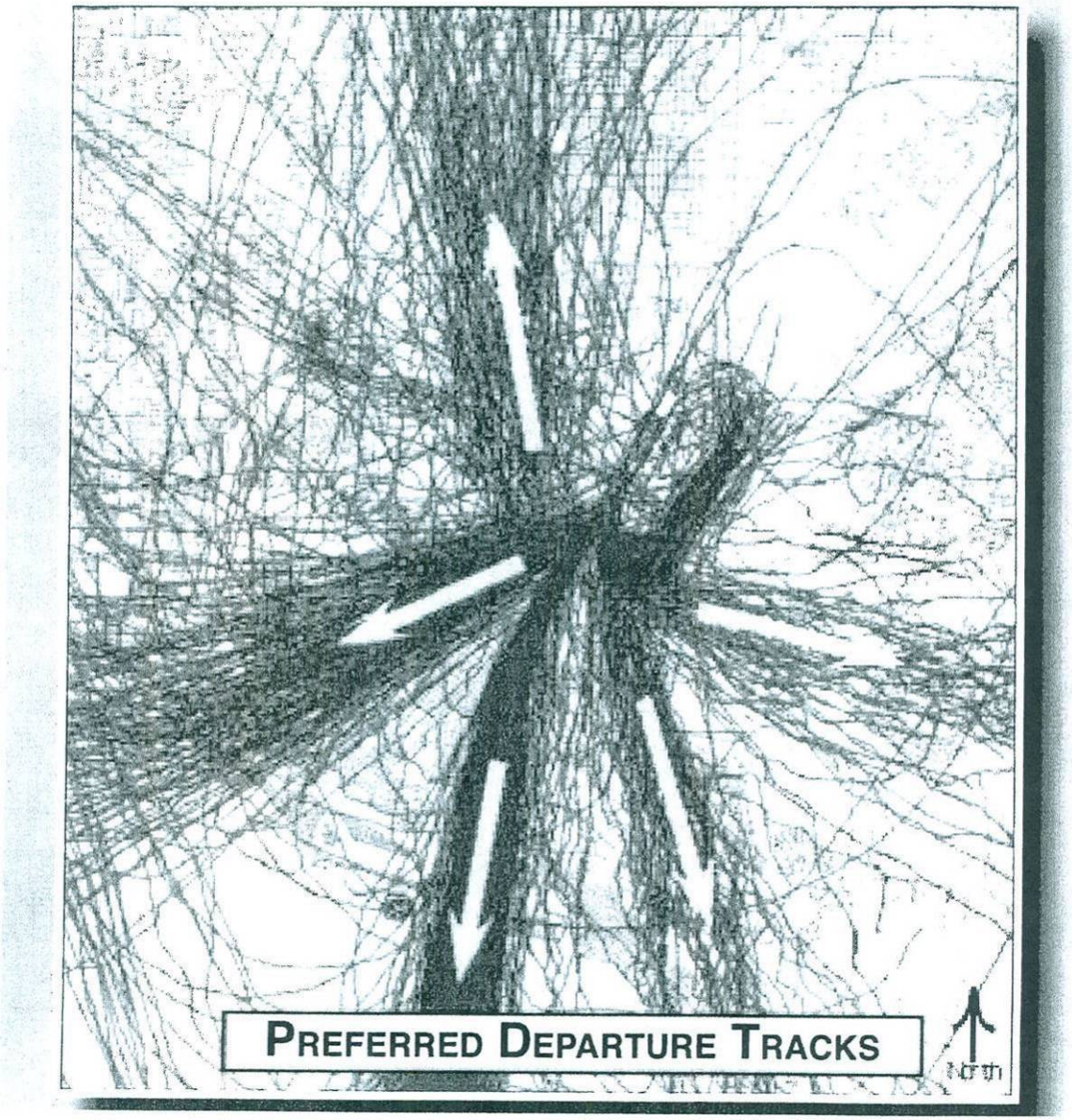
BAC 111	Westwind 1123
Jet Commander	Paris Jet

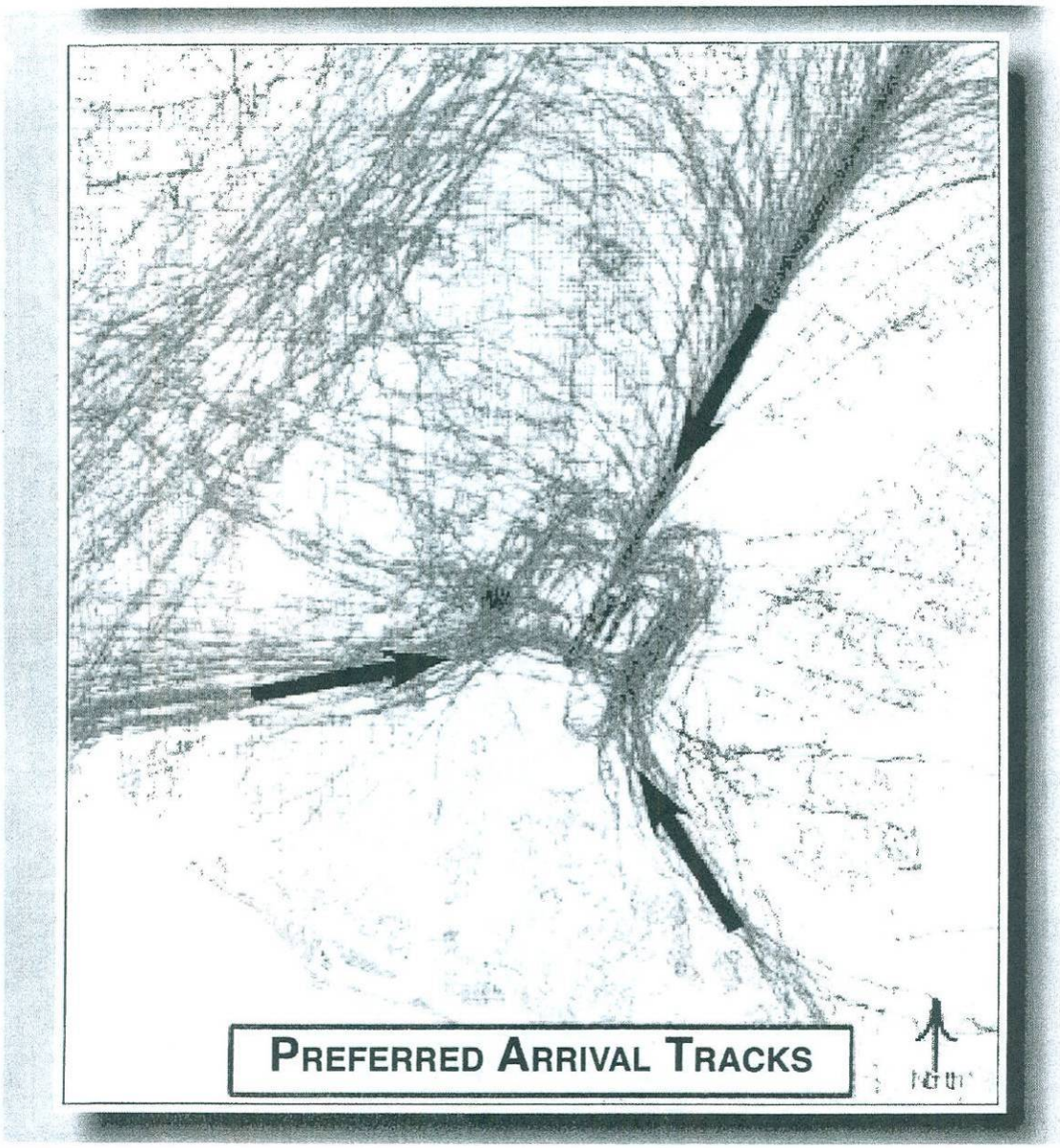
As described in the GANO, any owner or operator of the above listed aircraft will have the opportunity to furnish evidence to the reasonable satisfaction of the Airport Director that such aircraft can operate within acceptable noise levels.

FBO general aviation aprons are limited to aircraft with maximum certificated gross takeoff weight of 100,000 lbs. (dual gear) and with wingspans less than 100 feet. General aviation aircraft are prohibited from using any portion of the air carrier commercial ramp.

Note that manufacturers have developed noise abatement procedures for the Gulfstream II, IIB, III and IV and Learjet 23, 24, 25, 28 and 29 aircraft. See our Web site for special procedures.

Emergency Medical Flight Form - See Web site.


PREFERRED DEPARTURE TRACKS
NORTH


PREFERRED ARRIVAL TRACKS

Recommended Procedures

Safety permitting, pilots are encouraged to follow the aircraft manufacturer's recommended noise abatement procedures on all arrivals and departures.

DEPARTURES:

- **Runway 19R/L** are the preferred runways.
- Avoid high power setting at low altitude over noise sensitive areas (see map).

ARRIVALS:

- Pilots are encouraged to use minimum certificated landing flap setting in accordance with FAR 91.126c.
- ATC/weather permitting, pilots are requested to make a visual straight-in approach.

Noise Monitoring Locations, Sensitive Land Uses and Radar Track Maps

The adjacent map shows the Noise Monitoring Stations (NMS) and residential areas on an aerial photograph. The flight track maps show radar data plotted on a street map. These flight tracks show the preferred range of flight tracks into and out of the Airport. Your cooperation in minimizing noise in these areas by adhering to the preferred flight tracks and complying with the mandatory noise limits is greatly appreciated.

DME Distance to Noise Monitors*

NMS 1S	0.4 nm	NMS 4S 1.3 nm	NMS 8N 2.1 nm
NMS 2S	0.4 nm	NMS 5S 1.3 nm	NMS 9N 4.2 nm
NMS 3S	0.7 nm	NMS 6S 1.8 nm	NMS 10N 5.8 nm
		NMS 7S 2.9 nm	

* Approximate DME distance measured from ISNA localizer, located south of Runway 19R.

JOHN WAYNE AIRPORT

General Aviation Noise Abatement Guide

www.ocair.com

JOHN WAYNE AIRPORT

John Wayne Airport (SNA) is one of the busiest and most noise sensitive airports in the United States. The Airport is located in the center of Orange County, California with residential areas in close proximity. To mitigate potential noise impacts from aircraft operations and to enhance compatibility with surrounding communities, the Airport maintains some of the most stringent noise rules in the United States. The **General Aviation Noise Ordinance (GANO)** has been adopted by the County of Orange to regulate the hours of operation and the maximum permitted noise levels associated with general aviation operations.

This brochure has been prepared to introduce you to the GANO and to encourage the operation of your aircraft in the quietest manner possible consistent with safety. A copy of the GANO is available on our Web site at www.ocair.com. The Airport recognizes that pilot sensitivity is a key component of a successful noise abatement program, and your continued cooperation is greatly appreciated.

Disclaimer

Compliance with the GANO is mandatory unless deviations are made necessary by ATC instructions, a medical or in-flight emergency, or other safety considerations.

MARCH 2008

Proximity to the Community

The Airport is located just north of Newport Beach, west of Irvine, east of Costa Mesa, and south of Tustin and Santa Ana. Residential areas are located close to the Airport and the County of Orange is committed to minimizing noise in these neighborhoods. See map of residential areas on reverse side.

More Information

Access and Noise Office:	949.252.5185
Airport Operations:	949.252.5256
Airport Web site:	www.ocair.com
ATIS Frequency:	126.0
ATIS Phone Number:	714.546.2279
Airport Elevation:	+54 ft. MSL

O6. Responses from Geoffrey K. Willis, Sheppard Mullin, dated April 30, 2009.

O6-1 Comment noted. No further response necessary.

O6-2 See Responses O6-5 through O6-14 below.

O6-3 See Responses O6-5 through O6-14 below.

O6-4 See Responses O6-5 through O6-14 below.

O6-5 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision-makers for their review and consideration.

O6-6 As defined by Section 15357 of the CEQA Guidelines, a "Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. Therefore, the consistency finding issued by ALUC at their April 30, 2009 meeting is not considered a discretionary project because they did not approve the project; they only determined whether the project was consistent with the AELUP.

O6-7 As defined by Section 15381 of the CEQA Guidelines, a "Responsible Agency" means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project. As described above, the consistency finding issued by ALUC at their April 30, 2009 meeting is not considered a discretionary project because they did not approve the project; they only determined whether the project was consistent with the AELUP. Therefore, ALUC is not considered a responsible agency. It should also be noted that the Urban Neighborhood District boundary has been revised to be consistent with the AELUP.

O6-8 See Responses A1-1, A1-2, A1-5 through A1-7, and O6-9.

O6-9 As discussed during the ALUC hearing on April 30, 2009, the City of Irvine's single-event noise threshold was used as a supplemental noise criteria. The Recirculated DEIR clarifies that new residential land uses would be required to adhere to both the 45 dBA CNEL and 55 dBA $L_{max(10)}$ interior noise standard.

O6-10 The DEIR has been revised and recirculated to address the issues and comments raised by the commenter. The issues outlined in this comment are addressed in Sections 5.6, *Hazards and Hazardous Materials*, and 5.8, *Land Use and Planning*, of the of the Recirculated DEIR. See also Response A1-2.

O6-11 The DEIR has been revised and recirculated to address the issues and comments raised by the commenter. The issue outlined in this comment is addressed in

Section 5.6, *Hazards and Hazardous Materials* of the Recirculated DEIR. See also Response A1-1.

O6-12 See Response O6-7.

O6-13 Comment noted. No further response necessary.

O6-14 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision-makers for their review and consideration.

O6-15 See Responses O6-16 through O6-28 below.

O6-16 See Responses A1-5 and O6-9. The City of Irvine requires compliance with both the City's $L_{max(10)}$ and the State's 45 dBA CNEL noise criteria. Pursuant to Title 21 of the California Code of Regulations, new residential structures within the 60 dBA CNEL noise contour of an airport must use building materials that achieve an interior noise level of 45 dBA CNEL. However, the City's $L_{max(10)}$ threshold is in addition to this existing requirement; and, in the vast majority of instances, is more stringent.

O6-17 See Response O6-16 above. Residential land uses within the 60 dBA CNEL contour of the JWA would need to provide an acoustic report to ensure compliance with Title 21 and Title 24 of the California Building Code (see PPP 9-2). In accordance with this standard condition and the requirements of the California Building Code, new development would be required to be sound insulated to achieve the 45 dBA CNEL interior noise standard. In addition to the 24-hour average noise level interior noise standard of 45 dBA CNEL required by Title 21 and the ALUP, the City of Irvine requires residential uses constructed within the 60 dBA CNEL noise contour to also mitigate to achieve reduced interior noise levels generated by the loudest 10 percent of aircraft overflights to 55 dBA (i.e., 55 $L_{max(10)}$) through Policy "g" of the City of Irvine General Plan Noise Element. The City's single-event noise standard is in addition to the 45 dBA CNEL interior noise standard. The difference between the two standards is that the single-event noise standard is based on the loudest noise level generated by an aircraft overflight whereas the 45 dBA CNEL interior noise standard of the California Building Code averages noise levels over a 24-hour period.

O6-18 Pursuant to PDF 9-4, applicants for new development project are required to assess aircraft noise levels when located within the 60 dBA CNEL noise contour of John Wayne Airport. The $L_{max(10)}$ can be measured through ambient noise monitoring; or, if available, through evaluation of Sound Exposure Level (SEL) contours of the loudest aircraft takeoffs at the John Wayne Airport. Applicants for new development would be required to submit an acoustic analysis which documents methodology, impacts, and mitigation to achieve the 45 dBA CNEL and supplemental 55 dBA $L_{max(10)}$ noise standard.

O6-19 The City's single-event noise criteria is an Lmax, which means that it is the loudest noise level associated with an aircraft overflight. Since it is an Lmax, it is not averaged over a time period. The $L_{max(10)}$ is based on the average of the 10 percent loudest aircrafts overflights from John Wayne Airport. The $L_{max(10)}$ can be measured through ambient noise monitoring; or, if available, through evaluation of Sound Exposure Level (SEL) contours of the loudest aircraft takeoffs at the John Wayne

Airport. Applicants for new development would be required to submit an acoustic analysis which documents methodology, impacts, and mitigation to achieve the 45 dBA CNEL and supplemental 55 dBA $L_{max(10)}$ noise standard.

O6-20 See Response O6-18.

O6-21 The $L_{max(10)}$ is a supplemental noise standard. The City requires interior noise to comply with both the noise standard of the AELUP of 45 dBA CNEL and the City's supplemental single-event noise criteria.

O6-22 See Response O6-21.

O6-23 The $L_{max(10)}$ of 55 dBA is likely to be more stringent because flight activity at JWA is restricted to the daytime hours (7:00 AM to 11:00 PM). The 24-hour CNEL noise metric applies penalties of 5 dBA for flights after 7:00 PM but before 10:00 PM and 10 dBA for flights after 10:00 PM but before 7:00 AM. Furthermore, noise levels from all flights are averaged over the 24-hour period. The single-event noise metric is the single, highest event associated when an aircraft passes overhead. To meet the City's single-event noise criteria, new developments would be required to submit an acoustic report that details the architectural improvements to achieve this noise standard (see PDF 9-4).

O6-24 It should also be noted that the Urban Neighborhood District boundary has been revised to be consistent with the AELUP. Pursuant to PDF 9-4 residential land uses are prohibited within the 65 dBA CNEL noise contour.

O6-25 The $L_{max(10)}$ is a supplemental noise standard. The City requires interior noise to comply with both the noise standard of the AELUP of 45 dBA CNEL and the City's supplemental single-event noise criteria.

O6-26 Building Height limitations, recordation of avigation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided as required by the Federal Aviation Administration (FAA), Caltrans Division of Aeronautics, and the Orange County Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA). Building heights in the IBC shall not penetrate Federal Aviation Regulation (FAR) Part 77 Imaginary Surfaces for JWA.

The Recirculated DEIR has been revised to include additional language in Zoning Code Section 5-8-4.C (see Appendix D) and in Project Design Feature (PDF) 6-1, which requires that building heights not exceed Imaginary Surfaces height limitation of FAR 77 and structures that do penetrate the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alternation with FAA.

O6-27 See Response O6-26.

O6-28 The proposed project and associated DEIR have been revised and recirculated to address the issues and comments raised by the commenter.

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LETTER O7 – Sheppard Mullin (88 pages)

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May 14, 2009

Our File Number: 17HC-144166

VIA HAND DELIVERY AND U.S. MAIL

Bill Jacobs, Principal Planner
Department of Community Development
City of Irvine
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Irvine, CA 92623
E-Mail: cd@ci.irvine.ca.us

Re: Comments Regarding The Vision Plan, Overlay District, and Vision Plan Draft Environmental Impact Report

Dear Mr. Jacobs:

As you know, we represent Allergan, Inc. ("Allergan"), a long time resident of the Irvine Business Complex ("IBC"). Allergan has commented several times throughout the forty-five (45) day public comment period at various public meetings held by the City of Irvine ("Irvine" or "the City") and the Airport Land Use Commission of Orange County ("ALUC"). We appreciate this opportunity to further comment on the IBC Vision Plan Draft Environmental Impact Report ("DEIR"), which was released on March 27, 2009. As our prior comment letters have indicated, we feel there are substantial deficiencies with the DEIR, as well as the underlying IBC Mixed Use Community Vision Plan ("Vision Plan") and IBC Residential Mixed Use Overlay Zone ("Overlay Code") (collectively the "Project"). Consequently, we urge Irvine to revise the DEIR and the Project because they fail to satisfy the requirements of the California Environmental Quality Act ("CEQA") (Public Resources Code Sections 21000 et seq.) and contain fundamental flaws which cannot be corrected through the CEQA public review and comment process.

For the sake of clarity, the proposed "Project" reviewed by the DEIR consists of:

(1) general plan amendment to adopt the Vision Plan objectives and policies, increase the IBC dwelling unit cap from 9,401 to 15,000 units, together with an additional potential 1,191 density bonus units, and an "off-setting" reduction in the allowable non-residential intensity by 2,715,062 square feet;

(2) a zoning ordinance amendment to establish a new chapter in the Zoning Ordinance for inclusion of the Overlay Code, update the existing IBC traffic mitigation fee program, and revise the statistical analysis of land use intensities to increase allowable dwelling units and decrease allowable non-residential square footage consistent with the proposed General Plan Amendment;

(3) a municipal code amendment to incorporate new urban park standards into Irvine's park dedication requirements for the IBC;

(4) an amendment to Irvine's Park Standards Manual to incorporate new urban park standards for the IBC;

(5) a program for controlling development intensity within Traffic Analysis Zones (TAZ) based on existing IBC vehicle trip allocations;

(6) an amendment to Irvine's Local Coastal Plan to reference the Vision Plan for a small portion of the IBC located within the Coastal Zone;

(7) a program of infrastructure improvements to support the Vision Plan;

(8) adoption of Design Criteria for projects subject to the Vision Plan/Overlay Code; and

(9) changing the name of the area from "IBC" to "Jamboree Village."

This letter is intended as a comprehensive discussion of our concerns, comments, and questions regarding the DEIR, Vision Plan, and Overlay Code, based on our review to date. We incorporate by this reference, any comments we have previously submitted to Irvine regarding the Vision Plan, Overlay Code, DEIR, or any individual residential project or IBC infrastructure improvement implemented or approved by Irvine. Additionally, we incorporate by this reference, any comments previously submitted by the Cities of Newport Beach and Tustin regarding the Vision Plan, Overlay Code, DEIR, or any individual residential project or IBC infrastructure improvement implemented or approved by Irvine. Finally, we incorporate by this reference our letters to the Orange County Airport Land Use Commission ("ALUC"), which have either already been submitted to the City or are attached to this comment letter. O7-1

As will be seen below there are significant, widespread and fundamental flaws in the DEIR. First, the legal defects of the DEIR fundamentally impact the integrity of the document, requiring recirculation of the amended document. Second, the Project description is fatally defective. The Project description fails to mention that not only is the Project the nine items described above, but it is the City's intention for this document to serve as the environmental analysis for nine pending specific residential Projects. This kind of vague and uncertain Project O7-2

description and analysis was the reason that CEQA was created. Third, the alternative analysis makes no attempt to study and contrast alternatives to the Project that actually have the possibility of having fewer environmental impacts. O7-2 cont'd.

When responding to these comments, please provide written responses containing good faith and reasoned analysis supported by factual information. (CEQA Guidelines, § 15088. subd. (c).) Once again, we thank you for this opportunity to provide Irvine with our comments and we look forward to Irvine's responses to our concerns and comments on the DEIR. O7-3

I. Irvine Has Improperly Segmented Several Components of the IBC Vision Plan

A. General Comments

1. As we have previously commented, Irvine continues to engage in the "pattern and practice" of illegally "segmenting" or "piecemealing" components of the Project before the appropriate environmental review has been conducted. (See *Californians for Native Salmon and Steelhead Association v. Department of Forestry* (1990) 221 Cal.App.3d 1419.) As previously noted in our comments on each of these projects above, the Project description includes a program of infrastructure improvements to support the Vision Plan. (DEIR, Figure 3-5.) Included within these infrastructure improvements are the "*i*" Shuttle program and the IBC Sidewalk Completion Program. (*Ibid.*) Consequently, Irvine must include consideration of these two projects in the DEIR. Instead, Irvine has chosen to segment these two Vision Plan components by finding them exempt from CEQA review and prematurely implementing them without any environmental review. Consequently, Irvine has "chopped up [the Project] into bite-sized pieces . . ." in direct violation of CEQA. O7-4

2. Moreover, Irvine must consider the new Accessory Retail Business ("ARB") Designation in the new DEIR. The ARB designation seeks to encourage mixed-use neighborhoods and is necessarily a part of the Project. Thus, Irvine must study the ARB designation as part of the DEIR and cannot rely on its faulty finding that the ARB was exempt from CEQA review. O7-5

II. The Project is Flawed

A. General Comments

The Project is fundamentally flawed because it cannot be implemented to achieve the objectives that Irvine seeks. In an October 17, 2005, memorandum from Randal Jackson, Executive Director of the Planning Center,[1] to the Irvine Planning Commission, Mr. Jackson notes that "[t]he urban grid patterns, dispersion of traffic, and walkability envisioned for the IBC O7-6

[1] The Planning Center is the same company who prepared the DEIR.

cannot emerge under this fatal flaw in code applicability." (Jackson October 17, 2005 Memo, p. 1.) A copy of Mr. Jackson's October 17, 2005 memorandum is attached to this letter. O7-6 cont'd.

1. The "fatal flaw" that Mr. Jackson was referring to is that the Vision Plan applies only to proposed residential projects or mixed use with residential. As Mr. Jackson observed, this results in numerous negative consequences. "First, the new block structure incorporating new local roads or alleys will occur on an inconsistent basis without full connectivity originally envisioned for the area." (Jackson October 17, 2005 Memo, p. 1.) Additionally, "[s]ite planning for residential and mixed use projects will be oriented towards future local roads and the creation of an engaging street scene, without any assurance that these new roads will ever be connected to adjacent non-residential developments." (*Ibid.*) Mr. Jackson goes on to list several deficiencies and flaws contained in the Vision Plan and Overlay Code. However, despite these statements from Mr. Jackson, it appears that none of these flaws have been addressed in the newest versions of the Overlay Code and Vision Plan.

Additionally, it is apparent that Mr. Jackson has not changed his mind with respect to these flaws. During a December 23, 2008 deposition of Mr. Jackson, he reconfirmed his belief that the Vision Plan and Overlay District were fatally flawed. The pertinent portions of Mr. Jackson's deposition transcript have been attached to this letter. O7-7

Karen Gulley, also with the Planning Center, reiterated Mr. Jackson's statements during her December 9, 2008 deposition. Ms. Gulley explained a "fatal flaw" was inherent in the Vision Plan and Overlay District because the draft code required the creation of smaller block sizes through the introduction of new streets for residential and mixed-use projects but other uses did not have to comply with that requirement. Consequently, she believed this would create a "hodgepodge" of development in the IBC. Pertinent portions of Ms. Gulley's December 9, 2008 deposition transcript are also attached to this letter.

2. Furthermore, the IBC Vision Plan takes a "laissez faire" approach to the location of origins and destinations. The plan is silent on questions of spatial organization. There are no attempts to cluster supportive land uses near each other. The overlay feature, which applies the overlay zoning code to residential land uses only, reinforces the lack of spatial organization. The net result is a plan that allows residential development to be dispersed across the 2,800 acre IBC. The city's goals for a mixed-use, pedestrian-oriented "live-work" area will not be met without attention to spatial organization. O7-8

The lack of spatial organization, and an overly strong adherence to laissez faire market-oriented approaches to land use, are reflected in the zoning code and DEIR. Mr. Jackson (letter of October 17, 2005 to City of Irvine) said that the "… urban grid patterns, dispersion of traffic, and walkability envisioned for the IBC cannot emerge under this fatal flaw in code applicability." The circulation pattern is one aspect of the lack of attention to spatial organization. Another aspect is the City's lack of attention to the arrangement of origins or

destinations. There is no attention to clustering development, locating land uses that mutually support walking travel in tight proximity to each other, or coordinating land uses, functions, and densities in ways that build urban cores and pedestrian environments. The sheer size of the IBC suggests that absent explicit attention to the spatial elements of "place making," residential land uses will very likely spread out over the IBC area in ways that do not support walking travel. This is a major flaw is the Vision Plan and Overlay Code.

As these flaws indicate, the Vision Plan and Overlay Code are "fatally flawed" to the extent that the City cannot reach many of the objectives it has set for the Project. Consequently, and given the several significant impacts identified in the DEIR, Irvine cannot proceed with the Project by adopting a statement of overriding considerations because the benefits of the Project cannot outweigh the numerous unavoidable adverse environmental impacts identified in the DEIR. This substantial evidence of the Vision Plan and Overlay Code's fatal flaws prevents any balancing by Irvine in favor of the Project.

O7-8 cont'd.

B. Specific Comments

In light of the above, we have the following specific comments related to the flaws contained in the Vision Plan and Overlay District:

1. Figure 3-5 lists several infrastructure improvements proposed as part of the Project. (DEIR, § 3, Figure 3-5.) Included in those improvements are several pedestrian bridges. It is unclear how Irvine proposes to have these bridges built by existing property owners. Because the IBC environment is built out, conditions of approval cannot be imposed on many of the existing property owners in the IBC. **What if a property owner does not wish to have the bridge built on its property? How will Irvine choose the sites for these bridges? What if a bridge can't be built because existing property owners won't cooperate with the city in having the bridges built? How will Irvine force existing residential projects to cooperate in completing proposed IBC Infrastructure improvements to enhance connectivity within the IBC? If property owner's are unwilling to sell or use property for bridges, will Irvine condemn the property? What are the environmental consequences of these forced sales and use conversions?**

O7-9

2. The Project "objectives" include: "provide residential development in areas of the IBC where adequate supporting uses and public services and facilities are provided;" "contribute to the development of mixed-use cores;" and "provide neighborhood level amenities." (DEIR, § 3, pp. 1-2.) The Project does not accomplish any of these objectives. The market-driven approach allowed by the Project will allow developers to introduce residential uses anywhere in the IBC, and there is no requirement in the proposed Overlay Code or Vision Plan that requires walking proximity to supporting retail and restaurant uses. The resulting "Vision" desired will not be achieved. Instead, the IBC will consist of islands of residential and

O7-10

industrial/commercial uses. Enhancing sidewalks does nothing for connectivity if there is nowhere walkable for residents to go. O7-10 cont'd.

3. Administrative Relief: Several of the pending projects (Avalon Jamboree Village II, ITC, Kilroy) have requested administrative relief from development standards. (DEIR, § 3, pp. 28, 33, 34, 42.) Many of the other IBC residential projects approved to date have requested and received administrative relief from such requirements. The Vision Plan cannot achieve its goals if administrative relief is constantly granted. Its application needs to be consistent. O7-11

III. The Baseline and Cumulative Conditions Application in the Vision Plan DEIR is Unclear

A. General Comments

The CEQA Guidelines note that "[k]knowledge of the regional setting is critical to the assessment of environmental impacts." (CEQA Guidelines, § 15125, subd. (c).) Consequently, the "EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and must permit the significant effects of the project to be considered in the full environmental context." (Ibid.)

The DEIR, as presently drafted, fails to clearly demonstrate that the significant environmental impacts of the proposed project were adequately investigated because the time-of-review baseline conditions which form the basis for analysis in the DEIR is both unclear and inconsistently applied. It is unclear throughout the DEIR's impact discussions what the "current condition' is from which impacts may be quantified and evaluated. Further, the "current conditions" that are utilized in the DEIR are often inconsistent with one another. O7-12

Specifically, we note the following specific issues with the DEIR's baseline analysis:

1. The Project Background § 3.3.1 provides a thorough understanding of the history of the zoning changes in the City, but it leaves the reader wondering which set of changes is considered the current or present condition for purposes of establishing an environmental baseline. (DEIR, § 3, pp. 2, 9.) It appears that development may have been a moving target as opposed to a set of discrete policy changes that governed land use and development in the intervening periods. **Please concretely identify the phases of land use or zoning changes along with quantifiable metrics (such as residential units or density thresholds) for each phase so the reader can easily understand the progression of events and so that an environmental review can be performed from true current conditions.** O7-13

2. The release date of the NOP is sometimes used as the cut-off date for including residential developments which have been approved, built and occupied in the baseline O7-14

and residential developments which have been approved but not built and/or occupied in the cumulative analyses. (DEIR, § 3, p. 10) There are two NOPs included in the DEIR (Appendices A and B.) **Please confirm that the release date of the NOP for the Project is September 18, 2008 for purposes of analysis of the Project and its environmental impacts. Many of the studies used to compile the DEIR pre-date the September 18, 2008 NOP and therefore are outdated. Please update these antiquated studies.** Per the Court's rulings in the Martin and Alton litigation,[2] it may be arbitrary to use the NOP as a cut-off date. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.) **Please explain why the City has utilized the NOP for the Project as the cut-off date and why its decision is not arbitrary under the previous court rulings on the Martin and Alton litigations.** O7-14 cont'd.

3. The application of the baseline and cumulative conditions is unclear and inconsistent throughout the DEIR. (DEIR § 3). Per the project description, projects already "built and occupied… are considered part of the existing environmental setting," and projects approved but not yet under construction are "included as part of the cumulative impact analysis." The DEIR defines "pending" projects and "potential" units. **While "potential" units are allegedly part of the Project being analyzed, is the same true of the "pending" projects?** O7-15

IV. Hazards and Hazardous Materials

A. General Comments

1. The information regarding the Project area in the Local Setting Section is too general. (DEIR § 5.6, p.6). For example, no information is included in Section 5.6.1.2 regarding the nature of the industrial facilities currently present in the IBC and/or proposed as part of this Project, the likely direction of groundwater flow, prevailing wind direction, the presence or absence of sensitive receptors, the presence of wetlands or the likelihood of flooding. While some of this information is included elsewhere in the DEIR, there is no reference to such information in this Section, nor apparent incorporation of this information into the analysis in the Section (e.g., analysis of upgradient ground water contaminant sources or upwind air emissions sources). **Please specify the features of the local setting that impact the hazards and hazardous materials analysis. Where in this DEIR are such analyses specifically discussed?** O7-16

[2] Orange County Superior Court, Case Nos. 04CC01267 and 07CC01265.

V. Hydrology and Water Quality

A. The Hydrology and Water Quality Analysis is Inadequate for the Following Reasons:

1. This Section provides a valuable timeline regarding the history of zoning changes in the City, but it remains unclear what the "current" conditions are versus "background" or "baseline" conditions. (DEIR, § 3, pp. 2, 9). **Please provide tables or maps illustrating these two conditions so that the reader can more readily evaluate the potential environmental impacts of the proposed Project.** O7-17

2. It is unclear what is meant by "current" conditions and what should be considered as the environmental "baseline" conditions necessary as the starting point for the environmental analysis contained in this DEIR. (DEIR, § 5.7, p. 4). A table or series of maps would help the reader better understand these differences. **Please describe what is meant by the DEIR's references to "current" conditions. Does this include the Legacy Park Detention Basin? It is not clear from the DEIR whether this detention basin has been built or is proposed.** O7-18

3. The DEIR does not contain any analysis to support its assumption that for all flood models applied to the IBC the water level within San Diego Creek is 1.5 feet below the top of its banks. (DEIR, § 5.7, pp. 5.) **Please provide support for the assumption that for all flood models applied to the IBC the water level within San Diego Creek is 1.5 feet below the top of its banks. If this is not correct, please document how changes to this assumption would affect predicted flood frequency, extent and magnitude within the IBC.** O7-19

VI. Noise

A. The Noise Impact Analysis is Inadequate for the Following Reasons:

1. The DEIR uses modeling to assess noise impacts. (DEIR, § 5.9, pp. 9, 26). On page 5.9-9, the DEIR indicates that existing noise levels were modeled based on traffic volumes generated by existing conditions which do not include trips from projects that have approved but construction has not yet been completed. On page 5.9-26, however, the DEIR indicates traffic noise levels were modeled using approved and pending scenarios, at existing levels, year 2013 levels, and post-2030 levels. Thus, it is unclear what is included in the analysis of future conditions as compared to existing conditions. O7-20

2. Tables 5.9-10 – 5.9-13 present data for two scenarios: (a) GP Buildout + Approved Projects; (b) GP Buildout + Approved Projects + Pending Projects. Scenario (a) is presumably the baseline condition and Scenario (b) is presumably the "with project" condition. This is another example of where the cumulative conditions are improper. There is no analysis of O7-21

VII. Global Climate Change

A. The Global Climate Change Provisions of the DEIR are Inadequate and Inconsistent for the Following Reasons:

1. In Table 5.15-3, the DEIR includes a per capita emissions estimate. (DEIR, § 5.15, p. 9.) The use of a per capita emissions rate is often used in the context of residential development to evaluate the Greenhouse Gas ("GHG") emissions associated with population growth (or new residential development growth). However, a per capita metric should include only the residential population of a development project. Inclusion of people who work in the development is double-counting of residents who live and work in the development, and inclusion of people whose per capita emissions are attributable to another development project's inventory is inappropriate. Further, the per capita emissions rate is only one possible metric used for comparison purposes and it should not be used in place of a comparison of total GHG emissions. O7-22

2. In the context of this Project, the usefulness of a per capita emissions value for the existing conditions is of questionable importance. Since the IBC's existing emissions are largely from commercial and industrial sources, the per capita emissions rate is not necessarily representative of the per capita emissions for residents in the IBC. The existing conditions are important to evaluate as a basis for what the GHG emissions would be in the absence of the Project. A more appropriate comparison might be to evaluate what GHG emissions would be from the site in 2030 without Project development. **Please analyze what the Project's per capita emissions would be based only on the Project's population of future residents.** O7-23

3. The DEIR reports per capita emissions in Tables 5.15-4 and 5.15-5 but does not use the appropriate basis for these calculations. As mentioned, the proper use of a per capita GHG emissions estimate is to evaluate the potential increase in GHG emissions resulting from population growth. The DEIR appears to include both IBC residents and IBC workers in its calculations. **Please provide the appropriate per capita emissions considering only the residential population of new development that is part of the Project.** O7-24

4. In Table 5.15-6, the DEIR reports and compares the per capita emissions for the Project. The DEIR inappropriately takes credit for the reductions that will result from implementation of the California Air Resources Board ("CARB") Scoping Plan without having demonstrated implementation of any specific GHG emission reduction measures. **While the DEIR includes various Project Design Features ("PDFs"), the DEIR does not quantify what their respective benefits are. Please provide the actual per capita GHG reductions based on residential population only that would result from implementation of the listed PDFs.** O7-25

5. In the quantification of the emissions inventory, the DEIR includes emission factors that likely under-predict GHG emissions. (DEIR, § 5.15, pp. 15-20). For the electric generation sector, the DEIR uses a state-specific electricity CO_2 emission factor of 0.61 lbs CO_2/kWh, provided by the Energy Information Administration (EIA). The reference states that "reporters should use these state- and regional-level factors only if utility-specific emission factors are not available." An emission factor specific to Southern California Edison (SCE), the electric utility servicing the IBC, is available through the California Climate Action Registry ("CCAR"). CCAR's SCE-specific emission factor is 0.631 lbs CO_2/kWh for 2007 and 0.641 lbs CO_2/kWh for 2006. **Please explain why a less conservative statewide emission factor was assumed instead of the emission factor for the specific electric utility servicing the IBC. Please provide the anticipated electric generation sector emissions if the utility-specific emission factor is used.** O7-26

6. There are additional discrepancies in the calculations for the electricity sector, as noted below:

- The DEIR includes values for the electricity intensity of non-residential buildings that are not climate specific. These values are from the Commercial Buildings Energy Consumption Survey ("CBECS") Table C14 (Electricity Consumption and Expenditure Intensities for Non-Mall Buildings 2003). Climate-specific values are available in CBECS Table C20. **Please explain why the DEIR uses general values instead of the climate-specific values. What are the GHG emissions if a climate specific energy intensity value is used?** O7-27

- The breakdown of land use categories for non-residential buildings is poorly defined and not specific. For example, the unspecified "Other" category makes up 23% of the non-residential land use. There is no inclusion of food service or food sales, which have higher electricity intensity values and are allowed in many of these zones. **Please explain why the DEIR does not contain a more specific breakdown of land uses. What would be the change in GHG emissions if the "Other" category was specified further?** O7-28

- The DEIR includes a value for the energy intensity of residential buildings that is not climate-specific. These values are from the Residential Energy Consumption Survey ("RECS") Table US1 Part 1 (Total Energy Consumption, Expenditures, and Intensities – Housing Unit Characteristics and Energy Usage Indicators). The value used is for all of California (41.7 thousand Btu/ft^2), instead of the climate-specific value (38.8 thousand Btu/ft^2). **Please explain why the general value is assumed instead of the climate-specific value.** O7-29

- The DEIR does not include a specific enough breakdown of dwelling unit types and sizes (i.e., attached vs. detached). Residential energy use can and should be more O7-30

specifically determined and Micropas modeling could be used for comparison to Federal Energy Information Administration ("EIA") values. **Please provide a more specific breakdown of building types.** O7-30 ocnt'd.

- The units for the Total Project Related Water Demand are incorrectly stated on pg. 69 of Appendix G as "gallons per minute" instead of acre-feet per year ("AFY"). O7-31

- The DEIR relies upon an emission factor that does not appear to include direct emissions from wastewater treatment. The direct emissions from wastewater treatment can account for over half of the emissions for water demand and treatment. **Please verify whether the wastewater treatment emission factor includes direct emissions. If not, please revise the analysis such that direct emissions from wastewater treatment are included.** O7-32

- The utilities section of the DEIR specifies demands for non-potable water, but it does not include in the GHG calculations the emissions from treatment of reclaimed water. **Please explain why GHG emissions from the treatment of reclaimed water were ignored in the inventory.** O7-33

Additionally, it is unclear how reductions in emissions associated with the conversion of more than 2.7 million square feet of non-residential land use to residential land use are being accounted for in the DEIR's emission inventory calculations at build-out. Similarly, it is unclear how emission changes in converting office, warehouse, and manufacturing space to retail are accounted for at build-out. This is especially important because warehouses have a particularly low energy intensity whereas grocery stores and food-service locations have a particularly high usage. **Please provide the expected GHG emissions from these land use changes.** O7-34

7. For the emission inventory, the DEIR does not evaluate/include emissions from land use change, public lighting, or construction.

- Land use change would include one-time emissions associated with tree removal/additions and the development of undeveloped land. O7-35

- Public lighting includes the various light sources that would likely need to be installed as part of the Project's development including street lighting, traffic signals, area lighting, and municipal building lighting. O7-36

- Omission of construction emissions is not consistent with the steps outlined by OPR for compliance with CEQA climate change analyses (see pg. 5.15-10). CO_2 emissions from construction activities are calculated in URBEMIS but are not included in the quantified inventory. The URBEMIS runs provided in the DEIR O7-37

indicate that construction-related GHG emissions are 109,751 metric tonnes of CO_2 (for pending projects 2010-2013). O7-37 cont'd.

Please explain why emissions from these categories are omitted from the DEIR. What are the anticipated emissions from land use change, public lighting, and construction activities?

VIII. Vision Plan DEIR is Internally Inconsistent and Unclear

The DEIR is unclear and internally inconsistent throughout its various sections. In order for the DEIR to fulfill its purpose and the purposes of CEQA to inform the public of the potential environmental impacts of the Project, these inconsistencies must be corrected. In order to assist Irvine, we note the following inconsistencies and ambiguities: O7-38

A. Executive Summary

1. In the second paragraph of the Project Location (DEIR Section 1.3), the last sentence provides specific quantification of the number of residential units but is vague regarding the square footage of industrial or office space in comparison. This type of internal inconsistency is noted in numerous places throughout the EIR, which complicates a transparent and easily readable presentation of the Project. **Please provide a consistent level of description regarding project details throughout the EIR.** O7-39

2. All of DEIR Section 3.3.3 describes in site specific detail, nine properties that are proposed for residential development. **Given that the purpose of this DEIR is described early on as "program level," why is project-level review information also provided?** It appears that the DEIR illegally attempts to approve nine specific projects with pending applications at the same time it analyzes the program level approvals of the Project. A program level EIR should provide a comparable level of detail and not attempt to mix program level and project level review in the same document. **Please remove the attempted project level analysis for these nine specific projects that are pending, or ensure that each of the nine Projects are fully studied and analyzed in all section of the DEIR including cumulative impacts and Project alternatives.** O7-40

3. We note that project-specific impacts should only be addressed in site-specific EIRs which more readily focus on the specific environmental impacts created by each individual residential project. The DEIR is geared towards a programmatic level review and does not contain the necessary specificity related to individual residential projects to be considered a multi-level environmental analysis. Thus, any site-specific review in the DEIR is unnecessarily confusing and inconsistent with the purpose of a programmatic DEIR. Site-specific review for individual residential projects must still be completed as part of individual residential project approval, or each of the nine Projects must be studied and analyzed in all sections of the DEIR.. O7-41

B. Project Description and Existing Conditions

1. Section 4.5, "Assumptions Regarding Cumulative Impacts," states that the DEIR's cumulative impacts analysis is based on the build-out of the existing General Plan plus the proposed Project. This seems inconsistent, or is at least confusing, in light of the project description of existing, approved but not yet constructed, pending, and potential units at DEIR Section 3, page 10. The existing General Plan consists of all approved projects, since each incrementally increased the General Plan cap, but the project description states that the approved but not yet constructed units are considered part of the cumulative conditions and not the existing conditions. O7-42

C. Air Quality

1. With regard to impact 5.2-2, the DEIR states that the primary source of Volatile Organic Compound (VOC) emissions from the Project would be from the off-gassing of architectural coatings. However, Table 5.2-7 in the DEIR indicates that the maximum VOC emissions occur during demolition. The city appears to have incorrectly summarized Project emissions or incorrectly calculated these emissions. **Please explain these inconsistent statements. Why are demolition-related VOC emissions higher than those from architectural coatings? What mitigation measures are included to minimize VOC emissions during demolition?** O7-43

2. Table 5.2-7 may under-report potential emissions. There are nine residential projects listed in the Project Description (Section 3). However, the DEIR construction emissions were estimated based on only eight sites, as indicated in the footnote to Table 5.2-7. This inconsistency suggests that emissions are missing from one potential construction site and that the reported emissions calculated based on only eight sites are less than the potential emissions for the nine developments. Using the same emission calculation methodology, the construction emissions for nine developments would be about 13% higher than those reported for eight sites. Within Appendix G it appears that the total construction and demolition area for the eight sites was estimated based on the average size and demolition area per acre for seven sites. Two of these seven sites listed in Appendix G do not match the residential projects specifically listed in the Project Description. These particular inconsistencies suggest that the DEIR has not properly accounted properly for the potential construction and demolition that would be triggered by the Project's development projects. **Please correct these discrepancies and inconsistencies. Further, please update the DEIR's analyses to more accurately reflect what Project construction emissions would be.** O7-44

3. In addition, the footnote in Table 5.2-7 indicates that the URBEMIS default equipment list was used to calculate emissions from development projects. However, the equipment list for the projects' paving phases presented in Appendix G is inconsistent with the O7-45

use of URBEMIS defaults. **Please correct the DEIR's text and update the analysis. What would the emissions be using the URBEMIS default equipment list for the paving phase?** O7-45 cont'd.

4. The DEIR also lists various measures to reduce fugitive dust emissions as PDF 2-6. The DEIR describes the approximate control efficiencies. However, the emission estimates as included in Appendix G are not consistent with these descriptions. It is unclear what that actual controlled PM_{10} and $PM_{2.5}$ emissions would be. **Please update the calculations to be consistent with the stated PDFs and mitigation measures.** O7-46

5. Under Indicator 1 for Impact 5.1-1, the DEIR finds that long-term emissions would be increased and result in a significant air quality impact. (DEIR, § 5.2, p. 15). Under Indicator 2 for Impact 5.1-1, the DEIR finds that the Project results in a reduction of vehicle miles traveled and reduces the amount of air pollutants emitted. **Please clarify this inconsistency.** O7-47

D. Biological Resources

1. Responsible Agencies that may need to issue approval or permits likely include the California Department of Fish and Game ("CDFG") and the United States Fish and Wildlife Service ("USFWS"). CDFG approval is likely required because grading and other trail work along the San Diego Creek has the potential to affect nesting birds that may be using the ornamental vegetation rows along the creek trail. On pg. 5.3-14 of the DEIR, the text further indicates the City will notify CDFG in writing about project plans to comply with pertinent regulations, which implies CDFG should already be listed as a Responsible Agency. USFWS approval may be needed because the Biological Resources Subchapter indicates least bell's vireos are present along San Diego Creek and additional habitat restoration activities are planned to improve their available habitat. In addition, the Sea and Sage Audubon Society that is based in the San Joaquin Wildlife Sanctuary adjacent to the Project reported 11 detections of bell's vireos in its April 2009 census available on the Internet at *http://www.seaandsageaudubon.org/SJWS/sjws.htm*. **Please clarify the list of Responsible Agencies in this Section to capture statements elsewhere regarding which agencies will be contacted for approval. If the USFWS is not viewed as a Responsible Agency, please clarify the rationale for this assertion.** O7-48

2. Under the subheading "Potential for Occurrence in IBC Project and Adjoining Areas," the table lists some species as "known to occur" but at the same time ascribes to them a "low," "moderate," or other potential to occur. This is inconsistent and confusing. (DEIR, Table 5.3-1.) O7-49

3. PDF 3-1 says that alternatives for the Creek trail will be considered, but then the DEIR states that "the narrow space between the creek and adjoining land uses appears to O7-50

be the only possible location for the proposed trail extension." (DEIR, § 5.3, pp. 14-15.) This is inconsistent and confusing. **Please clarify this confusion.** O7-50 cont'd.

E. Project Alternatives

1. The third bullet of DEIR Section 7.1.1 emphasizes the importance of discussing existing conditions and identifying an environmentally superior alternative. However, as noted above, it is unclear what the existing conditions are exactly. Therefore, it is not possible to follow the DEIR's rationale for drawing conclusions about most of the Sections or the validity of the analyses of the Project's alternatives. **Please provide a clear recap of the baseline here, and clarify in detail the baseline in previous Sections so that this Section properly describes the alternatives analysis with the appropriate comparison.** O7-51

F. Hazards and Hazardous Materials

1. As noted above, the DEIR's analysis of hazards for the Project is insufficient, thus the extrapolated analysis for this alternative is also insufficient. This alternative's analysis also surprisingly concludes that the existing General Plan would result in exposure to hazardous substances while the Project itself would not. There is an inadequate evaluation in the DEIR of the potential hazards at the Project sites and thus there appears to be no basis for the DEIR's statement regarding this alternative. The DEIR should provide a more detailed discussion of the Project's potential hazard impacts as compared to those to be expected to be associated with this alternative in order to illustrate properly how this alternative compares to the Project. **Please explain how the existing General Plan could cause workers to be exposed to impacts from hazards and hazardous materials, while the Project would not.** O7-52

2. The DEIR also does not discuss the potential benefit of this alternative as a result of residential development not being located in areas with potentially contaminated soil and groundwater. As discussed above, the DEIR has not adequately evaluated this issue. It appears that the existing General Plan would have less impact on the environment than the Project because the General Plan would not allow new residential developments on such potentially contaminated sites. Please provide an analysis of this potential hazard. **What is the potential impact of residential exposure versus commercial and industrial exposure at these specific sites?** O7-53

3. The DEIR also fails to include a discussion regarding the benefit of maintaining the current land use designations, which would avoid potentially significant impacts associated with locating residential land use immediately adjacent to industrial and commercial land use areas. **Please explain the benefit of allowing residential land use within 1,000 feet from commercial and industrial land uses.** O7-54

4. Solely informing residents of the risks that they face from the Project (e.g., that air quality near or groundwater beneath their residences might be compromised as a result of the presence of nearby industrial facilities) is not sufficient, in and of itself, to reduce the impacts to the residents to below a significance level, particularly since there is no indication that such disclosure would be coupled with any engineering controls (e.g. increased air pollution control devices, vapor barriers). PDF 6-2 indicates that, associated with discretionary applications for residential or residential mixed use construction, new residents will receive a disclosure outlining the "issues associated with living in a mixed-use environment." The DEIR does not specify what "issues" would be discussed, how the disclosure would be worded, or if public comment would be sought, but rather states that the disclosure language will be specified by the City's Community Development Director. Additional detail about the disclosure is needed to provide an understanding of this PDF and to evaluate whether mitigation measure requirements are consistent with CEQA. **Please explain why a disclosure to future residents is sufficient to mitigate risks from hazardous materials (e.g., air quality and subsurface contamination risks). What specifically does the City plan to include in the disclosure and how would the public be able to provide comments?** O7-55

5. The DEIR should include the specific nature of the hazardous materials or the types of mitigation that may be required. PDF 6-3 is a general statement that individual development sites may have hazardous materials present associated with site features (e.g. transformers, clarifiers) that require demolition, and that the impacts of such features would be mitigated by unspecified project-specific conditions of approval as part of the discretionary review process by the City's Director of Community Development. It is surprising that the DEIR elsewhere argues that there are no significant impacts requiring mitigation, when this PDF acknowledges that mitigation measures may be required on a project-specific basis. **Please explain these inconsistent statements. What specific potentially significant impacts does the City anticipate will need to be addressed in project-specific conditions of approval, and what mitigation does the City plan to propose for each?** O7-56

6. PDF 6-4 is a general statement that applicants for new residential and/or residential mixed use development shall submit data (as determined by the City's Director of Community Development) for the City to evaluate compatibility with surrounding uses with respect to noise, odors, traffic, hazardous materials, air emissions, subsurface contamination, etc. There are no details in the DEIR regarding the specific types of data that are to be submitted, the criteria to be used to evaluate compatibility, the mitigation measures that could be required, and how the public would be involved in this process. Again it is surprising that the DEIR elsewhere argues that there are no significant impacts requiring mitigation, when this PDF acknowledges that further study of compatibility issues will be required on a project-specific basis. **How does the City reconcile these inconsistent statements? What specific data does the City envision would need to be submitted in association with particular projects, how will these data be evaluated, and what does the City plan to do in order to mitigate impacts identified on the** O7-57

basis of these data? How would the public provide comments on the data submittals and the City's analysis of them? O7-57 cont'd.

7. The DEIR's analysis of hazards for the Project is insufficient, thus the extrapolated analysis for this alternative is also insufficient. Similar to the no project alternative, the DEIR has not included sufficient analyses to make a significance conclusion. **Please update the hazards evaluation and update the Project's comparison to this alternative.** O7-58

8. The DEIR also appears to apply inconsistent logic as it assumes that the reduced development alternative would lead to reduced construction and to reduced numbers of upset conditions. Based on the descriptions used in Table 7-1 (Summary of Development Alternatives), the reduction in residential development would be replaced by commercial/industrial development as included in the existing General Plan. This would suggest that equivalent construction may occur in this alternative and that there would be no such benefit. **Please clarify the logic in claiming that construction and upset conditions would be reduced in this alternative.** O7-59

9. The DEIR also fails to discuss the potential benefit that under this alternative residential land use may be less likely to exist immediately adjacent to commercial/industrial land use. This would be an improvement in comparison to the Project. Please clarify the environmental benefit of the lower residential development with respect to the land use compatibility issue. **Please explain what residential areas would no longer need to be developed immediately adjacent to commercial/industrial land use areas.** O7-60

G. Hydrology and Water Quality

1. Three Plans, Programs and Policies ("PPPs") are described for Hydrology and Water Quality relative to ground water concerns and water quality management plans and BMPs. No PDFs or mitigation measures are required. However, in Subsection 5.7.3 a series of channel improvements are presented for the Lane and Armstrong Channels that currently do not contain the 100-year design discharges. **Do these suggested improvements constitute Project mitigation measures?** O7-61

2. The levels of significance before mitigation for environmental impacts 5.7-1 through 5.7-6 are all described as "less than significant" and many require "no mitigation measures". On page 21 and 22 of Appendix B these same environmental impacts are described as "potentially significant impacts". **Please explain these differences and how, without any mitigation measures, potentially significant impacts became "less than significant."** O7-62

3. This Section describes in great detail nine proposed residential properties. Given that the purpose of this DEIR is described as program level, why is project-level review information also provided? No description of on-site stormwater management for any of these O7-63

nine properties (i.e., stormwater swales, rain gardens, or other low impact design elements) is provided. **Please remove project specific analysis from the programmatic DEIR.** O7-63 cont'd.

4. The DEIR states that "a significant portion of the IBC, primarily the western portion that is adjacent to the major flood control channels described below, is within the area of special flood hazard." This seems like a significant finding of potential impact, yet Table 1-2 describes this environmental impact as "less than significant" and that "no mitigation measures are required". Furthermore, if it is anticipated that additional structures will be built within the SFHA with no required mitigation measures. **Please provide a cumulative impacts analysis of the full build-out on flood levels.** O7-64

In this same Section the DEIR states that "although there are no streams or flood control channels in the IBC, it is bounded on three sides by the Barranca Channel, San Diego Creek, and Lane Channel." **Please provide a map of all streams or flood control channels.** O7-65

H. Population and Housing

1. The Project area's figures of 4,524 existing residential units with a population of 5,881 used in this Subchapter do not match the numbers in Table 5.10-5. **Please explain this discrepancy.** O7-66

I. Global Climate Change

1. The GHG emissions inventory for the transportation sector is not adequately supported by the information provided. Appendix G includes conflicting information, or lacks sufficient detail to evaluate the DEIR's emissions inventory. For example: O7-67

- Pgs. 90-92 of Appendix G list values for daily trip rate, Vehicle Miles Traveled ("VMT"), and emission factors. It appears that the DEIR assumes an average trip length of only 5.06 miles/trip. This is much less than would be expected using assumptions within URBEMIS, a common CEQA emission inventory tool. **Please explain the basis for the DEIR's use of an average trip length figure that is not supported by the standard emission model.** O7-68
- Pg. 91 of Appendix G appears to have incorrect unit conversions and is inconsistent with Table 5.15-5. **Please correct the faulty emission calculations in Appendix G.** O7-69
- Table 5.15-7 has the incorrect trip number reported for Total IBC according to page 95 of Appendix G. **Please correct this discrepancy.** O7-70
- According to the EMFAC file in appendix G, the assumed vehicle speed was 20 mph, temperature was 85 degrees Fahrenheit, and relative humidity was 70%. A rationale for O7-71

selecting these variables was not provided. **Please explain the rationale for the DEIR's selection of variables used in EMFAC2007.** O7-71 cont'd.

- Pgs. 95 and 122 of Appendix G appear to present VMT and trip lengths, but there is no discussion regarding the sources for these values. It is unclear why two different trip lengths are presented on page 95. **Please provide the sources for the VMT and trip lengths information used in the DEIR. Please explain the discrepancy in the trip length figures presented on page 95 of Appendix G. Please explain how the trip length and VMT figures take into account PDFs such as compact mixed use, internalization rate, and urban infill near multiple transit modes.** O7-72

- The internal trip capture rate used in the traffic study, a key assumption used to determine VMT and trip lengths and thus GHG emissions, is not provided in the DEIR. Since the transportation sector contributes the highest amount of GHG emissions to the inventory, the assumptions used in this category are critical to verifying the basis of the GHG emissions inventory and therefore the overall conclusions regarding the Project's impact on climate change. **Please clarify what internal trip capture rate was used in the DEIR's analysis. Please explain the basis for deciding the magnitude of the internal trip capture rate. Please explain how this figure compares with today's trip capture rate for the area. Please explain how this rate compares to internalization rates in similar communities.** O7-73

IX. The Vision Plan DEIR Fails to Include Models and Data Supporting the Assumptions Made Regarding Environmental Impacts

A. Project Description and Existing Conditions

1. The description of the zoning regulations affecting the IBC is inadequate. (DEIR, § 4, p. 18.) The DEIR merely states the different zones within the IBC, including residential, but hides the fact that the residential zones only apply to specific sites – the result of spot zone changes. While there are maps/figures of the proposed overlay zoning district, there are no maps/figures of the existing zoning. This is necessary to show the extent of the change proposed by the Project. Further, the description of the zoning regulations uses language from the General Plan, not the Zoning Ordinance. O7-74

2. "Project Background," makes a concerted effort to avoid any mention of the 1992 EIR. (DEIR, § 3, p. 2: Section 3.3.1.) The 1992 EIR was the last comprehensive EIR conducted for the IBC so it is not only relevant, but is necessary, to presenting an adequate picture of the Project's background and regulatory setting. **Thus, please include a detailed discussion of the 1992 EIR and its associated General Plan Amendment and Zone Change.** O7-75

3. The project background notes that the City is "[c]ontinuing a process that began in the late 1980s… to ensure proper planning for residential uses in the IBC." (DEIR, § 3, p. 9.) The DEIR should expand on the City's efforts from 1980 to the present relating to IBC residential development. **Why has the process stopped and started? What obstacles were in the way? Have they been cured?** O7-76

B. Air Quality

1. With respect to PDF 2-2, the DEIR indicates that MERV 14 filters will be installed on residential buildings located within 500 feet of Interstate 405 (I-405). Based on ASHRAE Standard 52.2-1999, MERV 14 filters can capture up to 85% of the particles between 0.3 to 1.0 microns, and 90% of larger particles.[3] However, most combustion PM, especially that emitted by heavy duty vehicles, is smaller than 0.3 microns.[4] There is no information provided to indicate that the MERV 14 filters remove Diesel Particulate Matter (DPM) such that it will adequately achieve the Diesel PM reductions equivalent to the 500 foot buffer recommended by CARB. In order to achieve an equivalent reduction, the Project should consider the use of High Efficiency Particulate Air ("HEPA") filters. **What scientific documentation exists that demonstrates that MERV 14 filters will adequately remove DPM to meet CARB's Land Use Handbook recommendations? What would be the added benefit if HEPA filters were used instead?** O7-77

2. The South Coast Air Quality Management District ("SCAQMD") recommends that a CEQA Lead Agency perform a Health Risk Assessment (HRA) to ensure that the cancer risks from a freeway on a proposed project's receptors are less than 10 in one million above the ambient cancer risk identified for the area.[5] Based on SCAQMD's comment letter, the Project should perform such an HRA. **What are the cancer health risk impacts from the I-405 Freeway on the proposed Project's residential development areas?** O7-78

3. The DEIR indicates without analysis that the replacement of planned commercial and industrial development with residential development will help reduce vehicle miles traveled (VMT). Further, the DEIR does not provide an analysis of how a reduction in planned job centers may require new IBC residents to travel outside of the IBC for work. The DEIR also does not appear to consider the possibility that workers from outside of the IBC may be commuting into the IBC. **Please provide an analysis to support the DEIR's claim that VMT would decrease as a result of the Project. What is the impact of the reduction in** O7-79

[3] Camfil Farr, 2002. ASHRAE Testing for HVAC Air Filtration – A Review of Standards 52.1-1992 & 52.2-1999. http://www.camfilfarr.com/cou_camfil/filtertechnology/filtertesting/upload/ASHRAE52.pdf

[4] Coordinating Research Council, Inc., 2007. Report No. E55/59: Heavy-Duty Vehicle Chassis Dynamometer Testing for Emissions Inventory, Air Quality Modeling, Source Apportionment and Air Toxics Emissions Inventory. http://www.crcao.org/reports/recentstudies2007/E-55-59/E-55_59_Final_Report_23AUG2007.pdf

[5] SCAQMD, 2008. Comment letter for the DEIR for the Proposed San Clemente Senior Apartment Complex.

planned IBC jobs on the DEIR's consistency with the region's Air Quality Management Plan (AQMP)? O7-79 cont'd.

4. The DEIR reports the Project's estimated operational emissions, including from transportation, but the supporting information in Appendix G is not sufficient to confirm the listed emissions. Specifically, there is not enough detail to evaluate how the DEIR estimates the total VMT from trips generated by the Project. The DEIR cites "Parsons Brinkerhoff" without sufficient detail to conclusively determine what this reference means. It is assumed that the DEIR is referring to the traffic study as included in the DEIR. Indeed, based on trip information in the Parsons Brinkerhoff traffic study, the total VMT can be estimated using the URBEMIS default trip lengths. However, the total VMT estimated by using this approach is greater than that reported in the DEIR. **Please provide information that is sufficient to support the DEIR's decision to use a shorter trip length than appears appropriate. What is the basis for the trip lengths used in the DEIR to estimate total VMT and how was it derived?** O7-80

C. Project Alternatives

1. The alternatives analysis is considered the "core of an EIR," and is intended to provide transparency to the document by identifying and evaluating feasible project alternatives that could avoid or substantially reduce the project's significant environmental impacts. See, *Citizens of Goleta v. Board of Supervisors* (1990) 52 C.3d 553, 564; Pub. Res. Code, Sections 21002, 21002.1(a), 21100(b)(4), 21150. The DEIR does not describe a reasonable range of project alternatives as required by CEQA statutes and CEQA Guidelines Section 15126.6, but instead the City appears to have selected and evaluated only those alternatives which would exacerbate impacts and lead to the conclusion sought by the City - the superiority of the IBC Vision Plan Project. For example, the DEIR does not focus on alternatives that would eliminate or reduce significant environmental effects related to existing industrial uses within the IBC, such as an alternative project that would include industrial/commercial enhancements and expansion within the IBC, taking into account the more recently inserted residential development; or an alternative project which would locate new residential development primarily to the east of the I-405 Freeway. The City's selective designation of alternative projects distorts the conclusions of the DEIR, and fails to satisfy the minimum requirements of the law. **Please discuss why potentially superior environmental alternatives were not reviewed.** O7-81

2. The DEIR cites an Urban Land Institute 2008 document. (DEIR, § 7.4, p. 8.) However, it appears that no further details are provided in the bibliography and thus there is inadequate information on this reference. **Please provide the exact and complete reference for this information.** O7-82

3. The DEIR's logic in evaluating the "no project" alternative is insufficient. The discussion in Section 7.4.2 suggests that the development of commercial areas instead of residential areas would result in an increase in VMT, but no further details are provided. **What is the basis for the City's rationale? Why would the development of job centers in areas with residential development located to the north, south, east, and west not help reduce Project-related VMT also, by providing a nearby job center for the Project's new residential areas?** O7-83

4. The DEIR also does not include a discussion regarding the benefit of maintaining the current land use designations, which would avoid potentially significant impacts associated with locating residential land use immediately adjacent to industrial and commercial land use areas. **What is the benefit of maintaining commercial and industrial land use a short distance away (e.g., 1,000 feet) from residential land use areas?** O7-84

5. The DEIR's logic in evaluating this "reduced intensity" alternative is insufficient. (DEIR, § 7:5, pp. 12-13.) Contrary to the "no project" alternative, this alternative does not have commercial development in the absence of residential development. This is inconsistent with the DEIR's own descriptions. **Please explain why the "no project" alternative contains a different assumption than the "reduced intensity" alternative. While the overall total construction would be less, are there any assumptions that the construction activity per day would be any less? Since construction impacts are determined on a daily basis, how would this lessen the impact of construction?** O7-85

6. The DEIR also claims that there will be fewer trips compared to the Project, but that regional VMT will remain similar to that expected from the proposed Project. (DEIR, § 7.6, p.17.) It is not clear how the Project will have more trips than, but regional VMT similar to, this alternative. **What other assumptions did the City make to conclude that regional VMT would be lower in this alternative scenario? What are the estimated mass emissions for construction and operations for this alternative?** O7-86

7. The DEIR continues to use inconsistent logic with its evaluation of the "increased intensity" alternative. (DEIR, § 7.6, p. 17.) The DEIR concludes, without analysis, that VMT will be further decreased as a result of additional residential development in the IBC. However, this additional residential development would also include a decrease in commercial and industrial land use, and thus a reduction in the number of available near-by jobs. **What analysis did the City perform to identify the optimum job to residential area balance within the IBC? Given that not all residents in the IBC will work in the IBC, and vice versa, does this analysis account for residential and job centers outside of the IBC?** O7-87

8. The DEIR states that in the reduced residential alternative the construction impacts would be less because of reduced construction, but the discussion of this alternative states that construction would be similar. **Why is the logic apparently applied** O7-88

differently? What would be the result if consistent logic were applied to all alternatives? What are the potential additional impacts with respect to residential development being located adjacent or near commercial and industrial land uses? O7-88 cont'd.

9. The DEIR indicates that all impacts for this alternative are similar to those to be expected from the Project. However, the DEIR has not evaluated the likely benefit of avoiding the development of residential land use near or adjacent to commercial and industrial land use areas. (DEIR, § 7.8, p. 26.) The DEIR states that the objective of this alternative is "to reduce potential hazards and hazardous materials impacts and land use and planning impacts." (See pg 7-25, Section 7.8). This alternative properly identifies the issue of land use compatibility. Because of the potential for incompatibility between existing commercial and industrial activities and new residential development projects in the Project area, the DEIR should include an analysis of the air quality impacts as it relates to existing TAC and odor emitting sources impacting new residential developments. If the DEIR properly accounted for the impacts to residential development, this Urban Neighborhood Alternative would likely be identified as environmentally superior to the Project in terms of air quality impacts. **Why did the City not analyze the benefit of keeping residential land use some distance (e.g., 1,000 feet) away from existing commercial and industrial land uses?** O7-89

10. The DEIR confirms that the Reduced Urban Neighborhood Alternative satisfies all of the City's objectives, but does not properly characterize this alternative. Instead of separating residential development along the I-405 Freeway, the alternative should also look to develop appropriate buffers around commercial and industrial land use. In this way, Project objectives could be met while creating an environmentally superior alternative by minimizing impacts on residential locations. **What would an alternative in this respect look like? Why did the City not analyze the environmental benefits of this alternative? Please provide maps showing buffers around commercial and industrial land uses using or generating hazardous materials and analyze the viability of such an alternative.** O7-90

11. The DEIR contains a laundry list of Sections that are not considered to have significant effects and then focuses primarily on air quality, population and housing, land use/planning, **traffic**, utility service systems, and global climate change. (DEIR, § 7.2.1, p.3.) **Please describe clearly, and demonstrate proper analysis in all of the dismissed areas, including biological resources, before attempting to dismiss these areas as not having potentially significant effects.** O7-91

12. The third paragraph of DEIR Section 7.2.1 references the NCCP/HCP briefly described in the Biological Resources Section and qualitatively describes limitations on other Project alternatives because of the existing restrictions on land covered under the NCCP/HCP. (DEIR, § 7.2.1, p. 3.) **Please provide maps or graphics to demonstrate the location of existing lands covered under the NCCP/HCP in relation to the proposed Project.** Comments from the U.S. Fish and Wildlife Service (USFWS) during circulation of the O7-92

2008 NOP also requested this information and requested confirmation that the boundaries of land within the Project area are consistent with existing boundaries of land preserved as part of the NCCP/HCP. O7-92 cont'd.

13. The first paragraph of DEIR Section 7.2.2 indicates the No-Project/No Development alternative would restrict future development. This statement appears to assume that development has been static or consistent with the prior General Plan, but the baseline is not described with enough clarity to support this assertion. Rather, it appears development has proceeded and will continue to do so in a less organized fashion even if this Project is not approved. If this is the case, this is not a valid No-Project Alternatives Analysis. **Please describe clearly the rationale for asserting that the No-Project Alternative would restrict development and support it with a clear timeline of developments and approvals regulating existing development.** O7-93

14. Table 7-1 summarizes the development of alternatives provides vague and varying levels of detail regarding each alternative. Key metrics seem to primarily focus on specific references to residential units, vague and unquantified references to various neighborhood amenities, and specific and quantifiable references to daily trips. There is no mention specifically of the Creek Walk, which is a major source of potentially significant effects for both biological resources and hydrology/water quality. **Please provide a consistent and quantified level of detail regarding key metrics for comparing alternatives.** O7-94

15. The DEIR's analysis of hazards for the Project is insufficient, thus the extrapolated analysis for this alternative is **also** insufficient. (DEIR, § 7.6, p.18.) **Please update the hazards evaluation and update the comparison to this alternative.** O7-95

16. The DEIR indicates that the increased development "could result in more conflicts with existing and future commercial land uses." However, the PPPs and PDFs do not adequately evaluate the potential hazards of the Project. The PPPs and PDFs also do not identify proper mitigation measures to address this shortcoming. Increased residential development will likely lead to greater land use conflicts and thus this project alternative is likely to have hazard impacts that are environmentally similar to those of the Project. As with the Project, these impacts may be significant, unless site specific evaluations demonstrate otherwise or additional mitigation measures reduce such impacts to less than significant. **Please provide additional explanation regarding this issue. How will residential development that is part of the Project ensure that such conflicts in land use are avoided or properly mitigated?** O7-96

17. The DEIR has appropriately identified the likely benefit of this alternative which is "fewer conflicts with existing and future commercial land uses." (DEIR, § 7.8, p.27.) The DEIR states that the objective of this alternative is "to reduce potential hazards and hazardous materials impacts and land use and planning impacts." (See pg 7-25, Section 7.8). However, the DEIR fails to explicitly identify that this alternative is environmentally superior to O7-97

the Project by avoiding such conflicts. The information in Table 7-3 appears to indicate that this alternative is environmentally superior to the proposed Project. **Please explain why this alternative should not be considered to be environmentally superior to the Project.** O7-97 cont'd.

18. The Reduced Urban Neighborhood Alternative satisfies all Project objectives, but the DEIR does not properly characterize this alternative. Instead of separate residential development along the I-405 Freeway, this alternative should look to develop appropriate buffers around existing and future commercial and industrial land uses. In this way, project objectives would continue to be met while creating an environmentally superior alternative**. Please provide a proper description of this alternative, including its true environmental benefits.** O7-98

D. Biological Resources

1. Item number one of DEIR Section 1.6 describes the requirements for adequate description of the environmental effects. With specific regard to the treatment of potential impacts to biological resources, we have concerns about the description of potential effects and impact analyses because of the DEIR's multiple deviations from standard practice for environmental review under CEQA. **Please either provide documentation that follows standard practice for a CEQA biological resource document, or incorporate by reference other publicly available documents that include this analysis.** O7-99

2. The DEIR notes that comments were received from the U.S. Fish and Wildlife Service ("USFWS") regarding the need to quantify impacts on biological resources. Review of the actual comments in Appendix B indicates the USFWS requested quantification in the form of a habitat map with acreages by habitat type. Such a habitat map is standard practice for the Biological Resources section of an EIR but is notably absent form this DEIR. Implications of this omission are discussed further in comments on the Biological Resources Section. **Please include a habitat map and supporting table displaying acreages by habitat type, which should include natural communities listed by the California Department of Fish and Game ("CDFG") in the California Natural Diversity Database ("CNDDB").** O7-100

3. The second paragraph of DEIR Section 5.3.1 describes several aquatic resources such as flood control channels, the San Diego Creek channel, and the creek trail. However, there are no figures provided to depict these resources. The lack of appropriate figures throughout this Section precludes thorough **review** of the analysis. In addition, this Section lacks appropriate detail to understand hydrological connectivity as it relates to maintaining aquatic habitat. This information is provided in the Hydrology and Water Quality Section (5.7), but this Biological Resources Section should contain an excerpted version of the watershed and drainage information presented in Section. 5.7.1 for clarity. **Please include an excerpt from the Hydrology and Water Quality Section here that provides adequate basis for the reader to** O7-101

understand the hydrological function and connection responsible for providing aquatic or riparian habitat. O7-101 cont'd.

4. The Habitats and Wildlife Section presented should begin with a description of the site visits by qualified biologists and botanists along with their respective survey dates to document that the review did not rely on desktop analyses only. Although Appendix H confirms that site visits were conducted and Chapter 12 indicates that the site visits were conducted by a qualified biologist, an inspection of Appendix H reveals that personnel from The Planning Center completed the site visits in December, which is outside the breeding season for birds. Therefore, appropriate qualifications should be made in the DEIR's text regarding potential habitat for birds and their likelihood of occurrence as the site visits did not occur during the season when breeding would actually be documented. Site visits during breeding season would yield better information. For example, the DEIR concludes that burrowing owls were not seen during the site visits but the DEIR does not clarify that these site visits were in December and that not all owls are present during the non-breeding season. The standard protocol for burrowing owl surveys is for them to be conducted between February and August. The DEIR should either have been clear about the limitations the site visits placed on its conclusions regarding what could occur and breed, or have pointed out that future surveys would be needed to adequately determine what habitat and species are or can in fact breed there. It is standard practice in California, according to the CA Burrowing Owl Consortium Guidelines used by CDFG, to mitigate 6.5 acres per owl or pair displaced, so if appropriate surveys were deferred to project-level review much mitigation would end up being done piecemeal and therefore inappropriately. **Please conduct a site visit during the breeding season.** O7-102

5. In addition, it appears that the biologist who performed the site visits was not a botanist, which calls into question the validity of conclusions regarding the potential for occurrence of special-status plants on-site presented in Table 5.3-1. **Please insert clarifications in the text to adequately convey the seasonality of the site visits for drawing conclusions regarding which species may breed on-site. In addition, please provide sufficient information to determine whether the biologist who completed the site visits is a qualified botanist.** O7-103

6. The first paragraph in the on-site Section qualitatively describes habitat types. However, it is standard practice in an EIR to include a habitat map and a table showing acreages of each habitat type present and potentially affected. No quantitative analysis of habitat types or acreages is presented in this DEIR. This is an issue noted in a previous comment regarding the responses to the NOP and comments from the USFWS regarding the need to conduct a quantitative analysis and provide such documentation. **Please provide a habitat map consistent with CDFG CNDDB community classification and a table showing acreages of each habitat type within the IBC and in an appropriate surrounding buffer to depict sensitive, adjacent habitats such as the San Diego Creek Channel.** O7-104

7. The second paragraph of the on-site description provides some specific references to urban-adapted species that may be expected to occur within the Project, but is considerably more vague about species that may occur in areas adjacent to the marsh. This is a significant weakness of the analysis given that the Project's proximity to San Diego Creek and the San Joaquin marsh presents the highest probability of affecting sensitive species. **Please map habitat types of adjacent properties as well as providing the qualitative description on pgs. 5.3-5 to 5.3-6.** O7-105

8. In Table 5.3-2, any species that is listed as having a potential to occur should include a description of the nearest recorded or known occurrence using a CNDDB query or other resources from the CDFG or USFWS. This is done inconsistently in the DEIR, which reflects a varying level of review that appears to be inappropriate. For example, on pg. 5.3-11 of the DEIR, light-footed clapper rails are listed as having a high potential for occurrence. But although clapper rails in general are highly sensitive to noise and human disturbance and common practice by the USFWS often includes extensive noise buffers during the breeding season to prevent nest abandonment, no such buffers are considered in the DEIR. The *Bair Island Restoration and Management Plan Biological Opinion* (1-1-05-F-0121) issued by the USFWS in 2006 provides an example of a 700-foot noise buffer required during the breeding season. Implementation of such a buffer would require a change in the conservation and open space planning for the Project. In addition, even though light-footed clapper rails are addressed in the DEIR, they are not a covered or identified species in the *Orange County Central and Coastal Subregion Natural Community Conservation Plan* (NCCP)*/Habitat Conservation Plan* (HCP). Despite that, the DEIR incorrectly claims that impacts to all threatened and endangered species are consistent with the NCCP/HCP. **Please provide a consistent level of detail in Table 5.3-2 regarding the potential for sensitive species to occur and an appropriate analysis of potential effects on the light-footed clapper rail given their known occurrence in the adjacent marsh and their lack of coverage under the NCCP/HCP.** O7-106

9. Table 5.3-2 also indicates that federally listed least bell's vireos (a race of the bell's vireo) are known to occur along the San Diego River, but does not provide information on population numbers to properly assess whether the creek trail or other proposed parts of the Project adjacent to the San Diego Creek Channel or San Joaquin Marsh would directly affect this species' foraging or nesting habitat. As noted previously, the Sea and Sage Audubon Society recorded 11 bell's vireos in April of 2009 at the San Joaquin Marsh, so presumably that may include five to six breeding pairs or more along San Diego Creek or the San Joaquin Marsh. It is important to note that the Sea and Sage Audubon Society reports detections on a species level (bell's vireo), but these detections can be assumed to represent the least bell's vireo race due to their confirmed presence on San Diego Creek as described in the DEIR. The DEIR's analysis implies that there are no direct effects because the Project boundary does not include suitable habitat, but without a habitat map to provide such evidence and more information on the nesting sites within the San Diego Creek Channel, it is difficult to follow the logic of this premise. The text concludes the DEIR is consistent with the Orange County Central and Coastal Subregion O7-107

NCCP/HCP, but does not provide additional explanation to document how the proposed Project activities are addressed or which species are not covered. **Please provide sufficient documentation and analysis to address potential impacts to least bell's vireos and their habitat along the San Diego Creek channel and adjacent marsh.** O7-107 cont'd.

10. Table 5.3-2 considers several bat species that may roost in structures such as the bridges that are proposed for expansion in the Project, yet there is no description of a survey during the site visits or relative suitability of the bridges as roost sites based on crevice size, light penetration, and disturbances under the bridge that may prevent use. Bridges with current bat use are often easily identified by a qualified biologist using urine staining or additional acoustical detection surveys (e.g., Anabat), if warranted. Detailed surveys may be planned for future project level reviews, but a basic level of survey information that would be appropriate for an EIR addressing major infrastructure changes is absent. **Please provide documentation regarding potential survey findings and analysis given that bridge work is part of the program EIR project description.** O7-108

11. The impact analysis for IMPACT 5.3-2 indicates the Project does not contain riparian or other sensitive habitats, but a habitat map to verify this assertion is not provided. Given that the location of the creek trail is also uncertain, it is not possible to substantiate this assertion without additional evidence. **Please provide graphics with appropriate habitat types and the Project's boundary along the creek.** O7-109

E. Hazards and Hazardous Materials

1. The DEIR's analysis is inadequate to support the conclusion that the Project will not have a significant impact on the environment. The PPPs and PDFs that are offered as mitigation measures are simply not appropriate to mitigate impacts that have not yet been identified. **Please provide an analysis to support the conclusion that all identified and unidentified impacts can be mitigated.** O7-110

2. **Please include the Safety and Evacuation Plan, and Emergency Management Plan ("EMP") in the Appendices.** O7-111

F. Hydrology and Water Quality

1. The "Hydrology and Water Quality Technical Report for the IBC Vision Plan and Mixed-Use Overlay Zoning Code, Fuscoe Engineering, January 2009" included in Appendix K to this DEIR appears to cover only water quality impacts, with no analysis of rainfall-runoff patterns, or estimated stream flows within the Lane, Armstrong, Barranca and San Diego channels. The DEIR indicates that a hydrology and hydraulics analysis was performed by VA Consulting (2008), however the DEIR contains no reference that would allow a reviewer access to this source, nor is a copy of this report included as an Appendix to the DEIR. **Please** O7-112

provide a copy of the VA Consulting analysis to support the DEIR's claim that the amount of surface water runoff will not increase under full build-out conditions when compared to existing conditions. Please provide all flood modeling results. O7-112 cont'd.

2. **Please provide a map of all drainage channels, so that the reader can understand the DEIR's analysis.** O7-113

3. **Please provide electronic copies of the reports/studies used to support the conclusions stated in this DEIR:**

- San Diego Creek through Newport Highway. Prepared by the Orange County Flood Control District ("OCFCD"), July 1974.
- Hydrology Report for Lane Channel Entire Drainage System – Facility No. F08. Prepared by the Orange County Public Facilities Resource Department ("OCPFRD"), July 2002.
- Drainage Report for Lane Channel (Facility No. F08) Improvements at MacArthur Boulevard/Red Hill Avenue Intersection in the City of Irvine, California. Prepared by The Keith Companies, May 2004. O7-114
- Hydrology Report Barranca Channel Facility No. F09 Entire Drainage System. Prepared by EMA Flood Program Division, June 1987.
- Final Runoff Management Plan for Tustin Legacy. Prepared by RBF Consulting, December 2004.
- San Diego Creek Flood Control Master Plan Barranca Channel Update. Prepared by RBF Consulting, September 2007.
- VA Consulting, 2008.

4. The DEIR states that "if [it is] identified during the design process that habitable structures may be located within Special Flood Hazard Areas ("SFHA"), the City of Irvine and/or OCFCD will pursue the appropriate Federal Emergency Management Agency (FEMA) approvals and/or map revisions based on the final improvements to the projects." (DEIR, § 5.7, p. 7.) **To evaluate this possibility please provide maps of flooding extent and magnitude relative to proposed residential and commercial/industrial centers assuming current conditions and reasonable estimates of full-build out.** O7-115

5. Until the proposed channel improvements are complete, damage to residential, commercial, and industrial property is still likely to occur even if the habitable space O7-116

is above the 100-year flood elevations. Furthermore, new construction within the SFHA may result in an increase in the 100-year flood elevations causing properties to flood that previously would not have been flooded, thereby exacerbating flood damage to those properties currently within the SFHA. **Please provide maps of flood magnitude and extent under existing conditions and likely scenarios for full build-out conditions. Please overlay the nine proposed residential development projects described in Chapter 3. Please include all proposed infrastructure projects, i.e., bridge construction/expansion.** O7-116 cont'd.

6. Without an understanding of the extent and magnitude of flooding it is difficult to conclude, as is shown in Table 1-2, that the flood hazards associated with the Project is "less than significant" and that "no mitigation measures are required". Similarly, it seems difficult to conclude, prior to such an analysis, that the impacts associated with HYD-9 (expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam) would be "less than significant", as was done on Pg. 5.7-21. **Please provide the basis for the DEIR's conclusions that Project impacts associated with HYD-9 are "less than significant" and that no mitigation measures are required.** O7-117

7. It is not clear from the documentation whether the proposed "creek walk" and trails are within the SFHA or whether the walk will flood during the 10-year storm. Are the proposed "creek walk" and trails within the SFHA? **Will the "creek walk" or trails flood during the 10-year design storm? During the 25-year flood? And to what depth will the "creek walk" flood? Please provide maps of expected flooding depths and magnitudes overlain on all proposed trail, bridge, and residential development projects.** Without such a map it is difficult to evaluate the conclusion that flood impacts and risk to life and property are less than significant. O7-118

8. DEIR Section 5.7 introduces the 303(d) listed stream segments and the stormwater system within the IBC. **Please provide a map illustrating the 303(d) listed streams and indicate what water quality standards are currently not being met. Please provide a map of the stormwater drainage system. Please discuss in greater detail how the Total Maximum Daily Load ("TMDL") allocations described in Table 5.7-2 will be affected by the complete build out of this proposed Program.** O7-119

9. **Please provide a map illustrating for each stream its respective listed beneficial uses.** O7-120

10. Because it is unclear what the extent and magnitude of flooding during the 100-year design flows within the IBC are, it is unclear why it was assumed that HYD-9 is at a less than significant threshold. **Please provide maps illustrating the extent and magnitude of flooding especially as they affect the location of all proposed residential developments, "creek walks", trails, and bridges.** O7-121

11. The DEIR states that erosion and siltation on- and off-site are less than significant because of **proposed** hydrologic analysis and flood control within the Project site. **Please provide the analysis, or an example, that supports this conclusion. It is unclear how, until that analysis is complete, the DEIR arrived at the conclusion of a less than significant effect.** Furthermore, though an individual project may have a limited effect on off-site siltation the cumulative effect of all such projects may in fact be significant. **Please provide an analysis of the cumulative effects of Project developments within the IBC on off-site siltation.** O7-122

12. Until channel improvements are complete such that the 100-year design discharges are contained with the channel banks **please provide 1) an analysis of potential changes to water quality during flood events between existing and full build-out conditions, 2) describe potential flood depths in residential, commercial and industrial areas, 3) describe impacts of flood waters on proposed bridges and trails, and 4) re-consider the DEIR's conclusion that the effects of flooding in the IBC will be "less than significant."** O7-123

13. Alternatives 1-3 (i.e., No Project/Existing General Plan, Reduced Residential (12,033 du), and Increased Residential (20,000 du)) state that the channels within the IBC are designed to protect the surrounding areas from the 100-year flood. However, as stated elsewhere in the DEIR this level of protection is in fact not achieved. **Please discuss and evaluate potential flooding-related impacts to Alternatives 1-3. Provide maps of flooding extent and magnitude relative to proposed residential and commercial/industrial centers assuming current conditions.** O7-124

14. Alternative 4 (Increased Residential (25,000 du)) indicates that several channels within the IBC can not contain the 100-year stormwater flow. In fact, the EIR suggests that both the Lane **and** Armstrong Channels begin to flood during the 25-year storm, and that flood depths up to 2 feet can be expected during the 100-year design storm. **Provide maps of flooding extent and magnitude relative to proposed residential and commercial/industrial centers assuming current conditions.** O7-125

15. Despite the known, significant flooding potential within the IBC, the DEIR concludes that impacts from flooding would be less than significant under Alternative 4. This conclusion is apparently based on the fact that any new habitable spaces within the SFHA will placed above the 100-year flood elevations. **Do habitable spaces include existing and new warehouses, workshops, industrial properties, etc. per FEMA definitions? If so, please explain how the DEIR can conclude that the impact of flooding will be "less than significant."** O7-126

16. Damage to residential, commercial, and industrial property is still likely to occur even if the habitable space is above the 100-year flood elevations. Furthermore, new construction within the SFHA may result in an increase in the 100-year flood elevations, thereby O7-127

causing properties to flood that previously would not have been flooded and exacerbating flood damage to those properties currently within the SFHA. **Please provide maps of flood magnitude and extent under existing conditions and likely scenarios for full build-out conditions for all Alternatives (including the preferred Alternative).** In addition, increasing residential, commercial and industrial development within the SFHA will likely lead to a further degradation of water quality during over-bank flooding. **Please provide a cumulative effects analysis associated with potential impacts to flood water quality assuming current and potential future conditions for all Alternatives (including the preferred Alternative).** O7-127 cont'd.

17. No discussion of flooding potential is discussed for Alternative 5 (Reduced Urban Neighborhood). **Please discuss and evaluate potential flood-related impacts to Alternative 5. Please provide maps of flooding extent and magnitude relative to proposed residential and commercial/industrial centers assuming current conditions.** O7-128

18. For all Alternatives (including the preferred alternative) the DEIR states that the Project would "have less than significant impacts resulting from exposure to flooding as a result of a levee or dam failure, or effects of seiche, tsunami, or mudflow." **Please describe the Legacy Park Detention Basin that controls the flow in the Barranca Channel. Has it been constructed? If not, was it included in the flood modeling of current conditions reported in the EIR as having been conducted by VA Consulting? If it has been constructed please describe its size, capacity, etc. Is it possible that the Legacy Park Detention Basin could fail? If so, please provide a flood inundation map if the Legacy Park Detention Basin were to fail.** O7-129

19. The DEIR provides that it relies on Fuscoe's technical report for the hydrology and water quality analysis, and provides that report in Appendix K, but this entire impact section, instead, discusses and relies on a draft study by VA Consulting. That draft study should be included in an appendix to the DEIR, and the final study should be included in an appendix to the FEIR. O7-130

G. Noise

1. The documentation of the noise analysis presented in the DEIR is also incomplete in that it does not provide sufficient information regarding the methods used in the analysis of traffic data on roads throughout the study area. It is stated that the analysis relied on the Federal Highway Administration (FHWA) NOISE model to compute traffic noise levels, but this model alone is not sufficient to compute the CNEL as reported in this Section. Instead it is necessary to rely on any number of assumptions to convert the reported average daily traffic volumes into some representation of hourly volumes for use with this model. It is also necessary to consider the composition (i.e. light, medium, heavy) of those volumes and how these would change over time and also as a result of the proposed Project. Consequently, the critical assumptions and techniques used in these calculations must be revealed to allow reviewers O7-131

adequate information to consider the sufficiency of the impact analysis. **Please divulge what assumptions were used to analyze noise effects from traffic in the IBC.** O7-131 cont'd.

H. Global Climate Change

1. The DEIR does not provide adequate support for its claim that use of reclaimed water reduces GHG emissions associated with irrigation by 70%. **Please provide the basis for this statement.** O7-132

2. With respect to Impact 5.15-1, the DEIR concludes that the Project would not result in a significant contribution as long as it implements GHG emission reduction strategies identified in CARB's AB 32 Scoping Plan or other strategies identified by the City. The DEIR "jumps the gun" in stating this conclusion. As noted above, the DEIR does not appear to have presented the appropriate GHG emissions inventory for the existing, "business-as-usual" ("BAU") and Project conditions, nor has the DEIR demonstrated that the necessary and recommended GHG emissions reduction strategies will be employed and what benefit that will have. **Please clarify what GHG emission reduction strategies listed in CARB's AB 32 Scoping Plan have been included explicitly in the emission inventory. What other GHG emission reduction strategies not listed in CARB's Scoping Plan have been excluded?** O7-133

3. The DEIR should specifically address the following:

- In order to effectively compare the proposed Project to a BAU scenario, the GHG emissions inventory for a BAU representation of the Project should be reported. **Please provide a BAU emissions inventory.** O7-134

- The DEIR includes various PDFs that likely reduce the GHG emissions from the Project compared to BAU. However, the DEIR does not quantify the GHG emission reductions claimed to result from these specific PDFs. The GHG emissions reduction resulting from PDFs should be quantified to show how the Project reduces overall GHG emissions. **Please explain why the claimed GHG emissions reductions for the listed PDFs were not quantified and incorporated into the proposed Project's GHG emissions inventory. What are the GHG emission reductions that would result from each PDF?** O7-135

- Since the site is currently developed, the DEIR should include an analysis to demonstrate what the GHG emissions would be if the Project did not go forward as planned. This should be compared to the Project's predicted GHG emissions as an additional BAU scenario. **Please analyze what the IBC's GHG emissions would be if the Project did not occur.** O7-136

- The reduction in GHG emissions that would result from the removal or exchange of non-residential land uses should be quantified if these land uses are not just being displaced. The DEIR should then compare the Project's GHG emissions inventory for these specific areas with the GHG emissions that would have occurred otherwise. **What is the potential future GHG emissions inventory for the buildings that will be replaced by the Project's development? What is the increase or decrease in GHG emissions resulting from the Project, taking the existing baseline into account?** O7-137

4. Furthermore, the comparison that is used in the DEIR is not appropriate since the existing baseline and project GHG emissions inventory and per capita estimate are not correct. Because of this, the DEIR does not demonstrate that the Project will achieve the claimed 30% GHG emissions reduction as compared to BAU. In order to achieve the goals of AB 32, a reduction of 28% below projected BAU growth by 2020 is required based on CARB's Scoping Plan. While there will be variations from this goal across different sectors, the DEIR should demonstrate adequately that the Project will reach this 28% reduction as compared to 2020 BAU. The DEIR discusses general emission reductions that will decrease emissions from the BAU scenario, but none of these are quantified explicitly. It is inappropriate to assume without quantification that the regulations mentioned will cause a 28% reduction in emissions. **Please quantify the GHG emission reductions that the Project will cause. What is the actual GHG emissions change? What is the change in the significance determination without this demonstration?** O7-138

5. Additionally, GHG emissions are divided into those due to construction activities and those due to ongoing operation of the IBC under "no project" and various "with project" alternatives. The bulk of GHG emissions are from the transportation sector. Table 5.15-3 gives the existing GHG inventory for the IBC. Section 5-15 goes on to list several PDFs that are, in the language from p. 1-3 of the executive summary of the DEIR, "… specifically intended and designed to reduce or avoid impacts." PDF's 15-3, 15-4, and 15-6 through 15-10 are relevant to GHG emissions from the transport sector. Several points are pertinent: O7-139

- Seventy percent of the existing GHG inventory in the IBC is in the transportation sector, according to the DEIR (DEIR, Table 5.15-3, p. 5.15-9). The method of estimating transportation sector GHG emissions is not sufficiently explained in the DEIR and supporting documents, failing to meet CEQA's intended goal of illuminating environmental impacts through an analysis that is sufficiently detailed to allow the public to understand the methods used by the lead agency to estimate impacts. Furthermore, the method that was likely used has several shortcomings, including shortcomings that are discussed in supporting documents referenced by the DEIR. Despite both those shortcomings, the existing literature suggests that transportation sector emissions will be a sizeable part of the existing and future GHG inventory, placing a burden on the lead agency to accurately and transparently estimate current and future emissions. O7-140

- The PDFs cited that deal with the transportation sector, PDF's 15-3, 15-4, and 15-6 – 15-10 (DEIR, pp. 5.15-11 through 5.15-13) contain no supporting evidence that said PDF's will contribute to GHG emissions reduction. The effectiveness of those PDF's stands as an assertion in the DEIR. In some cases, *a priori* evidence and theory cast doubt on the effectiveness of the PDFs. The DEIR claims that the effects of the proposed project are to be evaluated based on whether practicable available control measures are implemented. Specifically, the DEIR states, "The approach employed is that the affects (sic) of a proposed project may not be evaluated based on the quantity of GHG emissions, but rather on whether practicable available control measures are implemented. If the proposed project implements GHG emissions reduction strategies identified in CARB's Scoping Plan or other strategies identified by the City of Irvine, it could reasonably follow that the project would not result in a significant contribution to the cumulative impact of global climate change." While this statement can be interpreted as the lead agency's position that simply citing PDFs from an acceptable menu is sufficient, the effectiveness of the PDFs as mitigation strategies was not shown, leaving open the question of whether "practicable available control measures" are implemented if the term requires that the measures indeed "control" GHG emissions by reducing those emissions from a base case. O7-141

- At odds with the City's position articulated above (that the quantity of GHG emissions need not be measured), the DEIR goes on to measure transportation sector emissions. See Tables 5.15-4 and 5.15-5 for estimates of GHG emissions in, respectively, years 2013 and 2030 (DEIR, pp. 5.15-16 and 17). The DEIR estimates that in year 2030, IBC residents, under the "pending + potential project increase", will have 15 metric tons of GHG emissions per year compared to 16 metric tons of GHG emissions per year under the "existing + cumulative" (e.g. "no project") scenario, a reduction of approximately 6 percent in per capita resident GHG emissions. The GHG emissions for the transportation sector are calculated using EMFAC2007 (per note 3 in Tables 5.15-4 and 5.15-5), and Table 5.15-7 shows changes in vehicle miles of travel (VMT), which is a common intermediate step to calculating emissions reduction. The DEIR and supporting documents do not discuss how the EMFAC model or the Parsons Brinkerhoff analysis yield VMT or transport GHG emissions estimates. Lack of sufficient detail in this regard is a major deficiency in the DEIR, as the public cannot assess and respond to the methods used. Also, common modeling techniques including those used in the EMFAC model and in the Parsons Brinkerhoff traffic analysis (appendices N-1 and N-2 of the DEIR) create serious shortcomings when applied to a VMT analysis in the context of a mixed-use urban scale transformation of the sort envisioned in the IBC vision plan. O7-142

6. Additionally, the PDFs employed by in the DEIR are not supported by sufficient evidence. The DEIR (p. 5.15-11) cites a California Energy Commission ("CEC") report that identifies "… density as the project feature most predictive of the number of vehicle O7-143

trips and VMT by the project occupants." From among the CEC reports in the bibliography, the 2007 report "*The Role of Land Use in Meeting California's Energy and Climate Change Goals*" deals with the land use – transportation connection. The DEIR cites the CEC conclusion that density and access to job centers are the two most important land use factors related to transportation (CEC 2007, p. 4), but the DEIR does not cite the same report's countervailing statement. The CEC (2007, p. 63) states, "The effect of land use on travel behavior is currently one of spirited discussion among academics; Ewing and Cervero provide an excellent research summary. In general, residents in dense neighborhoods or neighborhoods with grid patterns appear to drive less than those living in traditional low-density suburbs, but some studies have shown these reductions in VMT to be relatively minor. Following up on concern raised earlier in this report, others have shown that while VMT may decrease, the rate of trip-making remains relatively constant over land use types, which suggests the reductions in VMT may not translate fully into emissions reductions."

The CEC report cites a 2001 article by Ewing and Cervero. That article is a meta-analysis, providing averages of the results of several studies. The studies summarized were often of entire metropolitan areas, and the results give estimates of the impact of changes in four land use variables on the number of vehicle trips ("VT") and VMT. Results (see Table 9 in Ewing and Cervero, 2001) are listed below. Each impact shows the percentage change in VT or VMT for a doubling of the land use variable:

O7-143 cont'd.

Land use variable	Vehicle Trips (VT)	Vehicle Miles Traveled (VMT)
Local Density	-0.05	-0.05
Local Diversity (land use mix)	-0.03	-0.05
Local Design	-0.05	-0.03
Regional Accessibility	--	-0.20

Source: Ewing and Cervero, 2001, Table 9, p. 111.

The studies summarized in Ewing and Cervero often used highly aggregated data and statistical methods that, in many cases, were lacking. More recent summaries of the literature, focusing on more statistically sound studies with better data, often give magnitudes that are similar to Ewing and Cervero, so the CEC's use of those general magnitudes is acceptable. The CEC quote from page 63 notes that there are several unanswered questions regarding land use impacts on travel behavior. On the other hand, the DEIR's failure to note these qualifiers or to interpret the Ewing and Cervero (2001) results in the context of the IBC leads to an incomplete basis for assessing the impact of the proposed project. Briefly, the known shortcomings with the land use and travel literature include the following:

- Residential Selection – Residents might choose to live in neighborhoods that support their desired travel behavior. If so, residents who drive less in a mixed-use, dense development might have a preference for driving less, and might have driven less in other alternative residential locations. Simply looking at cross-sectional variation in travel patterns associated with land use would overestimate the causal impact of land use on changes in travel. See, e.g., Boarnet and Sarmiento (1998) and Cao et al. (2009).

- Induced Travel – Mixed land uses and density, by placing trip origins and trip destinations closer together, might encourage increased trip making. Models that do not allow for that possibility (e.g. by keeping trip frequencies fixed or by modeling trip frequencies only on characteristics of individual land use parcels and not on the overall land use pattern) might overstate VMT reductions associated with density and mixed use. See, e.g., Crane (1996).

- Most studies of dense, mixed-use developments examine a small area (e.g. Handy et al., 2006). Recent research suggests that the retail market area of pedestrian oriented developments is substantially larger than small, walkable neighborhoods (e.g. ERA 2008, pp. 76-78), suggesting that mixed-use developments import trips. The impact on such "imported trips" might countervail trip or VMT reductions within the mixed use development.

- The magnitudes of impacts that CEC (2007) cite from Ewing and Cervero (2001) are for doubling density and doubling accessibility to job centers. Typically doubling those variables requires enormous land use change, especially so for larger (e.g. metropolitan or regional scales), which is scale appropriate for many of the studies summarized in Ewing and Cervero. The DEIR should discuss how the Ewing and Cervero (2001) magnitudes (the basis for the CEC estimate of land use impact on travel) translate into reasonable impacts for the IBC project.

- Overall, land use – travel behavior relationships entail behavioral response. The model used to estimate traffic impacts does not capture the needed behavioral response necessary to assess factors such as VMT or GHG emissions changes.

O7-143 cont'd.

7. The other PDFs on DEIR pp. 5.15-11 through 13 will be discussed more succinctly below.

O7-144

8. PDF 15-4: High Rate of Internal Trip Capture: The language here, "significantly reduces trips outside the project area" (DEIR, pp. 5.15-11 and 12), suggests that a modeling exercise has been conducted. Possibly the traffic analysis can document the reduction of trips that originate within the IBC and end outside of the IBC? **If so, such a conclusion should be explicitly referenced to the appropriate analysis and conclusions.** Currently, the conclusion is not supported with reference to analysis. **Please provide the analysis.**

O7-145

9. PDF 15-6 SB375: Apparently a reference to analysis by SCAG that references a 10 percent reduction in VMT in 2035. Reference to IBC is unclear, and specific IBC analysis would seem to be preferable rather than a reference to region-wide and statewide analytical efforts. O7-146

10. PDF 15-7 Urban Infill Near Multiple Transit Modes: This section asserts that the project will facilitate walking and non-motorized travel only by reference to transit modes that include the "*i*" Shuttle. However, no information on "*i*" Shuttle ridership (actual and projections) is given. Overall, the statement that location near transit rests on the connection of "*i*" Shuttle to other stations, without ridership information and with assertion but no analysis of impact on non-motorized travel. This is insufficient. O7-147

11. PDF 15-8 Transportation Demand Management: The DEIR contains no analysis of impact on travel. O7-148

12. PDF 15-9 Pedestrian Improvements: The DEIR contains no analysis of impact on travel. O7-149

13. PDF 15-10 Bicycle Improvements: The DEIR contains no analysis of impact on travel. O7-150

14. Moreover, several of the PDF's, including PDF 15-8, 15-9, and 15-10, assume that providing infrastructure will lead to impact on travel. That assumption is not warranted and is not supported even by minimal data (e.g. data on current walking, bicycling, or transit use within the IBC and near existing bicycle lanes, sidewalks, and on the "*i*" Shuttle.) **Please include the supporting data.** O7-151

X. The Vision Plan DEIR Fails to Include A Cumulative Impacts Analysis for Several Potentially Significant Impact Areas

A. Project Description and Existing Conditions

1. The DEIR lists pending IBC non-residential development projects at Table 4-3, and pending IBC residential projects at Table 4-4. The DEIR says that these projects were considered in the cumulative analysis, but how were they considered? **The DEIR needs to describe how the cumulative impacts analysis was done.** O7-152

B. Air Quality

1. DEIR Section 5.2.4 describes the cumulative impacts analysis for air quality, saying cumulative projects include build-out of the "General Plan, projects under construction, and approved projects." It apparently does not include the pending projects or the Project in this cumulative analysis. **Why not?** This is inconsistent with the cumulative O7-153

assumptions described in the project description and environmental setting sections of the EIR and, moreover, violates CEQA. O7-153 cont'd.

C. Hazards and Hazardous Materials

1. The DEIR's analysis is inadequate to support the conclusion that the Project will not result in significant cumulative impacts. Given the numerous development sites throughout the IBC, even if an individual project development had a low hazard impact, the combination of all developments may lead to significant impacts. **Please provide an analysis of the individual hazard impacts at each planned or proposed development site. What are the cumulative impacts with the development of all sites in the IBC?** O7-154

D. Hydrology and Water Quality

1. An advantage of using a Program EIR is stated to be the opportunity to "focus on cumulative impacts that might be slighted in a case-by-case analysis." Such an analysis would provide a meaningful advantage, in particular with regard to the cumulative impact of building within the SFHA. Unfortunately, no cumulative impacts analysis was provided regarding the SFHA, impacts to water quality from additional traffic levels, quantification of on-site stormwater management and sizing of possible detention basins, etc. A Program level EIR would seem to be the appropriate venue to provide such an analysis. **Please provide such an analysis.** O7-155

XI. The Vision Plan Fails To Address Several Areas of Potentially Significant Environmental Impacts

A. Project Description and Environmental Setting

1. The Project offsets the proposed increase in residential units from 9,401 units to 15,000 units with a decrease in non-residential intensity, but the Project also includes 1,191 density bonus units and it does not appear that these units are accounted for in the decrease in non-residential intensity. O7-156

B. Air Quality

1. The DEIR does not include a discussion of the health effects from pollution generated by the use of freeways on new sensitive receptors that would be enabled by the Project, such as residents. CARB prepared a set of guidelines on siting new sensitive receptors, entitled *Land Use and Air Quality Handbook: A Community Perspective* (2005). That document specifically recommends a discussion of health impacts for sensitive receptors located within 500 feet of a freeway or an urban road with greater than 100,000 vehicles per day. More recent research implicates fine Particulate Matter ($PM_{2.5}$), specifically fine PM from motor O7-157

vehicles in a range of adverse health impacts, at distances greater than 500 feet from freeways and heavily traveled urban roads. As a result, the DEIR should include a discussion with respect to asthma attacks and premature mortality and morbidity, and a discussion regarding the study by Gauderman et al. analyzing how residential developments near freeways and heavily traveled urban roads may result in deficient lung formation in children living there.[6] **Please provide an analysis of the likely impact on lung formation and incidence of asthma attacks on children living near freeways and at newly entitled areas by the Project.**

O7-157 cont'd.

2. The DEIR also does not include a discussion of the premature deaths associated with exposure to $PM_{2.5}$. CARB has reported that $PM_{2.5}$ is much more toxic than previously estimated.[7] CARB has also reported that "exposure to ambient $PM_{2.5}$ concentrations above 5 $\mu g/m^3$ can be associated with about 18,000 premature deaths statewide annually."[8] The Project will result in significant $PM_{2.5}$ emissions during construction. In addition, freeway traffic emits substantial amounts of $PM_{2.5}$ and, in addition to the health effects noted above, may result in premature mortality to those newly entitled residents living near freeways. **Please provide an analysis of the increase in mortality due to the $PM_{2.5}$ emissions during construction. Since the Project will newly entitle residential areas near freeways and freeway users emit $PM_{2.5}$, what are the potential mortality estimates from freeway emissions at the Project's residential developments?**

O7-158

3. The DEIR lists various SCAQMD rules that may apply to the project as "Plans, Programs and Policies." However, the DEIR does not include SCAQMD Rule 212, which requires public notification by the proponent of a proposed project under particular circumstances, including if the source is within 1,000 feet of the outer boundary of a school. This Rule is of particular importance given the Project's planned extensive residential development that would almost certainly trigger the need for one or more schools in close proximity to the IBC's commercial and industrial facilities. Sitting of a school near or within a commercial or industrial area could have meaningful consequences for the school as well as for surrounding existing businesses. **What considerations have been made with regard to the sitting of a school near a commercial and industrial area? How will sources that are already permitted be evaluated for future school development?**

O7-159

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[6] W. James Gauderman, Edward Avol, Frank Gilliland, Hita Vora, Duncan Thomas, Kiros Berhane, Rob McConnell, Nino Kuenzli, Fred Lurmann, Edward Rappaport, Helene Margolis, David Bates and John Peters, "The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age." New England Journal of Medicine, Vol. 351, No. 11, Sept. 9, 2004.

[7] http://www.arb.ca.gov/research/health/pm-mort/pm-mort_fs.pdf

[8] CARB, 2008. Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter. Staff Report. (http://www.arb.ca.gov/research/health/pm-mort/pm-mort.htm)

4. With regard to PDF 2-1, CARB's Land Use Handbook[9] recommends that applicants for new residential development place residential structures at least 1,000 feet away from distribution centers that accommodate more than 100 trucks per day. Facilities such as B. Braun Medical, Inc., Contract Services Inc, and Lido Van & Storage Co, Inc, all have large truck loading docks and are less than 1,000 feet away from one or multiple planned developments as part within the Project area. **What evaluations have been done to ensure that future residential developments within 1,000 feet of such facilities are properly identified? If there are future residential developments within 1,000 feet of areas with such truck activity, what are the risks to, and impacts on, the future residents?** O7-160

5. With respect to PDF 2-4, the DEIR indicates that Tier 3 construction equipment will be used. It should be noted that in many cases Tier 3 equipment is not yet available and thus the DEIR likely overstates the Project's individual developments' ability to obtain and use construction equipment that are Tier 3 for all equipment over 50 hp. This suggests that the DEIR has underestimated Project emissions and/or is overstating this PDF. **What would be the change in the estimated emissions when actual availability of Tier 3 equipment is considered?** O7-161

6. The DEIR also does not consider the use of DPM filter traps on construction equipment. Construction equipment is largely diesel powered and its exhaust emissions can contribute significantly to PM_{10} and $PM_{2.5}$ emissions as well as create health risk impacts. The Project should evaluate this potential impact and consider using DPM filter traps on construction equipment. Since the DEIR did not quantify the health risk impacts, the public cannot assess if these health risk impacts would be significant. **What is the reduction in cancer risk impacts on surrounding workers and residents if DPM filter traps were used on construction equipment? Why was this feasible mitigation measure not considered?** O7-162

7. With respect to PDF 2-6, the DEIR indicates that the Project will comply with South Coast Air Quality Management District ("SCAQMD") Rule 403. However, given the magnitude of potential PM_{10} impacts as discussed later in the DEIR (page 5.2-20), all feasible mitigation measures should be considered. The Project should include an evaluation of all feasible potential mitigation measures that can provide real-time responses to fugitive dust events. These measures include continuous air monitoring of PM and full-time opacity observers. The Project should include the development of a dust monitoring plan that includes specific actions and measures to be implemented when fugitive dust concentrations exceed action levels (e.g. 50 $\mu g/m^3$) at the fenceline of each construction site. **Please include an evaluation of this mitigation measure. What would the benefit of these mitigation measures be in reducing the PM_{10} impacts on surrounding workers and residents?** O7-163

[9] CARB, 2005. Air Quality and Land Use Handbook: A Community Health Perspective. http://www.arb.ca.gov/ch/handbook.pdf

8. With respect to Impact 5.2-3, the DEIR does not include all potential emission sources for the Project. Given the potential new developments within the IBC (whether commercial or high density residential), emergency generators will almost certainly be required, yet the DEIR does not include expected emissions from these generators in its analysis. By not including them, the DEIR is in fact stating that they will not be included in any development that would be part of the Project. If developments within the Project site will need emergency generators, the DEIR's analysis should include them. **What would the operational emissions be if emergency diesel generators were included? What are the potential health risk cancer impacts if emergency diesel generators were included?** O7-164

9. The DEIR indicates that swimming pools may be included in the Project. Science Applications International Corporation ("SAIC") has indicated that chloroform may be emitted from chlorine- treated water.[10] The DEIR should evaluate the potential impact of chloroform emissions from water treated with chlorine. **What are the chloroform emissions from swimming pools and what is the risk impact from these sources?** O7-165

10. With respect to Impact 5.2.4, the DEIR compares Project-related construction emissions to the mass-rate look-up tables provided by SCAQMD. As noted above, the SCAQMD mass-rate lookup tables are not applicable to this Project per SCAQMD guidelines, because the Project is larger than 5 acres. The DEIR also has not appropriately identified the closest receptor. Based on the information provided in the DEIR, there is inadequate information to perform air dispersion modeling to estimate the air concentration impacts. **Please correct the air quality impact analysis and use appropriate air dispersion modeling to evaluate the Project's potential impacts on air quality resulting from Project construction emissions. What would the air quality impact results be if the analysis was done using air dispersion modeling? What is the impact of construction emissions on concentration levels of criteria pollutants and Toxic Air Contaminants ("TACs")?** O7-166

11. Based on the data in the DEIR, one can, at a screening level, arrive at a conservative estimate of the potential air quality impacts from construction emissions. A simple SCREEN3 model analysis using the estimated emissions reported in the DEIR shows that a conservative estimate of construction mass emissions yields a maximum 1-hour NO_2 concentration of 3,178 $\mu g/m^3$, a maximum 24-hour PM_{10} concentration of 2,886 $\mu g/m^3$ and a maximum 24-hour $PM_{2.5}$ concentration of 656 $\mu g/m^3$. These concentrations are many times higher than the National Ambient Air Quality Standards ("NAAQS") and California Ambient Air Quality Standards ("CAAQS"). The NAAQS are health-based ambient air quality standards (referred to as primary standards), established under the federal Clean Air Act ("CAA") to protect the most sensitive population groups. In the case of PM_{10} and $PM_{2.5}$ these impacts contribute to these pollutants' ambient concentrations that are already in nonattainment of their respective NAAQS. Furthermore, these emissions may result in health impacts on nearby O7-167

[10] SAIC, 1988. Sources and Concentrations of Chloroform Emissions in the South Coast Air Basin.

residents or workers. **The DEIR should conduct a refined analysis to estimate the impacts of construction-related emissions on nearby receptors and discuss the health impacts associated with exposures to these concentrations of nonattainment pollutants.** O7-167 cont'd.

12. In addition, the DEIR inappropriately concludes that these impacts are "unavoidable". However, certain mitigation measures, such as aggressive dust control and staggering of construction schedules can mitigate dust emissions. **Why doesn't the DEIR consider all feasible mitigation measures for construction-related emissions? Please indicate Irvine's rationale for not pursuing these feasible mitigation measures.** O7-168

13. The DEIR also inappropriately assumes that the closest receptor will be found at a distance of 25 meters. As discussed above, there is no supporting information in the DEIR for this assumption. Given the density of the area and the Project's anticipated high-density residential developments, there is the distinct possibility that receptors will be closer to a development's site, which could well result in an impact higher than that reported in the DEIR. **On what evidence does the DEIR base its assumption that the closest receptor is only 25 meters away? If the closest receptor is nearer than 25 meters, what is the air quality concentration impact from construction and operations for the closest receptors?** O7-169

14. The DEIR does not include any evaluation of potential air quality impacts at sensitive receptors such as daycare centers, schools, hospitals, and nursing homes that are located in the vicinity of the Project. There are numerous facilities in and around the IBC (e.g., Kiddie Academy of Irvine, Gateway Christian, Vineyard Christian, West Park Elementary, Mariners Christian School, ResCare Homecare, Care Options, and Birth Choice Health Clinic). Note that this list is only an example list and not necessarily representative of all such receptors. **Why does the DEIR not include a full evaluation to identify these locations and provide an analysis of the potential air quality impacts at these locations? What will be the impact on these locations (e.g., criteria pollutant air concentrations, cancer and non-cancer health risk) from Project construction activities?** O7-170

15. The DEIR indicates that CARB recommends the following buffer zones between industrial and residential uses:

- 1,000 feet from the truck bays with an existing distribution center that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units, or where transport refrigeration unit operations exceed 300 hours per week.
- 1,000 feet from an existing chrome plating facility.
- 300 feet from a dry cleaning facility using percholorethylene using one machine and 500 feet from dry cleaning facility using percholorethylene using two machines.

O7-171

- 50 feet from gas pumps within a gas dispensing facility and 300 feet from gas pumps within a gasoline dispensing facility with a throughput of 3.6 million gallons per year or greater.

Impact 5.2-6 notes that "development of residential uses within the Irvine Business Complex could be located within CARB's recommended buffer distances from I-405 or existing distribution centers, chrome platers, dry cleaners, or gas stations." On page 5.2-24 the DEIR notes that "placement of sensitive uses near major pollutant sources would result in significant air quality impacts from the exposure of persons to substantial concentrations of toxic air pollutant contaminants." The DEIR appears to then rely on PDF 2-1 for the finding that "no significant impact would occur." O7-171 cont'd.

16. Notably, the DEIR fails to analyze the implications of the newly adopted Accessory Retail Business ("ARB") designation which explicitly allows dry cleaners within mixed-use and multi-use residential developments. As noted, the ARB designation was prematurely implemented and segmented from the Project by Irvine. Consequently, no environmental review has been conducted to study the potential consequences of allowing these uses in close proximity to sensitive receptors. **Will dry cleaners be considered as ARBs? Will dry cleaners that use perchloroethylene be considered as ARBs? If so, what are the environmental impacts of allowing these businesses in such close proximity to sensitive receptors? Please provide a map of all dry cleaners in the IBC using perchloroethylene so that environmental impacts and buffers may be properly analyzed.** O7-172

17. The DEIR evaluates the potential impact of operational emissions using a similarly inappropriate and incorrect approach as that used for construction. (DEIR, § 5.2, p. 21.) As stated above, the mass-rate SCAQMD Localized Significance Threshold ("LST") is for sites of 5 acres or less, but according to the DEIR the individual Project sites are larger than this. The SCAQMD recommends against the use of the LST for development projects larger than 5 acres and suggests that project-specific air dispersion modeling be used. In addition, the DEIR may have excluded various emissions sources that could change its findings. **The DEIR should revise its analysis to evaluate the air quality impacts using air dispersion modeling. What would be the impacts using air dispersion modeling? What would be the cumulative impacts (criteria pollutants and cancer and noncancer health risk) if other potential sources such as emergency generators and chloroform emissions were evaluated?** O7-173

18. The DEIR evaluated six intersections for localized CO impacts. (DEIR, § 5.2, pp. 21-22.) The SCAQMD typically recommends that all intersections that change Level of Service from C to D (or worse), and all intersections that have a Level of Service of E or worse and that change in volume to capacity by more than 2% be evaluated specifically for CO concentrations. The information in the traffic study provided in the DEIR suggests that many intersections other than the six analyzed may fit the SCAQMD's criteria requiring a more detailed analysis. The DEIR should provide further analysis of these other intersections. **What** O7-174

are the localized CO impacts at these intersections that fit the SCAQMD criteria for analysis? O7-174 cont'd.

19. With respect to Impact 5.2-7, the DEIR indicates that there are no significant impacts from odors. However, given the changing land use designations, new residential developments in the IBC may be located in areas with existing odors that are not an issue to their commercial and industrial neighbors, but that may be an issue to new residential neighbors. In particular, commercial receptors are rarely impacted by transient odors, as these receptors are typically indoors rather than outdoors. Furthermore, commercial receptors are rarely impacted by odors in the nighttime, when odors tend to be greater due to the greater frequency of stagnant air. The DEIR should address this change in land use as it pertains to odors more thoroughly. Specifically, a survey could be conducted to evaluate the potential for odor impacts at proposed residential development areas. The intermittent nature of odors from commercial and industrial areas can make it difficult to identify such issues and therefore, a land use buffer between commercial/industrial land use areas and residential areas can help mitigate potential odor impacts. **What surveys and evaluations have been done to ensure that current operations in the IBC do not already produce odors in areas of future residential developments? What are the advantages and disadvantages of having buffer areas placed between commercial/industrial uses and residential areas?** O7-175

20. The DEIR indicates that Impact 5.2.4 (construction activities may expose sensitive receptors to substantial pollutant concentrations of NO_x, PM_{10}, and $PM_{2.5}$) is potentially significant. However, based on the very emission estimates reported in the DEIR and the likely air quality impacts, the estimated air quality impact of construction emissions is in fact significant. **Why does the DEIR ignore the significant effect of the Project's construction emissions?** O7-176

21. The DEIR does not include any evaluations to assess the significance of two issues. First, the DEIR has not included an evaluation of what the health risk impacts from construction and operations may be on residents, workers, recreational users, and sensitive receptors. **Why does the DEIR not include an evaluation of health impacts from Project construction activities? What would be the cancer and non-cancer health risk impacts on these receptors in the areas surrounding the Project's development sites, including areas outside the IBC?** O7-177

22. The DEIR has not included an evaluation of the potential impact of existing sources of TACs on future residential development. The DEIR includes a discussion of these potential sites in the Hazards and Hazardous Materials Section (5.6), yet there is no analysis included in the Hazards or Air Quality Sections. The SCAQMD CEQA handbook specifically recommends that such an evaluation be made.[11] This recommendation exists in part O7-178

[11] SCAQMD, 1993. CEQA Air Quality Handbook. Chapter 10.5. Siting of Sensitive Receptors.

to specifically prevent the inappropriate land use development of residential areas near existing industrial areas, the very activity that this Project proposes to effect. An appropriate analysis in this respect is likely to show that it would be appropriate to develop residential land use areas some distance away from current industrial and commercial areas. **Why does the DEIR not include an evaluation of the effect on existing commercial and industrial activities from the siting of sensitive receptors near those facilities? What would the cancer and non-cancer health risk impacts be on the new residential developments from existing TAC-emitting sources?** O7-178 cont'd.

23. Additionally, particulate emissions are discussed in Section 5.2 of the DEIR. Those emissions are "near-source," meaning concentrations drop to background levels within short distances, typically ¼ mile from the source. Yet dispersion depends on patterns of emissions, meteorology, and the built environment. The following points should be noted: O7-179

- The nearest Air Quality Management District ("AQMD") monitoring stations are distant from the IBC and will not provide accurate readings of particulate emission levels. This is especially serious if mitigation relies on measurements of concentrations and hence needs to be monitored.

- The DEIR (p. 5.2-24) proposes installing MERV14 filters for residences within 500 feet of the I-405 freeway. That distance corresponds to typical daytime thresholds for the distance at which particle concentrations from freeways will drop to background levels. New research from UCLA suggests that at night, when winds die down, particle concentrations can be elevated at somewhat longer distances from freeways. Hence MERV14 filters might be appropriate (or needed) at greater distances. O7-180

- The models used to measure particle concentrations, e.g. URBEMIS2007, EMFAC2007, and CALINE4, typically do not account for how buildings contribute to wind patterns (flows and eddies) that trap and disperse particles. By placing structures near freeways and major arterials, the IBC Vision Plan would require an analysis not just of emissions and dispersion without the built environment, but also dispersion within the built environment of the IBC. O7-181

24. The impact analysis for IMPACT 5.3-3 states that indirect effects of the Project on wetlands or other regulated waters may result from urban land use intensification. However, this Section does not address potential changes in flow pulses or intensity that may result from increased runoff. Given that restorations activities that depend on hydrological conditions are planned in the San Diego Creek channel and adjacent wetlands, the lack of analysis of these potential impacts is notable. It is not clear that the goals of this Project are entirely consistent with the ongoing restoration efforts referenced. **Please elaborate on the analysis of consistency with ongoing restoration goals to demonstrate this analysis has been conducted.** O7-182

25. DEIR section 5.3 item (c) states that restoration activities within the Project will not affect San Diego Creek because they occur outside the Project boundaries on the opposite side of the creek from the Project. This conclusion appears very simplistic and does not appear to acknowledge that creek impacts are possible from upland activities, regardless of the side of the creek on which they occur. **Please provide an appropriate analysis of potential impacts on aquatic and riparian resources in the San Diego Creek channel by considering all pertinent direct or indirect impacts.** O7-183 cont'd.

C. Biological Resources

1. Biological Resources appears under the heading of environmental factors that may have significant effects with the footnote that potential effects were dismissed during the 2007 Initial Study, and only included in the DEIR after the City received numerous comments with concerns during the Notice of Preparation ("NOP") circulation. However, we noted that the Biological Resources Technical Study used as the Initial Study for the 2007 NOP is included virtually unchanged in this DEIR as Appendix H. The lack of additional environmental analysis despite acknowledgement that such issues warranted further consideration suggests the City did not thoroughly or adequately address potentially significant impacts on biological resources. **Please either include a more detailed analysis of biological resource impacts consistent with EIR requirements or explain the rationale for including Appendix H with no additional analyses.** O7-184

2. The DEIR describes the creation of three districts within the Project. It is noted that each one extends out to boundary of the larger parcel in the Project along Campus and Michelson Drives with no buffer strip for the adjacent San Joaquin Marsh. The second paragraph on this page states there will be five to eight foot sidewalks and eight feet of paved parkway. If the goal of this plan truly is sustainability, this seems like a poorly matched approach. Inclusion of a wider green or open space buffer between the Project boundary and the bordering roads would help reduce potential impacts on the adjacent sensitive features such as San Diego Creek and the San Joaquin Marsh. **Please provide the rationale for not considering a green or conservation space element buffer along the creek walk to reduce potentially significant effects associated with flooding and biological resource impacts.** O7-185

3. DEIR section 3.3.2.2 describes infrastructure improvements such as new bridge construction and bridge expansion projects over regulated water ways. These concrete descriptions should be used in the impact analyses to describe and analyze potential impacts on biological resources for each type. This broad level of impact analysis is appropriate for a program level EIR because general types of potential impacts can be anticipated, although project-specific review under CEQA would still be needed. This proactive approach may streamline later CEQA review if infrastructure projects are properly evaluated up front to enable later tiering. **Please provide an appropriate level of analysis for a program EIR for each of** O7-186

the major infrastructure improvements listed or provide a rationale for the exclusion of such analysis given these features appear to be key elements of the Project's description. O7-186 cont'd.

4. The DEIR identifies the importance of greenbelts and green space in the Parks and Recreation and Conservation and Open Space Element Sections, but then goes on to say there is no designated conservation or open space planned in the Project. This seems an ideal opportunity to buffer sensitive resources, such as San Diego Creek, which is identified as "moderately sensitive" in the City's General Plan (described on pp.4-8), and the San Joaquin Marsh identified as "highly sensitive" (also described on pp. 4-8). Sustainable options consistent with the General Plan would include a green or open space to buffer these significant resources instead of placing development immediately adjacent to the Project boundary and separating roads. **Please provide the rationale for not considering such options.** O7-187

5. PDF 3-1 indicates the City may entertain alternative locations for the creek trail to minimize potential effects. Given the linkages between the creek trail and other major elements of the General Plan Amendment described in this program level DEIR, it is difficult to accept the logic that a relocation of the creek trail would not be accompanied by additional changes in the mixed use zoning overlay that are being reviewed in this DEIR. The creek trail location appears to be an inherent part of the Project and interdependent on other General Plan Amendment elements described. **Please provide the rationale for deferring analysis of the creek walk locations and impacts when they are an essential part of the program EIR project description and subsequent project-specific review may not capture cumulative impacts.** O7-188

6. PDF3-2 indicates that noise reduction efforts may be implemented if noise levels exceed the City's ordinance after monitoring. If monitoring begins after nest initiation and noise levels, or installation of noise reduction curtains, result in shifts in occupied habitat or nest abandonment, then direct impacts are possible. **Please provide an analysis of these potential side effects, including shifts in occupied habitat or territory establishment, nest abandonment, and potential direct impacts such as mortality or physiological damage, that may be associated with implementation of this measure.** O7-189

7. Impact Analysis for Impact 5.3-1 indicates that most of the land within the Project boundary does not provide suitable habitat, but does not describe those parts of the Project boundary that do contain suitable habitat. Based on comments summarized above, this is a recurring theme throughout the DEIR's analyses. The text also notes that the Project boundary is immediately adjacent to a proposed NCCP Reserve where restoration is underway. However, this effect is not analyzed either and appears to be at cross-purposes with the spirit of this Project without additional conservation or open space elements incorporated as buffer lands. **Please provide the appropriate analysis to demonstrate that potential impacts on the proposed NCCP Reserve have been considered and either reduced to less than significant levels or mitigated.** O7-190

8. Potential impacts to sensitive species are described in a cursory manner that is insufficient. The potential impacts by major infrastructure type as described in the Project Description (Section 3.0) should be addressed on a conceptual level appropriate for a program level EIR. Deferring analysis of the creek impacts to future project level analyses when the creek location is an essential feature of this Project is inappropriate. **Please provide an appropriate level of analysis for each of the infrastructure improvements described in the Project Description and clearly explain the criteria for deferring analysis from program level EIR to project-specific reviews. Please explain why the IBC Sidewalk Improvement Project has not been included in this DEIR for analysis.** O7-191

D. Geology and Soils

1. The DEIR provides on page 5.5-9 that impacts associated with threshold of significance G-1 would be less than significant. However, on page 5.5-7, the DEIR states that "[m]ost of the project site is in SRA-1, which is susceptible to liquefaction." The finding of "less than significant" appears to be inconsistent with the finding that the project site is within SRA-1, and thus susceptible to liquefaction. The DEIR contains no discussion regarding the environmental risks faced by the Project due to liquefaction. **Have mitigation measures been employed to mitigate potential liquefaction impacts? If so, what are those mitigation measure? Please provide a discussion of those mitigation measures. Please include a detailed analysis of liquefaction risks in the area of the proposed project.** O7-192

E. Hazards and Hazardous Materials

1. It is typical for EIRs to include a discussion of potential hazards in a Project area associated with radon gas. This DEIR does not contain such a discussion, including the typical levels of radon gas in the general Project vicinity, potential impacts on current and proposed buildings, and/or mitigation that may be required. **Please analyze the impact of radon gas on the proposed Project.** O7-193

2. While there is a statement that the Project may involve the demolition of existing structures, there is no indication as to the types of structures, their size, or their former usage. (DEIR, § 5.6, p. 6.) Also, while the report indicates that construction debris would need to be characterized and classified for disposal purposes as lead-containing and/or asbestos-containing, there is no discussion as to how this activity would be accomplished. **Please provide the lead and/or asbestos surveys for the buildings that are planned to be demolished. What samples will be collected prior to demolition?** O7-194

3. The DEIR acknowledges that lead-based paint chips and friable asbestos may be released to the environment and cause potential exposure to humans if proper monitoring, removal and disposal are not accomplished, but there is no effort to identify where these areas may be nor is there any information about proper techniques for preventing exposure. O7-195

Please analyze what specific structures are expected to pose risks related to asbestos-containing materials and lead-based paint, and what steps the City plans to take in order to mitigate significant impacts.

O7-195 cont'd.

4. Additional details and analysis should be included regarding the five businesses within the Project area that have developed and submitted RMPs pursuant to the California Accident Release Prevention ("CalARP") Program. There is no information as to the identities of these businesses, their respective locations, the chemicals used and/or stored on-site, or whether addition of residences could impact their respective RMP procedures. Presumably, increasing residential density in the Project area would place additional people at risk in the event of an accidental release incident. Businesses and site-specific hazards should be identified, and potential risks should be evaluated. In addition, the DEIR should address CalARP-subject facilities that are not within the Project area, to the extent that their release incidents could affect conditions within the Project area. **Please analyze what existing facilities in the IBC are subject to CalARP, where they are located, what chemicals are used and/or stored on-site, and how the introduction of additional residents into the IBC would impact their respective RMP procedures, and the risks to the inhabitants of the newly entitled residences. Please analyze what impacts may be present related to CalARP-subject businesses located outside the Project area.**

O7-196

5. The DEIR indicates that 14 Title V facilities are located within or in the "immediate vicinity" of the Project area, which facilities are reportedly mapped in Figure 5.6-1. However, the DEIR does not define the term "immediate vicinity," and the referenced figure only identifies 8 (rather than 14) Title V facilities. Several of the Title V facilities identified in the DEIR do not appear to be Title V facilities (e.g. 3M ESPE Dental Products Division, San Diego Shutter Co.), based on our review of the SCAQMD's Facility Information Detail (FIND) web tool. Other Title V facilities located just outside of the Project area (e.g. UC Irvine) are not analyzed either, even though they could impact the Project area also. Furthermore, the DEIR provides no information regarding the 497 other facilities identified on the FIND database as "regulated facilities." **What radius was searched around the Project area to determine the number of regulated facilities (including Title V facilities) in the "immediate vicinity"? How was this radius determined? Are there in fact 14 Title V facilities in the immediate area and, if so, what and where are they located and from what source was this information obtained? What pollutants are being regulated at each of the Title V facilities, and what is the impact of these pollutants on the proposed residential development projects? What are the 497 "regulated facilities" listed on the FIND database that are not Title V facilities, and for what are they being regulated? What is the potential impact from each of the Title V and other "regulated facilities" on proposed residential development projects? To what extent has the DEIR analyzed impacts from each of these facilities on the residents inhabiting the newly entitled residences?**

O7-197

6. The DEIR indicates that 388 sites were identified within or in close proximity to the IBC that are listed on databases indicative of past releases of hazardous substances to the environment and/or that are undergoing environmental investigation/remediation. The DEIR does not analyze the nature and extent of this contamination, the current status of the release sites, or the potential implications for residential development. Also, with the exception of the Tustin Marine Corps Air Station ("TMCAS"), the DEIR appears to include a search only of listings within the Project area, rather than also a discussion of other release sites in the immediate vicinity (e.g., immediately upgradient) that could adversely affect subsurface conditions in the Project area. **Please provide an analysis of the potential impact from each of the 388 release sites on the residential development proposed in the Project area. To what extent has the City analyzed impacts from each of these sites? What impacts may be present related to release sites located outside the Project area, in addition to impacts from TMCAS?**

O7-198

7. The Project Description within Chapter 3 of the DEIR suggests that two residential areas are proposed at the far southern end of the Project area (identified as the Irvine Technology Center and Martin Street Condominiums on Figure 3-7). There is no discussion in the DEIR of the known and potential contamination sources beneath or immediately adjacent to these areas. Based on our review of the database search report included as Appendix I to the DEIR, the Irvine Technology Center project appears to be situated on or immediately adjacent to the locations of at least three subsurface contamination-related listings, identified in the database report as "GW Cleanup – Irvine, Jamboree," "Xerox Corporation" and "GW Gleanup [sic], Campus & Jamboree." In addition, the Irvine Technology Center site is situated on or immediately adjacent to two facilities (Mallinckrodt Medical Inc. and Accupath Diagnostic Labs, a former microelectronics facility) that are regulated under the Resource Conservation and Recovery Act ("RCRA") Corrective Action ("CORRACTS") program, as well as numerous other industrial facilities with registered storage tanks, closed leaking underground storage tank ("LUST") incidents, hazardous waste generator identification numbers, reported spills, etc. Similarly, in the immediate vicinity of the Martin Street Condominiums site a number of hazardous waste generators have operated, and a release incident has been reported either at or immediately adjacent to that project's site (2192 Martin) for which additional information was not provided. Because some of these areas are currently light industrial in nature, the contamination identified in these areas may have been cleaned up to a commercial/industrial rather than residential standard (where remediation has been completed). As such, even release incidents that have been issued a No Further Action ("NFA") status would require re-evaluation and may need additional investigation/remediation prior to the construction of residential developments.

O7-199

A more detailed analysis of these and other potential contamination sources should be performed before residential development is planned. For instance, based on our review of publicly available information posted on the California Department of Toxic Substances Control's ("DTSC") EnviroStor database, the Xerox Corporation facility (located in

aforementioned areas of proposed residential development at the southern end of the Project area) has known impacts to soil, groundwater, and soil vapor related to past manufacturing activities. Prior risk assessments apparently indicated that risks to construction workers were unacceptable due to soil ingestion, soil particulate inhalation, and vapor inhalation of VOC off-gases from shallow groundwater during excavation/trenching, and that risks to future commercial/industrial workers were unacceptable due to indoor air related to VOC off-gases from shallow groundwater. Under a residential land use scenario, risks were unacceptable for indoor exposure based on soil vapor data and for outdoor exposures for ingestion, dermal contact, and inhalation. A number of other examples of highly contaminated locations within the Project area were also identified that could present problems for future residential development. **Please analyze the specific impacts that could impede residential development. How will the City mitigate these specific impacts?** O7-200

8. There is no discussion regarding actions to be taken if hazardous materials, wastes, and/or subsurface contamination are identified during construction that are unrelated to tanks. Identification of such contamination would likely impact construction activities and associated waste disposal (e.g. soil excavation, groundwater dewatering), and therefore seems to warrant discussion. PPP 6-1 describes actions to be taken only if Underground Storage Tanks ("UST") or Above-ground Storage Tanks ("AST") are encountered during construction activities. **Please analyze the potential impact from discovery of contamination (unrelated to tanks) during construction activities. To what extent has the City evaluated the likelihood of this occurrence, based on the proposed locations of construction and the locations of previously identified contamination? What plans, programs, and/or policies are in place to address such contamination, if it is encountered?** O7-201

9. Construction and future light industrial activities could affect stormwater impacts in the Project area, yet there is no specific discussion of stormwater within this Section of the DEIR. The measures to ensure that construction sites obtain the necessary stormwater permits, prepare and implement Stormwater Pollution Prevention Plans ("SWPPP"), and implement best management practices (BMP) to protect stormwater quality should be discussed in this section of the DEIR. In addition, the DEIR should address potential changes to the general construction and industrial stormwater permit requirements that have been proposed but not yet adopted. Please analyze the potential impact from stormwater contamination during construction and future light industrial activities. **What plans, programs, and/or policies will the City use to address prevention of stormwater contamination? How will such activities be affected by proposed changes to the stormwater permit requirements?** O7-202

10. As noted in the Local Setting Section above, the DEIR's discussion of hazardous materials transport, use and/or disposal is very general and dismisses all risks associated with this topic area by using the flawed argument that compliance with existing regulations related to hazardous materials abatement, transportation, and management ensures protection of the public and the environment. But there is no discussion of specific hazardous O7-203

materials and wastes to be handled, how they would be transported and managed, and what measures would be in place to ensure regulatory compliance. Further, there is no discussion in the DEIR of protective measures to be implemented during construction for protection of human health, such as dust mitigation and stormwater control. Additionally, there is no information as to the nature of industrial facilities that may initiate operations associated with the Project, which could increase the risks to nearby residents (e.g. increased air emissions, the presence of new flammable or toxic regulated substances, increased truck traffic and related dust emissions). **Please analyze how specific hazardous materials and wastes would be required to be handled during construction, how they would be required to be transported and managed, and what measures the City plans to employ to ensure regulatory compliance. What protective measures would the City require to be used during construction? What types of industrial facilities does the City expect would initiate operations associated with the Project, and what impacts would these new operations have on the occupants of nearby residences?**

O7-203 cont'd.

11. In addition to the impacts from typical hazardous materials transport, use and/or disposal, as addressed in the previous comment, the DEIR discusses potential risks from hazardous materials associated with releases or other upset conditions. Although the DEIR argues that existing rules and regulations would reduce potential impacts from such emergency situations to below a significance level, there are no details given with regard to the specific measures to be taken to prevent releases (e.g. spill containment, emergency response planning, RMP measures, etc.). Absent such details, it is difficult to evaluate whether significant impacts could in fact result from increased residential and industrial development in the Project area. Furthermore, the potential introduction of residents within an area that may be impacted by spills of hazardous materials clearly increases risks and impacts. **Please evaluate where there are new residents introduced into areas that may be impacted by hazardous materials spills and specify the measures the City will take to prevent or address releases.**

O7-204

12. The DEIR acknowledges that the proposed Project would create a mixed residential and industrial environment that may result in compatibility issues when siting residential development within areas that are impacted by existing facilities' emissions of TACs. Specifically, TAC emissions that may currently meet acceptable health risk levels based on existing land use could exceed health risk criteria in the more intense mixed use environment resulting from the proposed Project. The DEIR suggests that such potential impacts are reduced to a less than significant threshold through compliance with the PPPs and two of the PDFs. However, only one of these PPPs/PDFs directly addresses this issue, namely PDF 6-2, under which residents receive disclosure language outlining the issues associated with living in a mixed use environment. Disclosure of the potential increases in human health risk due to increased air emissions near residential areas would not, in and of itself, reduce the risk of this issue to below a level of significance. In addition, there is no regulatory mechanism for requiring reductions of emissions of TACs from permitted sources when land use changes approved by the Lead Agency (the City) result in impacts above the SCAQMD thresholds. **What additional PPPs/PDFs**

O7-205

and/or mitigation measures will the City require in order to reduce impacts from siting compatibility issues to below the level of significance? Beyond disclosing the compatibility issues, what specific mitigation measures does the City plan to implement? O7-205 cont'd.

13. The DEIR acknowledges that several hundred known contaminated sites are located in the Project area that may create a significant impact on future IBC residents. The DEIR suggests that such potential impacts are reduced to a less than significant threshold through compliance with the PPPs and two of the PDFs. However, these PPPs/PDFs do not serve to decrease the risk from Impact 5.6-2, but rather require the impacts to be evaluated and (in some cases) addressed on a project-specific basis. It is not appropriate to state that there is no significant risk from this Impact, since there may in fact be significant risks that will need to be mitigated during future activities associated with the proposed Project. The PPPs and PDFs do not explicitly address situations that could result in significant impacts to IBC residents, such as health effects from vapor intrusion for an increased number of residents due to a change in residence density or exposure of more residents to contaminants through vegetable gardening. A specific example of a location proposed for residential development was referenced above, where contamination has been identified well above levels considered safe for residents and construction workers, and other, similar situations are also present within the Project area. **What additional PPPs/PDFs and/or mitigation measures will the City require in order to reduce impacts from contaminated sites to below the level of significance?** O7-206

14. The DEIR's analysis is inadequate to support the conclusion that all Project impacts would be less than significant. As described above, the analysis of the hazards at each development site is likely to reveal specific hazards that may be significant. The DEIR has failed to provide an adequate analysis to make a significance conclusion. **Please provide an analysis of the likely hazards at each development site.** O7-207

15. The information relied upon to assess hazardous materials impacts is derived from databases tracking hazmat releases that have already occurred. Hundreds of sites within the IBC are listed. (DEIR, § 5.6-11) Further, the DEIR ignores the potential for an accident from other facilities, stating that compliance with regulations prevents significant impacts. The nature of an accident is that it is unpredictable. **Please address this deficiency**. O7-208

16. Impact 5.6-1 needs to address the hazards created by the Project in introducing residential uses to an area with existing industrial uses. **Address the potential exposure of residents to hazardous materials related to industrial operations.** O7-209

17. There are 511 hazardous materials regulated facilities in the IBC. The DEIR even admits that "[t]oxic air pollutants emitted from commercial or industrial facilities within the IBC that are otherwise at acceptable health risk levels based on their existing land use, may exceed health risk criteria in a mixed-use environment." **Please provide the justification** O7-210

for concluding this is mitigated to a less-than-significant impact by existing regulations and the shelter-in-place/evacuation plan. O7-210 cont'd.

18. The DEIR states that there are "numerous [over 200] businesses that have had releases of hazardous substances to the environment and/or are undergoing investigation/ remediation." In light of this, the DEIR's conclusion that the existing regulations are enough to prevent hazardous releases and mitigate the risk of exposure of residents to contaminants is not supported by the evidence. **Please address this deficiency.** O7-211

19. The DEIR fails to adequately consider the risks posed to future dense high rise residential developments for aircraft operations emanating from John Wayne Airport. Our April 30, 2009, comment letter to the Orange County Airport Land Use Commission ("ALUC") are attached and the comment letter of Richard K. Simon, Esq., is incorporated herein As these letters indicate, aircraft operations from John Wayne Airport pose a serious threat to residential developments within the IBC. Under the Project, exceedingly dense residential communities will be built below the busy traffic patterns of general aviation aircraft. These threats have not been adequately studied or addressed in the DEIR, and the Project is inconsistent with the John Wayne Airport Environs Land Use Plan ("AELUP"). O7-212

20. PDF 6-1 does not mitigate the adverse impacts of a plane accident on a dense residential development. Simply stating that "[t]he proposed buildings are required to comply with state seismic standards" is not sufficient to analyze the potential consequences of an aircraft accident in the IBC. Additionally, the DEIR states "[g]iven the project's compliance with the state seismic standards, it is unlikely that the small size of general aviation aircraft would penetrate the structure of any such buildings on-site . . . As a result, severe consequence would not occur." (DEIR, p. 5.6-20.) **Please provide the support for these assertions.** General aviation aircraft are broad ranging in both size and speed. Notably, many smaller jet aircraft (i.e. Learjets) are considered general aviation aircraft. These small jet aircraft travel at great speeds and carry a substantial amount of fuel. Thus, they could cause substantial damage to residential structures in the event of an accident. More analysis of this issue should be conducted. O7-213

F. Hydrology and Water Quality

1. The Lane and Armstrong channels are predicted to overtop by between 0.5 and 2.0 feet during the 100-year design discharge. However, Table 1-2 indicates that "no mitigation measures are required" to address the environmental impact associated with those portions of the Project site proposed for development that are located within the 100-year flood hazard zone. **Please describe proposed measures to address this potential – should these measures be considered PPPs, PDFs or BMPs?** O7-214

2. In addition, the impact was described as "less than significant." **Please describe how is it not a significant impact to encourage additional building in areas that will experience flooding of up to 2 feet during the 100-year design discharge when no mitigation is required? Please compare flood levels between existing conditions and full build-out. Please provide an evaluation of the potential cumulative impacts of full build-out on flood levels.** O7-215

3. In subsection 1.2.2 this DEIR is described as a Program EIR rather than a Project EIR and that a Program EIR is typically more conceptual and contains a more general description of impacts, alternatives and mitigation measures. This is typically the case, i.e., very general discussion of impacts, etc., however, in subsection 3.3.3 (Subsequent Development Pursuant to the Proposed Project), great detail is provided describing nine pending IBC residential development projects. It is unclear why this level of detail, including site plans, was provided and if these proposed projects should be described in a Program versus a Project EIR. O7-216

4. DEIR section 3.3.2.3 describes infrastructure improvements such as new bridge construction and bridge expansion projects. These projects should be included in the DEIR's flood effects analysis and any cumulative effects study to describe and analyze potential impacts on hydrology and flooding potential. **For example, with respect to the new bridge that is proposed over San Diego Creek, will this impact flooding potential within the IBC? Please provide results of such an analysis.** O7-217

5. The DEIR states that "there are no major dams within the project vicinity or within the San Diego Creek Watershed". On Pg. 5.7-23 the third paragraph states that an on-site detention basin provided by the off-site Legacy Park Development will reduce peak flows in Barranca Channel. **Please describe the Legacy Park Detention Basin that controls the flow in the Barranca Channel. Has it been constructed? If not, was it included in the flood modeling of current conditions described in the EIR as being conducted by VA Consulting? If it has been constructed please describe its size, capacity, etc. Is it possible that the Legacy Park Detention Basin could fail? If so, please provide a flood inundation map if the Legacy Park Detention Basin were to fail.** O7-218

6. The DEIR concludes that runoff would be similar after the Project as in the existing condition, but this assumption has not been fully analyzed. (DEIR, § 5.7.) This section does not account for the new streets that will be created pursuant to the Vision Plan's standards to break up blocks and internal residential streets. (c.f. 5.7-45) Additionally, residential projects will bring more landscaping, which will introduce more pesticides and organic matter into the runoff. O7-219

G. Land Use and Planning

1. The DEIR fails to analyze the foreseeable and significant environmental impacts associated with urban blight that could result from industrial businesses being forced out of the IBC due to residential encroachment. Past experience has shown that any time residential uses are introduced into industrial areas, industrial businesses face increasing complaints from the new residents regarding their industrial operations. Eventually, mitigation measures forced upon the existing businesses makes operating in the area too expensive and burdensome for industrial businesses and they are forced to relocate elsewhere. **Why has this potential significant environmental impact not been addressed in the DEIR? What physical changes could occur within the IBC if industrial businesses are forced out of the area? Please analyze the potential physical impacts that could occur in the IBC if any one or all of the industrial businesses left due to residential encroachment.** O7-220

H. Noise

1. The noise analysis reported in the DEIR failed to consider potentially significant impacts the existing uses could have on proposed sensitive receptors in the Project. The noise analysis acknowledges that sound levels from many existing stationary noise sources in the Project area probably exceed the maximum acceptable level under City policy for sensitive uses (i.e., 65 dBA Community Noise Equivalent Level(CNEL)), and also correctly indicates that such noise levels would constitute a significant environmental impact to sensitive receivers (e.g. homes and parks) introduced by the Project. But the noise Section then dismisses this issue by relying on City policy that would require each Project component that would introduce sensitive receivers into an unacceptably noisy environment to conduct a noise review and ensure effective mitigation of interior noise levels through design features in the new homes. This discussion entirely misses the point that introducing noise-sensitive receivers also would fundamentally alter the noise limits to which existing uses are subject. **Please provide an analysis of the impact of existing Project area noises on future noise-sensitive populations, and the impact of moving noise sensitive receivers near the existing businesses generating noise.** O7-221

2. The City's noise limits are based on uses as described by the zones defined in the City's rule 6-8-204. Under this rule, sound levels received on an industrial property (zone 4) are limited to an hourly L25 of 75 dBA, so sound levels can legally be in the range of 75 to 80 dBA for up to 15 minutes in any hour of the day or night. On industrial use lands, the not-to-be-exceeded (Lmax) noise limit is 90 dBA at all times of day. If the receiving property use becomes residential (zone 1), as would occur with the proposed Project, the L25 and Lmax limits would be reduced to 60 and 75 dBA during the day (0700-2200) and 55 and 70 dBA during the night (2200-0700). Such changes would represent substantial reductions in the levels of noise allowed to be emitted and received, which could have profound adverse effects on existing industrial and commercial operations. Such adverse effects could in turn abrogate the first stated objective of the proposed Project, to protect the existing job base (page 3-1). This O7-222

potentially significant adverse effect of the proposed Project must be thoroughly analyzed and disclosed to provide both decision-makers and affected industrial and commercial stakeholders with sufficient information to make informed decisions on this issue. **Please provide an analysis of the impact on existing commercial and industrial uses in the IBC from the introduction of residential dwellings and the consequent lowering of the acceptable noise limits.**

O7-222 cont'd.

3. The City recently significantly reduced the "*i*" Shuttle program stating that the change was required by a virtual absence of ridership. **Please provide "*i*" Shuttle ridership data and analysis supporting the assertion that the "*i*" Shuttle would help reduce traffic noise.**

O7-223

I. Population and Housing

1. The Housing Element of the City's General Plan contains goals and objectives for the Residential Housing Needs Assessment ("RHNA"). The final RHNA prepared by the Southern California Association of Governments ("SCAG") for the planning period 1/1/06 to 6/30/14 was adopted in July of 2007 and allots 35,660 housing units to the City of Irvine. The City has challenged this allotment in a lawsuit, arguing its housing target should be 8,833 units because, it alleges, the SCAG's housing targets for very low-, low-, moderate- and above-moderate income categories were generated by a regional formula prepared by SCAG that results in an unreasonable, financially infeasible, and inequitable share of Orange County's housing production goals. The effect of the possible different outcomes of the lawsuit on the analysis of housing units could be very significant. **Please provide an analysis of how the outcome of the lawsuit would affect the requirements for the construction of low-income housing in the IBC and what effect that would have on the Project.**

O7-224

J. Public Services

1. The DEIR states that the cumulative development in the IBC as a result of the Project will trigger the presence of more students than can be accommodated by the facilities of the three school districts that these students would attend (Irvine, Tustin and Santa Ana unified districts). Despite that, the DEIR states that the only proposed mitigation to help reduce the impacts related to school services is PPP 11-5, which would merely require the payment of developer fees to the appropriate school districts, which would establish financing mechanisms for funding additional school facilities. The environmental impacts of the presence of an additional nearly 3400 students have not been analyzed in the DEIR. Although, as the DEIR states, California law imposes restrictions on a local jurisdiction's ability to condition a project on mitigation of impacts on school facilities, CEQA requires that such impacts be analyzed and divulged to the public in the appropriate environmental documentation for a proposed project. The DEIR fails to do so. **Please provide an analysis of the Project's impact on the ability of local school districts to accommodate the future students, and the environmental impacts of**

O7-225

the construction of the necessary school facilities to accommodate the increase in students that will result from the Project. O7-225 cont'd.

2. The presence of additional schools could, depending on their respective locations, impact the notification requirements under SCAQMD Rule 212, which would add a potentially significant burden to existing commercial and industrial facilities in the IBC that may desire to expand their operations. **Please provide an analysis of how such new requirements would impact existing IBC businesses.** O7-226

3. The City's library system is currently undersized, with respect to both square footage and number of library volumes, a situation that would be exacerbated by the proposed Project. And although the Project in and of itself would not necessarily result in the need for a new library, the future construction and operation of a new library could result in significant environmental impacts, none of which are discussed in the DEIR. This cumulative Project impact has the potential to affect the significance determination. **Please provide an analysis of how the presence of the Project's new residents would increase the pressure on the City to construct a new library, and what the environmental impacts of the construction of such library would be.** O7-227

K. Traffic and Circulation

1. The accessory retail business land use designation ("ARB") was not included in this project description but was prematurely segmented from the Vision Plan Project. The ARB exempts retail uses attached to residential or office projects from the need to obtain a TDR to account for their traffic impacts. Since the ARB was not included in the Project description, the Project traffic analysis does not account for the traffic impacts of additional retail uses included in residential/office projects. As a result, the actual number of trips in the IBC will exceed the overall intensity analyzed and mitigated by the DEIR. The approval of the ARB was done pursuant to an improper exemption and never received any other review of its traffic impacts. O7-228

L. Global Climate Change

1. The DEIR does not include a lifecycle emissions analysis for the proposed Project. The DEIR states that "lifecycle emissions are not included in this analysis because no information is available for the proposed project and therefore lifecycle GHG emissions would be speculative." The DEIR further states that "information on manufacture of cement, steel, and other "life-cycle" emissions that would occur as a result of the project are not available and are not included in the analysis." These statements are inconsistent with the policy of California's Attorney General as published in a February 17, 2009 Comment Letter addressed O7-229

to the San Joaquin Valley Air Pollution Control District.[12] Specifically on page 3 of that Letter the following can be found:

> Similarly, excluding lifecycle emissions removes the opportunity to explore better sourcing and consumption decisions that could positively affect climate change. For example, using concrete with higher levels of fly ash will tend to reduce a project's lifecycle GHG emissions. Of course, CEQA does not require independent research to trace back to its source every single material used in construction, but there is no reason that existing, readily available information about lifecycle emissions should not be included in the CEQA analysis.

O7-229 cont'd.

Why has the City not provided an assessment of the Project's lifecycle emissions? What are the lifecycle emissions for this Project?

2. The DEIR includes an inappropriate analysis as summarized in Table 5.15-6 and thus the Project has not adequately demonstrated a 28% reduction from the BAU scenario. Table 5.15-6 misrepresents the GHG emissions inventory and does not present the necessary emission estimates to draw any meaningful conclusions. As discussed above, the DEIR's analysis includes the following flaws:

O7-230

- Existing GHG emissions are not quantified properly. O7-231
- The BAU scenario is not quantified properly. O7-232
- The Project's GHG emissions are not quantified with numbers that are detailed enough to demonstrate the claimed 28% reduction from BAU. O7-233
- The DEIR should report the emission reductions for which credit is being taken in terms of changing non-residential areas to residential areas and the impact of this change on energy use and water use. O7-234
- The DEIR can count reductions associated with trips only if the Project causes a change in the trips or trip lengths for those areas representing a permanent removal and not a displacement of trips. When comparing the BAU traffic emissions to traffic emissions from the Project, credit can be taken only if it can be shown that a development within the Project will in fact reduce trips and trip lengths for new residents. Even if trips by new residents are shorter than those of current residents, the construction of new residences results in new trips. Therefore, there should not be a net reduction in VMT and GHG associated with VMT. Instead, the new VMT, even if shorter than from existing residences, should become a part of the new inventory. O7-235

[12] http://ag.ca.gov/globalwarming/pdf/comments_SJVAPCD_Draft_GHG_document.pdf

- In the comparison of the emission inventory to the BAU inventory, the DEIR should take into account the reduction in energy for buildings based on improvement beyond Title 24 building standards. The DEIR should develop a more detailed emission inventory of energy use for both residential and non-residential buildings. O7-236

- The DEIR can take credit only for reductions associated with energy efficient appliances that are committed to be required for development as part of the Project. O7-237

- The DEIR should separately compare changes in the emissions inventory based on third party programs such as the renewable energy portfolio standard and the Corporate Average Fuel Economy ("CAFÉ") standards, Pavley Standards, and Low Carbon Fuel standards. O7-238

Please revise and correct the DEIR's BAU analysis. Please show what the results would be for the BAU and Project emission inventories consistent with the above discussion. Please clarify what PDFs are required to guarantee that these reductions will in fact be able to be implemented. Please analyze the improvement over BAU under these revised analyses. O7-239

XII. The Vision Plan DEIR Fails to Identify and Include Feasible Mitigation Measures

A. Aesthetics

1. Limiting projects to use building surface materials of reduced reflectivity to prevent light/glare impacts on wildlife habitating or visiting the Creek or Marsh to only those buildings within 100 feet of the Creek or Marsh is insufficient mitigation. It is feasible to limit all projects within 500 feet or bordering on/adjacent to the Creek or Marsh from using reflective building materials. O7-240

B. Air Quality

1. The DEIR should include an additional discussion of mitigation measures identified for Impact 5.2-2. The DEIR has not evaluated any and all feasible mitigation measures to mitigate the significant impact from Project construction. Given the magnitude of the air quality impacts, additional mitigation should be evaluated and included. **The DEIR should consider revising the potential construction schedule and analyze a possible reduction in the amount of equipment operating on any given day to reduce its air quality impact. What would be the quantified reduction in lbs/day for each pollutant by revising the construction schedule?** O7-241

2. The SCAQMD has provided numerous other mitigation measures in its CEQA Handbook (*http://www.aqmd.gov/ceqa/handbook/mitigation/MM_intro.html*). The DEIR includes an evaluation of some but not all of these mitigation measures. The Project should also O7-242

include mitigation measures to use land-line based power whenever possible and minimize the use of any diesel-powered generators and reduce on-site combustion emissions. **Given the magnitude of the projected impacts, the Project should include all possible and reasonable mitigation measures. Where is the DEIR's evaluation of the mitigation measures suggested by the SCAQMD?** O7-242 cont'd.

3. The DEIR should include an additional discussion of mitigation measures identified for Impact 5.2-3. For operational emissions, the transportation source is the primary contributor, thus, additional mitigation measures for the significant increase in transportation emissions should be evaluated. **The DEIR should consider including: additional public transportation infrastructure to reduce the number of trips generated; the development of alternative-fuel vehicle stations (e.g., natural gas, electricity plug-ins, etc.); road infrastructure development as part of traffic management strategies; the promotion of bicycle use; and public education programs for new residents. Please provide an evaluation of these mitigation measures. What analyses have been conducted to evaluate what types of public transportation could be enhanced to help reduce the number of trips generated as well as VMT? What were the findings?** O7-243

4. The DEIR should also include an additional discussion of mitigation measures for air quality impacts resulting from the Project's stationary source operational emissions, which by themselves are significant (see Table 5.2-8 and Table 5.2-9). The DEIR should include an evaluation of mitigation measures that could help reduce stationary source emissions. **Such potential mitigation measures include: the use of Best Available Control Technology ("BACT") to reduce combustion emissions from all Project combustion sources (e.g., boilers, heaters, gas stoves, swimming pool heaters, etc.); requirements to use low VOC architectural coatings for maintenance; and electrical outlets to facilitate usage of electric gardening equipment. Please provide an evaluation of these mitigation measures. What would be the quantitative benefit on the estimated emissions of including these mitigation measures?** O7-244

5. The DEIR should include an additional discussion of mitigation measures identified for Impact 5.2-4. The DEIR does not include a discussion of DPM filters that can reduce diesel combustion PM_{10} and $PM_{2.5}$ emissions by more than 85%. Additional mitigation can also be included to minimize these impacts, including air monitoring or opacity observers during construction. As part of this type of mitigation measure, a dust monitoring plan should be developed to be approved by supervising agencies and made available to the public. **Please include an evaluation of these potential mitigation measures. What would be the reduction in PM_{10} impacts if DPM filters were included?** O7-245

6. The DEIR should include an additional discussion of mitigation measures identified for Impact 5.2-6. The Sacramento Metropolitan Air Quality Management District has suggested that tiered vegetative plantings can assist in the removal of PM emissions from O7-246

roadways.[13] Given the size of the IBC, the DEIR should also evaluate alterative sites outside of the 500 foot buffer as recommend by CARB's Land Use Handbook. The DEIR should also consider enclosed recreational facilities to mitigate Impact 5.2-6, such as indoor pools, playgrounds, etc. **Please include an evaluation of these potential mitigation measures. What is the feasibility of these mitigation measures to reduce impacts on the Project's residential developments from freeways?** O7-247

7. Mitigation will also be required if the analyses the City has not included in the DEIR end up being identified as significant (e.g. the impact of current TAC emitting sources on new residential developments). Such mitigation may include siting of residential developments away from current TAC emitting sources. **Please include an evaluation of this potential mitigation measure. What are the mitigation measures the City suggests to avoid/mitigate significant impacts from current TAC-emitting sources in the IBC?** O7-248

8. The DEIR has not adequately evaluated all mitigation measures to conclude that the reported impacts are "unavoidable" As described above, additional mitigation measures may help reduce the reported impacts. **Please include all mitigation measures regarding reported impacts.** O7-249

C. Biological Resources

1. PDF 3-2 should prohibit construction during breeding season. Feasible mitigation must be provided. O7-250

D. Hazards and Hazardous Materials

1. The DEIR includes a conclusion that no mitigation measures are necessary, based solely on the fact that there are plans to address mitigation measures at a later date (as site-specific projects are approved) rather than up front as part of this DEIR. However, the absence of a complete analysis now reduces the ability of the public and other interested parties to comment on the significance of the Project and its impacts in their entirety.

For instance, it is possible that some of the hazardous material release sites have resulted in groundwater and/or soil gas contamination that poses or pose an exposure risk to construction workers and new residents (through vapor intrusion). Mitigation measures (e.g. extra air monitoring and Personal Protective Equipment (PPE) during construction, addition of vapor barriers to construction design, deed restrictions to prevent day care centers and groundwater wells) might ultimately be required, but the DEIR is not specific enough to identify and describe such mitigation measures. Similarly, there is no analysis in the DEIR as to the impacts of O7-251

[13] SMAQMD, 2009. Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways.

existing and potential new air emission sources on occupants of proposed and existing residences. It is possible that significant mitigation measures (e.g. additional air pollution controls, changes to RMPs) could be required to reduce impacts below the level of significance once additional residences and industrial facilities are constructed, but the DEIR does not analyze such impacts. In addition, in some cases, there is no mechanism to reduce impacts that may result from land use changes to below a level of significance. **Please include a plan to ensure that the appropriate mitigation measures are in fact included. What is the City's plan to ensure that the public has an opportunity to comment on these mitigation measures?** O7-251 cont'd.

2. Mitigation to reduce harm from a release of toxic air contaminants consists only of the "Shelter-in-Place" or evacuation. This mitigation is insufficient. Buffers may be necessary depending on the potential for harm from a nearby industrial business. **Please provide this analysis.** O7-252

E. Global Climate Change

1. The DEIR does not include many of the mitigation measures suggested by California's Attorney General.[14] There are various suggested measures related to energy efficiency, renewable energy, water conservation and efficiency, solid waste, land use, and transportation and motor vehicles. The incorporation of these measures would help reduce the climate change impacts of the Project. **The DEIR should be revised to evaluate and incorporate these mitigation measures as well as others. Please clarify how the DEIR will incorporate these specific measures into the Project. Please analyze the anticipated reduction in GHG emissions from the implementation of these measures.** O7-253

XIII. The Vision Plan DEIR Fails To Incorporate Reasonable Project Alternatives

A. Air Quality

1. The DEIR indicates that there are no available alternate sites that could accommodate the proposed Project. This conclusion is based on flawed logic and reasoning. The DEIR indicates that high-density residential development must be located in the IBC to offer the same reductions in VMT. This is not correct since residential developments near the IBC can also support jobs in the IBC with similar VMT reductions. Furthermore, the DEIR does not include any analysis that demonstrates that those living in the new residential development of the Project would necessarily work in the IBC or surrounding areas. The DEIR could also include an alternate site within the IBC. O7-254

[14] http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf

It is possible that a new residential development that is located within the radius equal to the assumed trip length for home-based work travel could provide a similar reduction in VMT as that proposed for the Project. Since URBEMIS uses the assumption that the average home-based work trip length is more than 12 miles, this area could include a substantial area around the IBC where residential development could occur to provide similar trip reduction benefits. In addition, alternate sites that have better public transportation access and that do not demolish or take away commercial or industrial development (i.e., job centers) may provide even better mixed-use density to help reduce VMT. **What analysis did the City perform to evaluate alternative sites within the IBC and surrounding the IBC that could reduce VMT?** O7-254 cont'd.

2. The DEIR states that "development projects may include outdoor private recreational areas within the" 500-foot buffer distance recommended by CARB for the siting of sensitive land uses, so people would be exposed to "elevated levels of toxic air contaminants," and concludes that this is a potentially significant impact. Mitigation measures that reduce impacts are required where feasible. The DEIR should require adherence to the CARB buffer. There is no reason not to prohibit future residential from development within that buffer. O7-255

B. Biological Resources

1. Table 7-1 summarizes the basis for selection and summary of alternatives analysis for each alternative except the No-Project/No Development Alternative as "Does not avoid significant environmental impacts". We do not agree and believe that there are variants associated with the creek trail and associated development buffers that could easily be considered to mitigate potentially significant effects on biological resources and hydrology/water quality. **Please provide a meaningful and reasonable analysis of alternatives that focus on addressing potential significant impacts associated with the creek trail and flooding in the vicinity.** O7-256

2. Biological Resources are not discussed specifically under any of the five alternatives. However, hydrology and water quality are discussed, which implies a disconnect because potential hydrological and water quality effects are also highly likely to affect biological resources along San Diego Creek and the adjacent marsh. It is not clear whether this was a simple oversight because Biological Resources were originally excluded, but this analysis of alternatives is incomplete. Despite the lack of alternatives analysis for biological resources in the text, Table 7-3 presents biological resources and indicates, without any discussion, that all alternatives would have similar effects. This conclusion is unsupported and not addressed in this Section. **Please add a biological resources section to each alternative and fully describe potential impacts similar to the manner used for other impacts, or explain the rationale for its exclusion.** O7-257

C. Hazards and Hazardous Materials

1. As shown above, the DEIR's analysis of hazards likely to result from the Project is insufficient, thus the extrapolated analysis for this alternative is also insufficient. The DEIR indicates that there are no available alternate sites that could accommodate the proposed Project. However, this conclusion is based on flawed logic and reasoning because the DEIR fails to include a discussion regarding the potential impact of existing hazards that may impact the Project. Without considering these hazards, the DEIR inappropriately concludes that there is no alternate site that could reduce environmental impacts. The City needs to complete a more thorough analysis of hazards and evaluate potential alternate sites in order to reach a conclusion regarding alternate sites as it pertains to hazard impacts. **Please provide an analysis to evaluate potential alternate Project sites in the vicinity of the IBC and for alternate sites within the IBC. Such alternatives should include a project alternative addressing buffers around industrial businesses using or producing hazardous materials.** O7-258

D. Hydrology and Water Quality

1. CEQA requires that alternative sites capable of avoiding or substantially lessening any significant effects of a project be considered. The City states that "… it is unlikely that any alternative site would have lesser impacts on air quality, population and housing, land use/planning, traffic, and utilities service systems, and global climate change." **Please provide a map of all alternative sites considered as part of this analysis. If no specific alternatives sites were considered please explain how it was concluded that "it is unlikely that any alternatives sites would have lesser impacts".** O7-259

2. Similarly, for those maps illustrating the location of all alternative sites that were considered, as well as for the preferred location, **please illustrate the location of all stream channels / drainages. Indicate the extent and magnitude of flooding during the 100-year design discharge for all channels assuming existing conditions (i.e., prior to construction of proposed stream channel improvements, detention basins, etc.).** O7-260

3. The eastern edge of the proposed Project abuts, and is upstream of, the San Joaquin Marsh which is a preserved natural area and the only remaining portion of a once extensive marsh that previously covered a good portion of Irvine flatlands. **Please describe / evaluate if similarly critical wetlands are associated with (i.e., abutting and/or downstream from) all other alternative sites considered. Please provide map of all wetlands.** O7-261

XIV. The Vision Plan DEIR Improperly Excludes Certain Thresholds Of Significance From Evaluation

A. Air Quality

1. This Section excludes the SCAQMD's toxic air contaminant ("TAC") significance thresholds (*http://www.aqmd. gov/ceqa/handbook/signthres.pdf*). The DEIR contains other SCAQMD significance thresholds but has excluded the threshold for incremental cancer risk and its associated hazard index, which is included in the SCAQMD's significance thresholds reference cited in the DEIR as "SCAQMD 2007". This is particularly relevant since there are sources of TAC emissions, such as freeways and existing businesses, that have the potential to impact sensitive receptors newly entitled in an area that may have previously held only commercial receptors. **Please explain why this significance threshold was excluded from the DEIR. What would be the significance determination for the Project's impacts for this threshold?** O7-262

2. Table 5.2-5 shows the results of the DEIR's SCAQMD LST screening level analysis. The note accompanying the Table indicates that the values for a 5-acre site with receptors located within 82 feet or 25 meters from the source was used. However, descriptions in this Section indicate that the construction sites (i.e. Project development areas) are greater than 5 acres for any potential single construction site. The DEIR also appears to analyze the total construction in comparison to the mass-rate LSTs, and the total construction area is more than 52 acres. The SCAQMD guidance specifically indicates that:

> "The staff proposal recommends using the LST mass rate look-up tables only for projects that are less than or equal to five acres. It should be noted that lead agencies are not precluded from performing project specific modeling if they prefer more precise results. It is recommended that lead agencies perform project-specific air quality modeling for larger projects." (ref pg 1-1; SCAQMD, June 2003, revised July 2008, *http://www.aqmd.gov/ceqa/handbook/LST/Method_final.pdf*). O7-263

The DEIR fails to follow this specific SCAQMD guidance for the use of its tables. Furthermore, there is no supporting information to show that the closest receptor is in fact 25 meters away from the Project site. **Why was the mass-rate look up table used when the SCAQMD guidance recommends that project-specific modeling should be used? What would be the result of the analysis if air dispersion modeling was conducted instead? What would the difference in findings be if the receptor were closer than 25 meters to the construction or operational sources? Please provide a more appropriate analysis methodology to evaluate the criteria pollutant air quality concentration impacts to compare against the SCAQMD significance thresholds.**

B. Hazards and Hazardous Materials

1. The DEIR includes a discussion of leaking underground fuel tanks, but does not discuss standards for active (non-leaking) underground tanks pursuant to 23 CCR Division 3 Chapter 16 or aboveground tanks pursuant to the California Aboveground Petroleum Storage Act and federal Spill Prevention Control and Countermeasure (SPCC) Plan standards, even though such tanks may be present or installed within the Project area. Similarly, there is no discussion of the federal Hazardous Material Transport Act, though the Project would presumably involve transport of hazardous materials, particularly during construction activities. As another example, there is no reference to municipal codes for septic systems and/or wastewater discharges to the sanitary sewer, nor are there references to federal Safe Drinking Water Act regulations, despite the fact that sewage disposal and drinking water systems could be relevant to this DEIR. **What criteria did the City use to determine which rules and regulations would be addressed in this Section? Please address all other regulations, beyond those discussed in this Section, that impact the proposed demolition, construction, and/or redevelopment activities in the Project area.** O7-264

C. Global Climate Change

1. The DEIR currently concludes that all climate change impacts from the Project are less than significant. While the current developing state of GHG/climate change thresholds leaves it open to interpretation as to what is significant, alternative interpretations could suggest that the Project's impact in this regard is significant.

Potential interpretations include:

- SCAQMD proposed draft CEQA Thresholds – A project is considered significant if its GHG emissions are more than 10,000 metric tonnes including construction and transportation activities (as an initial proposal for residential developments).
- CARB preliminary draft guidelines – A project is considered significant if its GHG emissions are more than 7,000 metric tonnes excluding construction and transportation activities (for residential developments). O7-265
- Federal Reporting Threshold – A project is considered significant if its GHG emissions are more than 20,000 metric tonnes (for industrial developments).
- California Air Pollution Control Officers Association ("CAPCOA") – CAPCOA's White Paper outlines multiple approaches to determining the significance of a project:

    a. No GHG thresholds – Each project is evaluated on a case-by-case basis.

b. GHG threshold of zero – The project is considered significant if it results in any GHG emissions above existing conditions.

c. Non-zero GHG thresholds -– The project is considered significant if the GHG emissions exceed a given threshold. Various thresholds are considered in the White Paper.

- Office of Planning and Research ("OPR") – A project's direct, indirect, and cumulative impacts on climate change should be considered in determining the significance of its GHG emissions.

- SCAQMD proposed draft CEQA Thresholds – A project's significance could be determined based on a VMT per household limit or other efficiency standard. The project could be required to implement all GHG reduction measures based on a standardized checklist.

- A project may be significant if it does not show compliance with AB 32 and/or EO-03-05.

O7-265 cont'd.

Why aren't these other potential significance thresholds addressed in the DEIR?

XV. <u>The Vision Plan DEIR Relies On Stale and Outdated Data</u>

A. <u>Population and Housing</u>

1. Orange County population projections used in the DEIR are those reflected in Orange County Projections (OCP-2006) prepared by the Orange County Council of Governments ("OCCOG"). The specific data for the City that are contained in OCP-2006 are those as of February, 2004. Because City Planning areas 3, 6, 9 and portions of 5 and 8 were not annexed to the City until July 14, 2004, the OCP-2006 projections for Irvine are incorrect. **Please update the various DEIR analyses that rely on outdated OCPs and use current data for the City.**

O7-266

2. Although OCP-2006 data were used in the DEIR for purposes of analyzing population, housing and employment growth, OCP-2004 data were used for the DEIR's traffic analysis and therefore also for noise and air quality analyses, both of which incorporate traffic data. **Please use updated projections for the purpose of analyzing the Project's traffic impacts.**

O7-267

B. Vision Plan and Overlay Code

1. The DEIR appears to be based on previous drafts of the Vision Plan, Overlay Code, and Design Criteria. The clearest example of this is the DEIR's reliance on the land use compatibility/industrial adjacency analysis ("IAA") that was included in older drafts of the Overlay Code as a mitigation measure for many impacts. The version of the Vision Plan, Overlay Code, and Design Criteria included in the appendices strike out the previous provisions for the IAA process, and no other provisions are put in their place. Thus, the conclusions of the impact analyses that rely on this compatibility analysis are no longer valid. Additionally, the pending project descriptions, e.g., two parts to the Barranca/Millikan project, projecting that the Alton/Millikan Apartments would begin construction in the first quarter of 2009, are outdated. **Please update the DEIR with current information.** O7-268

C. Traffic and Circulation

1. The DEIR includes the "*i*" Shuttle in its discussion of Project compliance with policies for alternative transportation, but this is another example of where the DEIR uses outdated project descriptions and another example of Irvine's premature segmentation of the project described above. The DEIR relies on the shuttle's *three* routes, but the midday circulator route has since been removed due to lack of ridership. **Please use current information regarding the "*i*" Shuttle.** O7-269

XVI. The Vision Plan Contains Numerous Technical Inaccuracies, Misstatements, and Omissions

A. Project Description and Existing Conditions

1. The "Project Background" states that "[t]he General Plan and Zoning designations for the IBC generally encourage… mixed-use development, including residential uses, south of Barranca Parkway." This is not true; the General Plan and Zoning designations allow for "multi-use," which is distinct from "mixed-use" south of Barranca Parkway. Residential uses are only allowed upon receipt of a conditional use permit. If residential uses were presently encouraged – or even allowed – under the existing regulatory framework, there would be little need for this Project. **Please address this deficiency.** O7-270

2. The reference to 1988 approvals is misleading, a violation of CEQA's mandate to inform the public. The discussion relating to these approvals describes the GPA (7234-GA), ZC (88-ZC-0135) and Program EIR approved in 1992. **Please correct the references to be to 1992 to accurately reflect the date of approval.** O7-271

B. Global Climate Change

1. The statement that the United States is excluded from the countries that have signed the Kyoto protocol is incorrect. The United States is a signatory of the Kyoto Protocol, but is non-binding since the United States has not ratified the Kyoto Protocol. O7-272

2. The chemical formula for sulfur hexafluoride is incorrect. It should be SF_6. O7-273

3. The reference to "USEPA 2007" is not listed in the Bibliography and it is therefore not clear what exactly this refers to. **Please provide the complete reference for this document**. O7-274

4. The DEIR incorrectly states that "AB 32 follows the emissions reduction targets established in Executive Order S-3-05, signed on June 1, 2005, which requires the state's global warming emissions to be reduced to 1990 levels by the year 2020 and by 80 percent of 1990 levels by year 2050." AB 32 addresses only the first part of Executive Order S-3-05 requiring a reduction in GHG emissions to 1990 levels by the year 2020. O7-275

5. The DEIR's review of federal regulations does not mention the new proposed mandatory GHG reporting requirements that are currently under review by the United States Environmental Protection Agency ("USEPA"). O7-276

6. The DEIR mischaracterizes Executive Order S-01-07, which does not "call for" the GHG reductions listed in the bullets on page 5.15-8 of the DEIR. These bullets are the goals of Executive Order S-3-05. Executive Order S-01-07 relates to recommendations to establish certain measures and standards to reduce GHG in 2020. O7-277

7. Riverside County is listed twice and Imperial County is missing in the list of counties in SCAG. O7-278

8. The DEIR does not discuss Executive Order S-03-05, which mandates that California emit 80% fewer GHG in 2050 than it emitted in 1990. **Please include a discussion of the Project in the context of the Governor's 2050 goal.** O7-279

9. The DEIR does not state that implementation of California's Clean Car law (the Pavley GHG standards) requires obtaining a waiver from USEPA. Pavley standards cannot be implemented until the USEPA issues such a waiver. **Please update the DEIR to include a discussion regarding the required USEPA waiver.** O7-280

10. The DEIR contains numerous uncertainties and apparent errors in its evaluation of the GHG emissions inventory. Without a more appropriate climate change analysis, it is not possible to make a significance determination. **Please update the DEIR and** O7-281

re-evaluate the Project for its significance with respect to GHG. Please publish what additional mitigation measures will be included. O7-281 cont'd.

11. The DEIR contains numerous uncertainties and likely errors in its evaluation of the GHG emissions inventory. Without a more appropriate climate change analysis, it is not possible to make a significance determination. **Please update the DEIR and re-evaluate the Project for significance.** O7-282

12. The DEIR should also consider significance against the previously suggested significance thresholds. **Please clarify what the Project's significance determination would be in comparison to the other significance thresholds that have been considered by various regulatory agencies (include as cited above).** O7-283

13. The DEIR climate change evaluation is flawed, and thus the extension of the analysis to the alternatives is flawed. **Please update the alternatives analysis when the climate change evaluation is updated.** O7-284

14. The DEIR incorrectly suggests that regional GHG emissions increase if the Project does not increase residential housing in the IBC. This no project alternative assumes that there is less residential development, and therefore there is less population growth. Typically, the lower the population growth, the lower the increase in GHG emissions will be for comparable projects. Therefore, based on the DEIR's current analyses, it is likely that this no project alternative would result in lower GHG emissions than the Project and that this no project alternative is environmentally superior with respect to climate change. Further, a per capita emissions comparison can only be made when the climate change analysis is updated. **Please update the DEIR to reflect these facts.** O7-285

15. The DEIR climate change evaluation is flawed, and thus the extension of the analysis to the alternatives is flawed. **Please update the alternatives analysis when the climate change evaluation is updated.** O7-286

16. Similar to the no project alternative, the DEIR incorrectly suggests that regional GHG emissions increase due to the reduced number of homes built under this alternative. The fewer homes built translate to less population growth, and therefore a lower increase in GHG emissions compared to the Project. Therefore, based on the DEIR's current analyses, the correct statement should be that the reduced residential alternative results in lower GHG emissions than the Project and the reduced residential alternative is therefore environmentally superior to the Project with respect to climate change. A per capita emissions comparison can only be made when the climate change analysis is updated. **Please update the DEIR to reflect these facts.** O7-287

17. The DEIR climate change evaluation is flawed, and thus the extension of the analysis to the alternatives is flawed. **Please update the alternatives analysis when the climate change evaluation is updated.** O7-288

18. The increased residential development suggests that there will be greater population growth and thus total GHG emissions would increase compared to the Project. In this respect, the increased residential alternative is environmentally inferior to the Project. A per capita emissions comparison can only be made when the climate change analysis is updated. Although mixed use developments may help reduce VMT, the DEIR can draw a meaningful conclusion only if the climate change analysis is revised to properly evaluate the comparison to a BAU standard. **Please update the DEIR to reflect these facts.** O7-289

19. The DEIR climate change evaluation is flawed, and thus the extension of the analysis to the alternatives is flawed. **Please update the alternatives analysis when the climate change evaluation is updated.** O7-290

XVII. The Vision Plan DEIR Contains Inadequate and/or Inappropriate PPPs and PDFs

A. General Comments

1. PDFs set forth provisions of the proposed Vision Plan, Overlay Code, and/or Design Criteria that assist in the mitigation of impacts. Throughout the DEIR, provisions are quoted but there are no citations to where the provision can be found. Since the Project documents are long, and there have been many drafts, citations are necessary so that the public can determine whether the provision still exists and will be enforceable mitigation, justifying the impact conclusion. As discussed above, the DEIR relies on the IAA process of the Overlay Code, but it was stricken. There may be other similar instances, but it is burdensome on the public to go through and search out where the PDF is located in the Project documents. O7-291

B. Air Quality

1. There is no discussion of enforcement measures for PDFs in this section. **How does the City propose to enforce PDF 2-5 and ensure substantial impacts for diesel exhaust are mitigated?** O7-292

C. Land Use and Planning

1. The DEIR indicates that "[w]ith adherence to existing ordinances and regulations and to the PPPs and PDFs outlined in section 5.6, foreseeable upset and accident conditions involving the release of hazardous materials are reduced to less than significant levels with implementation of the proposed project." **Please explain how the PPPs and PDFs outlined in section 5.6 will alleviate an unforeseen release of a hazardous substance. How** O7-293

does PDF 6-2 reduce the significant impact of a hazardous material release? A disclosure does nothing to protect residents from harm for a hazardous chemical release. O7-293 cont'd.

D. Global Climate Change

1. The DEIR includes a reference to the City's existing Recycling and Reuse Ordinance, but it is not clear how this PPP is incorporated in the Project. It does not appear that the benefit of this Ordinance is included in the emissions inventory, nor is it clear how the Project will be required to comply. **What are the GHG emission reductions that would be associated with this Ordinance? How will the City ensure that these goals are met?** O7-294

2. The statement in PPP 15-2 that the 2008 Building and Energy Efficiency Standards (2008 Title 24) are 15% better than the 2005 Title 24 Standards is unsupported. The referenced improvement will vary by climate zone, building size, and building type. The DEIR should include a climate zone specific determination. Also note that the Title 24 standards pertain to building envelope (e.g. space heating, cooling, ventilation, water heating, etc.) but do not include overall energy usage (e.g. refrigerator, televisions, lamps, miscellaneous electronics, etc.). **Please analyze the energy savings above and beyond 2005 Title 24 building standards for the IBC climate zone and the specific building designs of this Project.** O7-295

3. The DEIR should include a revised PPP 15-2 to state that development plans for structures shall be required to demonstrate that a particular development project within the IBC meets the 2008 Title 24 standards and any future standards that may be in place when such project is being built. The DEIR includes a list of strategies that meet this standard, but the DEIR does not identify specific improvements in water heating such as solar thermal and tankless water heaters. It also appears that the DEIR mistakenly includes the use of compact fluorescent light bulbs, which are not covered under Title 24 building standards at this time. O7-296

4. PDF 15-1 requires that construction contractors provide alternative transportation mode incentives. The DEIR should also include measures to verify that this PDF is implemented. It is also not clear how, if at all, the DEIR quantifies the potential benefit of this PDF. **Please clarify what the impact on GHG emissions would be from this Project's design features.** O7-297

5. PDF 15-6 discusses SB 375. This statute is not a specific PDF, but a law that "provides emission reduction goals for which regions can plan, integrate disjointed planning activities, and provide incentives for local governments and developers to follow conscientiously-planned growth patterns." [15] It appears that this PDF would be more appropriately described as a PPP. O7-298

[15] http://gov.ca.gov/fact-sheet/10707/

6. The DEIR has not demonstrated that the implementation of the PPPs and PDFs will adequately meet CARB's Scoping Plan. Thus the DEIR has inappropriately concluded that the Project is less than significant. O7-299

E. Hazards and Hazardous Materials

1. All PPPs are only construction-oriented. There are none for operational impacts. **Please provide operational PPPs.** O7-300

2. PDF 6-4 is an important example of where the DEIR relies on the Overlay Code's provision for an IAA. Hazardous materials impacts are not mitigated by a compatibility analysis that no longer exists as part of the Project. **Please provide an appropriate compatibility analysis.** O7-301

XVIII. Miscellaneous Comments

A. Project Description and Existing Conditions

1. The DEIR states that this is a Program EIR, which it appropriately describes as a general discussion under CEQA to allow the agency to "consider broad policy alternatives and program-wide mitigation measures." However, the DEIR then says that, "if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required." As discussed above, this programmatic EIR is not appropriate to be used for later project-specific approvals without further environmental review due to the possibility of land use compatibility impacts that can only be fully analyzed by a site-specific investigation into the operations of the surrounding existing businesses. Such an investigation includes air emissions from industrial businesses, noise emissions from the business operations, including trucking activities, nighttime lighting impacts from the business on the proposed residential operations, etc. O7-302

2. Section 3.3.3 is entitled "Subsequent Development Pursuant to the Proposed Project" and includes 30 pages of specific descriptions of these "pending" projects. It is unclear whether this level of detail is intended to: (a) incorporate the pending projects as part of the "Project" being studied by the DEIR, such that no further environmental review for each of the nine pending projects would be required, or (b) whether these pending projects are identified for informational purposes only. If the nine pending projects encompassing the 2,522 additional residential dwelling units and the 65 density bonus residential dwelling units are included for project-level environmental review under CEQA, that would be entirely inappropriate for this DEIR, as it is a program-level environmental review intended to analyze the Vision Plan and Overlay Code, and as such does not analyze the specific location and characteristics of each pending project (i.e. their compatibility with surrounding businesses); therefore, it cannot serve O7-303

as a project-level EIR or the basis for approval of the pending projects. **Please explain whether the DEIR serves as a project-level EIR for each of the nine pending projects. Do the nine pending Projects include the 2,522 additional residential dwelling units and the 65 density bonus residential dwelling units? If the DEIR is a project-level EIR for the nine pending projects such that no further CEQA environmental review will be required by the City, please explain why the individual impacts of the nine pending projects are not discussed in each section of the DEIR. Because the individual impacts of the nine pending projects are not individually discussed within each section of the DEIR, why doesn't the DEIR need to be revised to discuss the individual impacts of each of the nine pending projects and the revised DEIR should be recirculated? If the nine pending projects are for informational purposes only, please explain why the City does not identify for each of the nine pending projects that CEQA environmental review will be required for each under the "Project Components" section for each of the nine pending projects. If it is the intent of the City to have the DEIR serve as the environmental review of the nine pending Projects, the City should list and discuss the CEQA environmental review that the City will undertake in the "Project Components" section of Section 3.3.3 for each of the nine pending projects.** O7-303 cont'd.

3. The descriptions of the pending projects do not discuss their compliance with the Vision Plan Overlay Code and Design Criteria. They do not appear to be consistent with many aspects of the Project. **Is compliance required for these pending projects? If the pending projects are part of the Project being analyzed and approved by this EIR, then the EIR needs to discuss the inconsistency between the pending projects and the Vision Plan Overlay Code and Design Criteria.** O7-304

4. The project description describes 3 IBC districts: multi-use, urban neighborhood, and business complex. The multi-use and business complex "districts" are already developed. The real target of the "project" is the urban neighborhood district, which the DEIR describes as the "mixed-use core" of the IBC, "envisioned to be primarily residential with retail, offices, and restaurants allowed on the first floor." This district encompasses *half* of the IBC, which does not in any way constitute a "core." Moreover, if future new development in this area is "primarily residential," with other uses only allowed on the first floor… if they will occur at all, is not "mixed use." The job base of Irvine – and the County – will be dramatically impacted by this proposed zoning. Further, it will be difficult to create a "live-work" environment if the jobs are located outside of this district. Consequently, there will not be the kind of trip reduction expected in justification of the traffic analysis. O7-305

B. <u>Aesthetics</u>

1. The existing setting needs to discuss current building heights in the IBC. Recent residential projects have increased building heights, but the majority of IBC development is 1-2 story. With the Project, high-rise buildings will be the dominant visual character of the IBC. O7-306

2. The DEIR concludes that the Creekwalk enhances the aesthetic value of the San Diego Creek area, however, that is a subjective opinion that prefers development. The paving of the east side of the Creek a degradation of the aesthetics of the Creek, especially when viewed by persons already using the existing pathway on the west side of the Creek. Paving of both sides of the Creek degrades the natural aesthetic. **Please address this concern.** O7-307

3. The DEIR discussed "highly reflective" building materials but never provides a definition for this term. **Please Define "highly reflective".** O7-308

C. Air Quality

1. The air quality impacts analysis is dependent upon the traffic assumptions. The DEIR does not explain the traffic assumptions, but it appears that possibly as much as a 30% reduction in trips is assumed based on the theory that mixed uses increase pedestrian activity and result in trip capture. **First, the DEIR must explain what traffic assumptions were used. Second, if the assumptions used are not supported by substantial evidence, and a greater level of traffic should be expected than analyzed, then more significant air quality impacts can also be expected.** O7-309

2. The basic assumption that, "because the proposed project would accommodate a mix of office, retail, and residential uses within walking distance," vehicle miles traveled would be reduced is not supported by substantial evidence. Further, there is no discussion of by how much the mixed-use scenario would reduce VMT. Finally, there is nothing in the Vision Plan Overlay Code that actually directs the kind of spatial relationship of a mix of uses that is necessary to support walking and reduced VMT. **Please address these deficiencies.** O7-310

3. The DEIR concludes that "[b]ecause proposed office, commercial, hotel, and residential land uses typically do not generate substantial odors, no significant impacts would occur. Impacts would be less than significant." However, no support for this assertion is provided. Additionally, it does not appear from this statement that odors from industrial facilities were considered. Industrial facilities exist throughout the IBC. **Please include a discussion of odors from industrial facilities in the IBC.** O7-311

D. Biological Resources

1. Paving of the east side of the Creek is unnecessary. There is more than enough capacity on the existing pathway on the west side of the Creek and the paving is in excellent condition. There is no reason to introduce more people to the west side of the Creek and cause biological impacts if the existing pathway provides ample recreational opportunities. **Please provide a discussion and address this concern.** O7-312

2. The San Diego Creek and San Joaquin Marsh are described as "adjoining areas," as opposed to "on-site." Although the DEIR primarily assesses changes in land use in the IBC, part of the Project is the Creekwalk, which borders on/is adjacent to the IBC. Since this is part of the Project being reviewed, the San Diego Creek should be considered "on-site." O7-313

3. The DEIR states that "botanical surveys would need to be carried out as part of the project-level environmental review for the trail," and that "further study of the biological issues and the design alternatives for the proposed trail would be required." Is there going to be further environmental review of the Creekwalk? If not, then such studies cannot be deferred. O7-314

E. Hazards and Hazardous Materials

1. There is NO industrial adjacency analysis or assessment of the compatibility of residential land uses with existing industrial land uses provided in the DEIR. O7-315

2. The DEIR cites the City's Emergency Services Ordinance but notes that the "Emergency Response Plan does not address day-to-day emergencies or design of development projects, or land use planning efforts such as general plan amendments and zone changes." Since such issues are presented by the Project, it is insufficient to rely on the ERP for mitigation. O7-316

3. The DEIR states that "the language for this disclosure shall be as specified by the Community Development Director." The DEIR should include at least a general list of what those "issues" are in order for the public to determine whether this disclosure is a sufficient mitigation measure. **Provide the language for the "disclosure to residents clearly outlining the issues associated with living in a mixed-use environment."** O7-317

F. Land Use and Planning

1. The Land Use and Planning section of the DEIR is unclear as to whether design criteria compliance will be required. **Is compliance with the Design Criteria going to be required? If not, are impact conclusions supported?** O7-318

2. The DEIR concludes that the Project would not divide an established community, but it does by virtue of the fact that the whole IBC is currently one community of primarily office, commercial, and industrial uses, but the Project seeks to generally divide the IBC in half, reserving the western half for the existing business community, and converting the eastern half into a primarily residential community. Additionally, the Project leaves Allergan floating on its own little island in the midst of the otherwise Urban Neighborhood community. O7-319

3. The Zoning Ordinance consistency analysis states that the Overlay Code would "outline criteria for evaluating compatibility of residential development with adjacent businesses," but that provision has been deleted from the Overlay Code. Thus, the consistency conclusion is unsupported. O7-320

4. The General Plan consistency analysis finds that the Project is consistent with Objective A-2, Policy (a), which provides that it is the City's policy to "[r]etain and attract manufacturing and industrial uses within designated business centers." The DEIR states that the creation of the three districts, reserving manufacturing and industrial uses to the Business Complex District, achieves this goal. However, this goal can only be achieved in respect to those businesses existing within the boundaries of this District. The Vision Plan is inconsistent with the General Plan insofar as it encourages the replacement of existing manufacturing and industrial uses in the rest of the IBC, i.e. Allergan. O7-321

5. Objective A-6, Policy (a) of the General Plan provides that, when locating sensitive receptors, it is the City's policy to ensure that the health, safety, and welfare of sensitive receptors when locating them in close proximity to certain types of operations typical of industrial and manufacturing uses, and to ensure that the sensitive receptors will not have an impact on the continued operation and/or expansion of the existing residential uses. Objective A-6, Policy (b) also says that the project proponent of the sensitive land use is responsible for promoting the safety of the occupants at the site. Policies (c), (i), and (h) reflect similar concerns. The DEIR concludes that the Project is consistent with these policies because the risk will be disclosed to residents, and there is a shelter in place/evacuation plan. These Project elements are insufficient to constitute consistency with these General Plan policies. O7-322

6. General Plan Objective A-6, Policy (h) provides that residential development should be located where adequate supporting uses can be provided. See discussion above regarding failure to achieve Project objectives locating residential near supporting uses. O7-323

7. The Project is inconsistent with General Plan policies in multiple other respects, including: F-1, noise (see noise issues); G-1, schools and libraries (see public services issues); J-1, hazard occurrence (see airport issues); K-1, parks and recreation (see parks and rec issues). O7-324

8. The SCAG 2008 RTP Goals and Compass Blueprint 2% Strategy Area Principles consistency analyses are based on assumptions of trip reduction from mixed-use development that is not supported by any evidence or analysis in the DEIR. O7-325

9. The cumulative impacts analysis also relies on a land use compatibility analysis, but that process has been stricken from the Overlay Code. O7-326

10. LU-1 provides that there is significant adverse environmental impact when land use changes "[p]hysically divide an established community." The DEIR goes on to find in Impact 5.8-1 that the Project would not divide an established community. How can this be when the Project divides the existing commercial/industrial community and effectively make Allergan's campus in industrial island amongst potential residential land uses? Impact 5.8-1 is unsupported by the facts. **Please provide additional explanation of the finding in Impact 5.8-1.** O7-327

Furthermore, the DEIR indicates that a goal of the Project is to protect existing businesses. **Please explain how Allergan is protected by the Project given that residential uses are permitted directly adjacent to Allergan's campus?** O7-328

G. Noise

1. The DEIR states that: "Commercial deliveries or pickups for commercial properties that share a property line with any residential property are required to limit the hours of delivery/pick-up service to the hours of 7:00 a.m. through 10:00 p.m. daily." (DEIR, § 5.9, p. 7.) As a result, existing businesses will be impacted because they will have to reduce their hours of trucking operations once a residential project is built next door. The DEIR does not address this impact. O7-329

2. The noise impact analysis of future conditions with the Project will be flawed if the traffic assumptions upon which the potential number of trips generated are incorrect. For example, if the DEIR uses a high trip capture/reduction rate based on the premise that the mix of uses will reduce trips, and that premise is not supported by evidence, such that there may be significantly greater trips in the future, the noise levels can be expected to be significantly higher. O7-330

3. While noise modeling may account for vehicle noise, there should be actual measurements of ambient noise levels in the IBC in order to determine the true level of noise when all contributing sources – traffic, aircraft, business operations, and construction – are combined. **Please provide this analysis.** O7-331

4. The DEIR concludes that exterior noise levels may exceed the City's 65 dBA CNEL compatibility criteria. The only mitigation proposed for this are occupancy disclosure notices. Thus, the DEIR concludes exterior noise levels have a significant and unavoidable impact on outdoor residential uses (balconies, recreational amenities). Rather than conclude this impact is unavoidable, the DEIR should analyze specifically which parts of the IBC exceed the noise criteria. If residential can be built in the IBC in areas where the noise levels would not exceed the noise criteria, residential should be limited to those areas to avoid the significant impact. O7-332

H. Population and Housing

1. The DEIR analyzes the jobs/housing balance using the IBC as the geographic scope/boundary. This is inappropriate, as most of the rest of Irvine is residential, and the IBC and Spectrum are the source of jobs for Irvine and most of the County. The jobs/housing balance should be addressed on a region-wide scale per SCAG. O7-333

2. The DEIR states that its "2010 and 2015 projections may be overstated due to the current economic downturn." However, there is inadequate discussion given that the OCP-2004/2006 projections were based on the City of Irvine's General Plan prior to February 2004. As of that time, the General Plan was capped at 6,369 dwelling units. The DEIR states that approved and pending projects are anticipated to be built out by 2013, which would provide 12,033 units at that time. **Please provide this analysis.** O7-334

3. The DEIR uses a population generation factor of 1.3 residents per unit for the IBC. This is based on Federal Census data from 2000. This factor was adopted by the City for use in determining parks impacts under the Quimby Act. It does not accurately describe occupation for the IBC, as demonstrated by the City's own surveys, which found that actual population was closer to 1.86 residents per unit. Thus, the DEIR underestimates population generation by the Project, which also results in the underestimation of all the impact sections that rely on it, i.e. parks/recreation, public services, and utilities. **Please address this deficiency.** O7-335

I. Traffic and Circulation

1. The DEIR explains that Irvine's performance criteria for the IBC is Level of Service ("LOS") E, and an impact will occur if the volume-to-capacity (v/c) ratio of a roadway segment or intersection increases by 0.02. The thresholds of significance for traffic impacts state that the project would have a significant impact if it could: (T-1) substantially increase congestion in relation to the traffic load and the capacity of the street system (i.e. the number of vehicle trips or v/c ratio); or (T-2) exceed the LOS standard. The DEIR however, appears to find a significant impact if the Project impacts not only significantly increase the v/c ratio but *also* exceed LOS E, or not only significantly increase the number of vehicle trips on the road but *also* exceed LOS E. This is inappropriate, as it combines two independent thresholds of significance. This method avoids finding an impact under T-1 alone, where the v/c ratio or number of vehicle trips are significantly increased, and consequently avoids mitigating for those impacts except where the LOS E is also exceeded. This violates CEQA. **Please address this deficiency.** O7-336

2. The DEIR concludes that "the project would not increase hazards due to a design feature or incompatible uses" (T-5), but the impact analysis only mentions design hazards and does not analyze incompatible uses. The DEIR must address hazards created by increasing residential traffic on roadways used by heavy industrial vehicles, sometimes carrying hazardous materials. **Please address this deficiency.** O7-337

3. It is essential for the DEIR to explain what assumptions it relies upon in calculating project impacts. Does the DEIR reduce the level of traffic projected because it anticipates that that *i*Shuttle will remove vehicles from the road? Experience has demonstrated over the past year that the *i*Shuttle has not removed any vehicles from the road. Virtually the only riders are those commuters who were formerly using the OCTA buses on the routes replaced by the *i*Shuttle. One of the City's given reasons for abandoning the *i*Shuttle program was a virtual complete absence of ridership. ***Additionally*, does the DEIR assume trip capture or trip reduction based on the mix of uses proposed by the Project? If so, what percentage is assumed? Is there substantial evidence supporting that percentage?** O7-338

4. Please explain what is meant by the language: "Project impacts under existing scenarios are not included as impacts under these scenarios are theoretical and will not be mitigated. Recommended improvements for existing scenarios are presented for future planning purposes only." **What is theoretical? Which improvements identified are for planning purposes and are not required mitigation?** This affects the conclusions regarding impacts remaining after mitigation. O7-339

5. **The DEIR states that the Project is not responsible for mitigation of cumulative deficiencies? Why not?** The Project must mitigate for its contribution to cumulative impacts. O7-340

6. The DEIR provides that the Project is responsible for it's fair share of the cost of improvements for impacted circulation to the cities of Costa Mesa, Santa Ana, and Tustin, but it does not make such a statement re fair share payment to impacted Newport Beach circulation. O7-341

J. Significant Unavoidable Adverse Impacts

1. Many impacts could be avoided if the Project were modified or additional mitigation measures were imposed in accordance with the comments outlined above. **Please discuss why these modifications or mitigation measures were not discussed or provided.** O7-342

K. Project Alternatives

1. **What was the purpose for the "Increased Residential" alternatives of 20,000 and 25,000 dwelling units?** Alternatives must to be analyzed where they have a potential to avoid or substantially lessen the significant impacts of the project. These do not satisfy the requirement of CEQA. O7-343

2. The Reduced Neighborhood alternative would also reduce the land use compatibility issues with siting residential near Allergan. O7-344

3. **How are VMT and air quality impacts *reduced* for the two Increased Residential alternatives if the average daily trips generated are *increased*?** O7-345

4. **Why would there be more average daily trips in the Reduced Urban Neighborhood Alternative than the proposed Project if the number of dwelling units and non-residential square footage is the same in both scenarios? Additionally, if the DEIR is assuming that denser residential population decreases VMT, then wouldn't that apply to this alternative, since the dwelling units would be more concentrated?** O7-346

5. In assessing air quality impacts of the alternatives, the DEIR states that "mixed-use development can reduce average trip lengths and vehicle miles traveled by approximately 30 percent." **Is this 30% assumption used in the Project's traffic analysis and throughout the DEIR? If not 30%, then what percentage? What is the evidence supporting the percentage of VMT reduction assumed by the DEIR?** The 30% the article cited (Urban Land Institute, 2008), was the maximum, which can only be achieved in places like Manhattan, NY, and San Francisco, CA, where a true mix of uses has been fully developed overtime and people conduct all their daily activities within a small geographic area. **Please address this deficiency.** O7-347

6. Table 7-3 compares the impacts of the Project, No Project, and four development alternatives. The Reduced Urban Neighborhood Alternative has no greater impacts than the proposed Project, but reduced impacts compared to the Project in land use/planning and hazards/hazardous materials. The DEIR, however, concludes that the Project has less than significant impacts in those two areas, anyway, so it chose the Reduced Residential (12,033 du) alternative as the "environmentally superior alternative." This conclusion may be changed in favor of the Reduced Urban Neighborhood alternative in light of the DEIR's inadequacy in analyzing and mitigating impacts to land use/planning and hazards/hazardous materials. The Reduced Urban Neighborhood alternative would mitigate incompatibility between residential uses and Allergan. **Please provide this analysis.** O7-348

XIX. <u>Vision Plan DEIR Fails to Remedy the Problems with the 1992 IBC Rezone EIR</u>

As we have commented, the DEIR is also fundamentally flawed because it is based on stale information and unfounded assumptions drawn from the 1992 IBC Rezone EIR ("1992 EIR"). These flaws are not corrected or adequately addressed by this DEIR. The DEIR simply adds another layer of unsubstantiated conclusions which exacerbates the defects emanating from the 1992 EIR. **The DEIR must be revised to correct these deficiencies.** O7-349

A. <u>The 1992 IBC EIR's TDR Program</u>

1. The description of Irvine's Transfer of Development Rights ("TDR") program contained in Section 3.3.1 of the DEIR does not cure the problems with the TDR O7-350

program since its creation in the 1992 EIR. (DEIR, § 3, p. 9). As the Orange County Superior Court agreed,[16] the TDR program specifically prohibited further residential uses and constrained the application of the trip entitlement program to conversions between non-residential uses. Although the City's Zoning Code allows non-residential uses to be converted to residential uses, this was not supported by the 1992 EIR, and the DEIR does nothing to cure that defect. Instead of fixing the problem by analyzing trip conversions between residential and non-residential uses, the DEIR merely *renames* the entitlement program's intensity units from "trips" to "intensity values." The renaming is purely semantics and does nothing to change the nature of the intensity entitlements, which were based on trips.

O7-350 cont'd.

2. When the 1992 IBC EIR created the TDR program, it analyzed the IBC's circulation infrastructure capacity, determined what traffic improvements could be made, and from that came up with the maximum intensity build-out scenario that could be supported. The 1992 EIR analyzed land use and trip generation rates, then "allocate[d] a maximum number of trips to each parcel/site in the IBC planning area. A direct relationship exists between the trip generation of a parcel and the trip budget allocation." (1992 IBC EIR, § IV.A, p. 9.) Trips were assigned according to the intensity that could be supported by the circulation system in the particular area impacted by development on each site, as well as by the City's vision for where it wanted to see more or less intense development occur. Additionally, trips were allocated to existing, vested uses, and build-out land uses. The residential development that already existed or had been approved (vested) received an allocation based on their existing/approved uses. ***No*** allocation was made for any additional build-out residential land uses above the 3,896 dwelling unit cap created by the 1992 General Plan Amendment and Zone Change. (1992 EIR, § IV.A, p. 9, Table 3B.) The TDR system allowed the transfer of unused trips between ***non-residential*** parcels in order to allow for flexible zoning. The IBC Land Use Database was created to track the transfer of these trips. The total number of trips allocated created an overall "trip budget" for the IBC, and so long as trips were transferred within that budget, the impacts of the development intensity accounted for in the EIR would not change. (1992 EIR, § III, pp. 9-13; § IV.A.)

O7-351

B. <u>The Vision Plan's Revised TDR Program</u>

1. The Project includes a "reallocation of the existing intensity within current intensity limitations." Unfortunately, the DEIR does not adequately define the phrase "existing intensity." "Existing intensity" could mean a number of things such as intensity

O7-352

[16] Judge Sundvold, of the Orange County Superior Court, has previously ruled, in two separate cases, that Irvine failed to conduct proper CEQA review of the transformation of the IBC into a mixed-use residential community. (See Newport Beach/Tustin's Letter to Irvine, dated April 29, 2008 with attached Minute Orders from 2851 Alton and Martin Street cases.) Included within those rulings was a finding that the 1992 EIR did not address the application of the TDR program to residential uses.

potential or presently used intensity. Each of these different meanings would create very different environmental impacts and this difference is not studied anywhere in the DEIR.

In addition, the phrase "current intensity limitations" is also undefined by the DEIR. We believe that phrase refers to the IBC trip budget created by the 1992 EIR and as codified in the Zoning Ordinance and General Plan. The Project appears to completely change that intensity system. (DEIR, §1, p. 5; § 3, pp. 2, 9.) **Please clarify this ambiguity**.

O7-352 cont'd.

2. The DEIR's discussion of the revised intensity system is nominal, confusing and unclear to experts in the filed let alone its true intended audience, the public. The methodology for the intensity system is buried in an appendix. The DEIR's level of discussion is inadequate in light of the fact that it is the intensity budget that controls the maximum amount of development in the IBC and, consequently, results in impacts. The intensity budget needs to be front-and-center in the DEIR's project description in order to adequately inform the public. (DEIR, § 3, pp. 2, 9, 19; § 5, p. 42; Appendix F.)

O7-353

3. Section 3.3.2.6 of the DEIR describes a "program of optimizing land uses in the IBC." If this is the TDR program the DEIR should say so. As it stands, this section is also unclear and inadequately addresses traffic impacts. Moreover, Appendix F is the guts of the TDR program, and it is described as "Land Use Methodology." The DEIR's hide and seek game of terminology prevents informed decision-making or even simple understanding. (DEIR, § 3, p. 19, Appendix F.)

O7-354

4. The TDR Program set forth in § 3.3.2.6 is confusing and non-sensical. The DEIR states: The reallocation of land uses under this program would not change the development intensity assigned to each parcel per the 1992 IBC rezoning program, with the exception of parcels with unutilized zoning potential/approvals. Unutilized zoning potential/approvals for these parcels have been combined within each Traffic Analysis Zone (TAZ") to allow a larger amount of zoning potential to accommodate reuse of underutilized land uses to higher-intensity uses."

Our best guess at the interpretation of what this is saying is that parcels already built-out to their full potential intensity will not be affected by the Project and will retain development rights at their present intensity, but all other parcels will have their potential intensity per the 1992 IBC EIR allocation combined within each TAZ so that redevelopment of any parcel in that TAZ may use up to the maximum intensity available within the TAZ allocation. **If that is an accurate interpretation, please rephrase the EIR to state something to that effect. If it is not, then please explain what the DEIR and Appendix F are really trying to do.** As presently written, the DEIR and Appendix descriptions of the TDR program do not serve CEQA's purpose of informing the public.

O7-355

5. As discussed above, it is unclear from the DEIR section 1 on page 5 and section 3 on page 9 whether the Project's revised TDR program maintains the same total trip budget for the IBC as was established by the 1992 IBC EIR. **If it does, is that intensity limitation still appropriate?** Because greater intensity than projected by the 1992 EIR may have occurred or will occur due to application of TDRs to residential uses, because of the failure to complete some traffic improvements planned in 1992 EIR, and because of the City's grant of an exemption for accessory retail business uses from the TDR program, the DEIR's proposed intensity limitation is outdated, inappropriate and will have environmental impacts not studied or considered in the DEIR. Additionally, density bonus units apparently are not subject to intensity limitations, so the increase in residential beyond the cap set forth in the 1992 EIR also fails to account for the trips created by density bonus units. **Please clarify whether density bonus units are subject to intensity limitations. Please update and correct the data supporting the intensity limitation.** O7-356

6. Since DEIR is undertaking a comprehensive reanalysis of the existing IBC environmental setting and is planning for the future buildout of the IBC, now is a perfect opportunity for Irvine to reassess its total trip budget and the TAZ allocations. Doing so would allow Irvine to reduce intensity allocations to the areas that are causing the unmitigable significant traffic impacts, e.g. the Jamboree/Michelson intersection, thereby preventing Irvine from having to override significant traffic impacts. O7-357

7. Further, the City can use this opportunity, as it revises its TDR program into TAZ', to create situations that would allow for more or less intense uses that would facilitate the development of the mix of uses necessary to achieve the City's vision. For example, based on the size and location of a certain TAZ, it could be reallocated the right amount of intensity for a retail-restaurant project, while the adjacent TAZ could be reallocated the right amount of intensity for a high-rise residential project. O7-358

8. The pending residential projects include TDRs from sending sites in order to have enough intensity credits. (DEIR, § 3, pp. 21-52.) The Project requires that all TDRs be within the same TAZ. Inconsistent with this requirement, it appears that most of these projects obtain TDRs from locations outside the TAZ in which they lie. O7-359

9. The same sending site, Campus Center/The Plaza-Irvine, is used for at least 6 of the 9 pending residential project TDRs (the remaining 3 do not specify a sending site). (DEIR, § 3, pp. 21-52.) **Does Campus Center have sufficient remaining intensity for these TDRs? Does that account for the other approved projects that obtained TDRs from Campus Center/The Plaza-Irvine but have not yet been reflected in the IBC Land Use Database? These essential questions are not addressed by the DEIR in violation of CEQA.** O7-360

10. The IBC Land Use Database is not updated at the time of approval of each TDR but is updated at the time of issuance of the building permit, which could be several years after the TDR approval. (DEIR, § 5.13, p. 252.) In the lag time, it appears a sending site has more available intensity to transfer than it does, and this could result in over-entitlement. **The Zoning Code should be amended so that the Database is updated within two weeks of a TDR approval.** O7-361

XX. The Needed and Proposed Changes to the DEIR Require Recirculation

Due to the systemic and far-ranging deficiencies contained within the DEIR, the entire DEIR must be recirculated for further public comment and review. Irvine has already provided assurances to the ALUC that the Project would be modified to incorporate the ALUC's requested changes. Additionally, the Project and the DEIR will need to be modified to correct the deficiencies addressed by this comment letter as well as the other comment letters received by Irvine. Consequently, the revised DEIR will likely reveal further significant environmental impacts and contain "significant new information" requiring recirculation of the DEIR for further public comment and review under CEQA.

If the lead agency adds "significant new information" to an EIR subsequent to the commencement of public review, the agency must issue new notice and recirculate the revised EIR for additional public scrutiny. (Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.) During the recirculation period, the DEIR must be subjected to the same "critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.4th 99, 131; see also *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 131.) As indicated above, the DEIR requires "significant new information" in order to properly address the potential for significant environmental impacts posed by the Project. Consequently, Irvine must recirculate the DEIR in its entirety. O7-362

XXI. Conclusion

We look forward to Irvine's responses to our comments. As is apparent by the detail and breadth of our comments, we feel that substantial revisions and changes to the DEIR are necessary. Consequently, we hope that Irvine will revise and recirculate the DEIR in light the significant new information must be added to complete the proper environmental analysis. (Pub. Resources Code, § 21092.1; CEQA Guidelines 15088.5; *Laurel Heights Improvement Assn. v. Regents of the Univ. of California* (1993) 6 Cal.4th 1112 (Laurel Heights II).) O7-363

Thank you again for allowing us to submit our comments. Should you have any questions or concerns, please do not hesitate to contact our office at your earliest convenience.

Very truly yours,

Geoffrey K. Willis

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:3DPB1\401519750.4
Enclosures

cc: Philip Kohn, City Attorney for the City of Irvine
Jeffrey Melching, Assistant City Attorney for the City of Irvine

O7. Responses from Sheppard, Mullin, Richter, & Hampton dated May 14, 2009.

O7-1 Comment noted. No further response necessary.

O7-2 The DEIR has been revised and recirculated to address the issues and comments raised by the commenter. The issues outlined in this comment are addressed in Chapters 3, *Project Description*, and 7, *Alternatives*, of the Recirculated DEIR.

O7-3 Please refer to Responses O7-4 through O7-363 below.

O7-4 While operation of **The *i* Shuttle** is a component of the IBC Vision Plan area because it provides transit service within the IBC Vision Plan area, the proposed project involves changes to the land use and zoning designations within the IBC area of the City. The DEIR for the IBC Vision Plan evaluates changes in the physical environment associated with the proposed project. **The *i* Shuttle** item would proceed with or without the adoption of the IBC Vision Plan. Indeed, **The *i* Shuttle** program is calibrated to meet the existing needs in the IBC, not those that would or will exist in the future. If the IBC Vision Plan is adopted and implemented in the future, the **The *i* Shuttle** program may need to be amended to suit increased or changing needs. But for the time being, **The *i* Shuttle** serves its own independent purpose. Pursuant to the CEQA Guidelines, an agreement to maintain **The *i* Shuttle** program and vehicle maintenance was determined to be exempt from CEQA and a Notice of Exemption was filed. More specifically, the City relied on three separate and independently sufficient CEQA exemptions.

- The statutory exemption for the instituting or increasing passenger or commuter services on highway rights-of-way already in use, including the modernization of existing facilities (Public Resources Code Section 21080[b][10]).
- The categorical exemption for small structures (14 California Code of Regulations Section 15303)
- The catch-all exemption under, which CEQA is not applied to projects that do not have the potential for causing a significant effect on the environment (14 California Code of Regulations Section 15061[b][3]).

However, because **The *i* Shuttle** service operates within the IBC Vision Plan area, a discussion of **The *i* Shuttle** has been incorporated into Chapter 4, *Environmental Setting*, of the Recirculated DEIR as it relates to the existing and future conditions in the IBC Vision Plan area.

O7-5 A description and analysis regarding the recently adopted Accessory Retail Business designation has been incorporated into Chapter 4, *Environmental Setting*, of the Recirculated DEIR.

O7-6 The project description provided in Chapter 3 provides a complete and adequate description of the proposed project and its related goals. Revisions have been made to Chapter 3 and are provided in the Recirculated DEIR. It should be noted that October 17, 2005 letter referred to in the comment was on an early draft of the Vision Plan and has no relevance to the proposed project.

O7-7 See Response O7-6.

O7-8 See Response O7-6.

O7-9 Figure 3-5 shows conceptual bridge locations and are addressed at a Program level in the Recirculated DEIR. Use of eminent domain is not proposed at this time. If it is proposed at a later date, additional environmental review will be required.

O7-10 Please refer to Section 3, *Project Description*, and Section 5.8, *Land Use and Planning*, of the Recirculated DEIR.

O7-11 Administrative Relief is a separate discretionary process for individual development projects. Requests are considered on a case-by-case basis. The impact analysis of the pending individual projects has been included in the various topical sections of the Recirculated DEIR.

O7-12 The Recirculated DEIR for the IBC Vision Plan evaluates the impacts associated with the proposed project in each of the respective topical sections. The existing environmental setting, including existing baseline conditions, are also described and analyzed in each topical section evaluated. Please refer to Section 4, *Environmental Setting*, and in the various topical sections in the Recirculated DEIR.

O7-13 See Response O7-12.

O7-14 According to Section 15125(a) of the CEQA Guidelines, an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Consistent with Section 15125, the existing environmental baseline used for the DEIR is the second NOP release date September 19, 2008. However, for purposes of assessing cumulative impacts, all probable future projects known to the lead agency as of July 2009 have been included in Section 4.5, *Cumulative Impact Assumptions*, of the Recirculated DEIR consistent with the Court's ruling in the Martin and Alton litigation.

O7-15 As outlined in Section 3, *Project Description*, of the Recirculated DEIR, both pending and potential projects are a part of the IBC Vision Plan and Mixed Use Overlay Zoning Code. As shown in Section 1.2.2, *Type and Purpose of this DEIR*, the DEIR has been revised to include a program-level analysis for the IBC Vision Plan and a project-level analysis for the pending individual projects listed in Section 3. As noted in Section 3, the pending development projects are evaluated in the DEIR to the extent that specific development project information, including density bonus units, is available.

O7-16 Consistent with Section 15125 of the CEQA Guidelines, the description of the environmental setting is no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. Section 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR has been updated and references relevant factors, including but not limited to, prevailing winds and direction of groundwater flow. Also, a detailed discussion of the seven pending

projects is provided in Section 5.6 and a summary of potential issues for these projects is presented in Tables 5.6-1 through 5.6-3 and shown in Figures 5.6-1 and 5.6-2.

O7-17 See Response A7-1. The DEIR has been revised and recirculated to address the issues and comments raised by the commenter. The issue outlined in this comment is addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O7-18 See Response O7-17. There is no reference to the Legacy Park Detention Basin in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. However, it should be noted that the Legacy Park Detention Basin has not been constructed.

O7-19 See Response O7-17. As described in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR, project implementation will reduce the amount of impervious surfaces in the IBC and will therefore reduce off-site flows as compared to current conditions.

O7-20 Existing traffic volumes were modeled without traffic generated by units that are under construction. Future traffic (interim year 2015 and post year 2030) scenarios include traffic volumes from units that are approved. Therefore, the comparison of existing to future noise levels is based on the change in baseline environmental conditions from cumulative development and traffic generated by the project.

O7-21 The Recirculated DEIR has been revised to assess traffic from existing conditions and traffic associated with and without buildout of the proposed project in year 2015 and post-2030. See Response O7-20.

O7-22 The Recirculated DEIR includes a revised Global Climate Change section that quantifies emissions reductions from project design features and plans, programs, and policies to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-23 The Global Climate Change section has been revised in the Recirculated DEIR to quantify emissions reductions with and without GHG reduction strategies to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-24 See responses to Comments O7-22 and O7-23. The IBC Vision Plan includes demographic changes in both population and employment and therefore both employees and residents should be considered as part of the GHG per-capita emissions inventory.

O7-25 It should first be noted that the GHG emissions inventory included in the DEIR did not take into account any GHG emissions reductions associated with local, regional, state, or federal GHG reduction measures. The Recirculated DEIR includes a business-as-usual (BAU) inventory as well as a GHG emissions inventory that takes

into account GHG emissions reduction from GHG reduction measures, including those outlined in the California Air Resources Board's (CARB) Scoping Plan. In addition, the inventory includes GHG reductions associated with the quantifiable GHG reduction measures included as Project Design Features (PDF) and Citywide plans, programs, or policies (PPP). At the request of the commenter, GHG emissions reductions from individual strategies are included as part of the Recirculated DEIR, where feasible. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions with quantifiable PPPs, PDFs, and mitigation measures.

O7-26 The GHG emissions analysis has been revised in the Recirculated DEIR to be consistent with approach proposed for Irvine's proposed Climate Action Plan and the GHG emissions factors for Southern California Edison (SCE). The revised GHG emissions inventory has been updated based on locally available GHG emissions and energy demand factors for the IBC Vision Plan (see Appendix P in the Recirculated DEIR). Energy demand rates in southern California are generally lower when compared to average energy emissions factors for the state. As the commenter later points out in Comment O7-29, the residential energy demand rate for Southern California is lower than the residential energy demand rate for the southwestern United States as a whole.

O7-27 See Response O7-26. Energy demand rates in Southern California are generally lower when compared to average energy emissions factors for the state.

O7-28 Energy rates for industrial land uses have been revised in the Recirculated DEIR.

O7-29 Comment noted. As the commenter points out, energy demand in Climate Zone 4 is lower than the demand rates for the southwestern United States.

O7-30 Micropas modeling is not feasible at this stage in the environmental process because this model requires detailed architectural information to model energy emissions based on the building design, layout, and location. This model is used to show compliance with the California Building and Energy Efficiency Standards of Title 24.

O7-31 The commenter is correct. The spreadsheet included in Appendix G incorrectly listed water demand as gallons per minute when the number cited was in acre-feet per year. The Recirculated DEIR includes an updated emissions inventory based on revised water demand calculations.

O7-32 In response to the commenter, the embodied energy from water use was obtained from the California Energy Commission (CEC), which includes energy associated with conveyance, treatment, distribution, and wastewater treatment. The Recirculated DEIR's GHG inventory also includes emissions from energy associated with water use

O7-33 In response to the commenter, total water demand was used to calculate GHG emissions from water use in the DEIR. Therefore, the inventory includes GHG emissions from both potable and non-potable (reclaimed) water use. Since the same CEC energy rate per gallon of water was used to calculate GHG emissions from total

water demand, the analysis used in the DEIR was conservative since it assumed energy associated with conveyance (i.e., State Water Project/Municipal Water Department water) and treatment in addition to wastewater treatment and distribution. The recirculated DIR also includes GHG emissions from both potable and non-potable water use

O7-34 The GHG emissions inventory was compiled for existing conditions, buildout post-2030 business-as-usual (BAU), and buildout post-2030 with reductions associated with plans, programs, or policies (PPP) and project design features (PDF). The existing GHG emissions inventory represents GHG emissions associated with the uses on the ground today. The future GHG emissions inventories assumed conversion of office and industrial uses to commercial and residential uses. The emission rates were based on the forecasted land uses at buildout (see Appendix P).

O7-35 GHG emissions from grading activities, which result in removal of trees and other vegetation, are included in Recirculated DEIR. It should be noted that the project includes landscaping. The Recirculated DEIR section includes an estimate of GHG emissions associated with construction activities over the buildout of the IBC Vision Plan at the request of the commenter.

O7-36 GHG emissions associated with purchased energy are included in the GHG emissions analysis. The emissions analysis is based on the proposed land uses and estimates of electricity usage for those proposed land uses. Purchased electricity associated with municipal operations (e.g., street lights and traffic signals) are not included in the Recirculated DEIR. The Recirculated DEIR section includes an estimate of GHG emissions associated with construction activities over the buildout of the IBC Vision Plan at the request of the commenter.

O7-37 At the request of the commenter, the construction scenario that accounts for all development through buildout of the IBC Vision Plan is included in order to determine the general magnitude of GHG emissions from construction activities. The Recirculated DEIR section includes an estimate of GHG emissions associated with construction activities over the buildout of the IBC Vision Plan at the request of the commenter.

O7-38 The DEIR has been revised and recirculated. See individual responses to Comments O7-39 through O7-41 below.

O7-39 The DEIR has been revised and recirculated to address the issues and comments raised by the commenter. The issues outlined in this comment are addressed throughout the various sections of the Recirculated DEIR.

O7-40 As shown in Section 1.2.2, *Type and Purpose of this DEIR*, the DEIR has been revised to include a program-level analysis for the IBC Vision Plan and a project-level analysis for the pending individual projects listed in Chapter 3, *Project Description*. As noted in Chapter 3, the pending development projects are evaluated in the DEIR to the extent that specific development project information, including density bonus units, is available. Please refer to the individual topical sections in Chapter 5 of the Recirculated DEIR for a program- and project-level evaluation of each topic.

Mitigation measures have been crafted to apply to all future development within the IBC, including the individual pending projects outlined in Chapter 3. Future development projects within the IBC Vision Plan area would be required to adhere to the mitigation measures outlined in the DEIR.

O7-41 See Response O7-40.

O7-42 The DEIR has been revised and recirculated to address the issues and comments raised by the commenter. The issues outlined in this comment are addressed throughout the various sections of the Recirculated DEIR.

O7-43 Based on the sample construction scenario provided, the majority of volatile organic compounds (VOCs) are generated during construction activities. However, the primary source for any single construction project is typically during application of architectural coatings because of off-gassing of paint. The VOC emissions are higher during the demolition phase in the sample construction scenario because of the amount of demolition that would be necessary for the IBC Vision Plan. In the Recirculated EIR, this is now based on the total estimated demolition required disaggregated over the 20 year construction phase.

The sample construction scenario in the DEIR is overly conservative because details on the phasing and equipment is not available for this DEIR. At the request of the commenter, Impact 5.2-2 has been clarified that the primary source of VOC emissions from any single project is typically associated with architectural coatings. In addition, the construction model runs have been revised to estimate all construction activities over the next 20 years in the Recirculated DEIR

O7-44 The environmental analysis in the DEIR was based on a compilation of construction emissions estimated for previous analysis conducted for eight other sites within the IBC Vision Plan. Because the construction phasing and construction information is not available for this DEIR, the previous environmental analysis assumptions were used as a surrogate in the absence of detailed construction information to model a worst-case construction day. As the Commenter correctly points out, these eight projects do not represent all future projects within the IBC Vision Plan. At the request of the commenter, the construction scenario has been revised to account for all development that would occur throughout buildout the IBC Vision Plan. The sample construction scenario in the recirculated EIR estimates the magnitude of construction emissions that could occur on a worst-case construction day.

O7-45 See Response O7-44. The construction emissions sample model run has been revised to account for all future projects in the IBC Vision Plan associated based on the URBEMIS default construction mix.

O7-46 The emissions reductions included in PDF 2-6 in the DEIR previously circulated were based on South Coast Air Quality Management District's (SCAQMD) list of mitigation measures for fugitive dust control. This list shows the control efficiencies for each individual control measure and is not the overall emissions reduction associated with fugitive dust control for PDF 2-6. Fugitive dust emission reductions are based on the URBEMIS2007 computer model. This model takes into account emissions reductions from fugitive dust control measures, including those measures that are

required under SCAQMD Rule 403, as well as additional fugitive dust control measures required under PDF 2-6. The emissions reported in the DEIR are based on total particulate matter (PM_{10} and $PM_{2.5}$), as modeled using the URBEMIS2007 computer model.

O7-47 SCAQMD has two indicators for consistency with the Air Quality Management Plan.

Indicator 1: Whether the project would result in an increase in the frequency or severity of existing air quality violations, cause or contribute to new violations, or delay timely attainment of the AAQS or interim emission reductions in the AQMP.

Indicator 2: Whether the project would exceed the assumptions in the AQMP. The AQMP strategy is, in part, based on projections from local general plans.

The first indicator is based on SCAQMD's thresholds of significance. SCAQMD's thresholds of significance are indicative of whether or not the project is a substantial emitter of air pollutant emissions. Construction and operation of the IBC Vision Plan would exceed SCAQMD's regional and localized significance thresholds. The second indicator is not based on quantitative thresholds but is instead based on a more generalized characterization of the overall assumptions in the AQMP and how the project is consistent or inconsistent with those assumptions. The project is consistent with the regional strategy to reduce trips and vehicle mile traveled the project. This is not internally inconsistent because there are two thresholds for that are required to be evaluated for a consistency with the AQMP. Because both indicators were not considered consistent, impacts were considered significant

O7-48 The DEIR has been revised to address commenter's comments as shown in Section 5.3, *Biological Resources*, of the Recirculated DEIR.

O7-49 The DEIR has been revised to address commenter's comments as shown in Section 5.3, *Biological Resources*, of the Recirculated DEIR.

O7-50 The DEIR has been revised to address commenter's comments as shown in Section 5.3, *Biological Resources*, of the Recirculated DEIR.

O7-51 As required by Section 15125(a) of the CEQA Guidelines, an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Consistent with Section 15125, Section 4 describes the environmental setting as it existed at the time the NOP was published.

O7-52 Section 7.4.5 of the Recirculated DEIR under the No Project/Existing General Plan Alternative has been updated and provides a comparison to the proposed project regarding hazardous substances and worker exposure to asbestos and lead.

O7-53 Section 7.4.5 of the Recirculated DEIR under the No Project/Existing General Plan Alternative has been updated and provides a comparison to the proposed project regarding contaminated sites.

O7-54 Section 7.4.5 of the Recirculated DEIR under the No Project/Existing General Plan Alternative has been updated and evaluated the benefits of maintaining the existing land use designations versus the proposed project.

O7-55 As a stand-alone measure, PDF 6-2 (which entails disclosure to future residents regarding potential hazards associated with hazardous materials), would not mitigate risks. However, in conjunction with existing federal, state, and local regulations, and PPPs 6-1, 6-2, 6-4 through 6-8, and PDFs 6-2 through 6-5, such risks are expected to be mitigated. The language of the disclosure shall be as specified by the Community Development Director.

O7-56 A statement is made in Section 5.6, *Hazards and Hazardous Materials*, of the DEIR that individual sites may have existing equipment such as transformers or clarifiers that would be demolished or removed as part of site development. The DEIR states that potential impacts would be reduced to a less than significant level through compliance with certain policies, such as PDF 6-3 and compliance with existing state and local regulations. A broad range of hazardous substances may be encountered and providing a "one size fits all" approach would not be practical. Also, addressing every possible situation would be exhaustive for the purposes of the IBC Complex Vision Plan and Mixed Use Overlay Zoning Code DEIR. Therefore, an evaluation of site-specific conditions and the need for removal of hazardous materials during demolition activities or site development will be determined on a case-by-case basis.

O7-57 As a stand-alone measure, PDF 6-4 (which required submittal of data to the Director of Community Development, to evaluate compatibility with surrounding uses), would not mitigate all associated risks. However, in conjunction with existing federal, state, and local regulations, and PPPs 6-1, 6-2, 6-4 through 6-8, and PDFs 6-2 through 6-5, such risks are expected to be mitigated. The language of the disclosure shall be as specified by the Community Development Director.

O7-58 The DEIR has been revised to address commenter's comments as shown in Section 5.6, *Hazards and Hazardous Materials*, of the Recirculated DEIR.

O7-59 Section 7.5.5 under the Reduced Intensity Alternative has been updated and provides a comparison to the proposed project regarding hazardous substances and worker exposure to asbestos & lead.

O7-60 Section 7.5.5 under the Reduced Intensity Alternative has been updated and evaluates the benefits that would result from a reduction of residential density under the Reduced Intensity Alternative versus the proposed project.

O7-61 The Recirculated DEIR includes an evaluation of regional flood control facilities owned, operated, and maintained by the Orange County Flood Control District (OCFCD) that would potentially be impacted as a result of additional development in the IBC Vision Plan Area, including the Lane Chanel (F08), Barranca Chanel (F09), and Armstrong Channel (F08S01). A Master Drainage Study Update was prepared

by VA Consulting (April 2009) for the Irvine Business Complex development area, which calculated the existing 100-year High Confidence and Expected Value flow rates as appropriate of the major drainage channels within the IBC and determined existing flood capacities. Mitigation measures were included in the EIR section to ensure individual project approvals will not worsen or exacerbate existing flood control conditions. A summary of the results have been included in the Recirculated DEIR, and the full study is included as a technical appendix (see Appendix K). This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O7-62 The DEIR has been revised to address commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O7-63 See Response O7-40.

O7-64 The DEIR has been revised to address commenter's comments as shown in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR.

O7-65 In response to the comment, Figure 5.7-2, *Proposed IBC Drainage Improvements*, has been added, which shows all project-related drainage channels and areas.

O7-66 Revisions have been made to Section 5 10, *Population and Housing*, as shown in the Recirculated DEIR.

O7-67 See Responses O7-68 through O7-73.

O7-68 Trips and VMT were calculated using the ITAM model by Parsons Brinkerhoff. The ITAM model is based on the Orange County Transportation Authority (OCTA) model, which uses Southern California Association of Government (SCAG) projections used in the Regional Transportation Plan (RTP). The average trip length is a function of the total VMT divided by total trips associated with trip that start or end within the IBC Vision Plan. In comparison, the URBEMIS computer model is based on trips lengths from subregional council of governments for trips generated by land uses. The URBEMIS model was not used since the traffic study does not identify trip generation by land use type. VMT projections are based on the total VMT for trips generated by the land uses in the IBC Vision Plan are based on the ITAM model. The air quality and GHG emissions analysis has been revised based on the revised traffic analysis for the project.

O7-69 The original Appendix G labels on page G-91 for carbon dioxide (CO_2) and sulfur dioxide (SO_2) were juxtaposed in the conversion of pounds-per-day to tons-per-year and metric-tons-per-year. The conversions were correct, but the labels referenced the wrong air pollutant, which is why the numbers in Table 5.15-5 appear to be different. However, this comment is moot because the air quality and GHG analysis has been revised as part of the Recirculated DEIR.

O7-70 The total should have read 696,336 trips not 696 trips. However, this comment is now moot as the traffic study has been revised as part of Recirculated DEIR.

O7-71 The air quality analysis was conducted in conformance with SCAQMD's CEQA Air Quality Handbook (Hanbook). The Handbook was published in 1993 by SCAQMD and updates are periodically posted online. The 1993 Handbook methodology includes tables that list the county average speeds (see Table A9-5-F in Appendix G) and temperatures for modeling criteria air pollutants (see Appendix G). It should be noted that the Recirculated DEIR has been revised to quantify emissions reductions from business-as-usual (BAU) to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-72 Trips and VMT were provided by Parsons Brinkerhoff using the ITAM model. The trips and VMT are different for each scenario as projected through the ITAM model because the model distributes trips based on destinations and origins of those trips. The original estimate of trips and VMT do not include trip reductions associated with pass-by trips. In addition, the ITAM model is based on the OCTA model, which uses SCAG demographic projections. Because the SCAG model is not sensitive to changes in land uses, only demographics (e.g., housing and employment), this model is not very sensitive to changes in VMT associated with mixed-used projects. Therefore, trips and trip rates are conservative as a substantial reduction in VMT or trips associated with the mixed use development is accounted for in the model.

O7-73 There was no internal trip capture accounted for in the traffic study, hence assumptions on trip capture were not provided.

O7-74 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-75 The IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR provides a present day analysis of the proposed project and in no way relies on the previous 1992 IBC EIR. As a result, it is not appropriate to incorporate the 1992 IBC EIR by reference.

O7-76 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-77 According to the California Air Resources Board's (CARB) Air Quality and Land Use Handbook, concentrations of diesel particulate matter at 500 feet from the freeway are roughly about 70 percent lower than concentrations directly adjacent to the freeway. CARB's study does not show the fraction of particulate matter that is ultra-fine, fine, and coarse particulate matter at these distances but is the total particulate matter concentration. The American Society of Heating and Refrigeration and Air Conditioning (ASHRAE) uses the Minimum Efficiency Reporting Values (MERV) rating system for filtration efficiency. High Efficiency Particulate Air (HEPA) filters are based on international standards. However, both HEPA and MERV filters are only rated for concentrations that are 0.3 microns and above. So, while there are HEPA filters that obtain a 99.7 percent reduction in particulate matter, this is only for particulates greater than 0.3 microns. Likewise, MERV 14 filters capture 85 percent of particulates over 0.3 microns. Since the performance standard is to reduce total concentrations of particulate matter by 70 percent, use of a MERV 14 filter that captures 85 percent of particulates over 0.3 microns would result in average

particulate matter concentrations indoors similar to or even less than residents who live at distances of 500 feet from the freeway.

O7-78 SCAQMD's Handbook requires that lead agency perform a health risk assessment (HRA) when a project generates toxic air contaminants (TAC). Typically, industrial projects and warehousing project that generate heavy duty truck trips generate TACs. Because proposed land uses would be residential or commercial/retail use the project would not generate substantial quantities of TACs and a HRA is not warranted.

Health risk at the project site is associated with mobile and stationary sources throughout the SoCAB. As clearly stated in page 5.2-23, and again on page 5.2-24, health risk in the IBC Vision Plan ranges from 830 to 1,233 in a million

O7-79 Trips and VMT were provided by Parsons Brinkerhoff using the ITAM model. The ITAM model distributes trips based on destinations and origins of each trip that starts or ends within the IBC Vision Plan. The ITAM model is based on the OCTA model, which uses SCAG demographic projections. This model is therefore not very sensitive to changes in VMT associated with mixed-used projects. Traffic modeling has been revised for the Recirculated DEIR.

A consistency analysis of the project with SCAQMD's Air Quality Management Plan (AQMP) was conducted and was included under Impact 5.2-1. Proposed zoning and land use designations result in a reduction of VMT and therefore reduce the amount of air pollutants emitted (see Section 5.15, *Global Climate Change*, for discussion of per-capita VMT reductions) compared to the no-project/existing General Plan buildout condition. Therefore, consistency with the AQMP was considered consistent with the second indicator

O7-80 The URBEMIS2007 computer model was not used to estimate trips and VMT. The URBEMIS model estimates trips based on trip rates from studies conducted by the Institute for Transportation Engineers while VMT is based on trip lengths obtained from the subregional association of governments. Therefore, the URBEMIS model does not account for a reduction of trips associated with internal trips, trip passby, or reduction in trip length associated with mixed use development. Because the URBEMIS model is not a good surrogate for estimate VMT, trips and VMT were provided by Parsons Brinkerhoff using the ITAM model. The ITAM model distributes trips based on destinations and origins of each trip that starts or ends within the IBC Vision Plan. The ITAM model is based on the OCTA model, which uses SCAG demographic projections. The commenter should refer to the traffic appendix (Appendix N) for assumptions regarding traffic modeling. In addition, traffic modeling has been revised for the Recirculated DEIR

O7-81 As described in Section 7, *Project Alternatives* of the Recirculated DEIR, the Reduced Intensity Alternative was identified as the Environmentally Superior Alternative. In addition, the alternative described by the commenter was previously included as the Reduced Urban Neighborhood Alternative, which is now the proposed project analyzed in the Recirculated DEIR.

O7-82 In response to the comment, Chapter 13, *Bibliography*, was revised to include the requested reference.

O7-83 Fehr & Peers has prepared a technical study identifying the vehicle miles travelled (VMT) associated with the proposed project and the No Project/Existing General Plan Alternative which shows a decrease in overall VMT (see Appendix P of the Recirculated DEIR). The calculations were made using the City's ITAM traffic model.

O7-84 As described in Section 5.8, *Land Use and Planning* of the Recirculated DEIR, the mixed-use land plan associated with the proposed project reduces reliance on the automobile and reduces VMT. This is consistent with SCAG's Regional Comprehensive Plan and SB 375 land use strategies to reduce VMT and associated emissions in the South Coast Air Basin.

O7-85 Daily construction emissions were determined by dividing the remaining development potential by the number of days until project buildout. With the Reduced Intensity Alternative, less development potential would occur though the buildout schedule remains the same.

O7-86 Revisions have been made to Chapter 7, *Project Alternatives*, and are included in the Recirculated DEIR. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (County of Inyo v. City of Los Angeles (1981) 124 Cal.App.3d 1). As a result, detailed emissions calculations were not prepared for each of the alternatives.

O7-87 An analysis of jobs/housing balance is included in Section 5.10, *Population and Housing* of the Recirculated DEIR.

O7-88 Revisions have been made to Chapter 7, *Project Alternatives*, and are included in the Recirculated DEIR.

O7-89 No significant impacts were identified with regard to noise, air quality, or hazards. Applicants for new development would be required to assess compatibility of residential land uses within industrial areas (PPP 9-2, PDF 2-1, PDF 2-4 and PDF 6-5). Therefore, incorporation of the 1,000 foot buffer alternative is not considered necessary.

O7-90 See Response O7-89.

O7-91 Revisions have been made to Section 7, *Project Alternatives*, and are included in the Recirculated DEIR.

O7-92 The location of existing lands covered under the Central/Coastal Subregion NCCP/HCP may be viewed at http://www.naturereserveoc.org which shows that the project area does not contain any reserve lands.

O7-93 As described in Section 15126.6(e)(3)(A) of the CEQA Guidelines, when the project is the revision of an existing land use or regulatory plan, policy or ongoing operation,

the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan. As a result, the No Project/Existing General Plan Alternative assumes continuation of the existing General Plan which would allow continued non-residential development although no additional residential units could be developed.

O7-94 As described in the Recirculated DEIR, the proposed Creekwalk does not involve any significant unavoidable impacts. In addition, the Creekwalk is assumed for all alternatives with the exception of the No Project/Existing General Plan Alternative.

O7-95 Revisions have been made to Section 5.6, *Hazards and Hazardous Materials,* and Section 7, *Project Alternatives*, and are included in the Recirculated DEIR.

O7-96 While certain residential projects may be incompatible with existing industrial activities, a review of site-specific conditions (e.g. proximity, the actual quantity and type of hazardous material stored/handled) may indicate that co-location of residential and industrial land uses will not result in health and safety issues. The IBC Vision Plan seeks to incorporate residential land uses in the IBC where such uses are compatible. As outlined in PDF 6-4, the Proposed Overlay Zoning Code (Section 5-8-4, Special Development Requirements) would require that project proponents submit sufficient data, as determined by the Director of Community Development, so that the City may evaluate compatibility between industrial and residential land uses. Factors to be considered would include noise, odors, truck traffic, hazardous materials storage/handling, air emissions, and soil/groundwater contamination. Relevant site-specific conditions would include, but would not be limited to proximity to industrial facilities, the hazardous materials involved, and the quantity and manner in which the hazardous materials are used, emitted, and disposed of. The Proposed Overlay Zoning Code would allow for case-by-case determinations.

As described in Section, 5.2, *Air Quality*, of the revised and Recirculated DEIR, new developments are required to assess potential hazards associated with proximity to air toxics. Future developments are also required to assess potential noise impacts through the submittal of an acoustical report (see PPP 9-2). Additionally, all discretionary applications for residential or residential mixed use would be required to include as a condition of approval a disclosure to residents which clearly outlines the issues associated with living in a mixed-use environment (see PDF 6-2). At the request of the commenter, the discussion of land use compatibility with regards to air quality and hazards has been updated in Sections 5.2, Air Quality, 5.6, *Hazards and Hazardous Materials*, and 5.9, *Noise*, of the Recirculated DEIR.

O7-97 Please refer to Section 7, *Project Alternatives* of the Recirculated DEIR which explains the rationale for selecting the environmentally superior alternative.

O7-98 Please refer to Section 7, *Project Alternatives* of the Recirculated DEIR which explains the rationale for selecting the environmentally superior alternative.

O7-99 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-100 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-101 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-102 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-103 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-104 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

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O7-106 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-107 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-108 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-109 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-110 Because each project is unique and requires site-specific analysis to determine compatibility issues, mitigation measures will vary and are too numerous to specify in the DEIR. Through compliance with certain policies, such as PDF 6-4, which addresses compatibility issues between residential and industrial land uses, and PDF 6-5, which requires health risk assessments for projects within 1,000 feet of industrial facilities that emit TACs, potential impacts would be reduced to a less than significant level.

O7-111 The Safety and Evacuation Plan, and Emergency Management Plan apply City-wide and do not relate only to the proposed project. As a result, it is not appropriate to include them in the appendix to the DEIR, however, they are available for review at the City of Irvine Community Development Department, One Civic Center Drive, Irvine, California.

O7-112 This comment has been addressed in Section 5.7, *Hydrology and Water Quality*, of the Recirculated DEIR. Additionally, the IBC Complex Master Drainage Study Update

prepared by VA Consulting has been incorporated in Appendix K of the Recirculated DEIR.

O7-113 In response to the comment, Figure 5.7-2, *Proposed IBC Drainage Improvements*, has been added, which shows all project-related drainage channels and areas.

O7-114 As noted in Response O7-112, the IBC Complex Master Drainage Study Update prepared by VA Consulting has been incorporated in Appendix K of the Recirculated DEIR. The other requested documents were not prepared for the proposed project and have not been included in the Appendices to the Recirculated DEIR.

O7-115 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-116 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-117 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-118 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-119 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-120 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-121 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-122 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-123 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-124 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-125 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-126 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-127 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-128 As described in Section 7 of the Recirculated DEIR, the Reduced Urban Neighborhood Alternative is now the proposed project. Please refer to Section 5.7, *Hydrology and Water Quality* of the Recirculated DEIR for a discussion of the associated hydrology/water quality impacts.

O7-129 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-130 As stated above, the IBC Complex Master Drainage Study Update prepared by VA Consulting has been incorporated in Appendix K of the Recirculated DEIR.

O7-131 Traffic noise modeling was based on average daily traffic volumes provided by Parsons Brinkerhoff, not hourly traffic volumes. The commenter should refer to the traffic appendix (Appendix N) for assumptions regarding traffic modeling. Noise modeling was conducted using the Federal Highway Administration (FHWA) Highway Traffic Noise Prediction Model. Hourly traffic volumes were not computed using this model as stated in the comment. The City of Irvine noise compatibility standards are based on the 24-hour metric, CNEL.

Based on comments from the commenter, traffic noise modeling has been revised to better account for fleet mix in the project area. The original fleet mix used was overly conservative and based on County of Los Angeles fleet mix. Because a 24-hour fleet mix for the roadways in the IBC Vision Plan is not available, as a proxy for fleet mix for the major arterials, the fleet mix for State Route 55 (SR-55) was obtained from Caltrans. Noise modeling has been revised based on the fleet mix for SR-55. The fleet mix is comprised of 94.2 percent light duty automobiles, 2.3 percent heavy duty trucks, and 3.5 percent medium duty trucks.

Changes in fleet mix were not estimated with implementation of the project. However, a reduction in industrial square-footage and increase in residential, commercial, and office uses in the IBC would result in a greater proportion of passenger vehicle traffic and a reduction in truck traffic. Therefore, the traffic noise analysis is conservative because no change in the fleet mix that would result in fewer trucks on the road is assumed. The fleet mix on SR-55 between MacArthur Boulevard and Interstate 5 is 92 percent light duty automobiles, 3 percent medium duty trucks, and 5 percent heavy duty trucks.

O7-132 This statement has been removed in the Recirculated DEIR.

O7-133 The GHG analysis has been revised based on comments made by the commenter regarding the conclusions of the GHG analysis. The Recirculated DEIR has been revised to quantify emissions reductions from business-as-usual (BAU) to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The revised GHG analysis includes reduction associated with both statewide and local measures for reducing GHG emissions. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-134 The GHG emissions inventory in the EIR was an emissions inventory in the absence of any GHG reduction measures (statewide or local). The GHG analysis has been revised as part of the Recirculated DEIR

O7-135 The Recirculated DEIR Global Climate Change section quantifies GHG reduction measures, where feasible. A GHG emissions inventory has been conducted that shows GHG emissions with and without proposed PDFs, where feasible.

O7-136 The GHG analysis includes a comparison of existing conditions, future no project, future existing General Plan buildout, and the future proposed project GHG emissions inventory. See the Recirculated DEIR Global Climate Change section.

O7-137 The Recirculated DEIR Global Climate Change section includes a comparison of the GHG emissions inventory for existing conditions and the proposed project.

O7-138 The Recirculated DEIR GHG emissions analysis demonstrates that the project would reduce GHG emissions by 15 percent from existing conditions for both transportation and non-transportation sectors.

O7-139 Responses to GHG emissions associated with the transportation sector are provided below (see Responses O7-140 through O7-142).

O7-140 It is clearly stated that GHG emissions from the transportation sector were modeled using the EMFAC2007 computer model based on trips and VMT provided by Parsons Brinkerhoff. However, the revised GHG analysis is based on the model being used for Irvine's proposed Climate Action Plan. As climate change is a new CEQA topic, all current modeling tools have shortcomings as to how GHG emissions are quantified. However, it should be noted that the EMFAC2007 model is the same model used to quantify GHG emissions for CARB's Scoping Plan.

O7-141 No GHG reductions were assumed in the emissions inventory conducted for the GHG analysis in the DEIR associated with the transportation sector. However the revised analysis quantifies GHG emissions, to the extent feasible, for PDFs. Furthermore, all PDFs would be required to be implemented for each development project in the IBC Vision Plan.

O7-142 The GHG analysis was based on trips and VMT provided by Parsons Brinkerhoff using the ITAM model, which uses SCAG projections. Details on traffic modeling were provided in Appendix N. The revised Appendix N includes revisions to trip and VMT estimates.

O7-143 The commenter sites a countervailing statement made by Ewing and Cervero. However, the Ewing et. al. in the Urban Land Institute's Growing Cooler (2008) cites that mixed-used developments can reduce VMT on average of 30 percent. Therefore, it appears as though there is much research that supports the California Energy Commission's (CEC) report that mixed-use developments, like IBC Vision Plan, can reduce VMT to some extent. Even if there is debate among experts as to the magnitude of the VMT reduction, mixed-use developments clearly can reduce trips and VMT compared to traditional single-family developments.

The greatest proportion of air pollutant emissions is generated in the first few miles of vehicle travel. This is because air pollution control devices and other emissions sources (e.g., evaporative emissions, hot soak emissions, etc.) from car starts have a higher rate of emissions. Therefore, reducing trips in addition to VMT is also highly beneficial. Nonetheless, based on the Ewing et. al. studies, reducing VMT has near to a one-to-one rate relationship for GHG reductions.

The City of Irvine disagrees that inclusion and interpretation of the Ewing and Cervero 2001 report was necessary to disclose environmental impacts of the IBC Vision Plan. The technical analysis in the IBC Vision Plan DEIR did not quantify VMT reductions associated with the CEC's, Ewing and Cervero, nor Ewing et. al. reports. The impact of the project's transportation emissions are based on trips and VMT generated by the project, as calculated using the ITAM model from Parsons Brinkerhoff. Since the ITAM model is based on SCAG's model, the modeling for the project is based on travel behavior relationships for vehicle trips in the SCAG region. This is because SCAG's model analyzes origins of trips and destinations of trips within the entire SCAG region in order to evaluate VMT within the SCAG region.

O7-144 See Responses O7-145 through O7-147 below.

O7-145 Parsons Brinkerhoff did not incorporate any trip reductions associated within internal trip capture (see Appendix N).

O7-146 This references a more regional perspective of VMT reductions. While the full 10 percent reduction cited by SCAG cannot be fully attributed to the increase in density in the IBC Vision Plan area, it is projects like the IBC Vision Plan that further SCAG's regional goals that make these reductions possible. It should be noted that as a mixed-use project within SCAG's strategic growth area, the project furthers SCAG's goals to reduce VMT in the SCAG region in accordance with the goals of SB 375.

O7-147 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-148 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-149 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-150 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-151 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-152 Revisions have been made to Chapter 4, *Environmental Setting*, and the cumulative analysis in the various topical sections, as shown in the Recirculated DEIR.

O7-153 The analysis included pending projects and therefore the statement should have read pending projects and approved projects. This has been revised in Section 5.2, *Air Quality*, of the Recirculated DEIR.

O7-154 The commenter states that even though an individual project may have a low hazard impact, due to the presence of nearby industrial facilities in terms of evaluating accidental releases, hazardous air emissions, and listed hazardous material releases, the combination of all developments may lead to significant cumulative impacts. To address this issue, PDF 6-5 has been added which requires health risk assessments to be conducted for all residential projects within 1,000 feet of an industrial facility that emits TACs. With this evaluation, all cumulative emission impacts will be addressed.

O7-155 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and the cumulative analysis in the various topical sections, as shown in the Recirculated DEIR.

O7-156 The decrease in nonresidential intensity is only related to the base units that are a part of the proposed project and not the density bonus units, which are permitted by state law above and beyond the base units under certain provisions. SB 1818, enacted in 2005, requires local jurisdictions to amend density bonus ordinances with the intent to encourage the production of more affordable housing. In summary, the legislation allows large density bonuses in exchange for limited affordable housing and includes a mandate requiring cities to grant up to three incentives for a development depending on the amount of the affordable housing provided. These incentives include: a reduction in the development standards; approval of mixed-use zoning in conjunction with a housing project if the nonresidential component would reduce the cost of the housing and the nonresidential component is compatible with housing and any surrounding development; and other regulatory incentives proposed by the developer or the city that would reduce the cost of the project. SB 1818 also requires limited sales price controls on moderate income housing rather than affordability covenants and could preclude local inclusionary requirements. Therefore, to encourage the development of affordable housing units pursuant with state law, there is no corresponding decrease in nonresidential intensity associated with the density bonus units.

O7-157 The Air Quality section (Section 5.2) includes a discussion of the health effects of toxic air contaminants (TACs), including diesel particulate matter. It should be noted that overall health risk in the air basin is 1,200 in a million. Within the IBC Vision Plan, the DEIR clearly states that health risk ranges from 830 to 1,233 in a million

O7-158 Health risk is associated with TACs, like diesel particulate matter. SCAQMD does not require an assessment of diesel particulate matter from construction activities because construction activities at any one site are short-term, whereas health risk is based on a 70 year life time. However, SCAQMD does require an evaluation of air pollutants during construction activities associated with localized significance thresholds (LSTs). Thresholds for localized air pollutant modeling are based on the California Ambient Air Quality Standards (CAAQS), which represent the most stringent ambient air quality standards that have been established to provide a margin of safety in the protection of the public health and welfare. They are designed

to protect those sensitive receptors most susceptible to further respiratory distress, such as asthmatics, the elderly, very young children, people already weakened by other disease or illness, and persons engaged in strenuous work or exercise. Because the potential for air pollutant emissions generated during construction activities of individual projects within the IBC Vision Plan to generate substantial quantities of air pollutants, this impact was considered significant and unavoidable.

O7-159 At this time, it is speculative to estimate where potential schools site would be located in the IBC Vision Plan. The applicable school districts have the sole responsibility for siting schools within the City and within the IBC Vision Plan. The District would be required to evaluate proximity to sources of air pollution in accordance with existing California Department of Education requirements. School district are required to evaluate all major sources of air pollution within a quarter mile of a school site (Title 5 and SB 352), and other potential hazards related to the placement of new schools.

O7-160 CARB's Land Use Handbook recommends a buffer distance of 1,000 feet from facilities that accommodate more than 100 trucks per day. This distance is based on the potential elevated health risk associated with diesel particulate matter from heavy duty truck idling. New developments would be required to assess whether these facilities, such as B. Braun Medical, Inc. Contract Services Inc., and Lido Van & Storage Company Inc., generate more than 100 truck trips per day in accordance with the proposed zoning (see PDF 2-1).

O7-161 The US Environmental Protection Agency (US EPA) has phased in newer emissions standards starting in 1996. Construction equipment that meets the newer Tier 3 standards took affect in 2006 through 2008. Construction activities associated with the IBC Vision Plan would occur approximately over the next 20 years. Because it is the City's understanding that the vast majority of construction equipment is now available that meets the newer Tier 3 or higher standards, the construction contractor would be required to provide proof that such equipment is not available prior to using Tier 0, Tier 1, or Tier 2 construction equipment for construction activities within the IBC Vision Plan. Regardless, the DEIR did not estimate emissions reductions from use of Tier 3 construction equipment and therefore PDF 2-4 did not overstate emissions reductions. Furthermore, the SCAQMD has requested in the past that Tier 3 construction equipment be required as mitigation when air pollutant emissions exceed the significance thresholds.

O7-162 Diesel particulate matter filter traps are after-market control technology for construction equipment. CARB has established a verification program for Verified Diesel Emissions Control Strategies (VDECS) to ensure that modifications do not increase emissions and such modifications are proven by their manufacturers to reduce air pollutants. However, each VDECS is specific to an individual manufacturer's construction equipment model. In most cases, construction equipment is leased and VDECS may not be available for all models of construction equipment. Furthermore, construction contractors may be prohibited from installing VDECS on leased equipment. Consequently, this mitigation measure is considered infeasible. As an alternative to reducing emissions through after-market control technology, the City is requiring that construction contractors lease/use newer, Tier 3, construction equipment.

O7-163 The commenter suggests additional measures to reduce fugitive dust, including air monitoring of particulate matter and opacity observers. Monitoring particulate matter would not reduce particulate matter concentrations. Furthermore, the construction contractor, as part of monitoring requirements of SCAQMD Rule 403, is required to monitor opacity. Because monitoring opacity is an existing requirement under Rule 403, this mitigation measure is not warranted. The commenter also requests that contractors prepare a dust monitoring plan. However, large operations are also required to prepare and implement a dust control plan. At the request of the commenter, all construction activities (large or small operations) will be required prepare a dust control plan.

O7-164 Criteria air pollutant emissions were estimated using the URBEMIS2007 computer model. Projecting the number and use of emergency generators for individual residential, commercial, and office uses would be speculative. Furthermore, use of emergency generators would be infrequent (e.g., emergency use) and installation of new emergency generators would be required to be permitted by SCAQMD under the New Source Review program. Since the number of, or even the use of emergency generators would be speculative, these emissions sources are not included in the IBC Vision Plan emissions inventory.

Estimating health risk associated with infrequent use of emergency generators is not warranted because 1) installation of new emergency generators is speculative and 2) emergency generators operate for short-periods of time for testing and would only be used for emergency purposes.

O7-165 The air quality analysis evaluates criteria air pollutants in accordance with the SCAQMD's CEQA Air Quality Handbook. Chloroform is TAC and is not a criteria air pollutant. However, the generation of chloroform is not substantial enough to warrant a health risk assessment. SCAQMD requires a health risk analysis (HRA) if a project generates substantial quantities of TACs. If chlorine were to be used in swimming pool, generation of chloroform would be a small component of the project's emissions inventory and a HRA would not be required from use of chlorine in a swimming pool. Furthermore, it is unknown at this time whether or not pools would be implemented as part of all residential projects, whether or not the pools would use chlorine or iodine, or whether or not the pools would be indoors or outdoors.

O7-166 Construction activities would be conducted over the course of approximately 20 years. The exact level of activity in any given year is unknown, as it is driven by market conditions. In addition, the quantity of air pollutant emissions generated by any single project in the IBC Vision Plan is based on the site conditions, number of construction equipment, amount of grading required, and magnitude of construction activities onsite. The localized significance thresholds (LST) mass-rate lookup tables were used as screening level criteria to determine whether or not projects within the IBC Vision Plan have the potential to generate substantial quantities of air pollutants. At this point, the exact location of construction activities to sensitive receptors is unknown. However, for the purpose of the analysis, it was assumed that sensitive receptors could occur within 25 feet of construction activities.

Dispersion modeling must be based on project-specific details. Without additional information on the exact phasing of new development projects, location of development project, the amount of soil disturbed at each site, proximity to receptors at each, dispersion modeling is not applicable.

As stated in the DEIR, construction activities would generate substantial quantities of air pollutant emissions, including fugitive dust and particulate matter generated from construction equipment exhaust.

O7-167 The SCREEN3 data provided by the commenter could not be adequately reviewed as the exact inputs used to generate the SCREEN3 concentrations predicted is unknown. However, construction activities would be conducted over the course of approximately 20 years. The exact level of activity in any given year is unknown as it is driven by market conditions. In addition, the quantity of air pollutant emissions generated by any single project in the IBC Vision Plan is based on the site conditions, number of construction equipment, amount of grading required, and magnitude of construction activities onsite. Concentrations of air pollutants at sensitive receptors also depend on the relation of the sensitive receptors to construction activities. The screening-level analysis shows that the development activities associated with buildout of the IBC Vision Plan would generate substantial quantities of air pollutants. This was considered a significant impact of the project.

O7-168 All feasible mitigation measures have been incorporated into the proposed project. Staggering construction schedules for individual development applications would delay projects by years and is not considered a feasible mitigation measure.

O7-169 See Response O7-166. In the absence of detailed project information, the location of sensitive receptors was considered to be "within 25 meters" from construction activities. This distance is based on the SCAQMD's LST methodology and is the closest receptor distance for the mass-rate LST tables. Therefore, the "within 25 meters" LST is a conservative estimate of proximity of sensitive receptors to construction activities. The quantity of air pollutant emissions generated by any single project in the IBC Vision Plan is based on the site conditions, number of construction equipment, amount of grading required, and magnitude of construction activities onsite.

O7-170 See Response O7-166. The DEIR clearly defines sensitive receptors on page 5.2-8. The quantity of air pollutant emissions generated by any single project in the IBC Vision Plan is based on the site conditions, number of construction equipment, amount of grading required, and magnitude of construction activities onsite

O7-171 Impact 5.2-6 was considered a significant unavoidable impact of the project. PDF 2-1 would ensure that buffer distances around stationary sources of air pollutants would be maintained. PDF 2-2 would ensure indoor concentrations of air pollutants would be minimized. However, these PDFs do not restrict recreational land uses around the freeways and therefore, this was considered a significant unavoidable impact of the project.

O7-172 New dry cleaners permitted by SCAQMD are restricted from using perchloroethylene (SCAQMD Rule 1421). Consequently, this buffer distance only applies to

grandfathered drycleaners that still use perchloroethylene. Since new dry cleaning operations in the Accessory Retail Business designation would be restricted from using perchloroethylene, no significant impact would occur from proximity of these facilities to sensitive receptors.

O7-173 In response to the commenter, the analysis was based on the methodology for addressing air quality impacts in CEQA documents adopted by SCAQMD. Pursuant to SCAQMD, the mass-rate lookup tables can be used as screening criteria for projects larger than five acres. If a project is larger than five acres, air pollutants are dispersed over a greater area and therefore if the same emissions are produced on a five acre site and a site larger than five acres, the concentrations at offsite sensitive receptors would be lower for the site larger than five acres because air pollutants are dispersed over a greater area. Dispersion modeling must be based on project-specific details. Without additional information on the exact phasing of new development projects, location of development project, the amount of soil disturbed at each site, proximity to receptors at each, dispersion modeling is not applicable. Impacts were considered significant and avoidable (see Responses O7-166 through O7-172).

O7-174 Carbon monoxide (CO) hotspot modeling was conducted in accordance with the California Department of Transportation (Caltrans) procedures. Since 1993, ambient air concentrations of CO have declined in the SoCAB. In fact, the SoCAB has been designated as attainment under both the federal and state AAQS since 2007. Consequently, only the most congested intersections were modeled to show that the project, including background traffic, would not generate a CO hotspot at even the most congested intersections. Because the most congested intersections would not generate CO hotspots, it can be clearly derived that intersections with less traffic volumes would also not generate CO hotspots. Modeling of all intersections is not warranted.

O7-175 At the request of the commenter, an odor analysis associated with existing odor generation in the IBC has been incorporated into the Recirculated DEIR.

O7-176 In response to the commenter, the DEIR did not ignore significant construction impacts (see Response O7-166). A complete analysis of the air quality impacts associated with construction are provided in Section 5.2, *Air Quality* of the Recirculated DEIR. At this time, the exact location of construction activities to sensitive receptors is unknown. Therefore, the concentrations of air pollutants generated at any single site in the IBC Vision Plan is speculative. However, the screening-level analysis shows that based on the magnitude of development in the IBC Vision Plan, the project has the potential to generate substantially concentrations of air pollutants at sensitive receptors. This was considered a significant unavoidable impact of the project.

O7-177 The DEIR did not include an evaluation of health risk from TACs associated with construction activities because such analysis is not warranted based on SCAQMD methodology. Furthermore, health risk from TACs is not warranted because operational activities associated with the proposed residential, office, and commercial uses would not generate substantial quantities of TACs. However, the commenter is incorrect that the air quality analysis did not evaluate health-related

consequences of air pollutants generated by the project. The AAQS are designed to protect public health and welfare. To address health-related impacts of a project, SCAQMD requires an evaluation of LSTs. Both construction and operational phases of the project evaluated the potential for the project to exceed SCAQMD's localized significance thresholds. In fact, construction activities were projected to generate substantial concentrations of air pollutants at sensitive-receptors, which was considered a significant unavoidable impact of the project

O7-178 The Air Quality section (Section 5.2) includes a discussion of the health effects of TACs. Based on the MATES III study prepared by SCAQMD, overall health risk in the air basin is 1,200 in a million. Within the IBC Vision Plan, the DEIR clearly states that health risk ranges from 830 to 1,233 in a million. In accordance with the SCAQMD CEQA Air Quality Handbook, the DEIR evaluates siting of sensitive receptors based on the recommended buffer distances in CARB's Handbook.

O7-179 The air quality monitoring data obtained from SCAQMD monitoring stations in the vicinity of the project area are characteristic of the SoCAB and local vicinity. Mitigation measures provided for the project are not based on the concentrations measured from these monitoring stations. Monitoring of particulate matter concentrations would not reduce the concentrations of particulate matter, nor would it be necessary for mitigation for the proposed project. It should be noted that SCAQMD Rule 403 requires the construction contractor to monitor opacity of fugitive dust (see Response O7-163).

O7-180 The buffer distances proposed are recommended by CARB. Furthermore, SCAQMD's MATES III study shows that health risk in the entire SoCAB is elevated (see Response O7-178)

O7-181 A health risk analysis was not conducted for the proposed project because the operational phase of the project would not generate substantial quantities of TACs. However, the air quality analysis did evaluate land use compatibility as it relates to sources of air pollutants. The analysis is based on CARB's Handbook, which describes potential sources of TACs and then recommends buffer distances because of the potential for concentrations near these sources to be elevated above the ambient air quality environment. Dispersion modeling is not warranted as CARB's recommended buffer distance shows that concentrations near a freeway dramatically decrease farther from the edge of the roadway to a point, approximately 500 feet, where they become indistinguishable from the background concentrations.

O7-182 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-183 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-184 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-185 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-186 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-187 Areas adjacent to San Diego Creek and the San Joaquin Marsh have already been developed and are under private ownership. As a result, there are no opportunities for additional open space buffers.

O7-188 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-189 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-190 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-191 Revisions have been made to Chapter 3, *Project Description*, and Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-192 Revisions have been made to Section 5.5, *Geology and Soils*, and are included in the Recirculated DEIR.

O7-193 In response to this comment, a discussion regarding radon gas is presented herein. Radon gas is a naturally occurring radioactive gas that is odorless and invisible. It is formed from the radioactive decay of trace amounts of uranium and thorium naturally present in soils and rocks. Particular types of rock, including black shales and certain igneous rocks, can have greater amount of uranium and thorium than what is typical of the earth's crust. Increased amounts of radon will be generated in the subsurface region at these locations. Since radon is a gas, it can easily move through soil and cracks in building slabs or basement walls and concentrate within an enclosed space. Inhalation of air with elevated levels of radon gas could result in adverse health effects.

The United States Environmental Protection Agency (USEPA) estimates that the average concentration of radon in outdoor air is approximately 0.4 pico curies per liter (pCi/L) and that the average nationwide indoor radon level is about 1.3 pCi/L. USEPA's "Citizens Guide to Radon" (2004) recommends an indoor "action level" of 4.0 pCi/L. If concentrations in indoor air meet or exceed this level, mitigation measures are recommended.

The Department of Conservation, California Geologic Survey has published Radon Potential Maps; however, these do not cover Orange County. Pursuant to the Indoor Radon Abatement Act of 1998, USEPA has listed and identified areas of the United States with the potential for elevated indoor radon levels. The Map of Radon Zones assigns each of the 3,141 counties in the US to one of three zones based on radon potential. Orange County is listed under Zone 3: Low Potential (average indoor radon levels less than 2 pCi/L).

The Department of Health Services (DHS), Environmental Management Branch "California Indoor Radon Levels" database was reviewed to gain an understanding

about radon levels in the project area. The database contains both long-term and short-term indoor radon measurements, which are grouped according to zip code. According to the database, a total of 63 measurements have been collected in the zip codes representative of the IBC (92606, 92612, and 92614). Two of the measurements collected in the 92614 zip code met or exceeded the USEPA action level. Their specific locations were not provided.

Radon testing may be a condition for approval of residential projects; and measurements below the USEPA action level or the background national average would be a condition of approval. A radon survey of the entire IBC would be exhaustive.

O7-194 Approval of the IBC Vision Plan and Mixed Use Overlay Zoning Code would establish two districts, Urban Neighborhood and Business Complex, within the 2,800-acre IBC. At this time, there are seven pending residential projects. Consequently, the scope and timeline for demolition activities is unknown. A detailed discussion regarding the types and sizes of structures to be demolished, including asbestos-containing material (ACM) and lead-based paint (LBP) surveys, is not practical at this time. According to PPP 6-5, structures would be assessed for the presence of ACMs prior to the demolition of a facility. The assessment would be in accordance with SCAQMD Rule 1403, which specifies measures to minimize asbestos emissions during demolition. Rule 1403 specifies that a Facility Survey will include the identification, sampling, and quantification of suspect ACMs by USEPA and California Occupational Safety & Health Administration accredited professionals.

PPP 6-2 refers to the management and disposal of lead-contaminated debris generated during construction activities and compliance with the California Health & Safety Code and PPP 6-6 discusses the management of hazardous wastes encountered during site decommissioning and demolition activities.

O7-195 See Response O7-194.

O7-196 See Response O2-2. To paraphrase the response, residential projects planned in the vicinity of an industrial facility handling hazardous materials, which would include those that are regulated through the CalARP program, would be required to submit data to the Director of Community Development to determine if there would be a compatibility issue. The five RMP facilities are now depicted in Figure 5.6-1, *CalARP Facilities*.

The scope of review for the Director of Community Development is discussed in Response O2-6. A determination regarding compatibility would be based upon the review of the regulated facility's offsite-consequence analysis. If the residential project was determined to be adversely impacted by a release from the facility, the project would not be approved unless appropriate and practical mitigation measures would be incorporated. Therefore, residential receptors would not face significant impacts as the result of a hazardous material release from a CalARP-regulated facility.

Though the DEIR only reports CalARP regulated facilities within the confines of the IBC, the Director of Community Development would request data regarding any

facility that could result in compatibility issues within the vicinity of a residential project.

O7-197 See Response O3-47 with regard to Figure 5.6-1 and the clarification regarding the number and location of Title V facilities, as reported by the SCAQMD FIND. A discussion and evaluation of the seven pending residential projects with respect to the Title V facilities is provided in Table 9.6-2. A discussion of the other 497 SCAQMD permitted facilities, identified by the commenter using SCAQMD FIND, would be exhaustive for the purposes of the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR. As stated in Response O2-2 and in accordance with the Proposed Overlay Zoning Code, incompatibility between existing industrial facilities and residential projects would be considered on a project-by-project basis.

O7-198 A discussion of the impacts of all 388 sites with past releases of hazardous substances within or in close proximity to the IBC would be exhaustive for the purposes of the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR. As stated in Response A3-1 and in accordance with PDF 6-4, the Proposed Overlay Zoning Code (Section 5-8-4, Special Development Requirements) would require that proponents submit sufficient data to the Director of Community Development so that the City may evaluate compatibility with soil/groundwater contamination.

O7-199 The commenter states that two residential projects at the far southern end of the IBC, described in Chapter 3 of the DEIR and identified as the Irvine Technology Center and the Martin Street Condominiums, appear to be situated on or immediately adjacent to sources of potential contamination (according to data sources contained Appendix I of the DEIR). The commenter acknowledges that the hazardous material releases may have been issued a No Further Action (NFA) status However, the commenter states that NFA status may have been based upon a future commercial or industrial land use, and would not apply to future residential developments.

Typically, site cleanups and NFA letters are based on unrestricted (i.e., residential) future land use. If residual soil and/or groundwater contamination is left in place, the oversight agency usually issues a deed restriction or land use covenant to limit future land use to commercial or industrial activities. Section 5.6.1.2, *Local Setting*, of the DEIR has been updated and provides an evaluation of hazardous substance releases in the vicinity of the proposed residential projects (refer to Table 5.6-2, *Summary of Pending IBC Residential Development Projects and Relevant Hazardous Substance Releases*). Based upon a review of relevant data in the reports cited in Table 5.6-2, the listed hazardous substances were not expected to significantly impact the proposed residential projects. Lastly, as stated above in the Response O2-2, PDF 6-4 and the Proposed Overlay Zoning Code would require that proponents submit sufficient data to the Director of Community Development so that the City may evaluate compatibility with soil/groundwater contamination.

O7-200 See Response O7-199.

O7-201 PPP 6-1 addresses the issue of ASTs and USTs encountered during site development. PDF 6-3 addresses the discovery of other facilities that may present hazardous waste issues, such as transformers and clarifiers. PPP 6-8 has been

added to the DEIR to address the discovery of potential soil and/or groundwater contamination that may be encountered during site development.

O7-202 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-203 In regards to hazardous materials used and hazardous waste generated during construction, Impact 5.6-1 has been revised in the Recirculated DEIR and provides clarification regarding the steps to be taken if hazardous materials are encountered during site development activities.

The comment pertaining to the protection of human health during construction, from dust and stormwater does not apply to the hazards/hazardous materials section. Section 5.2, *Air Quality*, provides a detailed analysis of dust emissions and mitigation measures during the construction phase. Section 5.7, *Hydrology and Water Quality*, discusses potential impacts and mitigation measures as they pertain to stormwater during construction.

As stated in Response O7-16, there are numerous industrial businesses within the IBC. A discussion regarding the handling and management of hazardous materials and wastes from these facilities would be exhaustive for the purposes of the IBC Vision Plan and Mixed Use Overlay Zoning Code EIR. The proponent of a specific residential project would be required to evaluate issues pertaining to hazardous materials and wastes during the application process. Per Response O2-2 and in accordance with PDF 6-4, the Proposed Overlay Zoning Code would require that project proponents submit sufficient data to the Director of Community Development, so that the City may evaluate compatibility issues related to the co-location of industrial and residential land uses.

O7-204 Per Response O2-2 and in accordance with PDF 6-4, the Proposed Overlay Zoning Code would require that project proponents submit sufficient data to the Director of Community Development so that the City may evaluate compatibility issues between industrial and residential land uses, including risk of upset conditions. Enforcement of the California Accidental Release Prevention program, including the Risk Management Program element, is under the purview of the Orange County Fire Authority.

O7-205 Please see Response O2-7. A point-in-time adjacency study is likely to be conservative with respect to toxic air contaminants.

The analysis of land use compatibility in regard to potential health risk, is addressed in Section 5.2, *Air Quality*. It should be noted that there is no threshold for unacceptable health risk for siting new sensitive land uses. The threshold of 10 in one million cancer risk reference is based on SCAQMD's incremental increase threshold. SCAQMD has a threshold for potential impacts if a facility generates quantities of TACs that result in an incremental increase in health risk for the maximum exposed individual of 10 in a million. This is because health risk in the SoCAB is already elevated. Based on SCAQMD's MATES III Study, health risk in the SoCAB is 1,200 in a million. In the project area, health risk ranges from 830 to 1,233 in a million. Because health risk is elevated in the SoCAB, the analysis compares

land use compatibility based on studies compiled by CARB that show that health risk for individual receptors in close proximity to major sources have an even higher health risk. The DEIR acknowledges that disclosure of elevated health risk would not reduce exposure. However, PDF 2-2 also requires installation of MERV filters that reduce particulate matter concentrations indoors and therefore lower health risk. No additional mitigation measures are warranted.

O7-206 According to PPP 6-8, the appropriate oversight agency (i.e. Orange County Health Care Agency [OCHCA], Department of Toxic Substances Control [DTSC], or Regional Water Quality Control Board [RWQCB]) would be notified if there is the potential for soil and/or groundwater contamination at or beneath the project site. Remedial efforts would be overseen by that regulatory agency. Construction in impacted areas would not be permitted to occur at such locations until a "no further action" or closure letter or similar determination is issued by that agency, or until a land use covenant is implemented.

O7-207 The commenter is requesting an analysis of hazards for each development site. Revisions have been made to Section 5.6, *Hazards and Hazardous Materials*, and are included in the Recirculated DEIR. Section 5.6.1.2, *Local Setting*, and Section 5.6.3, *Environmental Impacts*, of Section 5.6 address the impacts of hazards and hazardous materials in the context of the seven pending residential projects. For future developments, it would be premature and exhaustive to analyze all likely hazards since the location of these developments has not yet been determined. As stated in Response O2-2, PDFs 6-4 and 6-5 provide a framework for the evaluation of compatibility between future residential developments and existing industrial facilities.

O7-208 The management of hazardous materials and wastes, including pollution prevention policies, is a highly regulated activity with oversight by various agencies, including but not limited to, OCHCA, DTSC, and RWQCB. The potential for accidental releases from other facilities is regulated under the CalARP regulations, which requires facilities that use large quantities of hazardous materials to prepare a Risk Management Plan that contains measures to prevent chemical releases and procedures for responding to releases or threatened releases. Releases of hazardous substances to the soil or groundwater are not as likely to occur in the current regulatory environment, but any releases and subsequent cleanup would be conducted with oversight and direction from the designated agency.

O7-209 See Response O2-2.

O7-210 In regards to toxic air contaminant emissions from the 511 SCAQMD permitted facilities, the DEIR has been updated to include PDF 6-5. This PDF requires that a health risk assessment (HRA) be completed by the applicant for all residential projects located within 1,000 feet of an industrial facility which emits toxic air contaminants (TACs). The project applicant shall submit the health risk assessment to the Community Development Director prior to approval of any tentative tract map. If the HRA determines that persons occupying the residences could be exposed to a significant level of risk, the applicant would be required to identify and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential risks to an acceptable level.

O7-211 See Response A3-1.

O7-212 Revisions have been made to Section 5.6, *Hazards and Hazardous Materials*, and are included in the Recirculated DEIR.

O7-213 Revisions have been made to Section 5.7, *Hazards and Hazardous Materials*, and are included in the Recirculated DEIR.

O7-214 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-215 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-216 See Response I1-1.

O7-217 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-218 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-219 Revisions have been made to Section 5.7, *Hydrology and Water Quality*, and are included in the Recirculated DEIR.

O7-220 As stated above, according to OCP-2006, in 2005, Irvine was home to 3.19 jobs for every dwelling unit in the City, indicating that the City is jobs-rich. Through this project and other residential projects in the IBC, the City of Irvine is attempting to correct past jobs/housing imbalances. It should also be noted that the majority of the residential projects in the IBC involve the redevelopment of vacant industrial and office buildings, thereby improving these sites to an economically productive use. Specific examples include Avalon Jamboree Village and Central Park West. While some industrial jobs will be lost in the IBC, new office towers and commercial centers are being built in the IBC and new jobs are being created. As a result, residential development within the IBC has actually increased economic activity within the IBC. This is supported by the results of the market analysis prepared for the proposed project by ERA.

O7-221 The commenter is incorrect in their interpretation of noise impacts and references three separate noise analyses in this comment. The DEIR concluded that the project would significantly increase the traffic noise environment. This impact was considered significant and unavoidable.

In addition, a noise compatibility analysis was conducted for the proposed noise-sensitive land uses. Based on the existing requirements of the City and the state of California, indoor noise at all new residential units would be required to achieve the noise standard of 45 dBA CNEL. Hence, indoor noise for new noise-sensitive land uses was determined to be less than significant.

The analysis also evaluates potential exterior noise impacts on new noise-sensitive land uses in relation to the noise standards of the City of Irvine, which include noise generated by stationary sources of noise. The City of Irvine Municipal Code governs the generation of noise for different levels of noise-sensitive uses. The commenter is specifically referencing this analysis in the comment. A more strict interpretation of the City Code for residential uses would reduce noise generated at adjacent properties and no impacts would occur in this regard. However, impacts of noise on noise-sensitive uses based on current noise generated by adjacent facilities are evaluated under Impact 5.9-5. While interior noise can be mitigated, the analysis concludes that exterior noise levels may continue to exceed the noise compatibility criteria, in which case occupancy disclosures would be required (see PDF 9-3). This was considered a significant unavoidable impact of the project.

O7-222 See response to O7-223 below. Reducing noise levels at existing land uses would not result in new noise impacts. However, existing noise levels from stationary sources of noise at the existing facilities on the new adjacent noise-sensitive uses was considered a significant unavoidable impact of the project.

O7-223 The noise analysis did not account for a reduction in passenger vehicle trips from use of **The *i* Shuttle**. Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-224 Revisions have been made to Section 5.10, *Population and Housing*, and are included in the Recirculated DEIR.

O7-225 Senate Bill 50 (Chapter 407 of Statutes of 1998) (SB50) sets forth a state school facilities construction program that includes restrictions on a local jurisdiction's ability to condition a project on mitigation of a project's impacts on school facilities in excess of fees set forth in Education Code Section 17620. These fees are collected by school districts at the time of issuance of building permits for commercial, industrial, and residential projects.

As with the limitations on the police power in Government Code Section 65995, SB 50 makes its limitations on a city's or county's power under CEQA to mitigate school facilities impacts applicable to both adjudicative and legislative decisions. The new version of Government Code Section 65996 also recites that the development fees authorized by SB 50 are deemed to be "full and complete school facilities mitigation" for the purposes of CEQA or for any other reason. A local agency may not deny approval of a legislative or adjudicative action under CEQA relating to real estate development on the basis of the inadequacy of school facilities.

As noted in Response I1-1, the DEIR has been revised to include a program-level analysis for the IBC Vision Plan and a project-level analysis for the pending individual projects listed in Chapter 3, *Project Description*. As noted in Chapter 3, the pending development projects are evaluated in the DEIR to the extent that specific development project information, including density bonus units, is available. Revisions have been made to Section 5.11, *Public Services*, and are included in the Recirculated DEIR. Additionally, construction impacts related to any future potential development of school facilities would require individual environmental review.

O7-226 Revisions have been made to Section 5.11, *Public Services*, and are included in the Recirculated DEIR.

O7-227 Revisions have been made to Section 5.11, *Public Services*, and are included in the Recirculated DEIR.

O7-228 Revisions have been made to Chapter 4, *Environmental Setting*, to include a description and analysis of the Accessory Retail Business designation, as shown in the Recirculated DEIR.

O7-229 A lifecycle analysis is not required for the project, as use of products and materials used in each residential, commercial, and office building within the IBC Vision Plan would be speculative. It should be noted that the San Joaquin Air Pollution Control District has determined that it was not feasible to estimate indirect emissions associated with transportation of raw materials and finished goods for non-industrial products and estimation of potential emissions associated with such deliveries are highly speculative. Furthermore, the Governor's Office of Planning and Research (OPR) has provided additional clarification that lifecycle quantification is not required.

O7-230 The Recirculated DEIR has been revised to quantify emissions reductions from business-as-usual (BAU) to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The reductions from BAU are based on the quantification conducted for individual PDFs and PPPs. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-231 The commenter provides no justification of why they believe the emissions were not quantified properly. It should be noted that quantification of GHG emissions was conducted using the same models used for the CEQA analysis for the past 10 years and transportation emissions were quantified using the same model used to determine the GHG emissions for transportation sources for CARB's Scoping Plan. Furthermore, there are no adopted protocols for a GHG emissions inventory for a program-level CEQA document developed by CARB or SCAQMD.

O7-232 See Response O7-231. The commenter provides no justification of why they believe the GHG emissions for BAU were not quantified properly.

O7-233 In response to this comment, the revised GHG analysis quantifies emissions reductions associated with CARB's Scoping Plan and quantifiable PDFs and PPPs.

O7-234 See Response O7-233.

O7-235 See Response O7-68. Trips and VMT were based on the traffic analysis prepared by Parsons Brinkerhoff, using the ITAM model. Trip reductions associated with internal trip capture were not assumed. Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-236 A more detailed emissions inventory that includes emissions reductions from BAU to ensure that new development and existing development in the City is more efficient

to reduce GHG emissions. This includes reductions from BAU based on improvements in the Title 24 Building and Energy Efficiency Standards. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-237 The Recirculated DEIR took into account emissions reductions associated with installation of energy-efficiency appliances as part of the post-2030 reduction scenario (see also Appendix P).

O7-238 The revised analysis includes emissions reductions associated with the Scoping Plan reductions.

O7-239 Revisions have been made to Section 5.15, *Global Climate Change,* and are included in the Recirculated DEIR.

O7-240 As described in the Recirculated DEIR, no significant biological impacts have been identified relating to light/glare impacts on San Diego Creek or San Joaquin Marsh. The commenter does not provide any evidence that the existing limitation on reflective building materials is insufficient.

O7-241 See Response O7-168 in regards to staggering construction schedules. Because multiple construction activities within the City would be conducted at any one time, it is not possible to reduce the amount of construction equipment operating within the City on any given day. This proposed measure would substantially extend the time required to complete any construction effort in the City. Furthermore, the SCAQMD thresholds are independent of the size of a project. Because the proposed project encompasses multiple individual projects, the thresholds are exceeded by the sheer magnitude of proposed development within the City. SCAQMD thresholds are based on a single project being a substantial source of air pollutant emissions. Only a single project would ever be able to be constructed at any one time within the IBC Vision Plan if this mitigation measure is proposed. Therefore, this measure is considered not feasible.

O7-242 As a responsible agency, SCAQMD provides comments on the mitigation measures incorporated into the DEIR. The DEIR included measures, based on SCAQMD's mitigation measure list, to reduce construction emissions (see PDFs 2-5 through 2-8).

O7-243 The City of Irvine has coordinated with the Orange County Transportation Authority (OCTA) on transit access within the IBC Vision Plan. In fact, as a regional employment center, the City has implemented **The *i* Shuttle** for residents within the IBC Vision Plan. The revised analysis contained in the revised and Recirculated DEIR lists details on additional traffic management strategies to reduce GHG emissions in the IBC Vision Plan Area.

O7-244 The California Building Code (CBC) standards are meant to promote energy efficiency and reduce the wasteful, inefficient, and unnecessary consumption of energy. The CBC includes efficiency requirements for heating, ventilation, and air conditioning (HVAC) equipment and requires outdoor electrical outlets. Because the

CBC regulates the efficiency of new stationary equipment in buildings, electrical requirements, etc. no additional mitigation measures are warranted.

O7-245 See Response O7-162. VDECS is specific to an individual manufacturer's construction equipment model. In most cases, construction equipment is leased and VDECS may not be available for all models of construction equipment. Furthermore, construction contractors may be prohibited from installing VDECS on leased equipment. Consequently, this mitigation measure is considered infeasible. As an alternative to reducing emissions through after-market control technology, the City is requiring that construction contractors lease/use newer, Tier 3, construction equipment.

O7-246 The addition of tiered vegetative plantings is not an effective measure in removing PM emission, and is therefore not included in the Recirculated DEIR.

O7-247 Enclosing recreational facilities is not consistent with the character of the IBC Vision Plan nor would it suit the recreational needs of IBC Vision Plan residents. Enclosing outdoor recreational areas is not a feasible mitigation measure.

O7-248 See Responses O7-157, O7-178, and O7-181. The EIR does include an evaluation of health risk from existing sources.

O7-249 See Responses O7-241 through O7-248 above.

O7-250 Per your request, PDF 3-2 has been modified accordingly.

O7-251 The commenter's concern regarding the absence of specific mitigation measures pertaining to hazards and hazardous materials, and consequently the public's inability to comment are acknowledged and will be forwarded to the appropriate decision makers. It should be noted that certain programs, policies, and procedures, stated in the responses to comments A3-1 and O2-2 would ensure that potential incompatibilities are identified and dealt with during the application phase of a project with residential uses. Each proposed project will be evaluated in accordance with PDFs 6-4 and 6-5 to ensure that appropriate measures are implemented and the City of Irvine and other designated agencies will have the opportunity to review and approve these measures.

O7-252 In regards to hazardous materials risk of upset, the Shelter-in-Place and evacuation procedures, as specified within a Hazardous Substances and Emergency Safety Plan (PDF 6-2), would not be the only mitigation measures. PDF 6-4 is intended to prevent the development of residential projects that would be incompatible with existing industrial facilities (please see Response O2-2).

O7-253 Section 5.15, *Global Climate Change*, has been revised in the Recirculated DEIR. The analysis is based on the emissions reductions of the quantifiable PDFs. Furthermore, the CBC standards are meant to promote energy efficiency and reduce the wasteful, inefficient, and unnecessary consumption of energy. Because the CBC regulates the efficiency of buildings, no additional mitigation measures are warranted.

O7-254 The IBC Vision Plan EIR evaluates a reasonable range of alternatives. The DEIR does not state that there are no other sites on which mixed use development could be accommodated within Orange County. However, the objectives of the project are based on incorporating residential into this existing job center in Irvine, consistent with SCAG's Compass 2% Strategy. See Response O7-146.

O7-255 See Response O7-247.

O7-256 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-257 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-258 The commenter states that alternate project sites were not considered. The DEIR is not evaluating a specific residential project. Instead, the EIR is intended to evaluate the City's objective of addressing residential and mixed-use development within the IBC. The following alternatives for residential growth within the IBC are presented and evaluated in Chapter 7 of the EIR: No Project/Existing General Plan Alternative, Reduced Intensity Alternative, Increased Residential (20,000 du) Alternative, and Increased Residential (25,000 du) Alternative. In addition, the rationale as to why alternative sites were not considered feasible is provided in Section 7, *Alternatives to the Proposed Project* of the Recirculated DEIR.

O7-259 Alternatives analysis is provided in Chapter 7 of the DEIR. A map of the existing flooding condition is provided in the final VA Consulting Master Drainage Study Update (April 2009)(see Appendix K of the Recirculated DEIR).

O7-260 See Response O7-259.

O7-261 See Response O7-259.

O7-262 See Responses O7-157, O7-178, and O7-181. The DEIR does include an evaluation of health risk from existing sources. The threshold referenced by the commenter is for new sources of TACs. The project includes residential, office, and commercial land uses, which do not typically generate substantial sources of TACs.

O7-263 See Response O7-166. While the project site is greater than five acres, the LSTs mass-rate lookup tables were used as screening-level criteria to determine whether or not projects within the IBC Vision Plan have the potential to generate substantial quantities of air pollutants. Dispersion modeling must be based on project-specific details. Without additional information on the exact phasing of new development projects, location of development project, the amount of soil disturbed at each site, proximity to receptors at each, dispersion modeling is not applicable.

O7-264 There are numerous laws and regulations that pertain to the management of hazardous materials. These are listed in Section 5.6.1.1, *Regulatory Background*. It would not be practical to discuss every such program in the DEIR. Consequently, those considered the most significant and applicable are mentioned in the DEIR. The comment regarding regulations/laws pertaining to active and non-leaking ASTs

and USTs is noted. Industrial-facility compliance with those regulations and laws (Underground Storage Tank Regulations, Aboveground Storage Tank Act, and the Hazardous Material Transport Act) would provide additional measures of security to the surrounding environment and the public. References to municipal codes for septic systems, and/or wastewater discharges, and the Safe Drinking Water Act would not be relevant to Section 5.6, *Hazards and Hazardous Materials*.

O7-265 The Recirculated DEIR includes a revised Global Climate Change analysis (see section 5.15) based on the reductions from BAU to ensure that new development and existing development in the City is more efficient to reduce GHG emissions.

SCAQMD's threshold of 10,000 metric tons is 10,000 metric tons per year (MTons/year) is for industrial projects where they are the lead agency. SCAQMD has yet to adopt any threshold for development projects. However, SCAQMD is proposing a tiered evaluation for development projects. In addition, the proposed changes to the CEQA Guidelines, which are required to be adopted on or before January 1, 2010, include a new section on tiering for GHG emission impacts. Projects that are consistent with a Climate Action Plan are considered less than significant, in accordance with the proposed CEQA guidelines.

CARB has not adopted a threshold for development projects for GHG-emission impacts. The initial preliminary draft threshold released by CARB did not specify a numeric threshold for development projects. The initial preliminary draft thresholds released by CARB in 2008 only specified a proposed, not yet adopted, threshold of 7,000 MTons for industrial projects. It should be noted that this number was only for stationary sources generated by industrial uses.

The federal reporting threshold for the proposed Cap and Trade program (Waxman-Markey American Clean Energy and Security Act) is not a CEQA threshold used by the City of Irvine for GHG emissions.

The CAPCOA document, released prior to OPR's advisory on addressing GHG emissions in CEQA documents and proposed changes to the CEQA Guidelines, includes multiple options for lead agencies to choose to address GHG emissions in CEQA documents.

The air quality analysis is consistent with OPR's recommendations to evaluate the project's direct, indirect, and cumulative impacts on climate change.

SCAQMD has not yet adopted GHG thresholds for development. It should be noted that the City's is in the process of preparing a Climate Action Plan which includes performance standards for projects in Irvine.

A consistency analysis with the goals of AB 32 was conducted. It should be noted that AB 32 formalizes the 2020 goal of Executive Order 03-05. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions based on the statewide strategy to meet the GHG reduction goals of AB 32.

O7-266 Planning Areas 3, 6, 9, and portions of 5 and 8 were part of a General Plan Amendment for the Northern Sphere Area. The Northern Sphere Area General Plan Amendment did not increase the overall City-wide residential unit cap, although unused residential density was transferred from other Planning Areas to the Planning Areas included in the Northern Sphere. Therefore, use of OCP-2006 data is considered appropriate.

O7-267 As stated in the DEIR, that although OCP-2006 data were used for the discussion of population, housing, and employment growth in this section, OCP-2004 data were used for the traffic analysis and noise and air quality analyses that incorporate traffic data. The reason for this is that the Irvine Transportation Analysis Model (ITAM) and related Orange County Transportation Analysis Model (OCTAM) utilize OCP population, housing, and employment growth data that is broken down into geographic units, referred to as Traffic Analysis Zones (TAZs). While the OCP-2004 data have been disaggregated into the required TAZs, the OCP-2006 data have not. Therefore, it is not possible to utilize OCP-2006 data as part of the ITAM traffic modeling.

O7-268 The DEIR has been revised and recirculated.

O7-269 Revisions have been made to Section 4.0, *Environmental Setting* and Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-270 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-271 Per your request, revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-272 The location of the statement referenced by the commenter could not be located. However, the Global Climate Change section (Section 5.15) of the Recirculated DEIR has been revised to clarify that the US is a signatory of the Kyoto Protocol.

O7-273 The formula for sulfur hexafluoride has been revised in Section 5.15, *Global Climate Change*, of the Recirculated DEIR.

O7-274 The correct reference to the US EPA website as outlined in this comment has been revised in the Recirculated DEIR.

O7-275 The Recirculated DEIR has been revised to clarify that the second tier of emission reductions is in reference to Executive Order

O7-276 The Recirculated DEIR has been revised to include a short discussion of the mandatory reporting requirements that affect large stationary source emitters.

O7-277 The Recirculated DEIR has been revised to clarify that these are the goals of Executive Order.

O7-278 The minor revisions outlined in this comment have been made in the Recirculated DEIR.

O7-279 The goals of Executive Order S-03-05 are listed in the regulatory setting of Section 5.15, Global Climate Change, of the Recirculated DEIR. The state has yet to adopt a statewide strategy to achieve the 2050 goal to reduce GHG emissions 80 percent below 1990 level GHG target of the Executive Order S-03-05. The Recirculated DEIR evaluates the project in context of AB 32's 2020 goal for which a statewide emissions reduction strategy has been identified.

O7-280 The USEPA has since approved California's waiver that allows California to implement the Pavley standards.

O7-281 Revisions have been made to Section 5.15, *Global Climate Change*, of the Recirculated DEIR to quantify emissions reductions from BAU to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-282 The City disagrees that the DEIR contains errors in its evaluation of GHG emissions. Nonetheless, the GHG emissions analysis has been revised in the Recirculated DEIR based on the comments.

O7-283 See Response O7-265. The Recirculated DEIR has been revised to quantify emissions reductions from BAU to ensure that new development and existing development in the City is more efficient to reduce GHG emissions. The GHG section evaluates whether or not transportation and non-transportation based GHG emissions are reduced by 15 percent below existing conditions.

O7-284 The Recirculated DEIR includes revisions to Section 5.15, *Global Climate Change*, and Chapter 7, *Alternatives*.

O7-285 The Recirculated DEIR includes revisions to Section 5.15, *Global Climate Change*, and Chapter 7, *Alternatives*.

O7-286 See Response O7-284.

O7-287 The Recirculated DEIR includes revisions to Section 5.15, *Global Climate Change*, and Chapter 7, *Alternatives*.

O7-288 The Recirculated DEIR includes revisions to Section 5.15, *Global Climate Change*, and Chapter 7, *Alternatives*.

O7-289 The Recirculated DEIR includes revisions to Chapter 7, *Alternatives*.

O7-290 The Recirculated DEIR includes revisions to Section 5.15, *Global Climate Change*, and Chapter 7, *Alternatives*.

O7-291 Revisions have been made to the various topical sections of the Recirculated DEIR.

O7-292 PDF 2-5 requires that the construction contractor service and maintain construction equipment in accordance with manufacturer's recommendation and limit

nonessential idling to no more than five minutes. City's Code enforcement can regularly inspect compliance with this standard condition of approval.

O7-293 Revisions have been made to Section 5.6, *Hazards and Hazardous Materials*, and are included in the Recirculated DEIR.

O7-294 PPP 15-1 references the City's Construction and Demolition (C&D) Debris Recycling Ordinance. Construction projects that fit the criteria are required to recycle at least 75 percent of concrete and asphalt waste and 50 percent of other nonhazardous debris generated at a project site. Reducing the amount of waste in landfills reduces GHG emissions not only at the landfill, but GHG emissions associated with the transport of these materials to the landfill. The City requires preparation of a Waste Management Plan for construction projects to ensure that the City's waste diversion goals are met. However, no GHG reductions were accounted for in the emissions analysis

O7-295 The Recirculated DEIR includes supporting information that shows the estimated energy efficiency benefit of Title 24 Building Standard.

O7-296 The state requires all new buildings constructed after January 1, 2010 to achieve the new 2008 Building and Energy Efficiency Standards by January 1, 2010. These standards will be in place when new development is built and developer. The strategies listed in PDF 15-2 are requirements under the new 2008 Building and Energy Efficiency Standards. The reference to fluorescent light bulbs has been removed from PDF 15-2.

O7-297 City's Code enforcement can regularly inspect compliance with this standard condition of approval.

O7-298 At the request of the commenter, this PDF has been revised as a PPP.

O7-299 The Global Climate Change section (section 5.15) of the Recirculated DEIR has been revised in Responses.

O7-300 The proposed IBC Vision Plan and Mixed Use Overlay Zoning Code would result in the development of additional residential land uses within the IBC. Hazards and hazardous materials, other than small quantities of household products, are not likely to be prevalent as a result of operations with a residential project. Consequently, operational PPPs are not provided.

O7-301 The commenter is incorrect in stating that a compatibility analysis no longer exists. As stated in the Response O2-2 and in accordance with PDF 6-4, the Proposed Overlay Zoning Code (Section 5-8-4, Special Development Requirements) would require that proponents submit sufficient data to the Director of Community Development so that the City may evaluate compatibility between industrial and residential land uses.

O7-302 See Response I1-1 with the regards to the program- verses project-level analysis.

O7-303 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR. See Response I1-1 with regards to the program verses project-level analysis.

O7-304 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-305 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-306 Revisions have been made to Section 5.1, *Aesthetics*, and are included in the Recirculated DEIR.

O7-307 Revisions have been made to Section 5.1, *Aesthetics*, and are included in the Recirculated DEIR.

O7-308 Revisions have been made to Section 5.1, *Aesthetics*, and are included in the Recirculated DEIR.

O7-309 The commenter is correct that air quality and GHG emissions from transportation sources are based on the trip generation and VMT estimates provided by Parsons Brinkerhoff. The traffic analysis did not take into account any reductions for internal trip capture associated with a mix of uses. The traffic study is based on the ITAM model. This model is based on OCTA's model and uses SCAG projections. The air quality, GHG emissions, and traffic section have been revised in the Recirculated DEIR.

O7-310 The reduction in VMT is supported by the analysis provided by Parsons Brinkerhoff. VMT analysis is based on the distance between the origin of the trip and destination of the trip in the ITAM model. Traffic modeling is included in Appendix N. As stated in Response O7-309, the traffic analysis did not account for any internal trip capture within the IBC Vision Plan

O7-311 At the request of the commenter an odor analysis associated with existing odor generation in the IBC has been incorporated into the Recirculated DEIR.

O7-312 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-313 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-314 Revisions have been made to Section 5.3, *Biological Resources*, and are included in the Recirculated DEIR.

O7-315 The commenter states that there are not any industrial adjacency or compatibility analyses of proposed residential land uses with existing industrial facilities. The DEIR has been updated in response to this comment. Section 5.6.1.2, *Local Setting*, and Section 5.6.3, *Environmental Impacts*, address the impacts of hazards and hazardous materials in the context of the seven pending residential projects. For

future developments, it would be premature and exhaustive to analyze all likely hazards since the locations of these developments have not yet been determined. As stated above in Response O2-2, PDFs 6-4 and 6-5 provide a framework for the evaluation of compatibility between future residential developments and existing industrial facilities.

O7-316 The DEIR states that the proposed project is not expected to interfere with implementation of the Emergency Response or Evaluation Plan. Individual projects would be reviewed by both the City's Public Safety Department and OCFA. The project would be designed and constructed in accordance with applicable requirements set forth in the Uniform Security Code, Uniform Building Code, Fire Code, City of Irvine, and OCFA standards. Therefore, the implementation of the Emergency Response Plan would not be affected.

O7-317 The proposed overlay zoning code does not provide the specific language to be used in the disclosures since the risks associated with hazardous materials would be unique for each development within the IBC. As stated in PDF 6-2, the language of the disclosure document shall be as specified by the Community Development Director. The commenter's request is acknowledged and will be forwarded to the decision makers.

O7-318 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-319 As stated in Section 5.8, *Land Use and Planning*, the proposed project would not divide established communities. Further revisions have been made to Section 5.8 and are included in the Recirculated DEIR.

O7-320 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-321 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-322 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-323 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-324 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-325 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-326 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-327 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-328 Revisions have been made to Section 5.8, *Land Use and Planning*, and are included in the Recirculated DEIR.

O7-329 The proposed zoning grandfathers in existing uses so that they would not be affected by a new residential project. Therefore, no impacts to existing businesses are anticipated.

O7-330 The traffic analysis has been revised in the Recirculated DEIR. It should be noted average daily traffic volume in which the noise analysis is based on includes all trips generated by the project, existing trips, and cumulative growth in trips on the roadway segments.

O7-331 Noise modeling is not warranted as noise modeling was done to approximate noise levels in the project vicinity and future noise levels would change based on the increase in traffic volumes on the roadway segments.

O7-332 The purpose of the Mixed Use Overlay Zone within the business complex is to provide a range of land uses within the urban core of the City. Because the purpose of the project is to mix residential, office, and commercial land uses, excluding residential land uses adjacent to the right-of-way would not meet the objectives to the project. Placing residents only on interior roadways would hinder the visual connectivity sought through the IBC Vision Plan and residential would be boxed in between corridors of commercial centers, which is contrary to the objectives of the project.

O7-333 Revisions have been made to Section 5.10, *Population and Housing*, and are included in the Recirculated DEIR.

O7-334 Revisions have been made to Section 5.10, *Population and Housing*, and are included in the Recirculated DEIR.

O7-335 Revisions have been made to Section 5.10, *Population and Housing*, and are included in the Recirculated DEIR.

O7-336 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-337 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-338 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-339 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-340 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-341 Revisions have been made to Section 5.13, *Transportation and Traffic*, and are included in the Recirculated DEIR.

O7-342 Revisions have been made to various topical sections of the Recirculated DEIR.

O7-343 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-344 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-345 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-346 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-347 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-348 Revisions have been made to Chapter 7, *Alternatives*, and are included in the Recirculated DEIR.

O7-349 The IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR provides a present day analysis of the proposed project and in no way relies on the previous 1992 IBC EIR.

O7-350 The DEIR the City prepared for this project is a full project-level, stand alone EIR that does not tier off of the 1992 EIR for the IBC. To be clear, a TDR is simply an increase in development intensity in one site with an offsetting decrease in another; such a reallocation of intensity, like other land use decisions, is within the prerogative of the City based on its land use authority. The DEIR fully accounts for the TDRs that have occurred and that are proposed. Therefore, the DEIR presents an up-to-date analysis of the project's potential environmental impacts, including potential impacts related to the TDR.

O7-351 The Irvine Zoning Code provides flexibility of land uses by permitting trips to be transferred from one parcel to another within the IBC boundaries. This trip transfer program is called a "Transfer of Development Rights" or "TDR." The TDR mechanism is codified in Chapter 9-36 of the Zoning Code. The TDR program is used to maintain the cap on development intensity in the IBC area as a whole. Each TDR application is required to undergo a discretionary review process to allow identification of all potential impacts of the TDR, and appropriate mitigation measures. The applicant is required to submit a traffic study to identify and address any potential traffic impacts on the circulation system. All TDR applications are also required to be associated with a project, to eliminate the "banking" of development potential on sites that have no plans to utilize the additional potential. A TDR fee has

been established to supplement the funding program for the implementation of circulation improvements. The trip cap assumptions for all parcels are based on the IBC database which is continually updated. The IBC Database tracks all of the trip budgets for each address within the IBC. It is updated whenever a building is renovated, enlarged, torn down, undergoes a land use change or transfers trips through a TDR. As a result, implementation of the TDR program is based on the most up to date and accurate traffic information available.

The City considered the potential impact of the project's transfer of development rights in the DEIR and included it in the traffic modeling. To be clear, a TDR is simply an increase in development intensity in one site with an offsetting decrease in another; such a reallocation of intensity, like other land use decisions, is within the prerogative of the City based on its land use authority. The Recirculated DEIR fully accounts for the TDRs that have occurred and that are proposed. Therefore, the Recirculated DEIR presents an up-to-date analysis of the project's potential environmental impacts, including potential impacts related to the TDR.

O7-352 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-353 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-354 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-355 Please refer to Section 3.3.2.6, *Land Use Assumptions* of the Recirculated DEIR which clarifies the land use assumptions analyzed in the DEIR and associated traffic study.

O7-356 Pursuant to State density bonus law, the density bonus units are not subject to the intensity limitations for the IBC, however, the impacts associated with the density bonus units have been analyzed in the Recirculated DEIR.

O7-357 Comment is hereby noted, included in the official environmental record of the proposed project, and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

O7-358 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-359 Revisions have been made to Chapter 3, *Project Description*, and are included in the Recirculated DEIR.

O7-360 The City of Irvine IBC Database maintains a record of how many trips are available at each parcel within the IBC, including Campus Center. As a result, the Campus Center site cannot transfer more trips than identified in the City's IBC Database.

O7-361 Comment is hereby noted, included in the official environmental record of the proposed project, and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

O7-362 The DEIR has been revised and recirculated.

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LETTER O8 – Sapetto Group, Inc. (3 pages)

SGi
Sapetto Group Inc.

May 14, 2009

Via e-mail: bjacobs@ci.irvine.ca.us

Mr. Bill Jacobs
CITY OF IRVINE
Community Development
One Civic Center
Irvine, California 92614

RE: COMMENTS ON IBC VISION PLAN AND MIXED USE OVERLAY ZONING CODE DRAFT ENVIRONMENTAL IMPACT REPORT

Dear Bill:

The following comments are provided on behalf of our client, Kilroy Realty, in regards to the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR which was circulated March 31, 2009.

Traffic

1. To accommodate the additional 5,599 dwelling units in the Irvine Business Complex (IBC), a reduction of 2,715,062 square feet of office equivalency has been made in the IBC. However, there is no documentation in the DEIR or Traffic Study that identifies how this square footage was calculated or what TAZs the office equivalency reductions for the added dwelling units came from. Please provide the details of this analysis. O8-1

2. For residential projects currently approved/under construction in the IBC, the transfer of development rights (TDR) has been based on the conversion of a.m. or p.m. peak hour trips to office equivalency (whichever is higher). It appears that the office equivalency for the Vision Plan has been calculated based on average daily traffic (ADT).Many of the pending projects, including Irvine Lofts, already have had traffic study scopes of work and approved traffic studies prepared (prior to the Vision Plan DEIR). The TDR for all of these projects were based on peak hour trips and not ADT. The City's Zoning Code (9-36-10) and the revised version Appendix D: Draft Amendments to the Zoning and Municipal Codes and Park Standards Manual allows for exceeding the ADT trip budget. Please confirm that future projects requiring a TDR will be based on peak hour office equivalency and not ADT. O8-2

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3. Mitigation 13-3 requires that the IBC Database be updated prior to the issuance of the first building permit pursuant to the proposed project. It is unclear whether the proposed project is the Vision Plan or subsequent residential projects. Page 4 of the Vision Plan traffic analysis states that no change to the IBC Database will be made as a result of the Vision Plan project. Please clarify. O8-3

4. It has not been clearly explained how the City is going to track future TDR applications that propose to utilize the future Vision Plan residential units (3,077 total new units) and where the reduction in office equivalency (TDR) must come from to be consistent with the DEIR. Please explain. O8-4

5. If a pending project, proposes to add density bonus units that were not analyzed in the DEIR would the City require a supplemental traffic study. For example, the Irvine Lofts project (a pending project) is 469 DU. If this project adds 35% density bonus units (an additional 164 DU), is this covered in the Vision Plan traffic analysis for the DEIR or would the City require further analysis? O8-5

6. It is our understanding that payment into the IBC fee program would adequately address all of the project impacts for the Irvine Lofts project. Please confirm. O8-6

7. It is our understanding that the traffic analysis in the DEIR includes the possible transfer of trips from anywhere within the IBC Vision plan area to a proposed residential project, such as Irvine Lofts, and, as a result, no further traffic analysis will be required when project specific entitlements are processed with the City. Please confirm or clarify. O8-7

Project Description

1. Table 3-2 on page 3-20 does not include the 122 density bonus units provided in the Irvine Lofts project and should be included. Please correct the Table.

2. In the description provided for Kilroy Irvine Lofts in the Project Description it is recognized that a Conditional Use Permit and Park Plan will be required for the project following certification of the IBC Vision Plan EIR. With this Vision Plan there will be no requirement for a General Plan Amendment or Zone Change in conjunction with the Irvine Lofts project. Our assumption is, that unless the project is modified in a way that creates the potential for new environmental impacts, the DEIR may be used as the Irvine Lofts project CEQA compliance document without the need for additional environmental documentation. Please confirm your understanding. O8-8

Mr. Bill Jacobs
CITY OF IRVINE
May 14, 2009
Page 3

We appreciate the opportunity to provide comments on the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR and will be available to discuss the comments with you at your convenience.

Sincerely,

SAPETTO GROUP, INC.

Pamela Sapetto
Principal

PS:arg

cc: Robert Little, Kilroy Realty

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O8. Responses from Pamela Sapetto, Principal, Sapetto Group, Inc., dated May 14, 2009.

O8-1 Please refer to Chapter 3, *Project Description* of the Recirculated DEIR.

O8-2 The traffic study assumes ADT waivers for these projects.

O8-3 Revisions have been made to Section 5.13, *Transportation and Traffic*, as shown in the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).

O8-4 In order to be consistent with the assumptions in the Recirculated DEIR, the TDR must originate in the same traffic analysis zone (TAZ).

O8-5 Consistent with Section 15162 of the CEQA Guidelines, future projects that are not consistent with the assumptions in the Recirculated DEIR would require additional environmental review.

O8-6 Payment of IBC fees would adequately address areawide traffic impacts associated with future development projects within the IBC. While IBC fees address many of the infrastructure requirements of the IBC, other environmental impacts are not addressed by the IBC fee program.

O8-7 Any TDRs associated with the seven pending projects identified in Table 3-4 of the Recirculated DEIR, including Irvine Lofts, have been assumed in the traffic study prepared for the proposed Vision Plan project. However, additional site specific analysis would be required for future TDR requests.

O8-8 Revisions have been made to Chapter 3, *Project Description*, as shown in the Recirculated DEIR. The locations of these projects are shown on Figure 3-8, IBC Residential Pending Projects. It is anticipated that following the certification of this DEIR, the City will proceed with the processing of the discretionary applications associated with each of these projects, without further need for a General Plan Amendment, Zone Change, or EIR so long as the project substantially conforms to the description in this DEIR. The following detailed project descriptions are provided based on previous environmental documentation prepared for each project. While the program-level impacts of each of these projects will be analyzed in this DEIR, particularly with respect to traffic, air, noise and global climate change impacts, additional site-specific analysis is provided to the extent possible. Consistent with Section 15162 of the CEQA Guidelines, additional environmental review may be necessary as part of the discretionary review process.

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LETTER O9 – Sheppard Mullin (4 pages)

SHEPPARD MULLIN
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Our File Number: 17HC-144166

April 21, 2009

VIA E-MAIL AND U.S. MAIL

IBC Task Force Members
City of Irvine
1 Civic Center Plaza
Irvine, CA 92623-9575
E-Mail: clerk@ci.irvine.ca.us

Re: Preliminary General Comments Regarding Vision Plan DEIR Deficiencies

Dear Members of the IBC Task Force:

We represent Allergan, Inc. ("Allergan"), a long time resident of the Irvine Business Complex ("IBC") and one of the largest employers headquartered in the City of Irvine ("Irvine"). Allergan appreciates this opportunity to provide its preliminary general comments on the Draft Environmental Impact Report ("DEIR") for the IBC Vision Plan, released on March 27, 2009.

The proposed "Project" reviewed by the DEIR, as described by Irvine, consists of:

> (1) a general plan amendment to adopt the IBC Mixed Use Community Vision Plan (the "Vision Plan") objectives and policies, increase the IBC dwelling unit cap from 9,401 units to 15,000, together with an additional potential 1,191 density bonus units, and an "off-setting" reduction in the allowable non-residential intensity by 2,715,062 square feet;
>
> (2) a zoning ordinance amendment to adopt a new chapter in the Zoning Ordinance for inclusion of the IBC Residential Mixed Use Overlay Zone (the "Overlay Code"), update the existing IBC traffic mitigation fee program, and revise the statistical analysis of land use intensities to increase allowable dwelling units and decrease allowable non-residential square footage consistent with the proposed General Plan Amendment;
>
> (3) a municipal code amendment to incorporate new urban park standards into Irvine's park dedication requirements for the IBC;

O9-1

(4) an amendment to Irvine's Park Standards Manual to incorporate new urban park standards for the IBC;

(5) a program for controlling development intensity within Traffic Analysis Zones (TAZ) based on existing IBC vehicle trip allocations;

(6) an amendment to Irvine's Local Coastal Plan to reference the Vision Plan for a small portion of the IBC located within the Coastal Zone;

(7) a program of infrastructure improvements to support the Vision Plan;

(8) adoption of Design Criteria for projects subject to the Vision Plan/Overlay Code; and

(9) changing the name of the area from "IBC" to "Jamboree Village."

O9-1 cont'd.

Through this letter, Allergan intends to provide the IBC Task Force (the "Task Force") with Allergan's preliminary and general comments on the DEIR. Due to the short amount of time since the release of the DEIR, we have been unable to fully review and analyze the DEIR in advance of this meeting. Thus, additional comments will be provided to Irvine upon completion of our thorough review and throughout the public comment process.

Allergan further incorporates by reference comment letters of the Cities of Newport Beach and Tustin and our previously submitted comments. Additionally, attached for the Task Force's reference is a comment letter submitted by Allergan to the Airport Land Use Commission of Orange County. In addition to those comments, Allergan notes the following preliminary and general comments regarding the DEIR:

A. The DEIR Continues To Apply The Defects Of The 1992 IBC Rezone EIR

The DEIR is fundamentally flawed because it is based on stale information and unfounded assumptions drawn from the 1992 IBC Rezone EIR ("1992 EIR"). The DEIR does no more than add another layer of unsubstantiated conclusions, thereby exacerbating the defects of the 1992 EIR.

The DEIR ignores considerable unmitigated impacts and service level deficiencies that Irvine allowed to accrue on residential projects approved between the 1992 EIR and today. Thus, the DEIR is a post-hoc justification for a project that has been in progress for many years. Consequently, like the 1992 EIR, the DEIR fails rationally and objectively to promote the informed and unbiased decision-making by local governments that is essential to the California Environmental Quality Act.

O9-2

B. The DEIR Fails To Include The Models And Data Supporting The Assumptions Made Regarding Environmental Impacts

Noticeably absent from many sections of the DEIR are the models and supporting data used to provide justification for the assumptions made by Irvine with respect to the environmental impacts of the proposed projects. Consequently, there is no way for an expert, let alone a person of normal intelligence and experience, to verify and reproduce the results outlined in the DEIR. This lack of transparency is counter to the spirit and mandates of CEQA. O9-3

Additionally, the DEIR appears to rely on outdated data in many areas. Consequently, many of the assumptions made in the DEIR are likely flawed and of no use in evaluating the environmental consequences of the proposed project.

C. The Baseline In The DEIR Is Unclear And Underinclusive

The time-of-review baseline conditions which forms the basis for analysis in the EIR are both unclear and inconsistently applied. It is unclear throughout the DEIR's impact discussions what the "current condition" is from which impacts may be quantified and evaluated. Further, the "current conditions" that are utilized in the DEIR are often inconsistent with one another. (14 Cal. Code Regs. ("Guidelines"), § 15125.)

Even more fundamental, the baseline analysis of the DEIR appears to be based in existing development (actually on the ground today) within the IBC; while the proposed project includes the residential projects with currently pending applications (specifically described in section 3) together with the remaining residential units that would be allowed up to the cap of 15,000 plus density bonus units. This baseline analysis fails to capture or evaluate cumulative impacts of significant residential project approvals, commencing in 2001 with the approval of the Watermark project and since Irvine began its Vision Plan redevelopment project in 2004. O9-4

D. Conclusion

Thank you again for the opportunity to address the IBC Task Force regarding Allergan's general and preliminary concerns regarding the DEIR. We look forward to presenting additional comments and concerns to Irvine as our review and analysis of the DEIR progresses.

Very truly yours,

Daniel P. Bane

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Attachment: John Wayne ALUC Comment Letter

cc: (via email):
Bill Jacobs, City of Irvine Principal Planner
Jeffrey Melching, Assistant City Attorney for the City of Irvine
Whitman Manley, Special Counsel for the Cities of Newport Beach and Tustin

O9. Responses from Daniel P. Bane, Sheppard Mullin, dated April 21, 2009.

O9-1 Comment noted. No further response necessary.

O9-2 The IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR provides a present day analysis of the proposed project and in no way relies on the previous 1992 IBC EIR.

O9-3 The DEIR has been revised and recirculated to clarify the assumptions regarding the analysis contained in the DEIR.

O9-4 According to Section 15125(a) of the CEQA Guidelines, an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Consistent with Section 15125, the existing environmental baseline used for the DEIR is the second NOP release date September 19, 2008. However, for purposes of assessing cumulative impacts, all probable future projects known to the lead agency as of July 2009 have been included in Section 4.5, *Cumulative Impact Assumptions*, of the Recirculated DEIR consistent with the Court's ruling in the Martin and Alton litigation.

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3. Response to Public Hearing Comments

3.1 INTRODUCTION

The Draft EIR for the Irvine Business Complex (IBC) Residential/Mixed Use Vision Plan and Overlay Zone (Planning Area 36) was released for a 45 day public review period from March 30, 2009, through May 14, 2009. The following public meetings were held during the public review period to receive public comments on the Draft EIR and the updated Vision Plan and related documents. These meetings were only to receive public testimony and no actions took place.

- Community Services Commission – April 15, 2009
- IBC Task Force Meeting – April 21, 2009
- Planning Commission – May 7, 2009

3.2 PUBLIC COMMENTS AND THE CITY OF IRVINE'S RESPONSES

1. Comments on Programmatic and Project Level Impacts

One Commenter expressed concern that the DEIR failed to analyze all of the individual projects that are included in the project description. The commenter requested clarification on the need of supplemental environmental review for projects in the pipeline; and, requested that mechanisms for streamlining projects that were under-processed during the EIR process are put into place.

One commenter expressed that the individual projects must complete their own environmental study and should not be a part of this EIR.

Response: The Recirculated DEIR evaluates impacts of the proposed project compared to existing conditions in the IBC Vision Plan area in accordance with CEQA Guidelines Section 21065. The EIR evaluates the maximum intensity of the IBC Vision Plan area, which includes growth associated with projects under construction, approved project, pending projects, and future projects within the IBC Vision Plan area. Section 3.3.3, *Subsequent Development Pursuant to the Proposed Project*, of the Recirculated DEIR provides a detailed description of the proposed development projects. The environmental impacts of the individual pending projects are analyzed throughout Chapter 5 of the Recirculated DEIR.

2. Comments on Land Use Compatibility

Commenter's expressed concern that the DEIR fails to provide mitigation for facilities such as Deft which have similar emissions and impacts as chrome plating facilities. Commenter's requested that a 1,000 foot buffer should be given to facilities that have similar emissions and impacts as chrome plating facilities such as Deft.

Response: The Recirculated DEIR includes a Project Design Feature (PDF) 2-1, which requires that applicants for new residential developments in the Irvine Business Complex prepare a health risk assessment for any residential project proposed in proximity to the following stationary air pollutant sources:

- 1,000 feet from the truck bays of an existing distribution center that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units, or where transport refrigeration unit operations exceed 300 hours per week.

- 1,000 feet from an existing chrome plating facility or facility that uses hexavalent chromium.

- 300 feet from a dry cleaning facility using perchloroethylene using one machine and 500 feet from a dry cleaning facility using perchloroethylene using two machines.

- 50 feet from gas pumps within a gas-dispensing facility and 300 feet from gas pumps within a gasoline dispensing facility with a throughput of 3.6 million gallons per year or greater. This comment has been incorporated PDF 2-1 in Section 5.2, *Air Quality*.

3. Comments on Consistency with ALUC

The commenter submitted a letter and discussed the ALUC consistency finding and stated that ALUC would submit comments on the EIR.

Response: The comment letter from Sheppard Mullin, Jessica A. Johnson, dated April 16, 2009, is provided in the FEIR Part II as Letter 05. See responses to Comments O5-1 through O5-5 in the FEIR Part II.

4. Comments on Alternatives

One commenter is concerned that the EIR fails to incorporate alternatives addressing buffer zones.

Response: No significant impacts were identified with regard to noise, air quality, or hazards. Applicants for new development would be required to assess compatibility of residential land uses within industrial areas (PPP 9-2, PDF 2-1, PDF 2-4 and PDF 6-5). Therefore, incorporation of the 1,000 foot buffer alternative is not considered necessary.

5. Comments on Inconsistency throughout the DEIR

One commenter expressed that the DEIR is unclear and internally inconsistent throughout its sections. The commenter requested that the inconsistencies be corrected and to recirculate the DEIR. One commenter expressed concern that the DEIR was being piecemealed.

Response: The inconsistencies have been corrected and the entire DEIR is being recirculated. The DEIR for the IBC Vision Plan is a programmatic DEIR that evaluates impacts associated with changes to land uses within the IBC Vision Plan area. The DEIR was prepared to avoid piecemealing of new residential projects that exceed the existing residential within the IBC Vision Plan area. The DEIR evaluates the maximum intensity of the IBC Vision Plan area, which includes growth associated with projects under construction, approved project, pending projects, and future projects within the IBC Vision Plan area. The existing environmental setting, including existing deficiencies, are also described and analyzed in each topical section evaluated.

6. Comments on the Irvine Business Complex Residential Mixed Use Vision Plan

One commenter was supported of the IBC and the City's success in creating a vibrant, mixed-use area.

Response: Comment noted. However, the comment is not applicable to the environmental document.

One commenter stated that he submitted a letter with written comments about the Irvine Business Complex Residential Mixed Use Vision Plan from Sheppard, Mullin, Richter & Hampton LLP representing Allergan, Inc.

Response: The letter from Sheppard, Mullin, Richter & Hampton LLP representing Allergan, Inc. dated on April 15, 2009, was included as letter O4 in the FEIR Part II. See responses to Comments O4-1 through O4-7 in the FEIR Part II.

7. Comments on the Data used in the DEIR

One commenter, representing Allergan, Inc. highlighted some of the points discussed in the letter sent to the Task Force on April 21, including the importance of the project, the need for it to be planned carefully, and concerns about the data used for the DEIR for its assumptions.

Response: The letter from Sheppard, Mullin, Richter & Hampton LLP representing Allergan, Inc. dated on April 21, 2009, was included as letter O9 in the FEIR Part II. See responses to Comments O9-1 through O9-4 in the FEIR Part II.

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