

DEIR CIRCULATED: March 30, 2009, through May 14, 2009
RECIRCULATED DEIR CIRCULATED: December 23, 2009, through February 5, 2010
FINAL EIR CERTIFIED: July 13, 2010

FINAL

*ENVIRONMENTAL
IMPACT REPORT
FOR THE
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*

JULY 2010

FINAL

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

prepared for:

CITY OF IRVINE

<i>P. O. Box 19575 Irvine, CA 92623-9575 Tel: 949.724.6521 • Fax: 949.724.6440</i>	<i>Contact: Bill Jacobs, AICP Principal Planner</i>
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THE PLANNING CENTER

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COI-21.0E

JULY 2010



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C.	Ordinances Adopting Amendments to the Zoning and Municipal Codes
D.	Amendments to Park Standards Manual
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1. Introduction

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and CEQA Guidelines (California Administrative Code Section 15000 et seq.).

According to CEQA Guidelines, Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
- (b) Comments and recommendations received on the DEIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies comments on the DEIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document contains responses to comments received on the Recirculated Draft Environmental Impact Report (RDEIR) for the Irvine Business Complex (IBC) Vision Plan and Overlay Zoning Code (proposed project) during the public review period, which began December 23, 2009, and closed February 5, 2010. This document has been prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the Lead Agency. This document and the circulated DEIR comprise the FEIR, in accordance with CEQA Guidelines, Section 15132.



1.1 FORMAT OF THE FEIR

This document is organized as follows:

Section 1, Introduction. This section describes CEQA requirements and content of this FEIR.

Section 2, Response to Comments. This section provides a list of agencies and interested persons commenting on the RDEIR; 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-15 for letters received from agencies, and O-1 through O-7 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. Revisions to the Recirculated DEIR. This section contains revisions to the RDEIR text and figures as a result of the comments received by agencies and interested persons as described in Section 2, and/or errors and omissions discovered subsequent to release of the RDEIR for public review.

The responses to comments contain material and revisions that will be added to the text of the FEIR. City of Irvine staff has reviewed this material and determined that none of this material constitutes the type of significant new information that requires recirculation of the EIR for further public comment under CEQA Guidelines Section 15088.5. None of this new material indicates that the project will result in a significant new environmental impact not previously disclosed in the Draft EIR. Additionally, none of this material indicates that there would be a

1. Introduction

substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

1.2 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 RDEIRs 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.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least 10 days prior to certifying the environmental impact report. The responses will be forwarded with copies of this FEIR, as permitted by CEQA, and will conform to the legal standards established for response to comments on DEIRs.

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 RDEIR and prepare written responses.

This section provides all written responses received on the RDEIR 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 RDEIR are excerpted in this document, the sections are shown indented. Where changes to the RDEIR text have been made, the response directs the commenter to the appropriate section of the RDEIR.

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

<i>Number Reference</i>	<i>Commenting Person/Agency</i>	<i>Date of Comment</i>	<i>Page No.</i>
Agencies			
A1	Airport Land Commission for Orange County	February 5, 2010	2-3
A2	City of Costa Mesa	February 5, 2010	2-9
A3	Irvine Unified School District Construction and Facilities	February 5, 2010	2-13
A4	Irvine Ranch Water District	January 28, 2010	2-19
A5	John Wayne Airport	February 5, 2010	2-23
A6	Native American Heritage Commission	December 29, 2009	2-27
A7	City of Newport Beach	February 5, 2010	2-32
A8	Santa Ana Unified School District	February 1, 2010	2-37
A9	South Coast Air Quality Management District	February 5, 2010	2-41
A10	Southern California Gas Company	January 5, 2010	2-50
A11	State Clearinghouse	February 9, 2010	2-54
A12	University of California Irvine	February 4, 2010	2-60
A13	Orange County Transportation Authority	February 3, 2010	2-65
A14	California Department of Transportation, District 12	February 8, 2010	2-69
A15	City of Tustin – Remy, Thomas, Moose and Manley, LLP	February 16, 2010	2-73
A15a	City of Tustin – Community Development Department	February 16, 2010	2-151
A15b	City of Tustin – Smith Engineering and Management	February 11, 2010	2-161
A15c	City of Tustin – Hogle-Ireland	February 16, 2010	2-197
A15d	City of Tustin – Excerpts from 1992 IBC PEIR	Year 1992	2-215
A15e	City of Tustin – Memorandum from LSA Associates, Inc. to Irvine Planner Pamela Sapetto	December 5, 2000	2-239



2. Response to Comments

<i>Number Reference</i>	<i>Commenting Person/Agency</i>	<i>Date of Comment</i>	<i>Page No.</i>
Organizations			
O1	The Colton Company	February 3, 2010	2-245
O2	Connor, Fletcher & Williams LLP	February 4, 2010	2-249
O3	Industrial Environmental Association	January 29, 2010	2-259
O4	Kilroy Realty Corporation	February 5, 2010	2-263
O5	Law Offices of Robert C. Hawkins	February 5, 2010	2-279
O6	Manatt, Phelps & Phillips LLP	February 5, 2010	2-406
O7	Sapetto Group, Inc.	February 5, 2010	2-418

2. Response to Comments

LETTER A1 – Airport Land Use Commission for Orange County (4 pages)



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

February 5, 2010

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

**Subject: Irvine Business Complex (IBC) Vision Plan and Mixed-Use Overlay Zoning Code
Recirculated Draft Environmental Impact Report (DEIR)**

Dear Mr. Jacobs:

Thank you for the opportunity to review the Recirculated DEIR for the Irvine Business Complex in the context of the Commission's *Airport Environs Land Use Plan for John Wayne Airport (JWA AELUP)*. We offer the following comments:

The Recirculated DEIR does include a discussion of building height limitations and references that building height limitations, recordation of aviation 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 *JWA AELUP*. To mirror the discussion in the DEIR we recommend that Project Design Feature (PDF) 6-1 be revised as follows:

PDF 6-1 As described in the proposed zoning for the project, ~~related to~~ building height limitations, recordation of aviation 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 ~~per Orange County Airport Environs Land Use Plan standards~~ for John Wayne Airport.

With respect to building height we also recommend the inclusion of a mitigation measure which requires that for any proposed structure which penetrates the 100:1 Notification Surface, Form 7460-1 "Notice of Proposed Construction or Alteration" must be filed with the FAA.

According to the Response to Comments document (Volume IIc of the Recirculated DEIR), it states that PDF 6-4 addresses the requirement that all residential land uses would be restricted within JWA Safety Zone 3. We recommend the following change to PDF 6-4 so that JWA compatibility is addressed:

A1-1

A1-2

A1-3



2. Response to Comments

IBC Recirculated DEIR
Feb. 5, 2010
Page 12

PDF 6-4 As required by the proposed zoning code, application for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, 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, soil/groundwater contamination and John Wayne Airport compatibility.

A1-3
cont'd.

We also suggest that Zoning Code Section 5.8-4.C must clearly state that residential uses are not permitted within JWA Safety Zone 3. Additionally, the DEIR should include a PDF or mitigation measure prohibiting residential development within JWA Safety Zone 3.

A1-4

The DEIR also refers to PDF 6-4 with respect to requiring new heliports/helistops to conform to existing state, FAA, Airport Land Use Commission (ALUC) for Orange County, and Caltrans Division of Aeronautics regulations. PDF 6-4 and Zoning Code Section 5.8-4.C (Appendix D of the Recirculated DEIR) do not address heliports requirements. The DEIR and Zoning Code should include language stating that the development of heliports/helistops must meet existing state, FAA, ALUC and Caltrans Division of Aeronautics regulations.

With respect to noise, the Recirculated DEIR has been revised to include PDF 9-4 which states:

PDF 9-4 As described in the proposed zoning for the project, residential and active recreational areas shall be prohibited in the 65 dBA CNEL noise contour of John Wayne Airport. In addition, as described in the proposed zoning for the project, prior to issuance of building permits, the project applicant for any project within the 60 dBA CNEL contour of John Wayne Airport shall retain an acoustical engineer to prepare an acoustic analysis that identifies required building acoustical improvements (e.g., sound transmission class rated windows, doors, and attic baffling) to achieve the 45 dBA CNEL interior noise standard of Title 21 and Title 24 of the California Building Code. In addition to the 24-hour interior noise standard, the acoustic report shall detail compliance with the City's interior noise standard of 55 dBA Lmax (10) for single-event noise generated by the loudest 10 percent of aircraft overflights at the John Wayne Airport. Parks within the 60 dBA CNEL noise contour shall include signage indicating their proximity to John Wayne Airport and related airport noise. The acoustic analysis shall be submitted to the Director of Community Development to ensure compliance.

A1-5

According to the Response to Comments document it states that similar language has been incorporated in Zoning Code Section 5-8-4.C (Appendix D), but no such language was found. We suggest including the requirements of PDF 9-4 into Zoning Code Section 5-8-4.C.

Below is more specific language recommended for the Draft General Plan Amendment for the IBC Residential Mixed Use Vision Plan and Zoning Code Amendment. In fact, the following additions and changes to the IBC Vision Plan, Zoning Overlay and related documents were included as part of the Consistency finding by the Airport Land Use Commission for Orange County for the proposed project on April 30, 2009.

A1-6

2. Response to Comments

IBC Recirculated DEIR
Feb. 5, 2019
Page | 3

I. Draft General Plan Amendment for IBC Residential/Mixed Use Vision Plan:

Objective N-5 Neighborhood Design:

Revise the second paragraph, first sentence to read: "The residential uses should be compatible with the existing businesses within the IBC and neighboring John Wayne Airport."

Add a new Objective N-5 policy: "Policy (n): Develop residential uses that are not in conflict with nearby John Wayne Airport operations."

Objective N-5 Protection from Airport Operations:

In the first paragraph, add a reference noting where the "development standards" can be found.

Revise the first paragraph, second sentence, to read: "These standards include maximum noise levels, building heights, required notification of residents (including deed disclosures) of the airport proximity and compliance with obstruction lighting and marking criteria."

II. Zoning Code Amendment - Draft Irvine Business Complex Residential Mixed-Use (IBCRMU) Overlay District

"5-8-4.A.2. Compatibility with Surrounding Uses. The IBC mixed use environment is an urbanized area, therefore land use compatibility issues are expected to occur.

Therefore, applicants 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 the following:

- a. Noise
- b. Odors
- c. Truck traffic and deliveries
- d. Hazardous Materials handling/storage
- e. Air emissions
- f. Soil/Groundwater contamination
- g. John Wayne Airport Compatibility"

"5-8-4.C. Airport Restrictions. Development within the Airport Land Use Commission (ALUC) jurisdiction shall meet the following requirements in order to support John Wayne Airport operations.

1. Building Height limitations, recordation of aviation 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 Airport Environs Land Use Plan (AELUP) for John Wayne Airport.
2. Building heights shall not penetrate Federal Aviation Regulation (FAR) Part 77 Imaginary Surfaces for John Wayne Airport. Additionally, in accordance with

A1-6
cont'd.



2. Response to Comments

IBC Recirculated DEIR
Feb. 5, 2010
Page | 4

- FAR Part 77, structures penetrating the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alteration with FAA.
3. Residential uses are not permitted within the 1985 John Wayne Airport Master Plan 65 dBA CNEL contour. See Figure 5.9-2.
 4. Sound Attenuation. For all residential dwelling units within the 60 dBA CNEL contour of John Wayne Airport, the maximum interior noise levels shall not exceed 45 dBA CNEL with windows closed, and shall not exceed the single event noise criteria outlined in the Noise Element of the City's General Plan.
 5. Parks located within the John Wayne Airport 60 dBA CNEL contour shall include signage indicating proximity to John Wayne Airport and related overflight and noise."
 6. Residential uses are not permitted within JWA Safety Zone 3.

"Business Complex (BC)

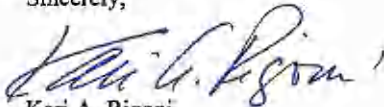
The intent of the Business Complex District is to maintain the existing industrial character of the northwesterly portion of the IBC, consistent with the Council-adopted goal of protecting existing businesses in the IBC. Due to a number of constraints, including the proximity of John Wayne Airport and the extent of existing industrial uses, residential uses are not appropriate for this area and are therefore prohibited. Properties in the BC District are subject to the requirements of the underlying IBC base zoning and as specified in Section 5-8-4.C Airport Restrictions."

III. Other Proposed Zoning Code Changes Related to IBC Sec. 9-36-21 Heliports

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.

Thank you for the opportunity to comment on the Recirculated DEIR. Please contact Lea Umnas at (949) 252-5123 or via email at lumnas@ocair.com if you need any additional details or information regarding the future referral of your project.

Sincerely,



Kari A. Rigoni
Executive Officer

cc: Alan Murphy, JWA Airport Director
Larry Serafini, Deputy Airport Director Facilities
Airport Land Use Commission for Orange County

A1-6
cont'd.

2. Response to Comments

A1. Response to Comments from Kari A. Ragoni, Executive Officer, Airport Land Use Commission for Orange County, dated February 5, 2010.

A1-1 The commenter's proposed language has been incorporated into Project Design Feature (PDF) 6-1 and proposed Zoning Code Section 5-8-4(C) (see Appendix B) will be revised at the Commenter's request.

PDF 6-1 As described in the proposed zoning for the project, ~~related to~~ building height limitations, recordation of aviation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided ~~per Orange County~~ consistent with the Airport Environs Land Use Plan standards for John Wayne Airport.

A1-2 Pages 5.6-5 and 5.6-17 of the RDEIR discuss Part 77 of the Federal Air Regulations (FAR). Figure 5.6-3 identifies that the entire IBC Vision Plan area is within the FAR Part 77 Imaginary Surfaces Area. On March 17, 1964, the Orange County Board of Supervisors recorded an "Aviation Easement for Orange County Airport" covering approximately 18,500 acres around the airport. This aviation easement restricts the construction of buildings and/or structures into air space at elevations above 203.68 feet above mean sea level (amsl). However, the Orange County Board of Supervisors has allowed certain nonresidential buildings to exceed this height limitation on a case-by-case basis. At the request of the commenter, the additional language has been incorporated in Zoning Code Section 5-8-4.C (see Appendix B) and in Project Design Feature (PDF) 6-4, which requires that building heights that penetrate the 100:1 *Notification Surface* shall file a *Form 7460-1 Notice of Proposed Construction or Alternation* with Federal Aviation Administration (FAA).

PDF 6-4 As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, 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, heliports/helistops and John Wayne Airport compatibility. Structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alternation with Federal Aviation Administration. Residential land uses shall be prohibited in Safety Zone 3.

A1-3 A small portion of the Urban Neighborhood district is located within the John Wayne Airport (JWA) Safety Zone 3. PDF 6-4 requires an assessment of land use compatibility with surrounding land uses. As disclosed on page 5.6-27, Safety Zone 3 prohibits the development of children's schools, large day care centers, hospitals, and nursing homes and calls for the avoidance or limited development of residential uses. At the request of the Commenter, PDF 6-4 and Zoning Code Section 5-8-4.C will be amended (see Appendix B) to specifically include an assessment of compatibility with JWA.

A1-4 While the draft zoning code already limits residential development to an area outside of Airport Safety Zone 3, the commenter's proposed language will be added to Proposed Zoning Code Section 5-8-4.C for further clarification. See response to Comment A1-3.



2. Response to Comments

Zoning Code Section 5-8-4.C will be amended to include similar language as PDF 9-4 (see Appendix B).

A1-5 At the request of the commenter, PDF 6-4 and Zoning Code Section 5-8-4.C will be amended to specifically include an assessment of compatibility with heliports and helistops.

A1-6 Consistent with responses A1-1 through A1-5, the proposed General Plan and Zoning Code amendments will be reviewed to include the commenter's proposed language (for amendments to the General Plan, see Appendix A). With respect to the commenter's proposed language regarding building heights not penetrating FAR Part 77 imaginary surfaces for JWA, see response to Comment A1-2 for proposed revisions to PDF 6-4 which addresses this issue. The City does not wish to supersede FAA's ability to approve waivers for any proposed height variations.

2. Response to Comments

LETTER A2 – (1 page)



City of Costa Mesa

P.O. Box 1200 • 77 Fair Drive • Costa Mesa, CA 92628-1200
714 754 5278 direct phone line • 714 754 4856 fax

ELECTRONIC TRANSMITTAL

February 5, 2010

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

Subject: Recirculated Draft EIR – Irvine Business Complex Vision Project

Dear Mr. Jacobs,

Thank you for the opportunity to provide comments on the Recirculated Draft Environmental Impact Report related to Irvine Business Complex.

The City of Costa Mesa requests that you address the following issues in the environmental analysis for the project:

- The City concurs with the eight percent contribution for SR-55 SB Frontage Road – Baker Street improvement identified in the IBC Vision Plan DEIR. | A2-1
- The IBC Vision Plan DEIR identified mitigation at the SR-55 NB Frontage Road – Baker Street intersection which refers to addition of a third eastbound through lane. This improvement is not included in the City's General Plan and is a new improvement identified as a result of the IBC Study. Therefore, the City requests that the full cost of the improvement be provided by the IBC Vision project. | A2-2

Please contact Raja Sethuraman, Transportation Services Division Manager, at 714/754-5032 for any questions related to the noted items.

Please include the City on any additional information on this development and the upcoming public hearings.

Sincerely,

Minoo Ashabi, AIA
Senior Planner

cc: Raja Sethuraman



2. Response to Comments

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2. Response to Comments

A2. Response to Comments Minoo Ashabi, Senior Planner, City of Costa Mesa, dated February 5, 2010.

- A2-1 Comment noted, the City of Costa Mesa concurs with the contribution for State Route 55 (SR-5)) southbound Frontage Road at Baker Street improvements.
- A2-2 The fair shares for locations outside Irvine are established through the City's Traffic Impact Analysis criteria. Both intersection improvements in Costa Mesa will be funded at a fair share level.



2. Response to Comments

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2. Response to Comments

LETTER A3– Irvine Unified School District Construction and Facilities (3 pages)



Irvine Unified School District
CONSTRUCTION AND FACILITIES
100 Nighthawk, Irvine, CA 92618, 949/935-5306, FAX 949/935-5329, www.iusd.org

February 5, 2010

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 A
RECIRCULATED DRAFT ENVIRONMENTAL 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 ENROLLMENT	AVAILABLE SEATS
Culverdale Elementary	1.6 Miles	652	645	7
Westpark Elementary	1.2 Miles	640	584	56
South Lake Middle	2.5 Miles	690	566	124
University High	2.9 Miles	2444	2444	0

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

BOARD OF EDUCATION
DAVID HUNTLEY-FEMTER, President / GUY KUNWABARA, Carolyn Kohn/NEP / MIKE KAPLAN / CHAIRMAN
GARY D. GROSS, JR., Superintendent of Schools
LARRY HARTMAN, Assistant Superintendent, Education Services / LARRY J. JEFFER, Assistant Superintendent, Human Resources

IUSD ... providing the highest quality educational experience we can envision.



A3-1

A3-2

2. Response to Comments

Mr. Bill Jacobs
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Page 2

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 regarding all units (existing, approved, pending and potential).

GRADE LEVEL	DISTRICT- WIDE RATE
K-6	.201
7-8	.06
9-12	.127
TOTAL	.389

A3-3

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.

A3-4

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.

A3-5

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.

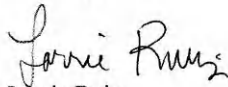
A3-6

2. Response to Comments

Mr. Bill Jacobs
February 5, 2010
Page 3

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

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



2. Response to Comments

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2. Response to Comments

A3. Response to Comments from Lorrie Ruiz, Assistant Director, Facilities Planning, Irvine Unified School District, dated February 5, 2010.

A3-1 Capacity and enrollment within the Irvine Unified School District's (IUSD) schools serving the IBC Vision Plan area are noted. The updated capacity and enrollment numbers have been updated in the FEIR, as follows.

Table 5.11-2
IUSD School Capacity and Current Enrollment

School	Capacity	Current Enrollment
Culverdale Elementary	652	620 645
Westpark Elementary	640	583 584
South Lake Middle School	690	567 566
University High School	2360 2,444	2356 2,444

Source: Ruiz ~~2009~~ 2010.

A3-2 The City of Irvine acknowledges that the IUSD is short classrooms to serve the proposed project. However, new residential and nonresidential development projects within the IBC Vision Plan area are required to pay impact fees, as authorized under Education Code Section 17620(a) and Government Code Section 65995(b). 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. Since all projects in the IBC must pay their appropriate impact fees, each future project will provide full mitigation pursuant to Education Code Section 17620(a) and Government Code Section 65995(b).

A3-3 The revised student generation rates for the IUSD are noted. Changes to student generation for the IBC Vision Plan have been revised in the FEIR in accordance with these revised student generation numbers. However, it should be noted that the Proposed General Plan Amendment will change the allowable density within the IBC from a maximum of 52 units an acre to a minimum of 30 units an acre, which would preclude development of single-family units.

Table 5.11-5
IUSD Student Generation

Grade Level	Total Units	District wide Generation Rate (student per dwelling unit)	New Students
K-6	3,082	0.575 0.201	1,772 619
7-8	3,082	0.325 0.060	1,002 185
9-12	3,082	0.228 0.127	703 391
Total	3,276 3,082	1.128 0.389	3,477 1,195

Source: Ruiz ~~2009~~ 2010.



2. Response to Comments

Table 5.11-8 Pending IBC Residential Development Projects and Number of Students Generated				
Project Name	Location by District	Total Units (including Density Bonus Units)	Districtwide Generation Rate (student per dwelling unit)	New Students
2851 Alton	Irvine Unified School District	170	0.402 <u>0.389</u>	68 <u>66</u>
2852 Kelvin	Irvine Unified School District	194	0.402 <u>0.389</u>	78 <u>75</u>
Subtotal	Irvine Unified School District	364	0.402 <u>0.389</u>	146 <u>142</u>

- A3-4 IUSD's Level 2 Developer Fees are noted. These fees are also listed on page 5.11-11 of the RDEIR.
- A3-5 See response to Comment A3-2. The need for IUSD to utilize relocatable classrooms, evaluate district boundaries, and construct new facilities is noted.
- A3-6 See response to Comment A3-2. Although developer 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.

2. Response to Comments

LETTER A4 – Irvine Ranch Water District (2 pages)



IRVINE RANCH WATER DISTRICT

15600 Sand Canyon Ave., P.O. Box 57000, Irvine, CA 92619-7000 (949) 453-5300

January 28, 2010

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

Subject: Notice of Completion and Availability of a Recirculated Draft Environmental Impact Report (DEIR) for the Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36)

Dear Mr. Jacobs:

Irvine Ranch Water District (IRWD) has received and reviewed the subject DEIR and offers the following comments. The Recirculated DEIR correctly identifies IRWD as the potable water, nonpotable water, and wastewater service provider.

Figure 5.13-2 (IBC Study Area Traffic Analysis Zones) in the body of the DEIR 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 number for this area and confirm that the Traffic Study included the correct use attributes for this area.

A4-1

The legend of Figure 3-4 (Chapter 3) and Figure N-2 (Appendix C) incorrectly labels Existing General Plan Designation as Medium High Density Residential. Please revise the legend to reflect the correct land use as High Density Residential.

A4-2

In the 2008 portion of the NOP Written Comment Summary (Table 2-1, page 2-5), IRWD comments addressed in sections 5.14 Recreation and 5.12 Utilities are labeled incorrectly. Please revise to the Table to correctly identify Section 5-12 as Recreation and 5-14 as Utilities and Service Systems.

A4-3

On April 28, 2008, the IRWD Board of Directors approved an assessment of water supplies for the Irvine Business Complex Vision Plan and made the determination that sufficient water supply is available for the project. This assessment included projections for water demand to 20,000 units in the city of Irvine. The preliminary estimates show an increase in water demands for this project of 588 AF per year potable and 43 AF per year increase in non-potable associated

A4-4



2. Response to Comments

Mr. Bill Jacobs
City of Irvine
January 26, 2010
Page 2

with the land use change proposed by the project. As specific projects become known and tract maps are prepared, verification of water supply for those projects with a minimum of 500 dwelling units is required.

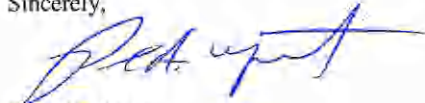
A4-4
cont'd.

IRWD completed a Sub Area Master Plan (SAMP) in February 2008 which analyzed demands for land use changes envisioned by the Irvine Business Complex up to 15,000 dwelling units and a sensitivity analysis of up to 20,000 dwelling units. The SAMP showed that existing water and sewer facilities were sufficient with relatively minor upgrade required to meet the demands if redevelopment in the area exceeds 15,000 units. The SAMP must be updated as specific projects become known. Please contact Eric Akiyoshi at (949) 453-5552 regarding the SAMP and its findings with respect to the land use changes proposed by the Irvine Business Complex.

A4-5

IRWD appreciates the opportunity to review and comment on the Recirculated DEIR. If you have any questions or require additional information, please contact Christian Kessler at (949) 453-5441.

Sincerely,



Paul Weghorst
Principal Water Resources Manager, IRWD

PW/CLK/clg

cc: Mike Hoolihan, IRWD
Kellie Welch, IRWD
Robert Jacobsen, IRWD
Eric Akiyoshi, IRWD
Greg Heiertz, IRWD
Christian Kessler, IRWD

F:/grm/wrd/depts/water resources 71/Kessler/2010.doc

2. Response to Comments

A4. Response to Comments from Paul Weghorst, Principal Water Resources Manager, Irvine Ranch Water District, dated January 28, 2010.

A4-1 The Traffic Analysis Zone (TAZ) map has been updated to include the appropriate TAZ number at the corner of Michelson and Carlson (TAZ 293) (see Appendix E of this FEIR). The land uses for the build-out of the IBC Vision Plan assumed 1,000 high-density residential dwelling units at the corner of Michelson and Carlson, consistent with planning documentation provided to the City.

A4-2 The Vision Plan Framework has been updated per the commenter's request in the FEIR. See Appendix E of this FEIR.

A4-3 Table 2-1 has been revised in the FEIR at the commenter's request.

<i>Table 2-1</i> <i>NOP Written Comment Summary</i>		
<i>Commenting Agency/Person</i>	<i>Comment Summary</i>	<i>Issue Addressed In:</i>
Irvine Ranch Water District	The conceptual location for a community park must be fully described and analyzed in the EIR. Need to discuss the impact of hydrology and water quality on the San Joaquin Marsh. The SAMP must be updated as specific projects become known.	Sections 5.7, <i>Hydrology and Water Quality</i> , 5.12 <u>5.14</u> , <i>Utilities and Service Systems</i> , and 5.14 <u>5.12</u> , <i>Recreation</i>

A4-4 Comment noted. Approval of tract maps with 500 or more units will require verification of reliable water supplies in accordance with Senate Bill 221. If a water supply verification reveals inadequate supplies, the project may not proceed until supplies have been identified and secured. (Government Code 66473.7[b][3]).

A4-5 The Sub-Area Master Plan (SAMP) prepared by EarthTech in February 2008 was based on a maximum of 20,000 dwelling units in the IBC Vision Plan area. The proposed project would only permit a maximum of 17,038 units (including bonus density units) in the IBC Vision Plan area at buildout. Therefore, the SAMP evaluated more units than proposed in the IBC. The SAMP included Approved and Pending project units totaling 14,552 in the SAMP and the remainder of the proposed units were included in the sensitivity analysis. However, the location of these additional units were unknown and therefore IRWD is requesting that the SAMP be updated when the location of projects not identified in the SAMP are proposed. Consistent with the existing development review process, the City will coordinate with IRWD as applications for new development projects are submitted to the City.



2. Response to Comments

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2. Response to Comments

LETTER A5 John Wayne Airport (2 pages)

 JOHN WAYNE AIRPORT Orange County, California Alan L. Murphy Airport Director	February 5, 2010	Mr. Bill Jacobs, Principal Planner City of Irvine One Civic Center Plaza P.O. Box 19575 Irvine, CA 92623	Subject: Comments on the Recirculated DEIR for the Irvine Business Complex (IBC)
	Dear Mr. Jacobs:	Thank you for the opportunity to review the Recirculated Draft Environmental Impact Report (DEIR) for the Draft IBC Vision Plan and Mixed Use Overlay Zoning. We offer the following comments:	The DEIR has been revised to include a discussion of the Federal Aviation Regulation (FAR) Part 77 notification and obstruction imaginary surfaces associated with John Wayne Airport (JWA). The DEIR includes Project Design Feature (PDF) 6-1. We recommend revising this PDF as follows:
	PDF 6-1 As described in the proposed zoning for the project, related to building height limitations, recordation of aviation 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 per Orange County Airport Environs Land Use Plan standards for John Wayne Airport.	A5-1	
	In addition to PDF 6-1, we recommend including mitigation measures or PDFs 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 Form 7460-1 "Notice of Proposed Construction or Alteration" with the FAA. The DEIR states Zoning Code Section 5-8-4.C (Appendix D to the Recirculated DEIR) addresses these requirements, but upon review these requirements were not included.	A5-2	
11601 Airway Avenue Costa Mesa, CA 92626-4608 949.252.5171 949.252.5178 fax www.ocair.com	The Recirculated DEIR has been revised to include additional discussion on the land use compatibility for proposed land uses within JWA's Safety Zones. According to the DEIR, all residential land uses would be restricted within the JWA Safety Zone 3. We suggest that a mitigation measure or PDF be included in the DEIR, as well adding language to Zoning Code Section 5-8-4.C, stating that residential uses are not	A5-3	



2. Response to Comments

JWA Comments – IBC Recirculated DEIR
February 5, 2010
Page 2

permitted. The DEIR refers to PDF 6-4 related to development within the Safety Zones. However PDF 6-4 states:

PDF 6-4 As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, 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.

A5-3
cont'd.

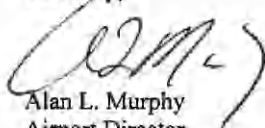
Because PDF 6-4 does not directly address development in airport safety zones, an additional PDF or mitigation measure should be added to clarify the restrictions to JWA Safety Zone 3.

We also suggest that the DEIR include a mitigation measure requiring the referral of the proposed revised project to the Airport Land Use Commission for Orange County for a consistency determination with the *Airport Environs Land Use Plan (AELUP)* for JWA.

A5-4

Thank you for the opportunity to comment on the Recirculated DEIR for the IBC. Please contact Kari Rigoni, JWA Planning Manager, at (949) 252-5284 or via email at krigoni@ocair.com regarding these comments.

Sincerely,



Alan L. Murphy
Airport Director

cc: ALUC for Orange County
Larry Serafini, Deputy Airport Director Facilities

2. Response to Comments

A5. Response to Comments from Alan L. Murphy, Airport Director, John Wayne Airport, dated February 5, 2010.

A5-1 See also response to Comment A1-1. At the request of the commenter, the additional language has been incorporated in Zoning Code Section 5-8-4.C (see Appendix B) and in Project Design Feature (PDF) 6-1, which requires that building heights not exceed Imaginary Surfaces height limitation of FAR Part 77, and structures that do penetrate the 100:1 *Notification Surface* shall file a *Form 7460-1 Notice of Proposed Construction or Alternation* with Federal Aviation Administration.

PDF 6-1 As described in the proposed zoning for the project, ~~related to~~ building height limitations, recordation of aviation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided ~~per Orange County~~ consistent with the Airport Environs Land Use Plan standards for John Wayne Airport.

A5-2 See response to Comment A1-2. At the request of the commenter, the additional language has been incorporated in Zoning Code Section 5-8-4.C (see Appendix B) and in Project Design Feature (PDF) 6-4, which requires that building heights that penetrate the 100:1 *Notification Surface* file a *Form 7460-1 Notice of Proposed Construction or Alternation* with Federal Aviation Administration.

PDF 6-4 As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, 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, heliports/helistops and John Wayne Airport compatibility. Structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alternation with Federal Aviation Administration. Residential land uses shall be prohibited in Safety Zone 3.

A5-3 See response to Comment A1-3. A small portion of the Urban Neighborhood district is located within the John Wayne Airport (JWA) Safety Zone. PDF 6-4 requires an assessment of land use compatibility with surrounding land uses. As disclosed on page 5.6-27, Safety Zone 3 prohibits the development of children's schools, large day care centers, hospitals, and nursing homes and calls for the avoidance or limited development of residential uses. At the request of the commenter, PDF 6-4 and Zoning Code Section 5-8-4.C (as shown in Appendix B) has been amended to include an assessment of compatibility with John Wayne Airport (JWA).

A5-4 Any revisions to the Vision Plan project impacting JWA facilities or operations will be referred to the Airport Land Use Commission for appropriate review, consistent with the Airport Environs Land Use Plan (AELUP). In accordance with Public Utilities Code section 21676, amendments to a specific plan or general plan affecting the JWA airport planning area will be submitted to the Airport Land Use Commission (ALUC) for a determination as to the consistency with the AELUP. If the ALUC finds that the amendment is inconsistent and the local legislative body does not concur, the City Council can either revise its amendment proposal or, by a two-thirds vote, overrule the commission's determination. Since ALUC review is already required by Public Utilities Code section 21676, an additional mitigation measure is not considered necessary.



2. Response to Comments

2. Response to Comments

LETTER A6 – Native American Heritage Commission (4 pages)

STATE OF CALIFORNIA	Arnold Schwarzenegger, Governor
NATIVE AMERICAN HERITAGE COMMISSION	
915 CAPITOL MALL, ROOM 264 SACRAMENTO, CA 95814 (916) 653-8281 Fax (916) 857-5390 Web Site www.nahc.ca.gov e-mail: ds_nahc@pacbell.net	
December 29, 2009	RECEIVED
Mr. Bill Jacobs, AICP, Principal Planner CITY OF IRVINE P.O. Box 19575 Irvine, CA 92623-0575	JAN 05 2010 COMMUNITY DEVELOPMENT CITY OF IRVINE
Re: SCH#2007011024 CEQA Notice of Completion; Re-circulated draft Environmental Impact Report (EIR) for the Irvine Business Complex located in the City of Irvine, Orange County, California	
Dear Mr. Jacobs:	
The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources. (Also see <i>Environmental Protection Information Center v. Johnson</i> (1985) 170 Cal App. 3rd 604) The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.	A6-1
The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources <u>were not identified</u> within one-half mile of the APE. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached <u>list of Native American contacts</u>. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes.. Furthermore we suggest that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP) Coordinator's office (at (916) 653-7276, for referral to the nearest OHP Information Center of which there are 11.	A6-2
Consultation with tribes and interested Native American tribes and individuals, as consulting parties, on the NAHC list should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 (f) <i>et seq</i>), 36 CFR Part 800.3, the President's Council on Environmental Quality (CEQ; 42 U.S.C. 4371 <i>et seq</i>) and NAGPRA (25 U.S.C. 3001-3013), as appropriate.	A6-3

2. Response to Comments

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'. Discussion of these should be included in your environmental documents, as appropriate.

A6-4

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of 'historic properties of religious and cultural significance' may also be protected under Section 304 of the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C. 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

A6-5

CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the Initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

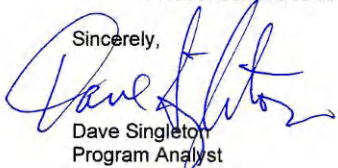
A6-6

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation.

A6-7

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

2. Response to Comments

Native American Contacts Orange County December 29, 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 Nation

Sam Dunlap, Tribal Secretary

P.O. Box 86908 Gabrielino Tongva
Los Angeles, CA 90086
samdunlap@earthlink.net

(909) 262-9351 - cell

Juaneno Band of Mission Indians Acjachemen Nation

David Belardes, Chairperson

32161 Avenida Los Amigos Juaneno
San Juan Capistrano, CA 92675

DavidBelardes@hotmail.com

(949) 293-8522

(949) 493-4933 - Home

Juaneno Band of Mission Indians Acjachemen Nation

Anthony Rivera, Chairman

31411-A La Matanza Street Juaneno

San Juan Capistrano, CA 92675-2674

arivera@juaneno.com

(949) 488-3484

(530) 354-5876 - cell

Tongva Ancestral Territorial Tribal Nation

John Tommy Rosas, Tribal Admin.

tattnlaw@gmail.com Gabrielino Tongva

310-570-6567

Gabrielino Tongva Indians of California Tribal Council

Robert F. Doramæ, Tribal Chair/Cultural

P.O. Box 490 Gabrielino Tongva

Bellflower, CA 90707

gtongva@verizon.net

562-761-6417 - voice

562-925-7989 - fax

Gabrielino/Tongva San Gabriel Band of Mission Anthony Morales, Chairperson

PO Box 693 Gabrielino Tongva

San Gabriel, CA 91778

(626) 286-1262 - FAX

(626) 286-1632

(626) 286-1758 - Home

(626) 286-1262 Fax

Juaneno Band of Mission Indians

Alfred Cruz, Cultural Resources Coordinator

P.O. Box 25628 Juaneno

Santa Ana, CA 92799

alfredgcruz@sbcglobal.net

714-998-0721

714-998-0721 - FAX

714-321-1944 - 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. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2007011024; CEQA Notice of Completion; Recirculated draft Environmental Impact Report for the Irvine Business Complex; City of Irvine; Orange County, California.



2. Response to Comments

Native American Contacts
Orange County
December 29, 2009

Juaneno Band of Mission Indians
Adolph 'Bud' Sepulveda, Vice Chairperson
P.O. Box 25828 Juaneno
Santa Ana , CA 92799
bssepul@yahoo.net
714-838-3270
714-914-1812 - CELL
bsepul@yahoo.net

Juaneño Band of Mission Indians
Sonia Johnston, Tribal Chairperson
P.O. Box 25628 Juaneno
Santa Ana , CA 92799
sonia.johnston@sbcglobal.
(714) 323-8312

Juaneno Band of Mission Indians
Anita Espinoza
1740 Concerto Drive Juaneno
Anaheim , CA 92807
(714) 779-8832

Gabrielino-Tongva Tribe
Bernie Acuna
501 Santa Monica Blvd, # Gabrielino
Santa Monica CA 90401
(310) 587-2203
(310) 428-7720 - cell
(310) 587-2281

Juaneno Band of Mission Indians Acjachemen Nation
Joyce Perry
4955 Paseo Segovia Juaneno
Irvine , CA 92612
949-293-8522

Gabrielino-Tongva Tribe
Linda Candelaria, Chairwoman
501 Santa Monica Blvd, # Gabrielino
Santa Monica CA 90401
(310) 587-2203
310-428-5767- cell
(310) 587-2281
lcandelaria1@gabrielinoTribe.org

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. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2007011024; CEQA Notice of Completion; Recirculated draft Environmental Impact Report for the Irvine Business Complex; City of Irvine; Orange County, California.

2. Response to Comments

A6. Response to Comments from Dave Singleton, Program Analyst, Native American Heritage Commission, dated December 29, 2009.

A6-1 This letter identifies various recommended actions to assess project impacts on archaeological and historical resources and has no specific comments on the RDEIR. The City has complied with the recommended actions through preparation of the RDEIR.

A6-2 The Native American Heritage Commission (NAHC) notes that a Sacred Land file (SFL) search was conducted and Native American Cultural Resources were not identified within the IBC Vision Plan area. The City of Irvine conducted the Native American consultation pursuant to Senate Bill 18 by contacting NAHC for a list of significant sites in the area and listing of Native Americans within Orange County that may have information regarding the area. Tribes listed by NAHC were included on the distribution list for the RDEIR. As part of this outreach, the City contacted all tribes on the NAHC list to inquire about the sensitivity of the area to yield Native American resources in February 2007 in conjunction with the original Notice of Preparation for the project.

As described in Section 5.4, Cultural Resources, a cultural resource records search was conducted for prehistoric and historical cultural resources by Cogstone Resource Management Inc. The RDEIR identified existing plans, programs, or policies (PPPs) in the event construction activities uncovered sensitive archaeological resources to ensure no significant adverse impacts would occur to historic and prehistoric resources. In accordance with PPP 4-1, cultural consultants would be selected from the roll of qualified archaeologists and paleontologists maintained by the County of Orange.

A6-3 The cultural resources evaluation was conducted in accordance with the California Environmental Quality Act with regard to National and California historic and archaeological resources. Native American consultation was conducted by Cogstone Resources Management during their evaluation.

A6-4 As described in Section 5.4, Cultural Resources, PPP 4-1 and PPP 4-2 were identified in the event construction activities uncovered sensitive archaeological resources to ensure no significant adverse impacts would occur to historic and prehistoric resources. Impact 5.4-3 includes a discussion on accidental discovery of human remains and PPP 4-2 describes compliance with Public Resources Code Section 5097.98 and Health and Safety Code 7050.5.

A6-5 The Commenter identifies various recommended actions to assess project impacts on archeological resources and has no specific comments on the RDEIR. The City has complied with the recommended actions through preparation of the RDEIR. The RDEIR identified PPP4-2 in the event construction activities uncovered sensitive archaeological resources to ensure no significant adverse impacts would occur to archeological and prehistoric resources.

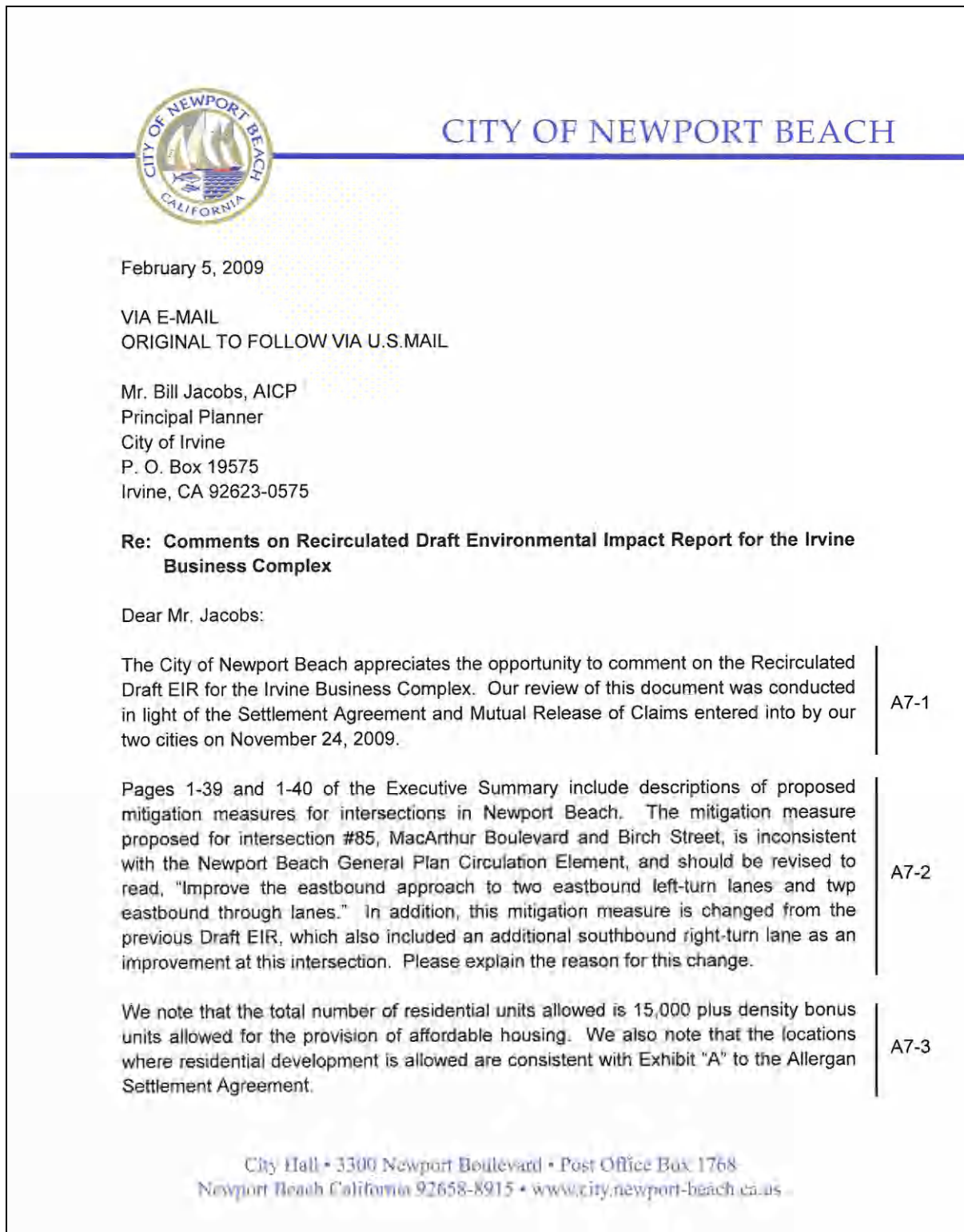
A6-6 See response to Comment A6-4. Impact 5.4-3 includes a discussion on accidental discovery of human remains and PPP 4-2 describes compliance with Public Resources Code Section 5097.98 and Health and Safety Code 7050.5.

A6-7 PPP 4-1 describes the City's requirements for new development projects with regard to historic and archaeological resources. In accordance with existing regulations, ground disturbing activities would be halted in the event of a discovery until adequate provisions are in place to protect these resources.



2. Response to Comments

LETTER A7 – City of Newport Beach (3 pages)



2. Response to Comments

Letter to Mr. Jacobs

February 5, 2010

Page 2

However, in our review of the draft Zoning Code amendments, we noted changes that appear to have the effect of undoing the intent of the Settlement Agreements, that is, to limit the amount of residential development south of the 405 Freeway and close to Newport Beach's borders. Specifically, the height limit in the "Urban Neighborhood" district is proposed to be changed from seven stories to 20 stories. This is a significant change in the project description, which is not mentioned in the DEIR's project description, and should be. The increased height is proposed to apply to virtually all of the blocks on the north side of Campus Avenue, directly on the Newport Beach boundary. This is an area where existing development is generally one- and two-story industrial and office development. The increased height is also proposed to be applied to the area directly adjacent to the San Joaquin Marsh, a significant habitat area. The development of 20-story buildings will represent a significant change, with the potential to impact adjacent areas both in Newport Beach and the San Joaquin Marsh. The potential for change is magnified by the proposed change to the General Plan to replace the density limit of 52 units per acre with a minimum density of 30 units per acre.

Yet Chapter 5.1 of the DEIR contains no discussion of the aesthetic impacts of significantly taller buildings, such as shade and shadow. The existing plans, programs and policies and the project design features outlined in the DEIR contain no reference to any requirements for shade and shadow studies for taller buildings, nor do the Mixed Use Design Criteria contain any provisions for tall buildings and their relationship to surrounding areas. With respect to the potential impact of significantly taller buildings, we believe that the conclusion with regard to Impact 5.1-1, "The proposed project would not substantially alter the visual character of the IBC area and its surroundings," is not justified.

A7-4



Because this change in the plan could result in residential density being concentrated close to Newport Beach's borders, rather than spread throughout the IBC, the proposed increase in height and density causes the City of Newport Beach concerns related to greater impacts on its residents and businesses. This greater density on the south side of the 405 Freeway undoubtedly causes greater traffic impacts and greater demand for park and recreation space than would occur if the intent of the Newport Beach and Allergan Settlement Agreements were followed. The City of Newport Beach requests that the Vision Plan be returned to its original provisions that limited height in this area to no more than seven stories and density to no more than 52 units per acre in order to avoid further impacts.

2. Response to Comments

Letter to Mr. Jacobs

February 5, 2010

Page 3

Thank you for considering these comments on the Recirculated Draft EIR.

Sincerely,



Sharon Wood

Assistant City Manager

cc: Newport Beach City Council
Dave Kiff, Newport Beach City Manager
David R. Hunt, City Attorney

2. Response to Comments

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2. Response to Comments

A7. Response to Comments from Sharon Wood, Assistant City Manager, City of Newport Beach, dated February 5, 2010.

A7-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

A7-2 The Traffic Study text describing the improvement at intersection #85 MacArthur/Birch is correct. The text describing this intersection improvement in Section 5.13, *Transportation and Traffic*, of the RDEIR has been revised to include the improvement of two eastbound-left and two eastbound-through lanes:

Intersection #85: MacArthur Boulevard and Birch Street: Improve the eastbound approach to two eastbound left-turn lanes and two ~~southbound~~ eastbound through lanes.

The southbound right-turn lane that was proposed as an additional improvement at this location as part of the March 2009 DEIR traffic study is no longer needed to bring this intersection back to acceptable levels of service (LOS) with the RDEIR.

A7-3 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

A7-4 Proposed building heights for the Urban Neighborhood area adjacent to Newport Beach have been reduced to 75 feet, which corresponds to the seven stories originally proposed.

Additionally, the portion of the IBC Vision Plan area adjacent to the San Joaquin Marsh including, the west side of Fairchild Road, the north side of Campus Drive, the west side of Carlson Avenue, and the north side of Michelson Drive; were recently developed. Redevelopment is not forecast to occur adjacent to the San Joaquin Marsh; and as a result, no impact on sensitive species resulting from new development in that area is anticipated.

2. Response to Comments

LETTER A8 – Santa Ana Unified School District (1 page)



Santa Ana Unified School District

Facilities & Governmental Relations

Jane A. Russo, Superintendent

February 1, 2010

Bill Jacobs
Principal Planner
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606-5207

Subject: Comments on the Recirculated Draft EIR for the Irvine Business Complex

Mr. Jacobs:

Thank you for the opportunity to respond to the Recirculated Draft EIR for the Irvine Business Complex. The Santa Ana Unified School District, Facilities and Governmental Relations Department, would like to take this opportunity to notify the City of Irvine of updates to our enrollment and developer fees so that the environmental analysis reflects the most current District data.

Enrollment updates for Table 5.11-3 on page 5.11-9 are as follows:

School	Current Enrollment (as of December 2009)
Monroe Elementary	477
McFadden Intermediate	1,510
Century High	2,339

In regards to the developer fees reported on page 5.11-12, the District implemented a Level 2 Fee of \$4.84 per square foot of residential development as of September 9, 2009.

If you have any questions regarding this information, please call me at 714-480-5356.

Sincerely,

A handwritten signature in blue ink that reads "Joe Dixon".

Joe Dixon,
Assistant Superintendent

1601 East Chestnut Avenue, Santa Ana, CA 92701-6322, (714) 480-5357

BOARD OF EDUCATION

Audrey Yamagata-Noji, Ph.D., President • Rob Richardson, Vice President
José Alfredo Hernández, I.D., Clerk • John Palacio, Member • Roman Reyna, Member



A8-1

2. Response to Comments

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2. Response to Comments

A8. Response to Comments from Santa Ana Unified School District, dated February 1, 2010.

A8-1 Capacity within the Santa Ana Unified School District's (SAUSD) schools serving the IBC Vision Plan area are noted. The updated capacity numbers have been updated in the FEIR.

*Table 5.11-3
SAUSD School Capacity and Current Enrollment*

<i>School</i>	<i>Capacity</i>	<i>Current Enrollment</i>
Monroe Elementary School	486	508 477
McFadden Intermediate School	974	1,519 1,510
Century High School	2,048	2,540 2,339

Source: Dixon 2008.

SAUSD's September 2009 Level 2 Developer Fees are noted. The FEIR has been updated to identify the updated fee schedule for the District.

... The current SAUSD development fees, as of ~~July 14, 2008~~ September 9, 2009, are ~~\$2.97~~ \$4.84 per square foot for residential development and \$0.47 per commercial and senior housing square foot...



2. Response to Comments

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2. Response to Comments

LETTER A9 – South Coast Air Quality Management District (5 pages)



**South Coast
Air Quality Management District**
21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

E-mailed: February 5, 2010

February 5, 2010

Mr. Bill Jacobs, AICP
bjacobs@ci.irvine.ca.us
Principal Planner
City of Irvine
Community Development Department
PO Box 19575
Irvine, CA 92623-0575

**Review of the Re-circulated Draft Environmental Impact Report (Draft EIR)
for the Irvine Business Complex**

The South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to comment on the above-mentioned document. The following comment is intended to provide guidance to the lead agency and should be incorporated into the revised Draft or Final Environmental Impact Report (Draft or Final EIR) as appropriate.

The SCAQMD appreciates that the lead agency reviewed the California Air Resources Board's (CARB's) Air Quality Land Use Handbook: A Community Perspective, and that the lead agency has utilized some of the guidance offered by the handbook on siting incompatible land uses and "sensitive land uses" (e.g., residences, parks and medical facilities) near industrial sources, high traffic freeways and roads to design the proposed project. Specifically, the lead agency incorporated project design features (PDFs), PDF 2-1 through PDF 2-5 to minimize potentially significant health risk impacts to sensitive receptors. In addition to the above mentioned PDFs the SCAQMD recommends that the lead agency mitigate future project impacts by precluding the establishment of new sensitive land uses within the buffers recommended by CARB.

A9-1

Pursuant to Public Resources Code Section 21092.5, please provide the SCAQMD with written responses to all comments contained herein prior to the adoption of the Final EIR. Further, staff is available to work with the lead agency to address these issues and any

A9-2

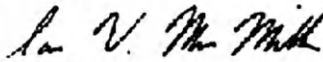


2. Response to Comments

other questions that may arise. Please contact Dan Garcia, Air Quality Specialist CEQA Section, at (909) 396-3304, if you have any questions regarding the enclosed comments.

A9-2
cont'd.

Sincerely,



Ian MacMillan
Program Supervisor, CEQA Inter-Governmental Review
Planning, Rule Development & Area Sources

Attachment

IM:DG

ORC091228-04
Control Number

2. Response to Comments

Mr. Bill Jacobs, AICP
Principal Planner

February 5, 2010

Air Quality Analysis and Mitigation Measures

1. Siting Criteria and Future Project Planning

The SCAQMD staff recognizes the proposed project provides regional air quality benefits by increasing residential densities near employment and transportation centers. However, the proposed project is a mixed use overlay zone for select areas that allows for an Urban Neighborhood District and a Business Complex District. These overlay districts appear to allow residential uses to be placed in close proximity to industrial zones. This future juxtaposition may expose local residents to potentially significant sources of emissions.

The SCAQMD staff appreciates that the lead agency has reviewed CARB Air Quality and Land Use Handbook: A Community Perspective, and that the lead agency has utilized the guidance offered by the handbook on siting incompatible land uses and "sensitive land uses" (e.g., residences, parks and medical facilities) near industrial sources, high traffic freeways and roads to design the proposed project. Specifically, the lead agency incorporated project design features (PDF) 2-1 through 2-5 to address CARB's recommended buffer distances between incompatible land uses. Given that the PDFs are intended to minimize the air quality impacts from the proposed project the SCAQMD staff recommends that the lead agency carefully examine all future projects subject to PDF 2-1 through PDF 2-5 and if potential significant impacts are identified (e.g., a health risk assessment identifies a risk greater than ten in one million), the lead agency should prepare the necessary CEQA document pursuant to the Public Resources Code 15168(c). Also, SCAQMD staff requests that pursuant to Section 15168(e) the lead agency place the SCAQMD on future notices of activity.

SCAQMD staff also notes that PDF 2-1 through PDF 2-5 rely heavily on the use of particulate filters placed in residential HVAC systems to mitigate air quality impacts from sources such as freeways. In general, these filters can be effective at reducing particulate pollution, yet have limited ability to remove gaseous pollutants. In addition, as these filters are used to control exposures indoors, there is still a concern for exposure during outdoor activities. Therefore, SCAQMD staff cautions the lead agency not to encroach upon the buffers specified by CARB for new sensitive land uses particularly if elevated health risks are determined.

2. Emission Calculations

On pages 5.2-18 and 5.2-20 of the Draft EIR the lead agency summarized the proposed project's regional air quality impacts (i.e., Table 5.2-8: Sample Construction Phase Regional Emissions Scenario and Table 5.2-9: Post Year 2030 Operational Phase Regional Emissions); however, the criteria pollutant emissions values (i.e., NOx, SOx, VOC, CO, PM10 and PM2.5) in the URBEMIS2007 Model output sheets which are available in Appendix G of the Draft EIR do not reflect the emissions values reported in Tables 5.2-8 and 5.2-9. The SCAQMD staff requests that the lead agency explain the discrepancy between the emissions values mentioned above and provide the methodology used to calculate the project's regional air quality impacts summarized on pages 5.2-18 and 5.2-20 in the revised Draft EIR or Final EIR.

A9-3

A9-4



2. Response to Comments

Mr. Bill Jacobs, AICP
Principal Planner

2

February 5, 2010

3. Construction Equipment Mitigation Measures

Given that the lead agency's regional construction and operational air quality analysis demonstrates that the criteria pollutant emissions exceed the SCAQMD's daily significance thresholds for NOX, VOC, CO, PM10 and PM2.5, the SCAQMD recommends that the lead agency consider adding the following mitigation measures to further reduce air quality impacts from the project, if feasible:

NOx

- Prohibit all diesel trucks from idling in excess of five minutes, both on-site and off-site,
- Use alternative fueled off-road equipment,
- Use electricity from power poles rather than temporary diesel or gasoline power generators,
- Configure construction parking to minimize traffic interference,
- Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow,
- Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site,
- Schedule construction activities that affect traffic flow on the arterial system to off-peak hour to the extent practicable,
- Reroute construction trucks away from congested streets or sensitive receptor areas, and
- Improve traffic flow by signal synchronization.

A9-5

Fugitive Dust:

In addition to the above NOx mitigation measures, SCAQMD staff recommends modifying Mitigation Measure AQ-2a and AQ-2b for fugitive dust to include the following:

- Suspend all excavating and grading operations when wind gusts (as instantaneous gusts) exceed 25 mph, and
- Pave road and road shoulders.

A9-6

In addition to the above mitigation measures, SCAQMD staff recommends modifying PDF 2-6 as follows:

Applicants for new developments in the Irvine Business Complex shall require that the construction contractor utilize off-road construction equipment that conforms to Tier 3 of the United States Environmental Protection Agency, or higher emissions standards for construction equipment over 50 horsepower that are commercially available. The construction contractor shall be made aware of this requirement prior to the start of construction activities. Use of commercially available Tier 3 or higher off-road equipment, or:

A9-7

- Year 2006 or newer construction equipment for engines rated equal to 175 horsepower (hp) and greater.

2. Response to Comments

Mr. Bill Jacobs, AICP
Principal Planner

3

February 5, 2010

- Year 2007 and newer construction equipment for engines rated equal to 100hp but less than 175 hp, and
- 2008 and newer construction equipment for engines rated equal to or greater than 175hp horsepower but less than or equal to 100hp.

The use of such equipment shall be stated on all grading plans. The construction contractor shall maintain a list of all operating equipment in use on the project site. The construction equipment list shall state the makes, models, and numbers of construction equipment on-site.

A9-7
cont'd.

The lead agency may also consider encouraging construction contractors to apply for SCAQMD "SOON" funds. The "SOON" program provides up to \$60 million dollars to accelerate clean up of off-road diesel vehicles, such as heavy duty construction equipment. More information on this program can be found at the following website: <http://www.aqmd.gov/tao/Implementation/SOONProgram.htm>

A9-8

4. Warehouse/Distribution Center Mitigation Measures:

The SCAQMD recommends that the lead agency consider adding the following mitigation measures to further reduce air quality impacts from the operation phase of the project, if feasible:

- Design the warehouse/distribution center such that entrances and exits discourage that trucks from traversing past neighbors or other sensitive receptors;
- Design the warehouse/distribution center such that any check-in point for trucks is well inside the facility property to ensure that there are no trucks queuing outside of the facility;
- Develop, adopt and enforce truck routes both for entering and leaving the city and in and out of facilities; keeping in mind common pedestrian routes, especially for schools;
- Establish area(s) within the facility for repair needs;
- Have truck routes clearly marked with trailblazer signs, so trucks will not enter residential areas;
- Identify or develop secure locations outside of residential neighborhoods where truckers that live in the community can park their truck, such as a Park & Ride;
- Provide food options, fueling, truck repair and or convenience store on-site to minimize the need for trucks to traverse through residential neighborhoods;
- Re-route truck traffic by adding direct off-ramps for the truck or by restricting truck traffic on certain sensitive routes;
- Improve traffic flow by signal synchronization;
- Require or provide incentives for diesel particulate traps that meet CARB certified level 3 requirements; and
- Electrify service equipment at facility.

A9-9



2. Response to Comments

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2. Response to Comments

A9. Response to Comments from Ian MacMillan, Program Supervisor, CEQA Inter-Governmental Review Planning, Rule Development & Area Sources, South Coast Air Quality Management District, dated February 5, 2010.

A9-1 See response to Comment A9-3 below. The City of Irvine evaluated impacts associated with the recommended buffer distances included in California Air Resources Board's (CARB) handbook.

A9-2 Comment noted. Written responses to comments on the RDEIR are provided below in accordance with Public Resources Code Section 21092.5.

A9-3 The RDEIR evaluated the potential for implementation of the IBC Vision Plan project to expose future residents to potentially significant sources of emissions. In accordance with PDF 2-1 through PDF 2-5, applicants for new residential projects are required to evaluate health risk. PDF 2-1 (projects within CARB buffer distances, excluding freeways), PDF 2-2 (projects within CARB buffer distances of Interstate 405 [I-405]), and PDF 2-4 (projects within 1,000 feet of industrial facilities) require that new residential development either mitigate impacts of each source of air toxics to ensure cancer risk of ten in one million or less, or be prohibited from constructing new residences proximate to the substantial emitter. Development projects not identified in the RDEIR would be required to prepare necessary environmental analysis in accordance with CEQA and the CEQA Guidelines.

The SCAQMD will be included on all future notices of activity.

Because the primary pollutant of concern related to health risk from freeways, pursuant to CARB's study, is diesel particulates, use of MERV 14 filters would reduce indoor risks associated with proximity to freeways (PDF 2-2). A MERV 14 filter can effectively remove 90 percent of PM_{2.5} as well as 90 percent of PM₁₀. In addition, public outdoor active areas would be prohibited within 500 feet of I-405. Therefore, use of MERV 14 filters in addition to prohibiting public outdoor active areas would be sufficient to mitigate risk from freeways. Therefore, at question is whether filters would be effective in removing gaseous pollutants from industrial facilities. PDF 2-1 and PDF 2-4 require the future development within 1,000 feet of an industrial facility or within the CARB buffer distances for listed facilities conduct a health risk assessment. If cancer risk exceeds 10 in one million, then applicants for new residential developments would be required to show that implementation of specific measures either on-site or at the source would reduce risk, or the development of the proposed residential land use would be prohibited. If gaseous pollutants contribute significantly to health risk, then MERV filters would not be an effective mitigation strategy. Alternative strategies would be required or residential development would not be permitted.

A9-4 The RDEIR incorrectly included the Air Quality Appendix to the DEIR. Appendix C to this FEIR includes the correct Air Quality Appendix to the FEIR. In addition, an electronic copy of the RDEIR Air Quality Appendix was sent to Dan Garcia on February 11, 2010. The URBEMIS modeling output sheets reflect the data included in the RDEIR.

A9-5 During construction activities, construction contractors for new development projects would be required to adhere to all statewide and local regulations to reduce construction emissions. Additionally, PDF 2-6 requires that construction contractors in the IBC Vision Plan area go above and beyond existing requirements, including use of Tier 3 construction equipment. While significant unavoidable construction air quality impacts would still remain, the mitigation measures suggested by the commenter would have a nominal affect on emissions generated by project construction and would not change the significance findings for



2. Response to Comments

construction-related air quality impacts. SCAQMD has requested the following additional measures to reduce air pollutant emissions from construction activities:

- Idling restrictions have been incorporated into PDF 2-7.
- Large construction equipment, which generates the vast majority of NO_x emissions, is only powered by diesel fuel because of the horsepower required to move heavy machinery and construction materials. Electric-powered, gasoline-powered, and alternative fuel-powered heavy construction vehicles are not available and therefore cannot be legally imposed.
- This mitigation measure is not feasible as electricity may be unavailable on an undeveloped site, and electricity must be purchased from the electrical provider.
- This mitigation measure is not enforceable as no performance standard is indicated (i.e., “minimize” is not a performance standard as this cannot be measured).
- The City of Irvine requires that applicants for new development projects obtain a grading permit (Chapter 5-10). Section 5-10-127 of the City’s Municipal Code requires that public roadways are not restricted. Per the City Code, there must be 300 feet of clear, unobstructed sight distance to the intersection from both the public roadway and the access road or flagmen are required.
- The City of Irvine requires that applicants for new development projects obtain a grading permit. Per Municipal Code section 5-10-127, the City requires applicants to submit a haul route for review and approval. In addition, access roads to the construction sites must be approved and designated on the grading plan.
- The City of Irvine requires that applicants for new development projects obtain a grading permit. Per Municipal Code section 5-10-127, the City limits the hours that grading operations and loading and transportation of earth materials can occur. In addition, grading operations are prohibited between 3:00 PM and 9:00 AM within the travelway of an arterial highway unless approved by the Chief Building Official. As the City limits the hours of occurrence of haul trips, no additional mitigation measures are necessary.
- The City of Irvine requires that applicants for new development projects obtain a grading permit. Per Municipal Code section 5-10-127, the City requires applicants to submit a haul route for review and approval. As a plan detailing the movement of soil haul vehicles is already required, no additional mitigation measures are necessary.
- PDF 13-1 provides for the establishment of a Transportation Management Association (TMA) within the IBC Vision Plan area. As part of the TMA, the City will monitor travel demand, offer employers and property owners assistance with transportation services, and deliver transportation services within the IBC Vision Plan area.

A9-6 During construction activities, construction contractors for new development projects would be required to adhere to all statewide and local regulations to reduce construction emissions, including SCAQMD Rule 402. SCAQMD Rule 402 requires suspension of all ground disturbing activities when wind gust exceed 25 miles per hour (mph). As this is already an existing regulation, a mitigation measure is not warranted to restrict activities when wind

2. Response to Comments

speeds exceed 25 mph. In addition, all roadways in the IBC Vision Plan area are already paved.

A9-7 At the request of the commenter, PDF 2-6 has been modified as follows in the FEIR:

PDF 2-6 Applicants for new developments in the Irvine Business Complex shall require that the construction contractor utilize off-road construction equipment that conforms to Tier 3 of the United States Environmental Protection Agency, or higher emissions standards for construction equipment over 50 horsepower that are commercially available. The construction contractor shall be made aware of this requirement prior to the start of construction activities. Use of commercially available Tier 3 or higher off-road equipment, or:

- ~~of~~ year 2006 or newer construction equipment for engines rated equal to 175 horsepower (hp) and greater;
- year 2007 and newer construction equipment for engines rated equal to 100 hp but less than 175 hp; and
- 2008 and newer construction equipment for engines rated equal to or greater than ~~over 50 hp horsepower~~ but less than or equal to 100 hp.

The use of such equipment shall be stated on all grading plans. The construction contractor shall maintain a list of all operating equipment in use on the project site. The construction equipment list shall state the makes, models, and numbers of construction equipment on-site.

A9-8 SCAQMD's "SOON" program is noted.

A9-9 The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). No significant impacts were identified with regard to truck idling as described on page 5.2-23 of the RDEIR. Therefore, measures in addition to the PPPs and PDFs already included in the RDEIR are not required.

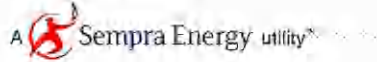


2. Response to Comments

LETTER A10 – Southern California Gas Company (1 page)



1919 S. State College Blvd.
Anaheim, CA 92806-6114



January 5, 2010

City of Irvine
P.O. Box 19575
Irvine, CA 92623-0575

Attention: Bill Jacobs

**Subject: Irvine Business Complex (IBC) Residential/Mixed Use Vision Plan and Overlay Zone.
Planning Area 36 State Clearinghouse No. 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.

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,

Eric Casares
Technical Services Supervisor
Pacific Coast Region - Anaheim

EC/me
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A10-1

2. Response to Comments

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2. Response to Comments

A10. Response to Comments from Eric Casares, Technical Services Supervisor, Pacific Coast Region – Anaheim, Southern California Gas Company, dated January 5, 2010.

A10-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

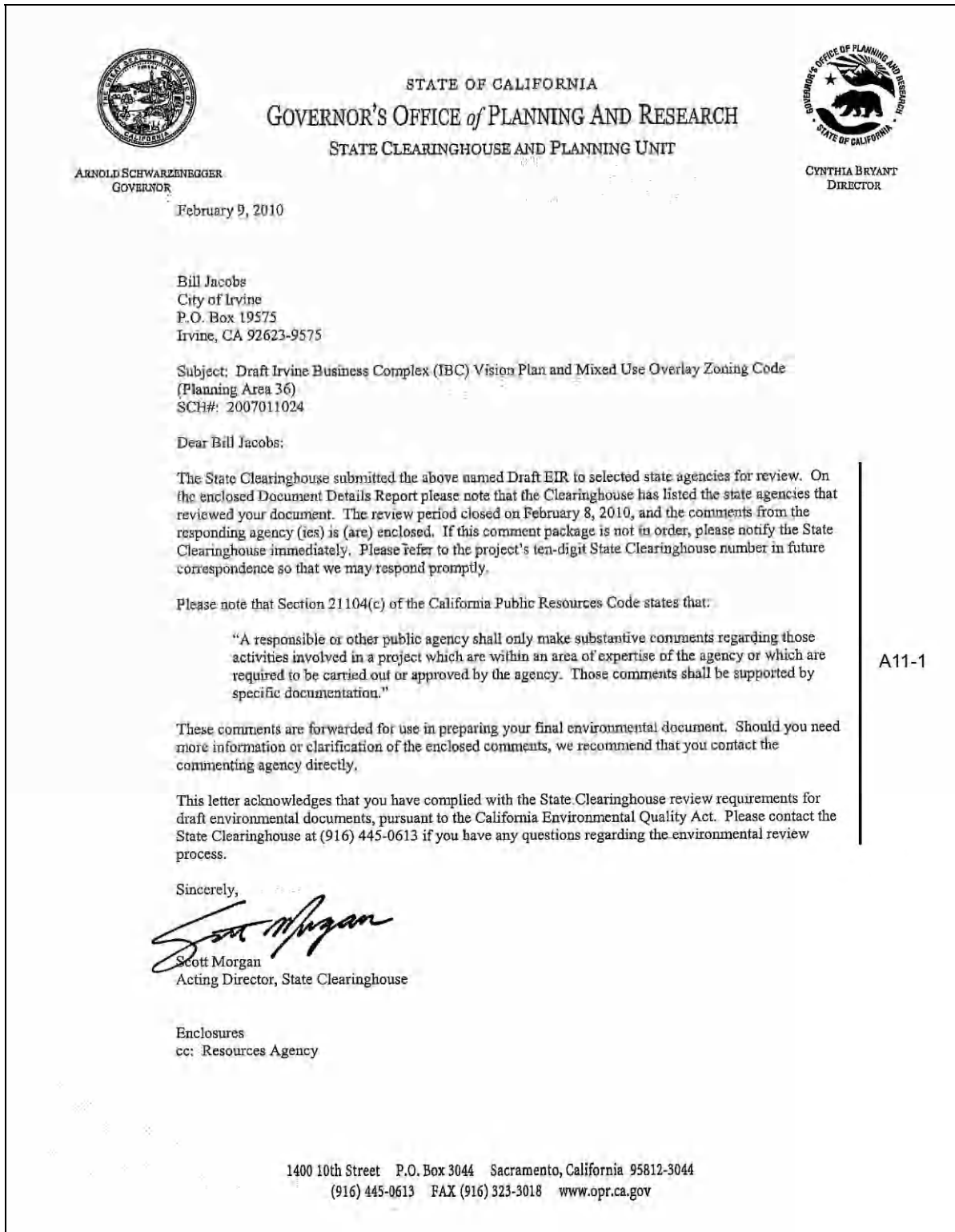
2. Response to Comments

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2. Response to Comments

LETTER A11 – State Clearinghouse (3 pages)



2. Response to Comments

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 NOTE: Revised 12/2009

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-residential 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
email
Address P.O. Box 19575
City Irvine
State CA **Zip** 92623-9575
Fax

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 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; Aesthetic/Visual; Air Quality

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; Regional Water Quality Control Board, Region 8; Department of Toxic Substances Control; Native American Heritage Commission

Note: Blanks in data fields result from insufficient information provided by lead agency.



2. Response to Comments

**Document Details Report
State Clearinghouse Data Base**

Date Received 12/23/2009 **Start of Review** 12/23/2009 **End of Review** 02/08/2010

Note: Blanks in data fields result from insufficient information provided by lead agency.

2. Response to Comments

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2. Response to Comments

A11. Response to Comments from Scott Morgan, Acting Director, State Clearinghouse, dated February 9, 2010.

A11-1 The letter acknowledges that the City of Irvine has complied with State Clearinghouse review requirements for RDEIR, pursuant to CEQA. No response is required.

For the comment letter sent to the State Clearinghouse from the Native American Heritage Commission, see response to comment letter A6.

2. Response to Comments

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2. Response to Comments

LETTER A12 – 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	
Campus & Environmental Planning	750 University Tower Irvine, CA 92697-2325 (949) 824-6316 (949) 824-1213 Fax
February 4, 2010 Mr. Bill Jacobs, AICP Principal Planner City of Irvine Community Development Department P.O. Box 19575 Irvine, California 92623-9575 Re: Irvine Business Complex Residential/Mixed Use Vision Plan and Overlay Zone Recirculated Draft Environmental Impact Report (SCH No. 2007011024) Dear Bill: 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 Recirculated Draft Environmental Impact Report ("RDEIR"). In commenting on the two Initial Study and Notice of Preparation documents (January 2007 and October 2008) and the previous DEIR (May 2009) circulated by the City for the Project, UCI requested that the Project's environmental analysis consider UCI's 2007 Long Range Development Plan ("LRDP") which includes the North Campus development area located at Jamboree Road and Campus Drive adjacent to the Project. The 2007 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 previous comment letters, UCI identified Project 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. UCI has the following comments and questions regarding the Project and the RDEIR. As expressed in our May 2009 correspondence, we remain interested in confirming that the analyses in the RDEIR fully and accurately considered UCI's projected growth as described in the 2007	
	A12-1 A12-2

2. Response to Comments

Mr. Bill Jacobs, AICP
February 4, 2010
Page 2

LRDP and that the Project would not significantly affect our ability to implement the LRDP, including the North Campus development program.

A12-2
cont'd.

1. Although requested in our previous letter (bracketed comment A18-2 in RDEIR Response to Comments, Appendix Q), neither the RDEIR, Section 5.13, Transportation and Traffic, nor the traffic study (Appendix N), identify what land use and traffic generation projections for UCI were incorporated into the Project traffic analysis. According to data received from Peter Anderson of the City on January 27, 2010, the RDEIR's traffic analysis assumed 6,657 and 21,722 trip ends for years 2015 and post-2030, respectively, for the North Campus (Planning Area 29) and 90,424 and 140,682 trip ends for the UCI Main Campus (Planning Area 50) in years 2015 and post-2030, respectively. Comparatively, the 2007 LRDP Final Environmental Impact Report (FEIR) (page 4.13-30) projected 13,364 ADT for the North Campus and 133,190 ADT for the Main Campus by 2025-26. Please indicate whether the variance between projected Project and 2007 LRDP trip ends for UCI would affect the roadway segments and/or intersections significantly impacted by the Project.

A12-3

2. In Response A18-7 regarding access/egress points to the UCI North Campus, the RDEIR states that no changes to existing UCI North Campus access points were assumed. However, the 2007 LRDP (Figure 5-3) identifies two new North Campus access points on Jamboree Road and Fairchild Road. These proposed campus entries should be reflected into the Project analysis.

A12-4

3. The RDEIR incorrectly states the number of multi-family units projected to be accommodated on the North Campus (page 5.8-29). The correct number is 435 dwelling units (2007 LRDP, page 49).

A12-5

4. While we recognize that at this time the City may be unable to identify rights-of-way requirements for Project roadway improvements bordering the UCI campus, please describe what improvements are proposed for the streets bordering the North Campus.

A12-6

5. A bridge crossing over the San Diego Creek near Fairchild Road is depicted in RDEIR Figure 3-4. While we understand that a crossing at this location is not a planned component of the Project, we remain interested in this important link between the IBC and the UCI campus and we look forward working with the City to pursue this concept.

A12-7

6. There is currently no sidewalk along Jamboree Road between Fairchild Road and Campus Drive bordering the UCI North Campus and we interpret the City's Response A18-12 to mean that the Project would construct such improvements. Any development within this location should be coordinated with UCI's plans for the North Campus and incorporate the access points described above that are depicted on 2007 LRDP Figure 5-3.

A12-8



2. Response to Comments

Mr. Bill Jacobs, AICP
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7. The RDEIR (page 5.8-30) states the importance of the North Campus as a gateway between the City and the UCI campus; however, neither the RDEIR nor Response A18-13 identifies the applicable IBC Vision Plan section that contains this objective. Please describe the improvements that are envisioned to meet the gateway objective and indicate the level of coordination required with UCI.

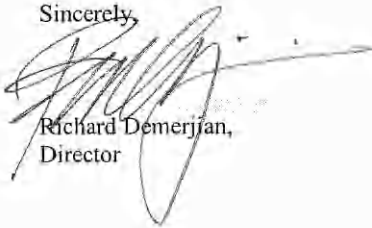
A12-9

8. We recognize that rerouting of the iShuttle is no longer a component of the Project; however, we remain interested in the incorporation of a shuttle stop adjacent to the North Campus and would welcome future coordination opportunities.

A12-10

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

2. Response to Comments

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2. Response to Comments

A12. Response to Comments Richard Demerjian, Director, University of California, Irvine, dated February 4, 2010.

- A12-1 Existing campus facilities and future campus facilities detailed in the University of California – Irvine’s (UCI) 2007 Long Range Development Plan (LRDP) are noted.
- A12-2 Growth associated with UCI’s 2007 LRDP was accounted for in the RDEIR (see response to Comment A12-3 below). Development within the IBC Vision Plan area would not hinder UCI’s ability to implement the 2007 LRDP.
- A12-3 The land uses for the IBC Vision Plan assumed 435 dwelling units and 950,000 square feet of Mixed Use for the North Campus Site. The forecasts for the North Campus are roughly 15,000 average daily trips (ADT) higher than the LRDP study. This is a result of including uses not included in the LRDP, such as the FDA facility, and a conversion of approximately 100,000 square feet to retail land uses after 2026 based on the mixed-use zoning designation. The City’s forecasts for the main campus are approximately 7,000 ADT higher than the LRDP. Again, the City is assuming some intensification beyond 2026 based on UCI’s previously approved Mitigation Measure No. 123. Since the City’s forecasts are higher than the LRDP, no new significant impacts of the Vision Plan would occur if the intensity of UCI were reduced.
- A12-4 Access to the North Campus area is assumed along Jamboree, Fairchild, and Campus. Based on the level of detail for the traffic analysis, individual driveways are not identified.
- A12-5 The following text has been revised in the FEIR at the commenter’s request.
- UCI owns and operates a property along the east side of Jamboree Road between Campus Drive and Fairchild Road, adjacent to the IBC. According to the UCI 2007 LRDP, the site, known as North Campus—which is currently occupied by academic and support facilities, an arboretum, and a child development center—is planned to be redeveloped with up to 950,000 square feet of office/research space and ~~455~~ 435 multifamily dwelling units by the year 2036.
- A12-6 No roadway improvements are proposed on streets bordering north UCI campus.
- A12-7 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- A12-8 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- A12-9 No specific designs for gateway monumentation are proposed at this time. For discretionary projects located at gateway intersections noted on the Vision Plan Framework, the City wishes to work with applicants to design gateway features into their projects.
- A12-10 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

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LETTER A13 – Orange County Transportation Authority (OCTA) (2 pages)



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February 3, 2010

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

Subject: Notice of Completion and Availability of a Recirculated Draft Environmental Impact Report for the Irvine Business Complex

Dear Mr. Jacobs:

The Orange County Transportation Authority (OCTA) has reviewed the above referenced document, which was received on December 23, 2009 and reiterates the following comments from our May 13, 2009 correspondence on the May 2009 Draft EIR:

- Please modify the language on Page 5.13-153, as it implies that OCTA approval of the proposed Orange County Master Plan of Arterial Highways (MPAH) reclassification is a foregone conclusion. This comment is specifically in reference to the last sentence where it states, "both agencies can move forward with amendments to the General Plan and MPAH to downgrade both Alton Parkway between Red Hill Avenue and Jamboree Road as well as Von Karman Avenue between Barranca Parkway and Michelson Drive." The MPAH would need to be amended and approved by the OCTA's Board of Directors prior to amendment of the City General Plan. This will allow the City to maintain eligibility for Measure M funding.
- As referenced on Page 5.13.154, the HOV drop ramps are not specifically identified as a part of the MPAH. Traffic analysis conducted as part of an MPAH amendment to downgrade Von Karman Avenue would need to include sensitivity analyses with and without the drop ramps, especially with regard to the impact of deleting the Von Karman drop ramps at the - 5/MacArthur and I-5/Jamboree intersections. This would identify any potential impacts these facilities would have on potentially downgraded MPAH facilities.
- On Page 5.13-2, Section 5.13.1.3, it is stated that 'several' Metrolink trains pass through the Tustin and Irvine stations. It should be indicated that there are almost sixty Amtrak and Metrolink trains per weekday serving the Irvine station and 35 Metrolink trains serving the Tustin station.

A13-1

A13-2

A13-3



2. Response to Comments



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Will Kempton
Chief Executive Officer

Additionally, please consider the following comment:

- On Page 5.13-157, it states that "MacArthur Boulevard between Main Street and SR-55 cannot be mitigated to below a level of significance without changing the MPAH road classification from a Major Arterial (six lanes) to a Principal Arterial (eight lanes)". Constructing a facility above an MPAH classification does not necessarily trigger the need to upgrade the MPAH. MPAH designations represent a minimum standard, which jurisdictions may build upon.

A13-4

If you have any questions or comments, please contact Joseph Alcock by phone at (714) 560-5372 or by email at jalcock@octa.net.

Sincerely,

Charles Larwood
Manager, Transportation Planning

c: Joseph Alcock, OCTA
Megan Taylor, OCTA
Glen Campbell, OCTA

2. Response to Comments

A13. Response to Comments from Charles Larwood, Manager, Transportation Planning, Orange County Transportation Authority (OCTA), dated February 3, 2010.

A13-1 At the commenter's request, the following language has been modified in the FEIR:

... The IBC Vision Plan traffic study has determined that 6 lanes are unnecessary for both of these roadway segments under buildout conditions. Thus, the City of Irvine will initiate an MPAH Amendment by entering into a cooperative study with the Orange County Transportation Authority (OCTA) to determine the feasibility of downgrading both Alton Parkway and Von Karman Avenue. Once this study is complete, both agencies can move forward with amendments to the General Plan and MPAH to downgrade both Alton Parkway between Red Hill Avenue and Jamboree Road as well as Von Karman Avenue between Barranca Parkway and Michelson Drive. In order for the City of Irvine to maintain eligibility for Measure M funding, prior to amending the City's General Plan to downgrade both Alton Parkway between Red Hill Avenue and Jamboree Road and Von Karman Avenue between Barranca Parkway and Michelson Drive, the City and OCTA will work to prepare amendments to the County MPAH to be approved by the OCTA Board of Directors. If the MPAH is approved by the OCTA Board, the City can move forward with downgrading the arterial segments.

A13-2 The impacts and mitigation stemming from buildout of the IBC Vision Plan are based upon a constrained network in which the Von Karman downgrade (to existing conditions) is assumed and no high occupancy vehicle (HOV) drop-ramps to Interstate 405 (I-405) are assumed. However, an alternative buildout scenario "Post-2030 With Project (MPAH Network)" was evaluated in Section 5.13.3.7 of the RDEIR and Chapter 7 of the traffic study (Appendix N). This sensitivity analysis assumed the HOV ramp improvement and the widening of Von Karman consistent with the current MPAH, and the results indicate no changes to the impacts at Interstate 5 (I-5)/MacArthur, and I-5/Jamboree intersections. The City will continue to coordinate with OCTA in preparing a cooperative study and/or additional analysis to further identify any potential impacts as part of the MPAH Amendment process.

A13-3 Estimates on the number of Metrolink trains have been incorporated into the FEIR at the commenter's request:

... There are ~~several~~ almost sixty Amtrak and Metrolink trains per weekday serving the Irvine station and 25 Metrolink trains per weekday serving the Tustin station ~~both stations, and Irvine Station is also served by Amtrak.~~ There is a current planning effort underway to implement a service expansion program by Metrolink by the year 2010. This expansion will reduce the headways of trains between Fullerton Metrolink station to the north of the study area and Laguna Niguel/Mission Viejo station to the south of the study area. This expansion will improve services at both the Irvine and Tustin Metrolink Stations.

A13-4 At the commenter's request, the following language has been modified in the FEIR:

MacArthur Boulevard between Main Street and SR-55 cannot be mitigated to below a level of significance without ~~changing the MPAH road classification~~ upgrading the segment from a Major Arterial (six lanes) to a Principal Arterial (eight lanes). ~~The classification would not need to be upgraded in the MPAH, as~~



2. Response to Comments

the MPAH designations represent a minimum standard which jurisdictions, such as Irvine or Santa Ana, may build upon. Reclassification would provide one additional lane in each direction and potentially would require an amendment to the City of Santa Ana General Plan. This forecast deficiency constitutes a project related significant impact according to the City of Santa Ana's performance criteria. The City of Irvine is responsible for a fair-share for this improvement for the Post-2030 future scenario.

2. Response to Comments

LETTER A14 – Caltrans (2 pages)

02/08/2010 16:40	9497242592	CALTRANS	PAGE 01/02
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			
Post-It® Fax Note 7871		Date 2/8/10	# of pages 2
To Bill Jacobs	From John Xu	File your power! energy efficient!	
Co/Dept City of Irvine	Co Caltrans		
Phone #	Phone # 949-724-2338		
Fax # 949-724-6440	Fax #		

February 8, 2010

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

File: IGR/CEQA
SCH #: 2007011024
Log #: 1817X
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 **Recirculated Draft Environmental Impact Report (RDEIR) for the Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code Project**. Upon adoption of the IBC Vision Plan, the total allowable development in the IBC would be 15,000 units (17,038 units including density bonus units), 48,787,662 square feet of non-residential, and 3,478 hotel rooms. 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 9,015 to 15,000, excluding a potential for 2,038 density bonus units. The 15,000 unit cap will be offset by a reduction of 4,337,727 square feet of non-residential square footage. 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 Creek 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. The IBC Vision Plan project will have significant impacts on State transportation facilities at various locations. Potential mitigation improvement projects for the IBC Vision Plan have been identified and presented to the City pertaining to these impacted locations. The Department will continue to work with the City to ensure an expedited review and implementation of the feasible mitigation measures. A Traffic Mitigation Fair Share Deferment Agreement shall be developed between the City and the Department to ensure the IBC Vision Plan's fair share contribution towards these improvement projects.

"Caltrans improves mobility across California"



A14-1

2. Response to Comments

02/08/2010 16:40

9497242592

CALTRANS

PAGE 02/02

Please 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.

A14-1
cont'd.

Sincerely,



CHRISTOPHER HERRE

Branch Chief, Local Development/Intergovernmental Review

c: Terry Roberts, Office of Planning and Research
Shorch Dupuis, City of Irvine

"Caltrans improves mobility across California"

2. Response to Comments

A14. Response to Comments from Christopher Herre, Branch Chief, Local Development/Inter governmental Review, Caltrans, dated February 8, 2010.

A14-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration. The City will continue to work with the California Department of Transportation (Caltrans) on a Traffic Mitigation Fair Share Agreement. See also response to Comment O6-12.



2. Response to Comments

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2. Response to Comments

LETTER A15 – Remy, Thomas, Moose and Manley, LLP (49 pages)

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February 16, 2010

VIA FEDEX AND E-MAIL

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

Re: Comments Concerning Recirculated Draft EIR for IBC Vision Plan

Dear Mr. Jacobs:

On behalf of the City of Tustin ("Tustin"), we offer the following comments regarding the revised environmental review document prepared for the Irvine Business Complex ("IBC") Residential Mixed-Use Overlay Zone and Vision Plan ("Vision Plan" or "Project"). These comments supplement the comments we submitted in May 2009, concerning the original Draft Environmental Impact Report ("DEIR") for the Vision Plan.

Tustin appreciates the 10-day extension to the comment period for the Recirculated Draft Environmental Impact Report ("RDEIR") for the Vision Plan, which extension the City of Irvine ("Irvine") granted in response to Tustin's written request. Tustin also appreciates the additional 2-day extension, granted in a letter to this firm from Douglas Williford, dated February 10, 2010, in response to our subsequent request. This additional extension allowed a brief opportunity to review the documents produced by Irvine in response to our two requests for public records.¹ Unfortunately, because these voluminous documents were produced on February 10, 2010, only a few days prior to the close of our extended comment period, we have not had an adequate opportunity to review the documents. Following a more complete review of these documents and other evidence, including requested "external station data" input into Irvine's ITAM 8.4

A15-1

¹ We incorporate by reference the two letters requesting documents, pursuant to the Public Records Act (Gov. Code, § 6250, et seq.), and Irvine's responses to these requests, including all documents produced in response to our requests. Please include these documents in the administrative record for the Vision Plan project.



2. Response to Comments

Bill Jacobs
Principal Planner, City of Irvine
February 16, 2010
Page 2

model (which data we requested but have not received), we may submit additional comments regarding the RDEIR.

A15-1
cont'd.

The RDEIR is, in many respects, an improvement over the original Draft EIR circulated in May 2009. Unfortunately, the document retains significant flaws identified in our previous comments and includes new flaws described below. Thus, the RDEIR 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.).²

By providing these comments and the comments concerning the original Vision Plan DEIR, we intend to continue a productive dialogue with Irvine, so that the environmental issues of pressing concern to Tustin are finally resolved. While we have noticed problems with other sections of the RDEIR, we place special emphasis on the sections that address impacts that will most affect Tustin, Transportation and Recreation.

The Cities of Newport Beach and Tustin ("Cities") have provided comments concerning IBC projects for almost as long as the IBC has existed.³ Yet their long-standing concerns regarding traffic, parks, and broad cumulative impacts have largely gone unheeded and unaddressed. The Vision Plan planning and environmental review process provides a vital opportunity for mutually beneficial cooperation.

By revising and recirculating the Draft EIR for the Vision Plan, Irvine has displayed a willingness to work cooperatively with the Cities on issues of importance to the Cities and to the region. We appreciate this effort. Unfortunately, however, even with the RDEIR's improved analysis, Irvine has not yet provided the robust and forthright analysis concerning the transformation of the IBC that the Cities have urged for years.

A15-2

As stated in our letter regarding the original DEIR for the Vision Plan and in comments concerning multiple residential projects that Irvine has approved in recent years, the Cities' concerns regarding this Project's impacts must be considered in the context of the history of intensive redevelopment in the IBC without adequately mitigating the impacts that previously approved projects within the IBC have caused both directly and cumulatively. The following comments explain in detail the deficiencies that remain in the RDEIR's analyses.

² / Engineers and planners at the City of Tustin have prepared additional comments concerning the RDEIR, these comments are attached hereto as Attachment A. In addition, expert consultants have analyzed the RDEIR's traffic and recreation impact analyses and have prepared separate comment letters attached hereto as Attachment B and Attachment C, respectively. These comment letters are incorporated herein by reference.

³ / See, e.g., Attachment E to Cities' comment letter regarding original Vision Plan DEIR; Cities' comment letters concerning the program EIR prepared for the 1992 IBC rezoning ("1992 IBC PEIR"). These letters present comments that are characteristic of the comments presented to Irvine repeatedly for almost 20 years.

Until recently, this firm has submitted comments on behalf of both Cities. As a consequence of the recently approved settlement agreement between Newport Beach and Irvine, the comments submitted herein were prepared at the direction of Tustin, and on its sole behalf.

2. Response to Comments

Bill Jacobs
Principal Planner, City of Irvine
February 16, 2010
Page 3

I. GENERAL COMMENTS

A. The Baseline for Analyzing Environmental Impacts is Improper.

The baseline for analyzing environmental impacts was established as either January 8, 2007 or September 18, 2008, the dates that the first Notice of Preparation ("NOP") and the second NOP for the original DEIR and RDEIR were issued, respectively, or as July 10, 2009, a date selected by Irvine for the purpose of establishing existing conditions. (Compare DREIR, pp. 4-1 with 3-19; see also Appendix A to RDEIR, first NOP; see also Appendix B to RDEIR, second NOP; see also Appendix N-1 to DREIR, Traffic Study, p. 33 ["For existing conditions, turning movement counts were collected in late 2007 and 2008. . . ."]) The RDEIR does not consistently state which NOP date was used as the environmental baseline. This lack of clarity regarding the baseline constitutes a failure to provide relevant information to the public.

A15-3

Furthermore, both NOP baseline dates, but especially the January 2007 baseline, are too dated for impact analysis. While using the NOP issuance date as the baseline for "existing conditions" is "normally" acceptable (CEQA Guidelines, § 15125), it is inappropriate in this situation to use such stale information regarding existing conditions. The determination of existing (or baseline) conditions is an important aspect of an EIR because, without an adequate baseline description, an accurate analysis of a project's impacts and the development of proper mitigation measures may be impossible. (*Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120-124 (*Save Our Peninsula Com.*)).

A15-4



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

The RDEIR 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 Sonoma* (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].)

A15-5

1. The RDEIR Fails to Adequately Address the Transformation of the IBC.

In April 2007, after considering the Cities' claims concerning piecemeal environmental review for individual IBC residential projects, a trial court ruled that Irvine was required to comprehensively analyze the "transformation of the IBC." Specifically, the court determined:

A15-6

2. Response to Comments

Bill Jacobs
Principal Planner, City of Irvine
February 16, 2010
Page 4

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.)⁴ The potentially significant impacts caused by numerous IBC 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].)

Yet, the RDEIR does not specifically address these impacts. Instead, it sweeps them under the rug by considering them as part of the environmental baseline. For example, the RDEIR fails to address the cumulative impacts to recreation that have occurred as a consequence of numerous residential projects being added to the IBC with no public recreation facilities in the area to serve them. The Project will increase the residential cap in the IBC by thousands of units, thereby exacerbating the problem already created by previous development projects. The RDEIR vaguely refers to plans to develop a community park and several neighborhood parks within the IBC, but it does not include these new parks as part of the Project description. As such, the RDEIR impermissibly piecemeals environmental review for the Project as a whole. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 732 (*San Joaquin Raptor I*) [wastewater treatment plant was necessary element of project and should have been considered in EIR].)

A15-6
cont'd.

Accordingly, the RDEIR's discussion of the impacts caused by past projects must be revised. This comprehensive analysis is especially important here because numerous individual residential projects have been approved in the IBC over the last several years, each without adequate cumulative impact analyses that considered the overall effects caused by the transformation of the IBC. The RDEIR must adequately address the impacts caused by the IBC's transformation so that its analysis of "regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole" may be relied upon in environmental documents that will later tier off of the RDEIR. (CEQA Guidelines, § 15168, subds. (d)(2).)

2. The RDEIR Improperly Segments Components of the Vision Plan Project.

The RDEIR's narrow approach to analyzing the Vision Plan project went beyond ignoring past residential projects and planned parks facilities. Irvine recently carved out two nonresidential projects related to the Vision Plan and approved them with no environmental review: the "Accessory Retail Business" ("ARB") zoning designation and the *i* Shuttle.

A15-7

⁴ / See letter from Cities to Irvine, dated April 29, 2008, with attached Minute Orders from 2851 Alton and Martin Street cases. This letter and the attached orders are incorporated herein by reference.

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The RDEIR fails to consider the impacts that will be caused by the City Council's March 24, 2009, approval of the "Accessory Retail Business" ("ARB") zoning designation. The ARB designation is a land use regulation that seeks to encourage mixed-use neighborhoods in the IBC, as well as elsewhere in Irvine. To the extent the ARB designation promotes mixed-use development within the IBC, it is necessarily a part of the Vision Plan Project and must therefore be considered in the RDEIR's analyses.⁵ As the Cities pointed out in previous comments concerning the ARB Designation and the Vision Plan, Irvine has recognized the importance of neighborhood-serving retail business in the IBC and in fact has made this one of the Vision Plan goals. (See, e.g., DREIR, pp. 3-2 [One Vision Plan goal is to "[c]ontribute to the development of mixed-use cores by incorporating residential, office, and commercial/retail uses into existing areas of nearby community facilities, retail goods and services, and restaurants to enhance the IBC's overall mixed-use urban character, . . ."]; see also Appendix N-1 to DREIR, Executive Summary for traffic study, p. a [Project includes: "Conversion of office, manufacturing, and/or warehouse uses to retail use to accommodate demand from current and planned residential development"].) The ARB designation was designed to satisfy this goal and therefore should have been considered part of the Vision Plan project. Instead, Irvine adopted the ARB designation with no environmental review.

A15-8

As the Cities noted in previous correspondence concerning this issue, in approving the zoning ordinance, Irvine assumed that the businesses falling within the ARB designation would not generate any traffic (i.e., there would be 100% "trip capture"). This assumption is, and remains, unsupported by any sufficient factual basis. Further, this assumption is not a limitation as stated in the RDEIR (p. 4-8), because businesses proposed under the ARB designation are not required to conduct a traffic study. Without a traffic study for each proposed so-called "accessory" retail business, how can Irvine determine that the use will not generate *any* traffic, as required and assumed under the ordinance? Contrary to the responses to comments A10-1 and A11-14, the RDEIR does not answer this question or adequately address the impacts caused by businesses that will be permitted under the ARB designation. (See Appendix Q to RDEIR, pp. 2-49 – 2-50, 2-147, 2-252.) These responses to comments assert: "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." (See *Id.* at p. 2-252.) This statement, however, does not address whether the traffic study considered the range of direct, indirect, and cumulative impacts that will be caused by an unlimited number of retail businesses that will be permitted through the ARB designation. In fact, the RDEIR ignored entirely ARB designation impacts.

A15-9

Based on the unsupported assumption that accessory retail businesses would not generate *any* traffic, Irvine approved the ARB designation after relying on CEQA's common sense

A15-10

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. These letters were each resubmitted in connection with the Vision Plan project and are incorporated herein by reference.



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exemption. (CEQA Guidelines, § 15061, subd. (b)(3).)⁶ This conclusion, however, was unfounded. The common sense exemption is only available to projects for which, as a matter of common sense, "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (*Ibid.*) Rather, there is substantial evidence that businesses within the ARB designation category will generate traffic.⁷ 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). Moreover, 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 designation has the potential to significantly change the face of the IBC. In light of this, it is impossible for Irvine to conclude with the requisite level of certainty that the ARB designation will have no possible effect on the environment. As such, the RDEIR must analyze the various impacts that will be caused by the ARB designation. The ARB designation should be considered part of the Vision Plan project, or at the very least, should be considered in the cumulative impact analyses.

A15-10
cont'd.

The ARB designation also exempts ARB uses in the IBC from Irvine's Transfer of Development Rights ("TDR") mechanism. The TDR mechanism 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.

A15-11

In summary, 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 RDEIR. Irvine was wrong to consider the ARB designation as distinct from the Vision Plan and must instead analyze the potential direct, indirect, and cumulative impacts of the businesses that will be permitted through this designation. Considering the ARB Designation as a separate, previously approved project constitutes improper segmentation of the Vision Plan project.

A15-12

Moreover, the RDEIR must consider the *i* Shuttle and Irvine's recent adoption of the *i* Shuttle Revised Service Plan. Instead, the RDEIR treats the *i* Shuttle as a preexisting transit source with independent utility. (See, e.g., RDEIR, p. 5.13-2.) As the Cities and others have previously stated, 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." (See RDEIR, pp. 4-12 – 4.13.) The RDEIR itself demonstrates that Irvine does not consider the *i* Shuttle to be wholly distinct from the Vision Plan. For example, the text of the proposed

A15-13

⁶ / See Cities' letter to Irvine Planning Commission concerning Vision Plan DEIR, dated May 5, 2009: Attachments 1 and 2.

⁷ / See *Id.* at Attachment 3: *ITE Trip Generation Handbook* (June 2004), pp. 85-100; see also Attachment B to this letter, comments regarding the RDEIR from Tustin's traffic consultant.

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General Plan amendment indicates that Irvine originally considered the *i* Shuttle to be part of the Vision Plan project. (See RDEIR, Appendix C, p. N-24 [deleted text regarding *i* Shuttle].)

A15-13
cont'd.

The RDEIR 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 RDEIR. This is precisely the type of segmentation prohibited under CEQA, because it results in the RDEIR understating the potential impacts of the "whole of the Project." (See *McQueen, supra*, 202 Cal.App.3d at p. 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 RDEIR failed to analyze the entire project, it has potentially understated the potentially significant impacts. The RDEIR 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.

A15-14

Impacts caused by the ARB Designation and the *i* Shuttle must, at the very least, be considered in the cumulative impacts analyses. (CEQA Guidelines, § 15355, subd. (b) ["The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."]; see *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024-1025 (*L.A. USD*).) The RDEIR, however, fails to consider these projects. (See pp. 4-20 – 4-27.)

3. Future Foreseeable General Plan Amendments May Have Been Ignored.

While the RDEIR purports to analyze the impacts of raising the cap for residential units to 15,000 units, plus density bonus units, it fails to consider the possibility that the 15,000-unit cap will be increased through subsequent General Plan amendments, similar to the General Plan amendments that have previously allowed additional residential projects in the IBC. Some evidence in the RDEIR suggests that this cap may be increased to 20,000 units. (See, e.g., RDEIR, p. 5.14-21 ["IRWD's WSA for the IBC assumes a 20,000-residential-unit cap in the IBC"].) Indeed, staff reports and other Irvine documents confirm that a 20,000 unit-cap is "more realistic." (See staff report to Irvine City Council regarding environmental review for the Vision Plan, dated February 27, 2006, incorporated herein by reference.) The RDEIR should state whether Irvine intends this Vision Plan residential cap to be absolute. If additional residential units are foreseeable, the RDEIR must analyze the impacts that would be caused by those units. The RDEIR should also describe environmental review requirements for future General Plan amendments and should identify performance standards and mitigation measures that will apply to future projects.

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C. The RDEIR Does Not Provide an Adequate Level of Detailed Analysis Concerning the Vision Plan Project and the Seven Pending Projects.

1. The Level of Detailed Analysis is Not Sufficient for a First-Tier Program EIR.

The RDEIR does not provide an adequate analysis of the gamut of impacts that will result from the Vision Plan. "A legally adequate EIR . . . 'must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.'" (*Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal. App. 3d 692, 733.) The EIR "must reflect the analytic route the agency traveled from evidence to action." (*Ibid.*)

A program EIR that is intended to be used as a first tier EIR must provide meaningful information when addressing the impacts of the overall project.

While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, the demand for meaningful information by [CEQA] is not satisfied by simply stating information will be provided in the future. As the CEQA Guidelines [citation] explain, tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. [Citation].

(*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 502-503, quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.)

The RDEIR fails to serve its function as a program EIR in several respects. For example, the RDEIR does not specifically identify the recreation facilities that will be provided to serve the population of the IBC. These facilities must be identified now, at the programmatic level, as they are necessary for buildout of the Vision Plan. Deferring this analysis is a form of impermissible "piecemealed" environmental review.

In addition, the RDEIR does not provide sufficient "site-specific" analysis to be relied upon as the environmental review document for future IBC projects. The RDEIR, for example, fails to predict the location of future residential development, by identifying underutilized parcels, and fails to analyze the Project's likely impacts based on this foreseeable land use pattern. Also, while the RDEIR lists the proposed Vision Plan infrastructure, it fails to provide sufficiently detailed environmental review for these facilities. (See RDEIR, p. 3-5.)

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2. The RDEIR Fails to Provide Adequate Project-Specific Analysis for the Seven Pending Projects.

The RDEIR claims to satisfy all of the environmental review requirements for seven pending projects. (DREIR, pp. 3-28, 3-56 – 3-57.) Section 3.3.3 of the RDEIR provides project descriptions for the seven proposed projects for which applications are currently on file with Irvine. (RDEIR, pp. 3-28 – 3-56.) Together, these seven individual projects would result in the development of 2,250 residential units. The RDEIR notes that these projects will be evaluated in the RDEIR to the extent that specific information is available. (RDEIR, pp. 1-4 – 1-5, 3-28.)

The analyses concerning these projects, however, fail to provide the level of detail required for project-level review. (See CEQA Guidelines, § 15146 [“The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in an EIR”].) Each of the seven projects that the RDEIR purports to analyze as part of the Vision Plan project are very well defined. In fact, almost all of them have already been subject to project-level environmental review, in the form of stand-alone EIRs or subsequent EIRs that tiered off the 1992 IBC PEIR. Because these projects are sufficiently defined for project-level review, the RDEIR must analyze all of their potentially significant impacts to a much higher level of detail. Instead, the impact analysis sections of the RDEIR include either no analysis or only perfunctory analysis concerning these projects. (See, e.g., RDEIR, pp. 5.8-9, 5.8-51 [no analysis of seven projects in Land Use section]; see also *id.* at pp. 5.9-25, 5.9-26, 5.9-55, 5.9-56, 5.9-57, 5.9-61 [perfunctory analyses of seven projects in Noise section]; see also 5.10-10 – 5.10-13 [no analysis of seven projects in Population and Housing section]; see also *id.* at pp. 5.12-5, 5.12-13 [no analysis of seven projects in Recreation section]; see also Section 5.13, regarding Transportation [no analysis of seven projects].)

To the extent Irvine wishes to rely on the EIR for the Vision Plan as the environmental review document for the seven projects, it must analyze these projects in much greater detail. To the extent the associated impacts are not fully analyzed in the RDEIR, the RDEIR must assure the reader that subsequent environmental review will be *required* for these individual projects.

By purporting to wholly or partially satisfy CEQA’s requirements with respect to the Martin Street, 2851 Alton, Avalon Jamboree II, Irvine Technology Center, Kiltroy, and 2852 Kelvin projects, the DREIR implies that its analysis will substitute for the previously prepared subsequent EIRs and stand-alone EIRs prepared for these projects.⁸ Please confirm whether this conclusion is accurate. If the RDEIR is intended to supplant the Subsequent EIRs prepared for the Martin Street and 2851 Alton projects, please explain when the project approvals and SEIR certifications for these projects will be rescinded and set aside. Please also explain how the litigation regarding these two projects, which is currently pending on appeal, relates to the decision to substitute new environmental analysis for the SEIRs prepared for these projects.

⁸ / The Cities submitted comment letters concerning the environmental review documents already prepared for each of these projects. These prior comment letters are incorporated herein by reference. We request that these comments, all other comments concerning these projects, and the prior environmental review documents for each project be made part of the administrative record for the Vision Plan.

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We also request additional information concerning the number of bedrooms per dwelling unit for each of the seven projects, and for all approved projects in the IBC: this information is only provided for the Martin Street project. (See RDEIR, p. 3-31.) Given the fact that almost all of these project have already been subject to project-level review, this information should be readily available. The number of bedrooms per unit bears on the likely occupancy level of residential units in the IBC. For dwelling units with more than one bedroom, the average occupancy level would likely exceed 1.3 persons per unit, as currently assumed. Thus, to estimate the existing and future IBC residential population, the RDEIR should describe the overall percentage of dwelling units with 1, 2, 3, or more bedrooms for built, approved and pending IBC projects.

A15-19

D. The RDEIR Fails to Analyze the Impacts of Applying the TDR Mechanism to Residential Uses and Fails to Acknowledge and Address the Significant and Unavoidable Impacts Tied to the TDR Mechanism.

The RDEIR inaccurately states that the Transfer of Development Rights ("TDR") mechanism established in 1992 was always intended to be used between all land use types within the IBC. (See RDEIR, pp. 3-9, 4-8.) The TDR mechanism, as analyzed in the 1992 IBC PEIR, applied only to nonresidential uses.⁹ In 1992, the amount of residential development was capped at 3,898 units "and no more."¹⁰ Irvine has never comprehensively analyzed the impacts of applying the TDR program to allow increased residential development intensity in the IBC. Residential uses have different impacts than nonresidential uses. For example, the traffic intensity and patterns differ with residential uses and residential uses increase demand for recreational facilities. Irvine must comprehensively analyze these impacts before it applies the TDR mechanism in this manner. The RDEIR, while serving as the programmatic environmental review document for a plan that calls for increased residential uses within the IBC, fails to provide this analysis.

A15-20

The RDEIR 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 "offsetting" reduction of nonresidential office uses, as depicted in Table 3-1, Maximum Intensity Standards by Planning Area, of the General Plan Land Use Element. (RDEIR, pp. 3-10 to 3-12.) While the RDEIR acknowledges that the Project involves increasing the residential development cap in the IBC through the reallocation of permitted development intensity within the IBC (RDEIR, p. 1-6; see also *id.* at p. 3-10), it fails to acknowledge this development intensity will result in significant and unavoidable impacts.

A15-21

In 1992, when Irvine adopted the comprehensive rezone for the IBC, it found that significant and unavoidable effects would result upon buildout of the IBC to its maximum

A15-22

⁹ / See Attachment D, Excerpts from 1992 IBC Preliminary Final Program EIR, p. III-10.)

¹⁰ / See *Id.* at pp. III-9 – III-10 ["Residential development within the IBC will be limited to existing and previously approved projects. No additional residential units beyond the existing and approved projects will be allowed within the IBC."]

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allowable intensity.¹¹ Since that time, Irvine has largely ignored these significant and unavoidable impacts, treating them as irrelevant to subsequent environmental impact analyses. The RDEIR repeats this flawed approach. (See, e.g., RDEIR, pp. 3-25 – 3-26 [describing development caps established in 1992 without mentioning associated significant and unavoidable impacts] see also Appendix N-1 to DREIR, Introduction to Traffic Study, pp. I, 4 [references to prior traffic studies and the TDR mechanism with no mention of significant and unavoidable traffic impacts]; see also Appendix Q to RDEIR, pp. 2-50, 2-147 – 2-148.) The traffic study states that while “the land use assumptions for the Vision Plan will supersede the 1992 assumptions, the existing TDRs and trip budgets will remain in place.” The 1992 IBC PEIR resulted in conclusions and findings, not assumptions, regarding significant and unavoidable impacts. These conclusions must be addressed in the RDEIR, but were not. In this respect, the RDEIR reflects a failure to make a good faith effort at full disclosure, as required by CEQA Guidelines section 15151.

A15-22
cont'd.

The IBC development cap established in 1992 has not yet been realized, as evidenced by TDRs available for transfer. One sending site in the IBC has been used repeatedly to allow increased development intensity elsewhere: Campus Center. (See DREIR, Table 3-7b, Transfer of Development Rights Assumptions.) The development rights remaining at this sending site can be used to permit development that will add thousands of Average Daily Trips (ADTs) to the roadway network.¹² The RDEIR states that development rights will only be transferred when associated with a project to prevent “banking,” but banking is in fact what has occurred at Campus Center. The resulting mountain of development rights has enabled development at numerous TDR receiving sites without a full accounting of the environmental impacts of such development.

A15-23



The RDEIR's analyses for future years (interim year 2015 and buildout post-2030) “reallocates” theoretical development intensity from reduced nonresidential development, thereby offsetting the actual development intensity that the increased residential development will generate. (RDEIR, p. 5.13-1; see also Appendix N-1 to RDEIR, Introduction, p. 13 [“By reducing the quantities of the non-residential land uses to accommodate the increased number of residential units under the Vision Plan, the Proposed Project is trip neutral”].) By permitting increased residential development to more than 15,000 units, however, the Project is contributing to an overall increase in traffic in the IBC, up to the total envisioned at the time Irvine adopted the development intensity caps for the IBC.

A15-24

Even though Irvine relies on this reallocation of development intensity to find the Project would have minimal air quality and traffic impacts, the RDEIR fails to describe the earlier analysis of the overall cap in the IBC PEIR (the only comprehensive analysis of this level of development intensity that Irvine has prepared). Nor does the RDEIR acknowledge that Irvine had previously found the overall development intensity managed through the TDR mechanism

A15-25

¹¹ / See Attachment D, pp. VIII-1 – VIII-3.

¹² / See Attachment E, Memorandum from LSA Associates, Inc. to Irvine planner Pamela Sapetto, dated December 5, 2000, regarding available development rights at Mola Centre (the Campus Center project is located on the former Mola Center site).

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would have significant and unavoidable impacts, requiring a Statement of Overriding Considerations. CEQA requires Irvine to squarely address the Project's contribution to these significant and unavoidable impacts. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124-125 (*CBE*) ["Even though a prior EIR's analysis of environmental effects may be subject to being incorporated in a later EIR for a later, more specific project, the responsible public officials must still go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts"]; see also *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842 [CEQA serves important function of ensuring that "the environmental and economic values of [the agency's] elected and appointed officials" are fully disclosed to the public].) By asserting that the proposed additional residential development will be "offset" by reduced nonresidential development, without acknowledging and addressing the significant and unavoidable impacts associated with permitted nonresidential development intensity, the RDEIR perpetuates a scheme designed to obscure impacts rather than reveal them.

A15-25
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E. The RDEIR Assumptions Regarding Jobs/Housing Balance and Trip Capture are Not Supported by Substantial Evidence.

A number of the RDEIR sections rely on unsupported assumptions concerning the jobs/housing balance that will be achieved with the Vision Plan and the level of "trip capture" that will occur through mixed-use development. These assumptions must be supported by evidence and analysis, not bare conclusions. The RDEIR, for example, does not provide an analysis concerning the median salary of IBC employees for the purpose of determining the degree to which the expected selling/rental prices for proposed IBC residential units will be affordable to IBC employees. In addition, the RDEIR does not provide any data or evidence supporting the assertion that the proposed mix of uses in the IBC will reduce vehicle miles travelled ("VMT") through "trip capture." While mixed-use development *may* provide these benefits, the RDEIR's analysis must provide a quantitative analysis that demonstrates the degree to which these benefits will be realized.

A15-26

F. Irvine has not Made Available for Public Review Documents and Information Relied Upon in RDEIR.

Tustin and other concerned local agencies did not have timely access to cited documents and other supporting documents and information. For example, the traffic study refers to a "Working Draft of 2008 Citywide Circulation Phasing Report, PB 2009." (Appendix N-1 to DREIR, p. 307.) This latest version of the Citywide Circulation Phasing Report should have been published and made available to the public last year. Instead, we obtained the document through a recent Public Records Act request. Limited access to supporting documents and information has compromised the public's ability to review the RDEIR. Some of the requested documents and information were provided only a few days prior to our deadline for submitting comments on the RDEIR, while other documents and information have not been produced. Most notably, Irvine has not produced information and documents regarding external station data input into the traffic model used to analyze the Project's traffic impacts. We reserve the right to

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submit supplemental comments following our review of produced and outstanding documents and information.

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G. Responses to the Cities' Comments Concerning the Original DEIR for the Vision Plan are Inadequate.

Under CEQA, a lead agency has a duty to respond to timely comments in good faith, and must provide a reasoned analysis; "[c]onclusory statements unsupported by factual information will not suffice." (CEQA Guidelines, § 15088, subds. (a), (b).) "The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful." (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 904, citing *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.)

Many of the responses to comments contained in an appendix to the RDEIR are conclusory and inaccurate. (See Appendix Q to RDEIR, pp. 2-251 – 2-264.) The Cities raised a number of issues in their original comment letters submitted in May 2009. Responses to these comments typically assert that the issues have been addressed in the RDEIR. The RDEIR in general, however, fails to adequately address the issues. In these respects, the responses were similar to the lead agency's responses in *Berkeley Keep Jets over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, where the court found the agency did not adequately respond to an expert's concerns about toxic air contamination. There, the court held:

A15-28



The EIR failed to acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR's analysis of this subject. The conclusory and evasive nature of the response to comments is pervasive, with the EIR failing to support its many conclusory statements by scientific or objective data.

(*Berkeley, supra*, 91 Cal.App.4th at p. 1371.)

The discussion that follows, while focusing on the adequacy of the revised DEIR, also describes more specifically the inadequacies in some of the responses to comments. To the extent the Cities' original comments were not adequately addressed in the RDEIR, select comments are repeated and emphasized here on behalf of Tustin.

II. SPECIFIC COMMENTS

A. Section 5.2 – Air Quality

Appendix G to the RDEIR includes the Air Quality technical analysis prepared for the original DEIR for the Vision Plan. The Air Quality analysis in the RDEIR uses the obsolete traffic information from the DEIR traffic study, not the revised traffic information from the RDEIR traffic study. As such, the RDEIR does not provide the public with information required

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to evaluate the Vision Plan project's air quality impacts. Consequently, the RDEIR must be revised and recirculated for public review.

Notably, the technical appendix for the Air Quality section reveals manipulation to traffic trip data that undermines the traffic impact analysis: the trip totals and vehicle-miles-traveled statistics on Appendix G .pdf pages 84 to 95 provide key clues to how much manipulation has been done with trip totals in the zones and external stations of ITAM outside the IBC. Until now, this information has not been provided to the Cities, despite repeated requests. Tustin's traffic consultant describes these manipulations in greater detail.

A15-30

B. Section 5.8 – Land Use

The discussion regarding PDF 8-1 fails to mention the ARB Designation and how this new zoning designation relates to the proposed Residential Mixed-Use Design Criteria. (See RDEIR, p. 5.8-8.) The analysis therefore does not address the whole of the project. For example, the RDEIR does not explain how, through the ARB Designation, retail businesses will be incorporated into mixed-use development so that there will be 100% trip capture. The ARB Designation should have been included as part of the Project so that its impacts would be considered in conjunction with other land use regulations that will promote mixed-use development in the IBC. Instead, the ARB Designation was carved out of the Vision Plan project, expanded to apply to the entire City so that Irvine could claim "independent utility", and was approved without any environmental review.

A15-31

General Plan Consistency Analysis (p. 5.8-10). The discussion regarding existing development intensity caps again fails to acknowledge the significant and unavoidable impacts that Irvine previously acknowledged would result upon buildout to the maximum intensity allowed under the current General Plan and Zoning Code. Potential land use impacts potentially include "significant impacts due to construction and right-of-way acquisition for road improvements."¹³ Neither the Land Use chapter nor other chapters of the RDEIR squarely addresses the Project's contribution to this potentially significant impact. Impacts related to right-of-way acquisition required for road improvements would only be more significant now, in light of intensive ongoing redevelopment activity within the IBC. This is exemplified by the impact to the Jamboree Road and Michelson Drive intersection which Irvine claims it cannot mitigate due to "constraints." (See DREIR, Table 5.8-1, Consistency with Objective B-1, Roadway Improvement.)

A15-32

The Project is not consistent with Objective B-1, Policy (n). The consistency analysis states that "existing arterial road system would continue to function as planned." This assertion is not accurate: the Project includes proposed downgrading of several arterials within the IBC. Downgrading these arterials so that they are not widened as planned may conflict with ensuring "safe and efficient traffic flow." Please explain how this aspect of the Project is consistent with this mandatory General Plan policy.

A15-33

¹³ See Attachment F; Resolution 92-162, Exhibit 1, Statement of Facts and Findings, p. 6.

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The Project is not consistent with Objective K-1, Policies (a) and (c). As discussed in the section regarding the Recreation chapter, the Project does not include sufficient community and neighborhood parks to meet the demands of IBC residents. The IBC currently does not contain any community or neighborhood public parks, despite the fact that in lieu fees have been exacted from developers for a number of existing residential projects. Thus, requiring the payment of in lieu fees does not necessarily guarantee that Objective K-1 will be satisfied.

A15-34

The General Plan amendment would also remove from Table A-1 the existing density cap of 52 dwelling units per acre and would add a density level of a minimum of 30 units per acre. (RDEIR, p. 3-12.) The RDEIR fails to analyze the potential impacts caused by removing maximum density cap and replacing the cap with a minimum density requirement. In addition, the RDEIR, which assumes new residential development will simply substitute for "office potential", fails to specifically analyze the development and localized traffic impacts likely to occur under the Vision Plan. It is not currently possible to know with precision the development patterns that will form through multiple successive applications for TDRs. Thus, project-level environmental review will be required for pending and future IBC development projects.

A15-35

Section 5.8.4 – Cumulative Impacts to Land Use

"[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; see *Citizens to Preserve the Ojai, supra*, 176 Cal.App.3d 421, 430-432.) 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.)

This section purports to take into consideration the cumulative impacts of IBC residential projects that have already been approved. (DREIR, p. 5.8-50.) The brief analysis, however, does not provide detailed information regarding the numerous residential projects that have already been approved and does not address whether the Project's incremental contribution to cumulative impacts to land use caused by closely related past projects will be "cumulatively considerable", as required. (See CEQA Guidelines, § 15355, subd. (b); see also *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 624-625 (*EPIC*) [EIR must consider cumulative effects of past projects].) This deficiency results in a failure to provide the public and decision-makers with the information that will enable them to intelligently take account of the Project's environmental consequences. (See *Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 720.)

A15-36

This section also fails to provide a detailed analysis concerning the compatibility between proposed residential development north of the 405 freeway and the award-winning Tustin

A15-37



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Legacy project.¹⁴ In fact, the section does not even mention the Tustin Legacy project, let alone analyze the land use impacts that Project-related development in the IBC will have on this adjacent reuse project. Under the Vision Plan, much of the proposed mixed-use development will occur north of the 405, in the areas adjacent to Von Karman Avenue and Jamboree Rd. (See DREIR, Figure 3-6.) Intensive redevelopment in the vicinity of Tustin Legacy project could cause land use compatibility impacts related to hazards/hazardous materials, air quality, noise, and traffic. This section fails to address these potentially significant impacts, and must therefore be revised to consider all cumulative land use impacts.

To the extent residential development in the IBC will be permitted under the Vision Plan, the RDEIR must analyze the impacts of that development on neighboring jurisdictions, including Tustin. *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 904-905 is instructive. There, the Court addressed whether a city was required to consider the cumulative effects of future construction activities that would result from an ordinance under consideration. After acknowledging that it was "presently impossible to determine with specificity the number, nature or location of replacement construction projects," the Court stated:

Until such projects are proposed, their impact -- individually and in the aggregate -- cannot be gauged with exactitude. But that the ordinance reasonably portends possible future environmental impacts flowing from the cumulative effect of probable replacement construction projects seems undeniable. And even before specific projects are commenced the City may be able to state -- at least in general terms -- that the ordinance will have an impact upon the environment, or to dismiss that possibility. Without a threshold evaluation, however, the City leaves its constituents in ignorance of the avoidable dangers CEQA intended to avert. (*Ibid.*)

A15-37
cont'd.

As in the *Terminal Plaza Corp.* case, the RDEIR here must evaluate the impacts that will be caused by increased residential development north of I-405 and in close proximity to Tustin Legacy. This analysis must include a description of the probable locations for future residential projects, to the extent these locations can be predicted.

C. Section 5.10 – Population and Housing

The RDEIR reports that Irvine will experience a disproportionately large increase in both population and employment by 2035, relative to Orange County as a whole. (DREIR, 5.10-1.) This anticipated large increase in population and employment must be taken into consideration in the DREIR's analyses of cumulative impacts in a variety of impact areas, not just population and housing. For example, population growth in Irvine and the region will likely cause cumulative traffic and recreation impacts that the RDEIR must address.

A15-38

¹⁴ / Tustin Legacy was awarded the 2008 Base Redevelopment Community of the Year Award on August 11, by the Association of Defense Communities (ADC).

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The brief discussion concerning "Project Area Population" ignores the results of the Alfred Gobar surveys discussed above. (DREIR, p. 5.10-3.) Later, in the section, the two surveys are mentioned, but their results are dismissed as "not legally binding." (*Id.* at p. 5.10-11.) These surveys have shown, however, that occupancy in IBC housing units is substantially higher than 1.3 people per unit. By utilizing the lower "population generation factor," Irvine has and continues to underestimate the number of existing and future IBC residents. It is inappropriate to ignore the results of recent targeted studies conducted by Irvine's own consultant to downplay impacts that will be caused by increased residential development in the IBC. The presumption favoring the use of the results from the 2000 census have been rebutted by Irvine's own surveys. (See Gov. Code § 66477, subd. (a)(2).)

A15-38
cont'd.

The discussion of housing prices in Irvine suggests an inadequate supply of affordable housing. (See DREIR, p. 5.10-4.) The impact analysis portion of the Section 5.10 refers to the General Plan Housing Element as setting forth policies that will promote the development of affordable housing within the IBC. (DREIR, p. 5.10-10.) Earlier in the section, however, the RDEIR notes that the Housing Element must be revised to address and accommodate the Southern California Association of Government's most recent affordable housing targets. For PPP 10-1 to be effective as advertised, it must set forth a performance standard for meeting the affordable housing targets set by the RHNA. Because the analysis does not provide any information regarding the affordability of the additional residential units that will be allowed under the Vision Plan, there is no substantial evidence supporting the conclusions that the impacts would be less than significant and that mitigation is therefore not required. (See DREIR, p. 5.10-13.)

A15-39

Furthermore, if there is no assurance that a significant percentage of the new residential units in the IBC will be affordable, then the RDEIR assumptions concerning the efficiencies achieved by locating residential uses near IBC employers may be misplaced. Please explain how the increased housing provided by the Vision Plan project will be sufficiently affordable to IBC employees, such that the asserted efficiencies will be achieved.

A15-40

D. Section 5.12 – Recreation

The Recreation section does not adequately address the Project's ability to meet the stated project objective to "Provide residential development in areas of the IBC where adequate supporting uses and public services and facilities are provided, consistent with the City's General Plan Land Use Element." (See DREIR, p. 3-1.) Specifically, the analysis does not determine whether the park facilities proposed as part of the Vision Plan will be adequate to serve the contemplated amount of existing and additional residential development. While the RDEIR acknowledges "the project would generate a need for a total of 49.3 acres of parkland at buildout, with 19.7 acres of community parkland and 29.6 acres of neighborhood parkland," this amount of parkland would only be sufficient to address the recreation needs of a portion of the additional residents the Project will add to the IBC. As discussed in more detail below, the IBC population will actually be much larger than assumed in the Recreation section analysis. The analysis also fails to address the existing deficiency of recreational facilities within the IBC. As such, the Project is inconsistent with this project objective.

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The discussion concerning the Project states that "part of the vision would be to create a system of new public parks, urban plazas, open spaces, and private or public recreation areas in the IBC that are interconnected by streets, bikeways, and trails. (RDEIR, p. 5.12-6.) The Recreation chapter, however, does not describe the community and neighborhood parks that are proposed as part of the Vision Plan project. The Project Description chapter and the draft General Plan amendment suggest that at least one community park will be built in the IBC, yet the Recreation section does not address where this community park will be located or when it will be developed. (Compare RDEIR, p. 3-26 and Appendix C to RDEIR, p. N-27 with RDEIR, p. 5.12-6.)

A15-42

Policy (a) under Object N-4 states that fees will be collected for a "new community park within or adjacent to the IBC." (DREIR, 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 RDEIR. Moreover, 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." (See *Ibid.*)

A15-43

Furthermore, it may not be reasonable to assume that Bill Barber Marine Corps Memorial Park will "serve the park needs for the area north of the 405 freeway" as stated in this section. (See *Id.* at p. N-27.) Bill Barber Park already serves the park needs for thousands of other Irvine residents. The RDEIR must analyze the current population served by Bill Barber Park and must examine the capacity for this park to serve additional IBC residents.

A15-44

The Project Description chapter states that "the City's Park Standards Manual would also be updated to address urban open space in the IBC. Section 5-5-1004D(1) will also be revised to remove a 50-unit per acre density." (RDEIR, p. 3-19.) Appendix D, however, does not include this revision. (See Appendix D to RDEIR, p. II-2.) The RDEIR is internally inconsistent in this respect. It also fails to provide information requested by the Cities in comment A11-25. (See Appendix Q to RDEIR, pp. 2-162, 2-253.) By not including and addressing all proposed changes to the Municipal Code and other relevant regulations, the RDEIR also lacks sufficient information and analysis regarding changes in regulations concerning recreation facilities for IBC residents.

A15-45

Revisions to IBC Residential/Mixed Use Design Criteria indicate that the Project will delete the minimum 1/3 acre size requirement for areas proposed as private recreational space. (See Exhibit E to RDEIR, p. 32.) The RDEIR fails to analyze this aspect of the Project. In fact, the RDEIR states that private neighborhood parks are a minimum of one-third acre in size, thereby failing to acknowledge and address this proposed change. (RDEIR, p. 5.12-1.)

A15-46

The new IBC Element refers to the Alfred Gobar Associates' surveys conducted in 2005 and 2007. (DREIR, Appendix C, pp. N-6 – N-8.) While the element recognizes these surveys, Irvine continues to ignore evidence about the IBC population that these surveys reveal. In particular, Irvine continues to use the 1.3 persons per household population generation factor for

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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.) Currently, this aspect of the proposed IBC Element is silent concerning this issue.

A15-47
cont'd.

Irvine asserts that its reliance on the 1.3 residents per unit figure to calculate parkland dedication requirements complies with the Quimby Act (Gov. Code, § 66477). (RDEIR, 5.12-1.) Irvine does not acknowledge, however, that Government Code section 66477, subdivision (a)(2) states that there is "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." (Italics added.) The 2005 and the 2007 Alfred Gobar surveys provide the evidence that rebuts this presumption. The difference in household population estimates found in the 2000 census and in the 2005 and 2007 surveys strongly suggests that Irvine has underestimated the projected population of the Project. The Recreation chapter does not adequately address this issue, despite the assurance in Response to Comment A11-24 that it does. (See Appendix Q to RDEIR, pp. 2-161, 2-252.) If Irvine continues to insist on using the 1.3 persons per unit figure for calculating parkland dedication requirements, please explain why this occupancy level is accurate for residential projects that include as many as 3 bedrooms per unit. (See RDEIR, p. 3-31 [description of Martin Street project].)

A15-48

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 7,583 residential units (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 development pattern 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, development within the IBC should be subject to a standard that emphasizes public open space.

A15-49

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 Tustin. Without public parks in the IBC, 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 Tustin parks. The Recreation section indirectly acknowledges this fact by stating that Irvine residents have access to recreational opportunities outside of Irvine, including Laguna Wilderness Park and

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Crystal Cove State Park in Newport Beach, but it does not mention a single public recreational facility within the IBC available to IBC residents. (RDEIR, p. 5.12-1.)

A15-50
cont'd.

When listing recreational facilities in the region, the DREIR fails to mention the parks that will be constructed as part of the Tustin Legacy project. Tustin's parks consultant describes these facilities in detail, relying on information that is publicly available. The RDEIR must be revised to reflect this information and analysis.

A15-51

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. Tustin is 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 RDEIR adequately analyzes this project's contribution to the cumulative demand for recreation facilities.

A15-52

Section 5.12.3- Environmental Impacts

This section fails to address the proposed changes to the City's Park Standards Manual and IBC Residential/Mixed Use Design Criteria concerning parks. Despite the fact that a component of the Project involves updating the Park Standards Manual and adopting the Design Criteria to address recreational facilities in the IBC (See Appendix D and E to RDEIR, Changes to Parks Standards Manual, p. II-2), this section of the Recreation Chapter only provides a cursory description of the proposed changes and provides no analysis of the resulting impacts to recreation. (RDEIR, p. 5.12-7.) Thus, Irvine's response to comment A9-3 is not accurate. (See Appendix Q to RDEIR, pp. 2-46 - 2-47.)

A15-53

The RDEIR should include an in-depth discussion of the proposed changes to the manual and design criteria and must address the impacts that may result from these changes. These changes include, for example, the proposed elimination of the 1/3-acre minimum size requirement for private recreational facilities. (See Appendix E to RDEIR, p. 32.) This section of the RDEIR does not mention this change and other changes to these regulations, much less analyze the resulting impacts.

Impact 5.12-1 (p. 5.12-8). 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 higher, according to the 2005 and 2007 surveys conducted by Alfred Gobar Associates. Using a factor of 1.3, and based on the Project's proposed addition of 7,583 units, the RDEIR estimates that the residents added by the Project will be 9,858 people. However, using the more conservative factor of 1.86 residents per dwelling unit, the added residents would total 14,104. The RDEIR fails to consider the impacts of the additional 4,246 people.

A15-54

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At buildout of the Vision Plan, the RDEIR estimates the total population of the IBC would be 22,149, using the 1.3 ratio. The more realistic 1.86 ratio results in an estimated 31,691 IBC residents. The RDEIR similarly underestimates the total population of Irvine at 2035. While the Recreation Chapter states this population will be 165,504, the Population and Housing Chapter reports the population will be 270,009. (Compare RDEIR, p. 5.12-12 with *id.* at p. 5.10-1 [reporting OCP-2006 projections].) Indeed, the latter chapter reports that Irvine's population, as of January, 2008, was 209,806, according to the California Department of Finance. (RDEIR, p. 5.10-2.) Please explain the discrepancies in these estimated future population figures.

A15-55

By applying the 1.3 persons per household figure to the proposed number of residential units to be added by the Project, the RDEIR 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.

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 RDEIR 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.

A15-56



The RDEIR does not provide any information concerning the projected average number of persons per dwelling unit for high-density, 50.1+ dwelling units per acre, development. 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 RDEIR.

The RDEIR 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." (RDEIR, p. 5.12-5.) The RDEIR does not acknowledge that all of these existing facilities are private nor does the RDEIR explain whether any shortcomings would be mitigated by public neighborhood and community parks that are actually located in the IBC.

A15-57

While the discussion concerning Potential Future Development acknowledges that the City "is attempting to create additional neighborhood-oriented park space in the IBC" and "is also currently seeking adequate sites within the IBC for construction of a public community-level park", it fails to identify specific locations for public neighborhood and community parks. (RDEIR, p. 5.12-10.) The RDEIR analysis also fails to disclose the ultimate size of these

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proposed neighborhood and community facilities and states that actual 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 recreational facilities would be provided on-site, elsewhere within the IBC, or even outside of the IBC. By failing to provide specific information regarding these facilities, the RDEIR improperly defers analysis of the Project's impacts to recreation. Moreover, by not analyzing the park facilities that will be necessary to serve current and future IBC residents, the RDEIR improperly segments environmental review for the Vision Plan project as a whole.

A15-58
cont'd.

Further, 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 RDEIR 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 RDEIR should describe provisions that will guarantee funding sources will be available when Irvine is ready to purchase sites for recreational facilities.

A15-59

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 RDEIR 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 RDEIR must demonstrate that such fee will actually result in mitigation of the Project's impacts on parks and recreational facilities. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189 (*Anderson First*) [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].) Currently, there is insufficient evidence supporting the assumption that collection of in lieu fees for recreation impacts will result in mitigation. For example, in 2005, Irvine created a future IBC community park fund, but since then no community parks have been created in the IBC, even though Irvine has continued to approve residential projects. Thus, the RDEIR's analysis concerning impacts to parks here is analogous to the cumulative traffic impacts analysis in *Anderson First*. The RDEIR presents inadequate impact analysis and improperly defers mitigation under CEQA.

A15-60

The collection of fees does not necessarily equate to the construction of new or adequate park facilities. If the exacted fees will be used to create a new community park and neighborhood parks within the IBC, the DEIR must address the improvements that will be made and specifically describe the locations of new parks. To assess feasibility, the DEIR should specifically describe how much the new parks will cost, and who is going to pay for them and should analyze whether the in lieu fees exacted for such improvements is proportional to the Project's impacts to recreation. To do any less is to create significant impacts on neighboring

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jurisdictions, like Tustin, when the residents of the Project are unable to find nearby parks and must instead travel to the extra-jurisdictional nearest park facilities. Tustin's park facilities are already overutilized by the underserved residents of the IBC area. Irvine's rapid approval and development of so many new residential projects, which lack adequate access to parks, has caused significant impacts on Tustin's parks and recreational facilities.

According to the Tustin's consultant, based on the projected population at buildout, the RDEIR must include mitigation that requires the construction of at least two community parks and eight neighborhoods parks.¹⁵ 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.

In responding to the Cities prior comments regarding these issues, Irvine asserted, without any substantiation, that the revised Recreation section addressed each issue. (See Appendix Q to RDEIR, pp. 2-163 – 2-164, 2-253 [comments A11-28 through A11-30 and Irvine's responses]; see also *id.* at pp. 2-46 – 2-47.) The RDEIR, however, fails to provide the promised information and analysis.

The discussion concerning Impacts on Surrounding Cities Parks and Recreational Facilities relies on a table comparing Newport Beach's and Irvine's recreational facilities. Table 5.12-6 only compares the two jurisdictions' respective ball fields and soccer fields, however, thereby providing an incomplete depiction of the full range recreational facilities provided to residents in each city. Moreover, the discussion does not compare the recreational facilities provided in other jurisdictions, including Tustin.

The RDEIR mentions possible future development of the San Diego Creek "Creekwalk", but states that "no detailed plans for the Creekwalk have been identified at this time." (RDEIR, p. 5.12-6.) Previous documents concerning the Vision Plan provided somewhat detailed conceptual plans concerning the Creekwalk. Because some information is available concerning this aspect of the Vision Plan project, the RDEIR must analyze and mitigate the impacts associated with developing the Creekwalk.

We 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 is expected to continue through Project buildout, there is therefore an escalating need for recreational amenities within the IBC. 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 well-designed neighborhoods. (RDEIR, p. 3-1.) Moreover, specifically identifying neighborhood and community park sites is the only way to satisfy the Project objective to "[i]dentify and pursue opportunities for open space areas that serve the recreational needs of IBC residents and employees." (*Id.* at p. 3-2.)

¹⁵ / See Attachment C, pp. 8-9.

A15-61
cont'd.

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Finally, we recommend adding a mitigation measure to address the deficiency in public recreation facilities in the IBC that will be worsened by the Vision Plan. Specifically, we urge Irvine to adopt an enforceable measure that will require development of a minimum amount of park facilities before any building permits are issued for residential projects in the IBC, and that additional park facilities are constructed on an as needed basis when specific development thresholds (e.g., IBC population numbers) are reached. This measure should also restrict residential development until adequate public recreational facilities are provided within the IBC.

A15-64

E. 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 Tustin. Consequently, Irvine is required to consult with Tustin, as it would other responsible agencies, concerning the Project's potential impacts on regional traffic. (See Pub. Resources Code, § 21092.4.) Irvine has consulted with Tustin and other adjacent jurisdictions during the RDEIR scoping process. Unfortunately, however, the RDEIR does not correct some of the core deficiencies identified by Tustin and other agencies. We offer the following comments so that the RDEIR may better perform its function as an informational document and so that all project impacts are identified and mitigated to the extent feasible.

A15-65

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., 2015).¹⁶ According to the TIA Guidelines, such information includes the nature and extent of the improvement project, the implementation schedule, and the agency or funding source responsible. (TIA Guidelines, pp. 7-8.) The RDEIR does not include this information. The traffic study refers the reader to unnumbered pages buried in the appendix, where only a portion of this information is presented. (See Appendix N-1 to DREIR, pp. 19-21; see also Appendix N-2 of DREIR, Appendix E – Intersection Improvement List, .pdf file pp. 612-634.) The information regarding future lane configurations that is presented in Appendix N-2 is incomplete: the tables do not provide all lane configuration information for future years under the "constraint" and "MPAH" scenarios. In addition, to assist the reader in reviewing the table, the table should repeat the heading on page one which provides a key to lane type and orientation. (See Appendix N-2 to DREIR, .pdf file p. 612.) Thus, the RDEIR does not provide the required information, contrary to the unsubstantiated and conclusory assertion in response to comment A11-34. (See Appendix Q to RDEIR, pp. 2-164 – 2-165, 2-253.)

A15-66

As drafted, neither the RDEIR nor the traffic study satisfies the mandatory requirements of Irvine's adopted TIA Guidelines. Please provide all the required information concerning the

¹⁶ / In an effort to minimize the length of these comments, we have opted not to attach to this letter a full copy of the TIA Guidelines, which Irvine adopted on August 24, 2004. Instead, we incorporate the TIA Guidelines by reference herein and request that this document be made a part of the administrative record for the Project.

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assumed improvements for the interim year and buildout scenarios 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. . . .'"].)

A15-66
cont'd.

Tustin is concerned that assumed roadway improvements will not be constructed in a timely manner, or may not be feasible at all. The RDEIR is conclusory when stating that only fully funded improvements were assumed in the ITAM. The TIA Guidelines require more specific information, especially with respect to interim year improvements.

The traffic study in Appendix N-1 must be revised to accurately reflect the City of Tustin's Settlement Agreement with Irvine for the MCAS Tustin Reuse Project. Currently, only the 2030 ICU Worksheets, reflect the mitigation improvements from the MCAS Tustin Settlement Agreement, but these improvements just appear without any explanation or discussion. These improvements should also be discussed in the Study Area Committed Improvements section of the document. Specifically, Tables 2.9 and 2.10 in the traffic study should be revised to include the improvements called for in the Settlement Agreement between Tustin and Irvine, concerning the MCAS Tustin Reuse Project, assuming these improvements remain necessary. These improvements include:

- Red Hill/Main: add free southbound right turn lane;
- Von Karman/Michelson: add additional eastbound left turn lane;
- Jamboree/Alton: add additional northbound through lane;
- Harvard/Alton: add additional northbound left turn lane; and
- Culver Warner: add additional eastbound right turn lane.

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By not including these improvements in the lists of committed improvements, the traffic study may have failed to consider them as committed and necessary improvements. If, on the other hand, the improvements called for in the 2001 Settlement Agreement are not necessary, then Irvine must refund the in lieu fees paid by Tustin as fair share contributions to these planned improvements. Here too, Irvine failed to respond adequately to the Cities' prior comment regarding this issue. (See Appendix Q to RDEIR, pp. 2-165, 2-253 [comment A11-35 and response].)

The RDEIR's discussion of proposed amendments to the General Plan Circulation Element discloses plans to downgrade seven arterial segments and remove to interchange improvements as part of the General Plan amendment. (RDEIR, pp. 3-26 – 3-27.) The RDEIR states that improvements to these arterials and interchanges are no longer necessary, but fails to provide substantial evidence supporting this conclusion. Moreover, the traffic study does not provide the detailed information necessary to confirm that the proposed downgrades are

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appropriate. (See Appendix N-1, Executive Summary for traffic study, p. f; see also *id.* at p. 306 [conclusory statement supporting downgrading seven arterials].)

Specifically, the traffic study does not explain the reasoning or justification for downgrading:

- Barranca Parkway between Red Hill Avenue and Jamboree Road (downgrade from 8-lane divided roadway to 7-lane divided roadway)
- Jamboree Road between Barranca Parkway and McGaw Avenue (downgrade from a 10-lane divided roadway to a 8-lane divided roadway)
- Main Street between Red Hill and Harvard (downgrade from 6-lane divided arterial with 2 auxiliary lanes to 6-lane divided roadway)
- MacArthur Boulevard between Fitch and Main Street (downgrade from 8-lane divided roadway to 7-lane divided roadway)
- Red Hill Avenue between Barranca Parkway and Main Street (downgrade from an 8-lane divided roadway to a 6-lane roadway)

In addition, the explanations for downgrading segments of Alton Parkway and Von Karman Avenue and for removing two intersection improvements indicate that Irvine is improperly deferring analysis regarding the impacts of downgrading these arterials. (See Appendix N-1 to DREIR, p. f [cooperative studies concerning feasibility of downgrading two of the seven arterial segments and for removing intersection improvements have not been completed].) Also, the RDEIR also does not address whether the downgrades are consistent with the assumptions in the Tustin Legacy EIR.

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Rules regarding the MPAH promulgated by the Orange County Transportation Authority ("OCTA") encourage Irvine to reach "mutual agreement" with jurisdictions that may be impacted by the proposed downgrading of arterials from their designation in the MPAH.¹⁷ In order to downgrade any arterials without such mutual agreement, OCTA requires that the lead agency proposing the downgrade to conduct a "cooperative study" documenting the impacts that would be caused by the downgrade. If, after completion of the cooperative study, disagreement remains concerning the proposed downgrade, OCTA's conflict resolution procedures will apply. Any unilateral downgrade without OCTA's approval will render Irvine ineligible to receive any funding from the Measure M program. The traffic study states that Irvine has unilaterally proposed the downgrades, but will prepare cooperative studies with OCTA to determine the feasibility of removing these interchange improvements from the MPAH. If Irvine insists on going forward with the proposed downgrades, all affected local agencies, including Tustin, must be consulted when Irvine prepares these cooperative studies.

¹⁷ / See Attachment G, Excerpt from Guidance for Administration of the Orange County Master Plan of Arterial Highways, MPAH Amendment Process (OCTA, 1998), pp. 11-16.

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"Downgrading the MPAH designation" appears to be a euphemism for deleting previously adopted mitigation measures. The improvements that Irvine now claims are not necessary were all mitigation measures that Irvine committed itself to implementing as part of the 1992 mitigation program. Irvine may not now abandon these mitigation measures without sufficient evidence that the measures are infeasible, impractical or are no longer necessary. (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359; see also *Katzeff v. Cal. Dept. of Forestry and Fire Protection* (2010) 181 Cal.App.4th 601 ["[W]here a public agency has adopted a mitigation measure for a project, it may not authorize destruction of cancellation of the mitigation . . . without reviewing the continuing need for the mitigation, stating a reason for its actions, and supporting it with substantial evidence"].)

The RDEIR does not adequately analyze the implications and ramifications of changing the MPAH designations for the seven arterials. For example, the RDEIR does not acknowledge that, with the proposed changes, Irvine would, in effect, abandon some of the traffic mitigation measures adopted in 1992. These mitigation measures may not be deleted in the absence of legitimate reasons supported by substantial evidence. The RDEIR fails to provide this analysis.

Appendix C, pages N-20 and N-21 describe the roadways that will be downgraded from their designation in the MPAH. The roadways identified in the proposed General Plan amendment, however, appear to only be a partial list of the roadways that Irvine proposes to downgrade. Please reconcile this inconsistency.

Downgrading the seven arterials will require approval of a General Plan amendment. This would be in addition to the General Plan amendment required for the Project. Because the Vision Plan includes the proposal to make the IBC more pedestrian friendly, downgrading these facilities from wide arterials that would be less "walkable" is properly considered part of the Vision Plan project and therefore the impacts that may be caused by downgrading the facilities must be analyzed in the RDEIR. (See CEQA Guidelines § 15378 [defining "project" as "the whole of an action, which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. . . ."]; see also CEQA Guidelines § 15168 [program EIR may be prepared for a series of actions that can be characterized as one large project and are related, for example, "[a]s logical parts in the chain of contemplated actions"].) Further, a number of IBC roadways already create a hostile pedestrian environment, due to the high level of traffic congestion — failing to implement the committed traffic mitigations will only worsen that condition. This would directly conflict with the Project objective to "[d]evelop safe, well-designed neighborhoods." (RDEIR, p. 3-1.)

Geographic Scope of Study Area. The traffic study states that, at the request of adjacent jurisdictions, the geographic scope of the study area was expanded to include additional intersections beyond those considered in the "original 1992 IBC Vision Plan study area." (Appendix N-1 to DREIR, Executive Summary, p. c.) This reference to the original Vision Plan traffic study appears to be incorrect, as the Vision Plan was not proposed in 1992.

Land Use Assumptions. The land use assumptions underlying the RDEIR's analysis of Project and No Project conditions at buildout and interim year 2015 do not accurately reflect

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A15-69

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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 2015 No Project scenario and the 2030 No Project scenario is just 8 trips, a negligible change. This conclusion seems to indicate there will be no regional growth from 2015 to 2030 without the Project. The analysis does not explain this improbable scenario, even though Response to comment A11-39 asserts that our prior comments concerning this issue have been addressed. (See Appendix Q to RDEIR, pp. 2-166, 2-254.) Instead, other sections in the RDEIR refute this information. For example, the Population and Housing section reports that the County as a whole will experience a substantial increase in both residents and employees, and that much of this growth will be focused in Irvine. (RDEIR, Table 5.10-1.) Population and employment growth in the amount reported in Table 5.10-1 will certainly cause substantial land use changes and bring associated traffic. The negligible difference in 2015 and 2030 no project traffic conditions appears to completely ignore these growth projections. Thus, the traffic analysis improperly considers the cumulative impacts of the Project based on erroneous and likely under-estimated land use assumptions.

A15-70
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The appendices to the RDEIR do not provide sufficient information to determine what extra-jurisdictional development was considered in the RDEIR analyses. Please confirm that the traffic impact analysis considered all pending and planned extra-jurisdictional development. When providing this response, please provide detailed information concerning the extra-jurisdictional projects and growth considered. This information must include the external station data, or a detailed and accurate summary of this data, as requested by Tustin.

A15-71

Zoning Code, section 9-36-8(3)(b), states that land use code 36 "[u]ses are assumed to have no traffic generation." (Appendix D to RDEIR, pdf file p. 47.) These uses include parks. This does not appear to be a realistic assumption. If Irvine believes that park uses generate no traffic, the RDEIR should explain, for example, why Bill Barber park includes 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 RDEIR. This is especially important with respect to parks because IBC residents are expected to rely on Bill Barber park and other recreational facilities located outside the IBC. Certainly some amount of traffic is attributable to these trips. The traffic impact analysis must address traffic associated with trips to parks and recreation facilities.

A15-72

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 original DEIR for the Vision Plan. The ARB Designation was a foreseeable future project at the time the NOPs for the Vision Plan was issued. Despite this, the RDEIR'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. (See RDEIR, p. 5.13-12; Appendix N-1 to DREIR, Traffic Study, pp. 4, 33.) Because the language instituting the ARB Designation does not place an overall cap on the total square footage of ARB uses allowed in the IBC, land use patterns could change significantly, thereby creating additional

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traffic impacts that the RDEIR must consider in the No Project and With Project scenarios. The RDEIR must be revised to analyze and mitigate these impacts.

A15-73
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The RDEIR also states that Irvine calculated its future forecast volumes using the Irvine Transportation Analysis Model ("ITAM"). (RDEIR, p. 5.13-11.) Traffic engineers and planners from Irvine and the Cities met to consult regarding the scope of the traffic study and the ITAM 8.1 modeling for the DEIR. There has not been any discussion between Irvine and Tustin officials regarding the ITAM 8.4 model or its use in the RDEIR. Tustin notes that there are unexplored discrepancies between the results of ITAM 8.1, ITAM 8.4 and the OCTAM 3.2 and 3.3 models used for recent projects in Tustin. 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 8.1's forecast ADT traffic volumes for Jamboree were in the 60,000 range, whereas the OCTAM 3.2 reports these volumes to be in the 90,000 ADT range. Similar discrepancies have been observed with respect to ITAM 8.4.¹⁸ 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.

A15-74

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 RDEIR does not address the likely development pattern that will arise through multiple transfers of development rights.¹⁹ 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 RDEIR 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.

Revised Zoning Code section 9-36-4 now 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 final [EIR] for the IBC Vision Plan project." (*Italics added.*) By deleting the reference to the 1992 Program EIR, Irvine apparently would like to rely on the 1992 trip caps without ever addressing the impacts that were identified when those trip caps were adopted.

A15-75

As we have repeatedly pointed out, the 1992 Program EIR identified numerous significant and unavoidable impacts, resulting in the adoption of a Statement of Overriding Considerations. The RDEIR fails to acknowledge and address the significant and unavoidable

¹⁸ / See Attachment A, comment letter from Tustin, p. 1.

¹⁹ / 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 RDEIR, 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. Furthermore, the ultimate number of residential units must be analyzed in the RDEIR, to the extent these future development projects are foreseeable.



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impacts identified in the 1992 IBC Program EIR.²⁰ It is inappropriate and, yes, irresponsible to rely on the existing development cap for the IBC without addressing these impacts. This is particularly true here, where the RDEIR proposes to jettison the most significant of the remaining unimplemented measures of the 1992 mitigation package that was designed to address those impacts not covered by the Statement of Overriding Considerations.

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.

(*CBE, supra*, 103 Cal.App.4th at pp. 124-125.)

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, referenced above). Unfortunately, by not addressing these impacts in this RDEIR, Irvine apparently intends to ignore Judge Sundvold's rulings. This RDEIR, 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 IBC parcels.²¹

A15-75
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If the unavoidable impacts identified in 1992 have been mitigated, the RDEIR must 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 RDEIR, 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 RDEIR 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.

Because the Project includes comprehensive regulatory changes for the IBC, it must reevaluate the impacts that will occur upon buildout. "CEQA nowhere calls for evaluation of the

²⁰ / The DREIR 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.

²¹ / 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."

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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).) Instead, the traffic impact analyses for future year scenarios fail to disclose impacts associated with increased residential development because it assumes this development will occur through “reallocation” of existing permissible nonresidential development intensity. (See, e.g., Appendix N-1 to RDEIR, pp. 4, 11.) By utilizing the 1992 IBC development cap, the RDEIR 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.

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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 traffic analysis zone (“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 RDEIR must 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 RDEIR 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 RDEIR must address this distinct possibility.

A15-76



The RDEIR must also thoroughly discuss the TDRs for the seven 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 RDEIR. In addition, the RDEIR must analyze and mitigate impacts of concentrating development rights at the locations of the seven pending projects.

A15-77

Section 5.13.1.3 – Traffic Analysis Methodology

Traffic Counts (p. 5.13-12). The traffic study does not indicate the time of year when the traffic counts were conducted. (Appendix N-1 to RDEIR, pp. 13, 24.) Please provide additional specific information concerning the timeframe within which traffic counts were performed. Traffic counts conducted when UC Irvine is out of session, for example, would understate the existing traffic levels.

A15-78

Peak Hour Link Analysis. For each of the scenarios analyzed in this section, the RDEIR finds that “arterial segments that are deficient under daily conditions operate at an acceptable LOS in both peak hours.” (See, e.g., RDEIR, p. 5.13-135.) This result seems improbable and counterintuitive, especially since the IBC contributes to rush hour traffic. Please confirm these results are accurate and explain how the peak hour analysis was conducted.

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Section 5.13.2 – Thresholds of Significance

Case law recognizes that an adopted level of service, or “LOS,” standard may serve as a threshold of significance for CEQA purposes. (See *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 623-625.) Compliance with an LOS standard, however, does not relieve the agency of its duty to consider whether a significant impact may occur. (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 [observing a public agency cannot apply a threshold of significance in a way that prevents consideration of other evidence showing that there may be a significant effect]; see CEQA Guidelines, § 15064.7, subd. (b); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109-1111.) 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 view of the severity of the existing problem. (*CBE, supra*, 103 Cal.App.4th at pp. 119-120; *Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 721 [rejecting cumulative air quality impact analysis for relying on discredited “ratio” theory].)

Pursuant to the RDEIR's thresholds of significance, the Project would have a significant effect if the project could exceed the LOS standard established by the respective jurisdiction within the study area. (RDEIR, pp. 5.13-15 – 5.13-20.) Irvine's continued use of LOS E as the acceptable baseline condition throughout the IBC is inappropriate. This standard establishes levels of unsatisfactory traffic differently for the IBC (LOS E) than for the remainder of the study area 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 thousands of new IBC residents should be entitled to the same traffic level protection as other residents.

A15-80

The traffic study explains the threshold of significance as follows: “If the Proposed Project causes a mainline segment or ramp to deteriorate from better than the LOS D/E cusp ($V/C < 0.89$) to worse than the LOS D/E cusp and adds 200 peak hour trips (mainline segments) or 30 peak hour trips (ramps) once beyond the D/E cusp, then the location has a project impact.” (Appendix N-1 to DREIR, p. 16.) The DREIR restates this threshold. (DREIR, pp. 5.13-16 – 5.13-17.) Neither the DREIR nor the traffic study, however, provides an explanation for this very specific performance standard. The traffic study did not apply a different performance standard for determining whether the Project generated traffic would be cumulatively considerable when added to the cumulative condition. The DREIR should explain why this performance standard is appropriate for both the direct and the cumulative traffic impact analyses.

Section 5.13.3 – Environmental Impacts

Impact 5.13-1 (p. 5.13-38).

A15-81

Organization of Subsection. The analysis of traffic impacts is quite detailed and somewhat complex. Thus, without a more detailed index, it is difficult to navigate this analysis

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to compare identified impacts at the various scenarios. To better disclose this information, please include a detailed index to this analysis.

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Existing Conditions at Critical Road Segments and Intersections. The traffic study indicates 12 segments are already deficient under the Existing Year 2008 daily conditions. (Appendix N-1 to DREIR, p. 29.) The worksheets for existing conditions indicate intersection performance is already deficient at the following intersections:

- Red Hill at Barranca – ICU .95 (Appendix N-2 to DREIR, pdf file p. 40),
- Red Hill at El Camino Real – ICU 1.11 (*Id.* at p. 81).

A15-82

Neither the RDEIR nor Table 3.4 of the traffic study highlights the existing deficiency at Red Hill/Barranca. (RDEIR, p. 5.13-37; Appendix N-1 to DREIR, p. 35.)

Existing Plus Project Analysis. Figure 3.7 in the traffic study is not accurate in at least one respect. The parcel where the proposed ITC project will be built will include 1,000 residential units, not 404 as indicated in the figure. Additional errors may be present in this figure, and these errors may be reflected in the traffic impact analysis. Please correct the figure and the analysis, to the extent required.

A15-83

Using the flawed methodology, the Existing with Project analysis concludes that a number of arterials and freeway ramps would operate at deficient LOS. (RDEIR, pp. 5.13-43 – 5.13-44, 5.13-59 – 5.13-60; Appendix N-1 to RDEIR, p. 79.) Yet, the DREIR fails to propose mitigation for the impacts identified in this analysis apparently because “the Existing With Project scenario is a theoretical exercise.” (*Ibid.*) This argument disregards, however, the fact that the seven pending projects analyzed as part of the Vision Plan project will be fully developed by interim year 2015. (*Id.* at p. 82 [“As part of the IBC Vision plan, the 2,035 known pending residential units currently in process and associated 215 density bonus units would be expected to be completed by 2015, with the exception of 776 approved units at Park Place anticipated to be built after 2015. . . .”].) Other aspects of the Vision Plan may also be in place before 2015. Thus, the impacts identified in the Existing With Project analysis that may occur must be mitigated to the extent feasible. (See CEQA Guidelines, § 15125, subd. (a) [lead agency must not only describe the physical environmental conditions as they exist at the time the NOP is published, but also must evaluate the project’s impacts upon the existing environment]; see also *Woodward Park*, *supra*, 150 Cal.App.4th at pp. 706-707.) One possible way these impacts may be addressed is requiring the project proponents for the seven pending projects to “front” the mitigation fees for the required improvements and to require proponents for subsequent developments to reimburse the initial proponents for the cost of mitigation. This approach would ensure that funds are available to implement required mitigation when they are needed, while also spreading the costs equitably.

A15-84

The RDEIR states that the Existing With Project analysis determined four intersections in the PM peak hour would operate at a deficient LOS. (RDEIR, p. 5.13-44; see also Appendix N-1 to RDEIR, pp. 66-67.) Two of these intersections are located in Tustin. The RDEIR and traffic

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study further assert that these deficiencies “are temporary and are addressed as part of already planned circulation improvements within the study area.” (*Ibid.*) There is no substantial evidence, however, supporting this assertion. The RDEIR does not explain how these deficiencies will be addressed because it does not discuss the relationship between planned improvements and identified deficiencies. The RDEIR should describe the improvements with greater specificity and 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 Com., supra*, 87 Cal.App.4th at p. 135.) The RDEIR does not describe Irvine’s plan for mitigating these impacts.

A15-85
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The RDEIR also does not state whether the planned traffic improvements will act as formal and enforceable mitigation for the temporary deficiencies. In fact, section 5.13.6 reveals no mitigation measures are proposed for impacts identified in the Existing With Project analysis.

A15-86

Interim Year Analysis. The EIR fails to take into account “the significance of an activity may vary with the setting.” (Guidelines, § 15064, subd. (b).) The cumulative no project condition for freeways in 2015 shows that almost all freeway segments within the study area will operate at deficient levels. (See, e.g., DREIR, pp. 5.13-71 – 5.13-72; see also *id.* at Figure 5.13-35.) Similarly, the 2015 cumulative no project condition for street segments and intersections in and around the IBC will be poor. (See, e.g., DREIR, pp. 5.13-66, 5.13-71.) Despite these already impacted traffic conditions, the RDEIR applies blanket thresholds of significance for all arterials, intersections, freeway ramps, and freeway segments in both the direct impact and cumulative impact analyses. Given the already deteriorated traffic conditions projected to occur in 2015, the RDEIR must carefully analyze and fully mitigate all additional traffic impacts, to the extent those impacts are significant. As stated above, the threshold of significance should be adjusted for the cumulative traffic impact analysis in response to the deteriorated setting in 2015.

A15-87

The discussion concerning 2015 Cumulative With Project Peak Hour Link Analysis only addresses “arterial segments within the City of Irvine that are deficient under daily conditions.” (DREIR, 5.13-89.) This discussion should also address any arterial segments in adjacent jurisdictions within the study area that the model shows are deficient under daily conditions.

The discussion concerning 2015 Cumulative With Project Intersection Analysis, mentions that “a reduction in commercial, office, and industrial square footage” was factored into the analysis. The ITAM should not deduct any development intensity from these nonresidential uses for the interim year analysis.

Elsewhere in the transportation section, the RDEIR states that no deductions were made, and that the interim year impacts were measured against existing conditions. (See RDEIR, p. 5.13-66 [Table 5.13-13 indicates that the 2015 No Project condition is identical to the 2008 No Project condition].) Please explain or resolve this apparent inconsistency.

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Buildout Analysis. Tables 5.13-17 and 5.13-18 suggest that the cumulative buildout analysis did not consider any growth in areas outside of the IBC. (RDEIR, p. 5.13-106.) While the RDEIR purports to consider planned growth in the General Plans of adjacent cities and in Orange County as a whole, these tables do not appear to reflect this ambient region-wide growth. This suggests that the buildout analysis itself fails to consider increased traffic caused by extra-jurisdictional development.

The asterisk notation next to significant cumulative impacts identified in the buildout (post-2030) analysis assists the reader in distinguishing those impacts that are deficient in the cumulative condition from those impacts that the Project causes. (See RDEIR, p. 5.13-136.) This notation system should also be used to identify project-related impacts for the interim year analysis. (See RDEIR, pp. 5.13-89 – 5.13-90.)

The differences between the various buildout scenarios analyzed in the traffic study are not clearly explained. (See Appendix N-1, p. 229.) For example, the RDEIR states that it compares the post-2030 Vision Plan buildout under the “constrained network” (i.e., with seven downgraded arterials assumed) with post-2030 Vision Plan buildout under the MPAH network (*id.* at p. 290), but the conditions under the constrained network are not reported. Instead, the traffic study reports the impacts that will occur in connection with post-2030 General Plan buildout. (See, e.g., *id.* at p. 258.)

The traffic study states that freeway mainlines would perform better if the current MPAH Network is maintained. (See Appendix N-1, p. 290 [“Overall, the freeway system seems to operate at a slightly better V/C ratio and LOS with the MPAH network. This is likely due to traffic distribution to improved arterial facilities that were not improved in the constrained network.”].) The analysis concerning impacts to freeway mainlines concludes, however, with limited explanation, that the difference between the two assumed roadway networks is “negligible.” (*Id.* at pp. 305-306.) Similarly, with regard to impacts on city streets, the traffic study states that with the constrained network “traffic shifts from one facility to another.” (*Id.* at p. 277.) The analysis, however, does not specifically identify this shift in traffic patterns or analyze the severity of traffic impacts that may be caused by the shift.²² In this way, the traffic study downplays the identified extra-jurisdictional traffic impacts that will occur if Red Hill Avenue, Von Karman Avenue, Barranca Parkway, Alton Parkway and Jamboree Road are downgraded as proposed. These roadways are in close proximity to the Tustin Legacy project and the future expansions planned in the MPAH are part of the local and regional roadway infrastructure long assumed to be in place in future years.²³

²² / The analysis describes traffic impacts identified in the buildout scenario, but does not clearly identify which impacts will occur with the constrained network in place and which impacts will occur with the MPAH network. (See Appendix N-1, pp. 277-278.)

²³ / For example, 6-lane Tustin Ranch Road connects directly to Von Karman Avenue. Restricting Von Karman to a 4-lane roadway could cause traffic impacts at the Tustin Ranch Road, Barranca Parkway and Von Karman Avenue intersection. Indeed, the traffic study suggests that such impacts are likely to occur. (See Appendix N-1, p. 277)

A15-88



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Tustin is also concerned about proposed downgrading to MacArthur Boulevard and Main Street. While these roadways are more distant from Tustin's jurisdiction, eliminating plans for future expansion may result in more widespread circulation problems.

A15-88
cont'd.

Impact 5.13-2 (p. 5.13-154). The RDEIR recognizes that potential hazards created by future projects may impact the circulation system or emergency access routes. (RDEIR, p.5.13-154.) The RDEIR states that because the "City has adopted roadway design standards that would preclude the construction of any unsafe features, no increased hazards are anticipated." (*Ibid.*) The RDEIR, however, fails to provide a description of the roadway design standards and it is unclear whether compliance with these standards alone would result in no impact. In this respect, the impact analysis is conclusory and is not supported by substantial evidence.

A15-89

Potential hazards could, for example, result from the proposed downgrading of arterial segments in the IBC: such downgrading could cause unexpected constriction of vehicle movement when drivers cross jurisdictional boundaries into the IBC. Hazards also may result from incompatible uses, including industrial uses located adjacent to high-density residential uses. The RDEIR does not analyze these potential hazards or identify programs, policies, or mitigation measures that would assure that such impacts are less-than-significant.

Impact 5.13-3 (p. 5.13-154). The DREIR assumes that the Vision Plan will result in no parking impacts because projects within the IBC must comply with policies and regulations governing parking. Project proponents, however, may request administrative relief to reduce required parking for their respective projects. (See Appendix D to RDEIR, Irvine Municipal Code, § 3-37-28.1, subd. (M).) The RDEIR fails to analyze the cumulative impact to parking that may occur if reduced parking ratios are granted to a number of mixed-use projects.

A15-90

Impact 5.13-4 (p. 5.13-154). The RDEIR does not provide adequate information regarding the community-oriented pedestrian infrastructure improvements. Please provide an explanation concerning the ability to ensure implementation of the pedestrian infrastructure improvements. The RDEIR must also address the traffic impacts that will be caused by the construction and operation of pedestrian and bicycle-oriented infrastructure improvements.

A15-91

Additionally, the City of Irvine Public Works Department is currently exploring trip reduction strategies. To the extent that these strategies support or promote alternative modes of transportation, please identify these strategies and analyze the degree to which the Project will be consistent with and foster these strategies.

Section 5.13.6 – Mitigation Measures

As further explained below and in the attached comment letters from Tustin and its traffic consultant, many of the mitigation measures identified in the Mitigation Program are deficient for one or more of the following reasons: they (i) are based on dubious impact analysis

A15-92

[“Clearly, Von Karman Avenue is attracting a greater share of overall traffic[,] as evidenced by the two additional deficient intersections”].)

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methodology, (ii) ignore mitigation measures adopted by Tustin in connection with the Tustin Legacy project, (iii) fail to include the necessary details and mandatory language to ensure enforceability, (iv) do not sufficiently mitigate the Project's impacts to traffic, (v) do not include adequate sources of funding, or (vi) do not include performance standards or otherwise impermissibly defer mitigation.

A15-92
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 substantial differences in traffic forecast volumes and modeling methodologies, Tustin is concerned that there are unidentified locations where the Project will have potential impacts.²⁴ In other words, based on numerous inconsistencies between the traffic models used by Irvine and Tustin, Irvine cannot rule out with sufficient certainty that the identified locations are the only locations impacted by the Project. Irvine's responses to comments concerning deficiencies in the modeling procedures and discrepancies in modeling results were simplistic and dismissive. (See Appendix Q to RDEIR, pp. 2-172, 2-181, 2-255, 2-257.) CEQA requires a good faith reasoned response to these and all other comments.

The courts have repeatedly emphasized the importance of the public's role in the CEQA process; such participation supplies both vitality and legitimacy to the environmental review process. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) An EIR must "include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Id.* at p. 405.)

A15-93



Recognizing these requirements, Tustin has sought greater transparency in the methodology employed in ITAM 8.4. As part of this effort, Tustin recently requested information and documents from Irvine through several Public Records Act requests. While Irvine produced some responsive documents, it refused to produce documents with information concerning the external station data input into the model. Due to Tustin's substantial concerns regarding the methodology employed in ITAM 8.4, and the lack of transparency afforded in this process, Tustin does not believe it would be productive to comment at this time on the proposed traffic mitigation measures for Tustin intersections described in the RDEIR.²⁵ Instead, we urge Irvine to revise the analysis, in consultation with Tustin traffic engineers and its traffic consultant. Following receipt and review of the revised analysis, Tustin may have more specific comments regarding identified impacts and proposed mitigation measures.

The RDEIR Ignores Tustin Legacy Traffic Impact Mitigation. Tustin paid a substantial amount of in lieu fees to Irvine as mitigation for impacts associated with the Tustin Legacy project. As explained above, the RDEIR states, however, that the improvements that these fees

A15-94

²⁴ / See Attachment A, letter from Tustin, p. 1, 3 [comments I and 11].

²⁵ / See Attachment B, letter from Tustin traffic consultant, pp.25-27.

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would help fund are not necessary. If Irvine does not consider these improvements to be necessary, then it must refund the mitigation fees paid by Tustin.

A15-94
cont'd.

Mitigation is not Sufficiently Enforceable. 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 RDEIR 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.

The RDEIR states that Irvine "is committed to working with the adjacent Cities to identify the most appropriate improvement strategies for their facilities and acknowledges the fair-share cost of improvements to those facilities." (RDEIR, p. 5.13-199; see also Appendix N-1 to the RDEIR, p. 212.) Tustin appreciates this statement of commitment and similar statements found elsewhere in the RDEIR (see, e.g., p. 5.13-164), but more is required to satisfy CEQA and Irvine's TIA Guidelines. CEQA requires Irvine to mitigate all of the Project's impacts, including extra-jurisdictional impacts, to the extent feasible. (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 366-367; see also *County of San Diego v. Grassmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 104.) Moreover, Irvine's adopted TIA Guidelines require Irvine to enter into an agreement with local agencies that will be impacted by the Project.

A15-95

If impacts on other jurisdictions are identified, such impacts shall be mitigated. The applicant shall be conditioned to enter into an agreement between the applicant (or his successors), the City of Irvine and the affected jurisdiction. This agreement shall establish the manner in which the improvements will be made, timing of those improvements and the procedure by which funding shall be made by the applicant for the improvements.

(TIA Guidelines, p. 19.)

In spite of this requirement, Irvine has failed to coordinate mitigation with adjacent affected jurisdiction and to enter into the required agreements concerning mitigation for traffic impacts. For example, the RDEIR identifies deficient performance at the segment of MacArthur Boulevard, from Main Street to SR-55 in the City of Santa Ana. (RDEIR, p. 5.13-157.) To mitigate this impact, it will apparently be necessary to upgrade the MPAH designation for this arterial. Irvine must coordinate its mitigation for this impact with the City of Santa Ana, and then enter into an agreement regarding the mitigation, rather than simply identify possible mitigation. (See also *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1259, 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"].)

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The RDEIR states that Irvine has developed the proposed Mitigation Program in “coordination” with adjacent jurisdictions, including Tustin. (RDEIR, p. 5.13-164.) Yet there is little evidence that such coordination has occurred. While Irvine has engaged in dialogue with Tustin regarding mitigation measures to address the Vision Plan’s impacts, this dialogue occurred early last year in connection with the original DEIR. There has been little to no dialogue in connection with the RDEIR and, in particular, the proposed mitigation measures for Tustin roadways. The mitigation measures proposed in the RDEIR were not established through coordination, as stated in the RDEIR. “[C]oordination” implies some measure of cooperation that is not achieved merely by asking for and considering input or *trying* to work together.” (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 641.)

The traffic study states the Irvine “should” coordinate with affected jurisdictions. (See Appendix N-1 to RDEIR, pp. 215-218.) The commitment to coordinate with adjacent jurisdictions must be enforceable. For this reason, Irvine must substitute “shall” for “should” with respect to the requirement to coordinate traffic mitigation with Tustin and other affected agencies.

A15-95
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Irvine must ensure that all extra-jurisdictional mitigation proposed in the RDEIR is acceptable to each respective jurisdiction. Proposing mitigation without more of an effort to ensure the mitigation is adequate and will be implemented as advertised is a form of improper deferral of mitigation. (See *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral of mitigation is impermissible when an agency “simply requires a project applicant to obtain a report and then comply with any recommendations that may be made in the report”].) While identifying potentially feasible mitigation is an improvement over biological report mitigation in *Defend the Bay*, the strategy suffers from a similar deficiency: failing to identify enforceable and feasible mitigation that Irvine can recommend the outside agencies implement and can partially fund by contributing fair share fees.

Another example of this failure is Irvine’s vague promises to “work with Caltrans to identify the most appropriate feasible improvements on the freeway mainlines and . . . to contribute the identified share to such improvements.” (Appendix N-1 to RDEIR, p. 226.) Irvine’s failure to coordinate mitigation measures with Caltrans to address impacts to freeway mainlines and ramps is similar to a county’s failure to commit to specific mitigation measures in *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1121-1122. The DREIR includes a mitigation measure that requires Irvine to enter into a mitigation agreement with Caltrans “prior to issuance of a building permit for the 12,000th unit.” (RDEIR, p. 5.13-198.) The measure does not require timely coordination of mitigation. In addition, the RDEIR does not explain why this agreement would not be necessary to mitigate impacts that occur before the 12,000th unit is approved.

A15-96

The RDEIR does not reflect a good faith effort to define potentially feasible mitigation measures for impacts to the freeway mainline and ramp systems. Instead, the RDEIR has shifted onto Caltrans the responsibility to define mitigation for these Project impacts. Since the RDEIR already assumes everything Caltrans proposes in its currently defined programs to be implemented in the post-2030 scenarios, the RDEIR should, at a minimum, include a



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reconnaissance level investigation in an attempt to identify what measures, beyond those Caltrans already has programmed, might be feasible. Irvine must also investigate Caltrans' freeway improvement programs to ensure the planned improvements will be implemented in a timely manner.

The freeway mainline and ramp analysis discloses impact conditions that, in some instances, are so severe as to have serious secondary impact consequences. These are conditions where an off-ramp is so overloaded that it will stack up to block freeway mainline lanes or where an on-ramp is so overloaded that it will back up to block operations at its intersection with the feeding street. While these circumstances are fairly obvious, the RDEIR fails to mention them.

The mitigation measures included to address freeway mainline and ramp improvements impermissibly defer mitigation. The RDEIR states that Caltrans has the primary responsibility to implement transportation improvements to Caltrans facilities, including freeway mainlines. (RDEIR, p. 5.13-199.) According to the RDEIR, 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. (RDEIR, p. 5.13-191, 5.13-199.) Although the RDEIR 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 RDEIR concludes that, if the relevant agencies do not implement these programs, the impacts will remain significant and unmitigated. The RDEIR must be revised to squarely address the feasibility of these mitigation measures.

A15-96
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 v. County of Orange* (2005) 131 Cal.App.4th 777, 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.)

The RDEIR is impermissibly vague in other respects. For example, the RDEIR states: "If an intersection impact occurs only in 2015 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." (RDEIR, p. 5.13-165.) The RDEIR 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. If an impact is felt in 2015 or sooner, but does not become mitigated until post-2030, that certainly is not timely mitigation. Rather, it is an improper deferral of mitigation.

A15-97

Finally, please also correct the inconsistent statements regarding mitigation required for intersection #36 Red Hill/El Camino Real, found on p. 220 of the traffic study. Mitigation is required for project-related impacts at this intersection.

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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 RDEIR 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 RDEIR does not describe, with sufficient specificity the feasibility of acquiring necessary right-of-way. (See RDEIR, p. 5.13-165 [identifying, in general terms, physical constraints to mitigation implementation].) The responses to comments on the original DEIR for the Vision Plan fail to address this issue. (See Appendix Q to RDEIR, p. 2-255.)

The mitigation measure proposed for Intersection #145 (Jamboree Road and Michelson Drive) recognizes that there are physical constraints that "limit the improvements necessary to mitigate the project impacts at this location." (RDEIR, p. 5.13-169.) We note that Irvine approved the HCG Irvine project in 2008, thereby authorizing limitations that cause physical constraints on mitigation at this intersection with notice of their consequences during the period of preparation of this Vision Plan EIR — the physical constraints are not the result of some action taken long ago when the needs were unforeseen.

The RDEIR 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." (*Ibid.*) This language is 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. This discussion concerning mitigating the impacts at Intersection #145 also does not address the effect on mitigation feasibility caused by the pending HCG Irvine project. The discussion for example, does not consider whether mitigation would be feasible if the project approvals for the HCG Irvine were rescinded as a consequence of the pending litigation challenging the EIR for that project. The RDEIR should address whether mitigation at Intersection #145 would be feasible if the HCG Irvine project does not go forward or is modified.

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. (Appendix D to RDEIR, .pdf file p. 71.) If this is correct, the RDEIR must explain how the elimination of the setback requirement for residential uses may affect the feasibility of future right-of-way acquisition for necessary traffic mitigation. The RDEIR must also address how inconsistent General Plan provisions for setbacks among different use types will be implemented so as not to interfere with right-of-way requirements and needs. The response to the Cities comment regarding these issues was inadequate. (See Appendix Q to RDEIR, p. 2-256.)

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Mitigation may be Financially Infeasible. Although the RDEIR's description of many of the mitigation measures identify whether the particular measure "appears to be physically feasible," the RDEIR fails to identify whether sufficient funds are expected to be available to construct the improvement when needed. For example, mitigation for Intersections #3, #12, #13, #24, #36, #62, #85, #93, #111, #134, #136, #141, #188, #232, #543, and #754 do not describe: 1) the measures as mandatory, 2) the source of funding, and 3) the timing of implementation. (RDEIR, pp. 5.13-166, 5.13-169 – 5.13-170, 5.13-173, 5.13-177, 5.13-181 – 5.13-182.)

For example, mitigation measures included for Intersection #62 Campus Drive at Bristol Street NB state that, "[i]mplementation of the identified improvements results in acceptable operations under both scenarios and the mitigation appears to be physically feasible although potentially cost prohibitive due to potential impacts to a structure adjacent to the intersection." (RDEIR, p. 5.13-173.) The RDEIR does not specifically state whether any funds would be available in the future to carry out these improvements. 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 that the agency commits itself to implementing, 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.

A15-100
conf'd.

Fee Assessment/Fair Share for Improvements. The RDEIR 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. (RDEIR, p. 5.13-197.) This description of a fair share program does not address whether sufficient fees for particular improvements will be collected and whether the improvement will be completed by the time it is needed.

"The cost of proposed improvements will be presented in a supplemental nexus report, subsequent to the finalization of the IBC Vision Environmental Impact Report (EIR). (Appendix N-1 to DREIR, Executive Summary, p. c.) The costs of these improvements and the fee program for required mitigation must be developed now, before the Vision Plan project is approved. Neither the Mitigation Fee Act (Gov. Code, § 66000 et seq.) nor the concepts of nexus and proportionality explained in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825, and *Dolan v. City of Tigard* (1994) 512 U.S. 374, can excuse the failure to impose adequate and enforceable mitigation for acknowledged significant impacts.

A15-101

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 RDEIR must provide the required information concerning mitigation funding and the timing of implementation.

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The RDEIR describes the IBC Development Fee Program as an existing plan, program, or policy that will help reduce and avoid potential traffic impacts. (RDEIR, p. 5.13-38.) 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." (*Ibid.*) It further states that development fees collected are used strictly for circulation improvements and right-of-way acquisition in the IBC area. (*Ibid.*) The RDEIR 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. Now Irvine seeks to delete several of these mitigation measures by downgrading arterial segment and interchange designations in the MPAH. Irvine may not delete these mitigation measures in the absence of a legitimate reason for doing so, supported by substantial evidence. (*Katzeff, supra*, 181 Cal.App.4th 601) In addition, the RDEIR's discussion of the fee program should more clearly explain how funds will be applied in a timely manner to implement required mitigation. The analysis should also address the feasibility of acquiring sufficient funds to timely implement planned mitigation. By failing to provide these explanations and the supporting analysis, the RDEIR improperly defers mitigation.

A15-101

The RDEIR Fails to Analyze Impacts that will be Caused by Traffic Mitigation. The RDEIR 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 the "whole of the project," including impacts that may arise from implementation of mitigation measures. (See CEQA Guidelines, § 15003, subd. (h).) Failing to consider these impacts is a form of impermissible piecemeal review. (See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 [EIR failed to analyze impacts of constructing facilities necessary to deliver water to project].)

A15-102

Section 5.1.6.7 – Level of Significance After Mitigation.

The RDEIR section addressing significant and unavoidable impacts states: "With completion of the improvements described in Mitigation Measure 13-1, the significant impacts to local roadways associated with the proposed project would be fully mitigated with the exception the Jamboree Road/Michelson Drive intersection." (RDEIR, p. 6-4.) This statement is overly broad and fails to reflect the uncertainty surrounding the implementation of extra-jurisdictional mitigation measures. More importantly, the conclusion that almost all traffic impacts will be fully mitigated is not supported by substantial evidence. The comments above, and those submitted by Tustin officials and Tustin's traffic consultant undermine the veracity of the traffic impact analysis. Mitigation measures have, of course, not been proposed for impacts that are either unreported or underreported in the RDEIR.

A15-103

Section 5.13.7 acknowledges that "there are intersections where improvements may not be feasible due to cost, right-of-way concerns, or community opposition. For these intersections a Statement of Overriding Considerations is proposed." (RDEIR, p. 5.13-198.) If Irvine adopts

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a Statement of Overriding Considerations, it must explicitly and specifically state Irvine's compelling reasons to approve the Project despite its significant and unmitigated impacts. Irvine must also support its determination that specific measures are infeasible. A decision to adopt a Statement of Overriding Considerations may 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.

"In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible." (*L.A. USD, supra*, 58 Cal.App.4th at p. 1029.) "While the response need not be exhaustive, it should evince good faith and a reasoned analysis." (*Ibid.*) Tustin's traffic consultant has suggested retaining the current MPAH designation for the seven arterials and one intersection as mitigation for the Project's impacts to freeway mainlines and ramps. Please address this suggested measure. Upon further review of the documents recently provided by Irvine in response to our Public Records Requests, and after consultation and coordination between Tustin and Irvine regarding mitigation, we may have additional suggestions for mitigating the Vision Plan's traffic impacts.

A15-103
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F. The RDEIR Fails to Adequately Address the Cumulative Impacts of the Project.

The RDEIR'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.)

Furthermore, the RDEIR 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 and parcel of the Vision Plan and must be analyzed accordingly. Even if not considered part of the Vision Plan, the RDEIR must consider the Project's cumulative impacts in conjunction with the impacts caused by past projects.

A15-104

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. (*San Franciscans for Reasonable Growth, supra*, 151 Cal.App.3d at p. 79.) 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.)

Recreation. The RDEIR 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

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cumulative impacts to parks fails to consider impacts in neighboring jurisdictions, such as Tustin, where recreational facilities are used by IBC residents. Instead, the RDEIR 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 RDEIR 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 RDEIR 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 RDEIR must identify alternative funding sources. Furthermore, the RDEIR's use of a lower population ratio to calculate needed parkland undermines the veracity of the analysis concerning cumulative impacts to parks and recreational facilities.

A15-105
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Because the DREIR does not address the cumulative deficiency of parkland and recreational facilities in the IBC, there is insufficient evidence that the Vision Plan project, as currently designed, satisfies the project objectives to "Provide neighborhood level amenities to serve the level of mixed-use development envisioned by the City's General Plan and IBC Vision Plan" and "Identify and pursue opportunities for open space areas that serve the recreational needs of IBC residents and employees." (See RDEIR, p. 3-2.)

Transportation and Traffic. The RDEIR 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); *L.A. USD, supra*, 58 Cal.App.4th at pp. 1024-1025.) The RDEIR 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. The RDEIR, for example, does not address the cumulative impacts that have been and will continue to be caused by Irvine's use of the TDR mechanism to promote intensive redevelopment within the IBC. (See RDEIR, p. 5.13-155.)

The RDEIR analyzes cumulative traffic impacts by applying a threshold of significance that does not appropriately consider smaller impacts that may nonetheless be 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. (RDEIR, 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.) Tustin urges Irvine to change the threshold of significance for identifying cumulative traffic impacts to a change in LOS or ICU of 0.01. If Irvine insists on using the same threshold of significance for cumulative traffic impacts as it does for direct traffic impacts, Tustin requests a reasonable explanation verifying that application of this threshold complies with CEQA's requirements for analyzing cumulative impacts.

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G. The RDEIR Fails to Adequately Analyze the Alternatives to the Project.

This section of the RDEIR describes the four project alternatives that will be considered by Irvine decision-makers. The analysis does not examine a reasonable range of alternatives, as is required. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 566 [“an EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project”].) For example, it fails to consider an alternative that would allow some shift to increased residential development while also including all planned transportation infrastructure described in the MPAH, including all transportation mitigation measures called for in the 1992 IBC PEIR. Such an alternative could potentially better satisfy some project goals, including the goal to provide transportation connectivity, while reducing traffic and air quality impacts.²⁶ The analysis must be revised to include this feasible alternative.

A15-107

Please explain the factual basis for the conversion factor of “572 square feet of nonresidential intensity per unit.” (See RDEIR, p. 7-7, fn. 2 to Table 7-1.) The RDEIR does not include substantial evidence supporting the conclusion that this conversion factor is accurate. Each residential unit may produce impacts that exceed the impacts that would be caused by 572 square feet of nonresidential intensity. Also, as mentioned above, this section erroneously relies upon the population generation factor of 1.3 residents per unit, despite substantial evidence that there actually more residents per unit in the IBC. (See RDEIR, Table 7-2.) Consequently, the RDEIR underestimates the number of existing and anticipated residents in the IBC and thus fails to adequately address the impacts associated with thousands of unreported future residents: this problem pervades all analyses in the RDEIR, including the analysis of impacts that would be caused by alternatives to the proposed project.

A15-108

All alternatives assume buildout to maximum development intensity caps established in 1992, through the last IBC rezoning. None of the alternatives, however, acknowledge or address the significant and unavoidable impacts that would result upon build-out to this intensity. As discussed above, these impacts must not be ignored, or assumed to be merely a part of the environmental baseline. Rather the RDEIR must analyze the contributions to these impacts that would result from either the proposed Project or any of the alternatives.

A15-109

Table 7-4, Ability of Each Alternative to Meet the Project Objectives, 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.” (RDEIR, p. 7-35.) The RDEIR does not provide sufficient evidence or analysis to support this determination as to each alternative. The RDEIR must provide evidence that supports the conclusion that the recreational needs of IBC residents will be met, under each alternative scenario, through implementation of the in lieu fee program and parkland dedication. As discussed above, until

A15-110

²⁶ / As discussed above, the traffic and air quality sections of the RDEIR failed to identify all impacts that would result from the Project.

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now, no public recreation facilities have been developed in the IBC despite the addition of thousands of new residents and the exaction of substantial in lieu fees.

A15-110
cont'd.

In addition, the RDEIR should consider one or more alternatives that include locations for proposed community and neighborhood parks within the IBC. These parks are needed to serve IBC residents, and yet they are conspicuously absent from the proposed project and all project alternatives. If it is not feasible to identify the specific locations for these park facilities, then Irvine should reconsider its plan to add thousands of additional residents to the IBC without adding proximate recreational facilities. Without a reasonable plan to provide the necessary recreational facilities that have long been absent, it is premature to consider a plan that would allow substantially more residential development within the IBC.

A15-111

H. Increased Traffic and Demand for Recreation Facilities Are Significant Irreversible Changes Caused by the Project.

This section of the RDEIR acknowledges that "[a]n increase in vehicle trips would accompany project-related population growth." (RDEIR, p. 9-1.) Elsewhere, the RDEIR fails to acknowledge the increased traffic that will be caused by the Project. Instead, the analyses simply substitute trips that would occur under planned nonresidential development for the trips that will be caused by increased residential development.

A15-112

The Project will have unique traffic and recreation impacts that differ from those impacts that would be caused by nonresidential development at buildout. This section must acknowledge all significant irreversible changes caused by the Project and the RDEIR must consistently address the Project's unique impacts.

I. The RDEIR Fails to Adequately Address the Vision Plan Project's Growth Inducing Impacts.

The Vision Plan project includes the proposal to replace the 52 dwelling units per acre density cap with a minimum requirement of 30 units per acre. (RDEIR, p. 3-13.) This new minimum level of residential development intensity is unprecedented in the IBC. With this change, only very high density residential would be permitted. Such high density development brings concentrated traffic. For this reason, the RDEIR cannot possibly conclude that "the increase in residential units is offset by a corresponding decrease in nonresidential intensity in the IBC." (RDEIR, p. 10-2.) With each proposed project under the Vision Plan, the IBC will be increasingly transformed from relatively low-intensity industrial, warehouse, and office uses to high-density residential uses.

A15-113

This section of the RDEIR also asserts that the increased demand for public service will be offset by a reduction in non-residential development. (See RDEIR, p. 10-2.) The public service requirements of residential uses, however, differ from those required for nonresidential uses. For example, residential uses require adequate school facilities. Reductions in nonresidential uses cannot possibly "offset" this increased demand as asserted in the RDEIR. This discussion fails to address the cumulative recreation impacts caused by increased residential

A15-114



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development in the IBC, as required for the analysis of growth inducing impacts. (See CEQA Guidelines, § 12516.2, subd. (d).)

A15-114
cont'd.

The RDEIR correctly recognizes that increased residential development in the IBC will create new demands for neighborhood serving retail and other businesses. (See RDEIR, p. 10-2.) The RDEIR, however, fails to address how the Vision Plan project relates to the recently approved ARB Designation discussed above. These projects are part of the same transformation process, reviewed by Irvine in a piecemeal fashion. With each new residential project, additional retail businesses may be permitted without any additional environmental review. The associated impacts would thus go unrecognized and unmitigated. This section must therefore be revised to more specifically and thoroughly address the increased retail businesses that will be encouraged if the Vision Plan project is approved.

A15-115

The analysis of growth-inducing impacts provided in this section of the RDEIR fails to provide evidence supporting the assertion: "although the proposed project would have a direct growth-inducing effect, indirect growth-inducing effects would be minimized due to the balance of land uses set forth by the proposed project." Specifically, the RDEIR does not include evidence that mix of uses in the IBC will be balanced throughout the buildout process. Nor does it verify with evidence and analysis that the needs of IBC residents will be met locally, thereby minimizing VMTs.

A15-116

Finally, while the RDEIR recognizes that the proposed Project may encourage future General Plan amendments to allow development not contemplated in the Vision Plan, it fails to support the conclusion that environmental review for such future regulatory changes will ensure the associated environmental impacts are minimized. (See RDEIR, p. 10-2.) Based on Tustin's experience with General Plan amendments that followed the 1992 rezone, subsequent environmental review, in the form of SEIRs and Addenda, failed to result in mitigation for impacts associated with each subsequently proposed project. Irvine must analyze, in this RDEIR all foreseeable development associated with the transformation of the IBC. If the residential development cap for the IBC will exceed 17,038 units, and additional General Plan amendments are now foreseeable, then RDEIR must be revised to address these future projects.

A15-117

III. CONCLUSION

For all of the foregoing reasons, and for the reasons described in the attached comments, Irvine must again revise the RDEIR for the Project. As with the RDEIR, the revised analysis will likely reveal additional significant impacts and other significant new information, requiring recirculation.

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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

Attachments:

- A. Comment letter regarding RDEIR from the City of Tustin
- B. Comment letter regarding RDEIR from the City of Tustin's traffic consultant, Smith Engineering and Management, dated February 11, 2010
- C. Comment memorandum regarding RDEIR from the City of Tustin's parks consultant, Hogle-Ireland, dated February 16, 2010
- D. Excerpts from 1992 IBC PEIR
- E. Memorandum from LSA Associates, Inc. to Irvine planner Pamela Sapetto, dated December 5, 2000
- F. Resolution 92-162 and attached Findings and Statement of Overriding Considerations
- G. Excerpt from Guidance for Administration of the Orange County Master Plan of Arterial Highways, MPAH Amendment Process (OCTA, 1998)

cc: (via e-mail w/ attachments):

Douglas Holland, Tustin City Attorney
Elizabeth Binsack, Tustin Director of Community Development
Douglas Stack, Acting Public Works Director
Scott Reekstin, Tustin Senior Planner
Doug Anderson, Transportation and Development Services Manager
Dan Smith, Tustin Traffic Consultant
Mike Thiele and Kimiko Lizardi, Hogle-Ireland, Tustin Parks Consultants



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A15. Response to Comments from Jason W. Holder, Remy, Thomas, Moose and Manley, LLP, dated February 16, 2010.

A15-1 The commenter notes that it may submit additional comments based upon certain additional data that it has requested be produced to it and based further upon responses to separate Public Records Act requests. The comment conveys information to the City but does not call for any specific response. Please see response to Comment 05-16.

The public review period for the RDEIR closed on Friday, February 5, 2010. The City granted a 12 day extension to the City of Tustin, which concluded on Wednesday, February 17. A copy of the City's response to the extension of the public review comment period is included as Appendix D to this FEIR. No unusual circumstances arising from this project justify an extension of the public review period beyond the mandated 45-day review period required under Section 15105 of the CEQA Guidelines.

The requested external station data is regional data used by the City of Irvine but not produced by the City of Irvine. This regional data is available on the City's website at:

http://www.cityofirvine.org/cityhall/cd/planningactivities/ibc_graphics/default.asp

A15-2 Comment A15-2 is generally a set of introductory remarks. It calls for no specific response from the City of Irvine (Please see response to Comment 05-16). The specific assertion that the City of Tustin's "long-standing concerns regarding traffic, parks, and broad cumulative impacts have gone unheeded and unaddressed." is; however, an inaccurate characterization. The City of Irvine has held multiple recent meetings with the City of Tustin concerning these issues. Indeed, Tustin staff has indicated that it had no remaining concerns with the traffic analysis conducted in connection with the RDEIR. Unfortunately, Tustin's staff level approval of the analysis contained in the RDEIR is not reflected in the comment letter from its counsel.

Comment A15-2 also asserts that "Irvine has not yet provided a robust and forthright analysis concerning the transformation of the IBC that the cities have urged for years." The RDEIR assesses, comprehensively and expansively, the impacts of all future development within the IBC, whether residential, office, or industrial in nature. To the extent specific criticisms of the RDEIR are offered elsewhere in the comment letter, appropriate responses to those comments have been provided.

Finally, the commenter suggests that Tustin's "concerns regarding the Project's impacts must be considered in the context of the history of intensive development in the IBC without adequately mitigating the impacts that previously approved projects within the IBC have caused both directly and cumulatively." To the extent this comment suggests that long since approved projects in the IBC are the subject of Tustin's concerns, Irvine notes that the period of limitations for challenging those projects has long since expired. (Pub. Res. Code § 21167.) Indeed, the City of Tustin notes that it has "provided comments concerning IBC projects for almost as long as the IBC has existed." Therefore, the City of Tustin was clearly aware of and had the opportunity to comment or otherwise meaningfully participate in the approval process for past projects. In addition, the City of Irvine notes that the environmental effects of all past projects are included in the environmental baseline for this project, i.e., the existing conditions as of the date of the issuance of the Notice of Preparation. Thus, the effects of past projects are accounted for in the environmental analysis conducted in the RDEIR. Please see responses to Comments 05-5 and 05-17.



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- A15-3 The baseline environmental setting for the RDEIR is based on existing conditions as they existed on July 10, 2009, as stated on page 3-19 of the RDEIR. Traffic counts taken before July 2009 we adjusted based on the Orange County Transportation Authority's (OCTA) guidelines and methodology, as described in the Traffic Study, included as Appendix N to the RDEIR. This date was also cited in Appendix F of the RDEIR. The baseline analysis was updated from the date listed in the Notice of Preparation so that the baseline environmental setting was not stale.

As to the assertions regarding land use assumptions (i.e., future development assumptions), the City of Irvine took the opportunity it had in connection with the preparation of the RDEIR to provide the most current practicably available forecast data in conducting the land use analysis. As the commenter is aware, these recessionary times have caused changes in future land use assumptions, and changes in the list of pending projects. Therefore, as reflected on page 3-19 of the RDEIR, the City updated the existing land use assumptions to be the most currently available information.

- A15-4 Please see Response to Comment O5-5. The commenter claims that the use of the Notice of Preparation publication date as the environmental baseline date is somehow inappropriate in this context. That environmental baseline date, however, is authorized by CEQA Guidelines Section 15125. The period of time that it has taken for the City to prepare the environmental impact report for this project is based in large measure on the City's attempt to respond comprehensively and meaningfully to the comments of, among others, the commenter. As a practical matter, the City cannot be required to update baseline conditions continuously. Furthermore, as noted in response to Comment A15-3, the City did update land use assumptions so that future development assumptions are, to the extent feasible and practical, based on the most recent available data. The baseline environmental setting is based on existing conditions as they existed on July 10, 2009 for the RDEIR, as stated on page 3-19 of the RDEIR.

- A15-5 In this comment, the commenter focuses on various CEQA cases concerning "piecemealing." However, the comment calls for no specific response by the City of Irvine. Rather, it serves as an introduction to Comment A15-6. Please see response to Comment O5-16.

- A15-6 The commenter begins Comment A15-6 by focusing on a trial court decision that is currently on appeal and that dealt with a specific residential project in the IBC. For a general response to assertions regarding the binding nature of the trial court decisions in those other cases, please see response to Comment O5-17.

Next, the commenter states that "the potentially significant impacts caused by numerous IBC projects that have already been approved are relevant to the cumulative impacts of the IBC Vision Plan Project." The statement is true, as far as it goes. All past approvals have been integrated into either the baseline conditions (if approved projects have been built), or future development assumptions (if approved projects have not yet been built). Thus, those past approvals are part of the environmental impact analysis. If those past approvals plus forecasted future approvals plus approval of the Project result in an identified cumulative impact, and the Project has a cumulatively considerable contribution to that identified cumulative impact, then further mitigation has been required in the RDEIR and/or a significant unmitigable impact has been disclosed.

If and to the extent the commenter suggests that the IBC Vision Plan Project is required to provide mitigation for the impacts of past approvals, the City of Irvine does not agree (Please see Response to Comment O5-17). Those past approvals were subject to their own public

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review processes. The public, including the commenter had a full and fair opportunity to participate in those processes and to raise and pursue concerns it may have had with those approvals. The commenter has emphasized that it has participated meaningfully in approvals in the IBC since at least 1992. In short, the environmental review process is designed to identify and mitigate the impacts, direct, indirect, and cumulative, of the Vision Plan Project. It is not, however, designed to revisit the wisdom of the approval of past projects.

The commenter next claims that the City “sweeps [the impacts of past projects] under the rug by considering them as part of the environmental baseline.” Far from sweeping the impacts under the rug, the City of Irvine has specifically considered the impact of past approvals by including those matters in the environmental baseline. If past approvals led to adverse existing conditions, that fact is clearly disclosed in the RDEIR.

The commenter next generally claims that impacts on recreation of past residential approvals in the IBC have not been adequately analyzed. Again, the commenter had a full and fair opportunity to comment on recreation impacts in connection with past approvals. The City has consistently required Quimby Act compliance in connection with past approvals. Beyond its general statements concerning recreation impacts, the commenter does not identify any specific deficiencies in past or current analysis in Comment A15-6.

The commenter next criticizes the RDEIR for referring to a “community park and several neighborhood parks within the IBC, but not providing any more specific analysis of those parks.” A site for a community park and/or neighborhood parks has not yet been selected. CEQA and the CEQA Guidelines recognize that in connection with programmatic environmental analyses, more generalized, i.e., vague, project assumptions must be utilized. Because the Vision Plan does not direct or dictate specific sites for future residential development, it is impossible at this stage to determine the precise location, timing, size, or sequence for the construction of future parks. If and when factors are ultimately selected, an appropriate environmental analysis will be performed. (See response to Comment O5-31.)



A15-7 As an initial matter, the commenter claims that the RDEIR does not address Accessory Retail Business (ARB) zoning designation. However, RDEIR states at page 4-8 that “for purposes of the IBC Vision Plan, the utilization of the ARB designation has been assumed, although that assumption does not, by definition, yield any additional traffic generation.” Thus, the Vision Plan Project description does include an assumption that the ARB zoning designation will be in place. Further, as the commenter noted in its Comment Letter on the ARB use zoning approvals, to the extent the application of the ARB use designation requires a demonstration that no additional traffic will be generated by the installation of an accessory retail use, the commenter has no concerns. The City of Irvine has confirmed, based on the clear zoning test, that that is the case. In implementation of the ordinance, the city of Irvine will require an affirmative demonstration that a proposed accessory retail use generates no additional traffic. Absent such a demonstration, the proposed use will not qualify for the ARB zoning designation.

The commenter also makes reference to *The i-Shuttle* in Comment A15-7. However, beyond a single reference, it does not explain how *The i-Shuttle* is relevant to its comment. In point of fact, *The i-Shuttle* was approved by a Notice of Exemption CEQA clearance document, and the time period for challenging that Notice of Exemption has long since expired.

A15-8 While the ARB provisions of the code meet similar goals of the Vision Plan, these provisions provided a definition of accessory retail businesses sufficiently narrow as to reasonably conclude that such uses would be limited to nearby users, and that such uses would not

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generate additional environmental impacts. The provision has independent utility —the city would have (indeed, did) pursued the ARB provisions with or without the implementation of the Vision Plan. Thus, while the ARB provisions are consistent with some of the concepts behind the Vision Plan, they are not essential to the Vision Plan. Research into the development of the definition of accessory retail uses included review of mixed-use projects in other cities, including Newport Beach and Santa Ana.

- A15-9 See also response to comment A15-8. The plain text of the ARB designation zoning ordinance requires that accessory retail businesses generate no additional traffic. In order for an applicant to successfully utilize the rights under that accessory retail business designation ordinance, it must affirmatively demonstrate that no additional traffic would be generated.

The commenter also suggests that an unlimited number of retail businesses would be permitted under this designation; however, the provision of the current zoning code outline a specific set of uses and size limitations for neighborhood-oriented retail uses.

- A15-10 The commenter continues to assert that ARB designation did not comply for the CEQA common sense exemption which was applied to it when the ARB designation zoning ordinance was approved by the Irvine City Council. The issues being argued in this comment do not relate to the RDEIR. However, see response to Comments A15-8 and A15-9 explaining that the ARB designation is part of the assumptions for the IBC Vision Plan and further that ARB designations are available only to projects that will generate no additional traffic.

The comment concludes by stating “the ARB designation should be considered part of the Vision Plan Project, or at the very least, should be considered in the cumulative impact analyses.” Again, at page 4-8 of the RDEIR, the City of Irvine stated “for purposes of the IBC Vision Plan, the utilization of the accessory retail use designation has been assumed, although that assumption does not, by definition, yield any additional traffic generation.” Thus, the ARB designation is considered as part of the Vision Plan Project.

The commenter notes that the Institute of Traffic Engineers (ITE) manual indicates that accessory retail uses within retail and office complexes generate a percentage of stand-alone trips. If such a demonstration is made in the context of a specific development proposal, it will not qualify for treatment as an ARB use under the ARB ordinance. Further, no reference is made to the specific numeric edition of the manual used and the City is not aware of a June 2004 version of the manual (The 7th edition of the manual is dated 2003 and the current 8th edition is dated 2008). In addition, no definition of the ITE’s accessory retail designation has been provided, and may be broader than the City’s narrow definition.

- A15-11 The commenter broadly states that an exemption from the transfer of development rights (TDR) mechanism for the ARB designation “raises further concerns regarding the associated potentially significant impacts and Irvine’s commitment to address them.” However, the commenter does not provide any specifics beyond the traffic generation issues addressed in Comments A15-8, A15-9, and A15-10. Absent further detail, further response is not possible.

As noted in comment A15-8, the definition of ARB is sufficiently narrow as to reasonably conclude that such uses would be limited to nearby users, and that such uses would not generate additional environmental impacts. As such, no additional intensity under the City’s current Transfer of Development Rights (TDR) provisions would be applicable.

- A15-12 See response to Comment A15-7 through A15-11.

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- A15-13 The commenter attempts to wrap **The i-Shuttle** into the Vision Plan Project. However, **The i-Shuttle** has already been approved, a notice of exemption for the I-Shuttle has been issued, and the period for challenging **The i-Shuttle** has long since expired. (See Pub. Res. Code § 21167.) Furthermore, **The i-Shuttle** is part of the existing environment. It is actually running in the IBC today. As a result, **The i-Shuttle** is not part of the Project, but rather part of the baseline conditions.

Separately, the commenter emphasizes that the City deleted text from the proposed General Plan Amendment relating to **The i-Shuttle**. Because **The i-Shuttle** had independent utility, and because it was approved separately from the Vision Plan, there was no need to include further description of **The i-Shuttle** in the General Plan Amendment being processed as part of the Vision Plan Project. (See generally Guideline 15165 [“Where one project is one of several similar project of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.”].)

- A15-14 The City of Irvine’s separate consideration of **The i-Shuttle** and the ARB zoning does not constitute piecemealing. Rather, those projects had independent utility and were approved on a separate track. Equally important, once approved, those projects became part of the existing environmental baseline. Leaving no ambiguity concerning this issue, the ARB zoning has in fact been wrapped into the Project under analysis in the Vision Plan EIR. This treatment of the ARB zoning was possible, in large measure, because the ARB provisions have not yet been utilized by any party in connection with accessory development in the IBC.

The commenter asserts that “because the RDEIR failed to analyze the entire project, it has potentially understated the potentially significant impacts.” However, as noted, **The i-Shuttle** and ARB zoning are accounted for in the RDEIR and, in any event, have no environmental impacts. The ARB zoning by definition cannot generate additional traffic. **The i-Shuttle** is a transit program that serves to reduce, not increase traffic impacts.

The comment concludes that the ARB designation and **The i-Shuttle** must at the very least be considered in the cumulative impact analyses. The comment serves to confirm that both projects were considered in the context of cumulative impacts, but neither project resulted in any impacts and therefore did not contribute toward any cumulative impact.

- A15-15 The commenter speculates that the City of Irvine may increase the residential development cap in the IBC to 20,000 units. That is not what is proposed by the IBC Vision Plan Project. The RDEIR studies the project under analysis which is an increase to 15,000 residential dwelling units (plus applicable density bonuses). The fact that Irvine Ranch Water District’s Water Supply Assessment assumes 20,000 residential unit cap in the IBC does not render a 20,000 residential cap a probable future project, as it is not representative of the City of Irvine’s Project as analyzed in the RDEIR.

- A15-16 The commenter states that the City was somehow required to perform an environmental analysis of recreational facilities that may be constructed in connection with the buildout of future residential development in the IBC pursuant to the Vision Plan. However, as noted in response to Comment A15-6, the location, size, timing, and sequence of the construction of future parks is not currently known and cannot be forecasted with any reliability. This is not, as the commenter suggests, a case of piecemealing. Indeed the idea of constructing future parks is acknowledged in the RDEIR. (See, pgs 3-26 and 5.12-10) Rather, pursuant to Guideline Section 15145, if a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate its discussion of the impact.



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Here, the location of future parks is not known, and therefore a more specific impact evaluation cannot be conducted at this stage. Further, the level of detail provided in the RDEIR is consistent with Guidelines 15146 and 15152 which contemplate a more generalized, non-construction specific, analysis in a broader EIR such as the RDEIR with later environmental analyses to be used on narrower projects (i.e., specific park improvements). In those circumstances, the later project would “incorporate by reference the general discussion from the broader EIR; [the later analysis would concentrate] solely on the issues specific to the later project.” Here, the level of detail with regard to the RDEIR does not include specific park siting; and therefore, the City’s actions are consistent with the Guidelines.

Community park facilities that would serve the IBC Vision Plan area are listed in Table 5.12-1 of the RDEIR. The Vision Plan expands the criteria for neighborhood parks so that more types of neighborhood open space may be used for neighborhood parks, and suggests a potential location for a future community park adjacent to the IBC, where sufficient land is available.

A15-17 See response to Comment A15-16. The analysis in the RDEIR is consistent with the level of detail for the Vision Plan Project. Specific infrastructure improvement locations have not been identified, sized, or assigned to a specific location or specific time frame for construction. Further, the Vision Plan does not contemplate assignment of specific future residential development locations. Accordingly, consistent with Guideline Section 15152(b), the level of detail contained in the Vision Plan EIR need not be greater than that of the Vision Plan itself. See also, Guideline 15146 [“The 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”].

A15-18 See response to Comment O5-34. The seven specific projects analyzed in the RDEIR are analyzed at the level of detail that can reasonably be assigned to those projects. The locations of the Projects are known and the general details concerning the level of intensity of development of those projects are known. However, given changing economic conditions, more specific details are not currently available. Therefore, the City of Irvine has integrated into the RDEIR the level of detail that it believes it can reasonably and responsibly include with regard to those seven projects. Each of those projects remain subject to a future discretionary process. If at the time those projects are brought forward, they are consistent with the Vision Plan EIR and will not result in impacts above and beyond those studied in the Vision Plan EIR, then the Vision Plan EIR may serve as an environmental clearance document. However, until those specific development projects are brought forward, that judgment cannot be made.

In addition, please note that while pending residential development projects were identified in the EIR, certain site-specific project analyses were not completed as part of the EIR, primarily with respect to site-level noise, circulation, access and land use compatibility issues. Therefore, once the conditional use permit (CUP) is ready to proceed, staff will conduct a new initial environmental evaluation to determine the scope of any changes to the project and/or the surrounding environment, and will make a determination at that time regarding any additional environmental review necessary for the CUP.

To the extent the commenter requests that assurance be provided that subsequent environmental review will be required for the individual projects, this response to Comment serves as that assurance. Each subsequent project will be analyzed under CEQA.

The commenter also requests to know how the Vision Plan EIR relates to the entitlement processing for the seven identified projects. The Vision Plan EIR supplants and updates the

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prior draft project specific environmental analyses. While portions of the analyses in those prior environmental documents may prove useful for some future purpose, that judgment cannot be made until those projects proceed forward for project-specific entitlement approvals. As to the Martin Street and 2851 Alton projects, if those projects are allowed to proceed based upon their existing effective entitlement approvals and independent environmental impact reports (i.e., if the judgment of the Superior Court is reversed on appeal) then the analysis in the RDEIR will prove redundant and duplicative to some extent. If the judgment of the Superior Court is sustained on appeal, then the RDEIR will serve as the environmental analysis document for those two projects, and, as necessary, any additional environmental analysis will be conducted in connection with the re-approval of those projects.

A15-19 The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). 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. Number of bedrooms for the pending projects is not necessary to determine population estimates. At this time, given changing economic conditions, the City believes that the average of 1.3 persons per unit is the accurate forecast for the IBC Vision Plan area. Physical environmental impacts are based on buildout of number of units (see Table 3-1). Further, specification of specific bedroom configuration on specific development projects is a level of detail that is not currently available to the City in a form that can be relied upon.

A15-20 The reality demonstrated by numerous approvals following 1992 is that the TDR has repeatedly and consistently been applied to residential development. It is also accurate that the IBC zoning text contemplates the use of the TDR mechanism for residential development. The commenter nonetheless focuses on language in the 1992 EIR that specified that project assumptions were based upon a cap of 3,898 residential dwelling units. The statement is true as far as it goes. Following 1992, however, the City on several occasions amended the General Plan to allow more residential dwelling units, and in doing so utilized the TDR mechanism as the device to shift from office or industrial uses to residential uses. Thus, in 1992, a cap of 3,898 residential dwelling units was envisioned. When the cap was expanded, the TDR mechanism was used, as authorized by the 1992 Zoning text, as the device that allowed for the conversion of non-residential development to residential development.

The commenter next states that “Irvine has never comprehensively analyzed the impacts of applying the TDR program to allow increased residential development in the IBC.” Without debating the accuracy of the commenter’s statement with regard to the multitude of projects that have been approved and are long since beyond any period for legal challenge, it suffices to note that the RDEIR provides an analysis of residential conversion in the IBC, including conversion associated with the use of the TDR program. Effects associated with the past use of the TDR Program are included in the environmental baseline conditions. See response to Comments O5-5, O5-17, A15-2 and A15-6.

The commenter next notes that “residential uses have different impacts than non-residential uses.” While the statement does not itself call for a response, the City agrees, and residential uses have been assumed and examined in the RDEIR.

The commenter next states that “Irvine must comprehensively analyze these impacts before it applies the TDR mechanism in this manner.” The RDEIR provides that analysis by making reasonable assumptions concerning transfers of development rights and applying those



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assumptions in forecasting future residential development. See Traffic Study, included as Appendix N to the RDEIR (and Appendix J within the traffic study). Given the nature of the program and the level of detail currently available, the City of Irvine has made the most reasonable assumptions that it could. If its assumptions prove inaccurate at a later date, those corrections will be addressed in connection with a future environmental review. This approach is consistent with Guideline 15152.

A15-21 The commenter claims that “while the RDEIR acknowledges that the Project involves increasing the residential development cap in the IBC Vision Plan Area through the reallocation of permitted development intensity within the IBC (RDEIR, p. 1-6; see also Id at p. 3-10), it fails to acknowledge this development intensity will result in significant and unavoidable impacts.” The commenter fails in Comment A15-21 to explain how it arrives at its conclusion. To the extent that explanation is offered in a later comment, the expressed concern will be addressed in response to that later comment. The RDEIR evaluated impacts associated with increasing residential intensity in the IBC Vision Plan area in Chapter 5, Environmental Analysis. Chapter 6, Significant and Unavoidable Adverse Impacts, identifies several significant unavoidable impacts associated with the project.

A15-22 The commenter suggests that the conclusion regarding the impacts of the buildout of the IBC provided in a 1992 IBC Program EIR are somehow binding on the conclusions reached in the RDEIR. The conclusions in the 1992 IBC Program EIR were based upon a forecast of conditions that was conducted in 1992. Those forecasts have proven incorrect in many respects, and the 1992 IBC Program EIR is not an accurate representation of what the City of Irvine currently forecasts to be probable future conditions.

Consistent with that reality, while the 1992 IBC Program EIR concluded that the ultimate buildout of the IBC could result in significant and unavoidable impacts, the RDEIR does not reach the same conclusions. With the benefit of 18 years experience in managing, mitigating, and avoiding impacts, and with the benefit of significant changes in land use assumptions, and with the benefit of significant changes in ambient growth assumptions, it is not surprising that the RDEIR concludes that some of the impacts forecasted in the 1992 IBC Program EIR will not ultimately come to pass.

As the commenter notes, residential development results in different impact patterns than office and industrial development. To the extent the plan studied in the RDEIR includes more residential development (15,000 dwelling units vs. 3,892 dwelling units) and less office and industrial development, one would and should expect that the impacts resulting from buildout of the Vision Plan Project would be different from the impacts resulting from buildout as contemplated in the 1992 IBC Program EIR. Thus, the City correctly forecasted future conditions and impacts by assuming buildout of the Vision Plan Project and stacking the impacts of that growth on existing environmental conditions. To achieve this analytic structure, the City did not need to, and did not, rely upon the 1992 IBC Program EIR. Chapter 6, Significant and Unavoidable Adverse Impacts, identifies several significant unavoidable impacts associated with the project.

A15-23 See response to Comment A15-6 and A15-22 regarding the 1992 Baseline. The existing trip budgets for each parcel in the IBC and proposed TDR’s under the Vision Plan are detailed in Appendix F of the RDEIR.

A15-24 The commenter claims “by permitting increased residential development to more than 15,000 units, however, the Project is contributing to an overall increase in traffic in the IBC up to the total envisioned at the time Irvine adopted the development intensity caps for the IBC.” As an

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initial matter, it is true that any increased development in the IBC Vision Plan area will result in increases in traffic over existing conditions. The Traffic Study contained in the RDEIR studies that increase in traffic up to the maximum development envisioned under the Vision Plan Project (see Table 3-1). In performing that analysis, the Traffic Study identifies areas where direct or cumulative impacts will be identified. Where possible, it then suggests feasible mitigation for those impacts. Whether traffic is more, less, or different than that “envisioned at the time Irvine adopted the development intensity caps for the IBC [in 1992]” is not an environmental issue but a land use planning policy issue. From an environmental analysis standpoint, the impacts of the additional development over and above the baseline conditions have been included in the traffic analysis, studied, and where feasible, mitigated.

As discussed in Section 5.13, Transportation and Traffic, the proposed project would generate significant unavoidable traffic impacts at Jamboree Road and Michelson under the 2015 and Post-2030 scenarios and significant unavoidable traffic impacts at Caltrans main-line segments and ramps.

- A15-25 See responses to Comments A15-22 through A15-24. The traffic and air quality analyses are based upon assuming a full buildout of the IBC Vision Plan project and adding that full buildout to existing conditions. This is precisely the analysis required by CEQA. (See Guideline 15126.2 [“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 published, or where no Notice of Preparation is published, at the time environmental analysis commenced.”])

The commenter asserts that the City was required to “acknowledge” the significant and unavoidable impacts previously found in the IBC EIR.” The Vision Plan EIR acknowledges those significant and unavoidable impacts that are identified for the Vision Plan Project and studied in the RDEIR. The RDEIR does not tier off of or rely upon the 1992 IBC Program EIR; and therefore, the commenters reliance on *Communities for a Better Environment v. California Resources Agency* is inapposite. (103 Cal.App.4th 98, 124-125 [“responsible public officials must still go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts”].) First, the Vision Plan Project is not a “later project” within the meaning of the *Communities for a Better Environment* case inasmuch as the Vision Plan EIR does not tier off of or rely upon the 1992 IBC Program EIR. Second, the significant and unavoidable impacts of the Vision Plan Project are clearly and concisely disclosed in the RDEIR.

The commenter next states “by asserting that the proposed additional residential development will be offset by reduced non-residential development, without acknowledging and addressing the significant and unavoidable impacts associated with the permitted non-residential development intensity, the RDEIR perpetuates a scheme designed to obscure impacts rather than reveal them.” There is no effort to obscure impacts here. The RDEIR studies the complete buildout of the IBC, including all residential and non-residential development. In doing so, it assesses the ultimate environmental impacts, in interim and in final buildout conditions, and discloses those impacts clearly and concisely. The development assumed in the Vision Plan Project is different in character than the development studied in the 1992 IBC Program EIR. The tools used to determine whether impacts would exist are different from those utilized in the 1992 IBC Program EIR. The development patterns that have materialized between 1992 and the present in the IBC are different than those assumed in the IBC Program EIR. The traffic improvements which have been constructed in neighboring jurisdictions are different than those assumed in the 1992 IBC Program EIR. For all of these reasons, the 1992



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IBC Program EIR was treated as a stale document. Rather than relying on the analysis, assumptions, or conclusions contained in that document, a new analysis has been provided in the RDEIR. This approach is not, as Tustin asserts, a “scheme designed to obscure impacts.”

Further, the RDEIR evaluates impacts associated with the proposed project. Chapter 7, Alternatives to the Proposed Project, includes a comparison of the proposed project with the No Project/Existing General Plan Alternative.

- A15-26 As stated in earlier comments, the RDEIR does not assume any trip reduction for the IBC Vision Plan land uses in the traffic study, allowing for a more conservative analysis to maximize traffic mitigation. In addition, no trip reductions were assumed in Section 5.15, Global Climate Change, that relate to job-housing balance or mixed-use development. Traffic projections were based on the Orange County Transportation Authority’s (OCTA) guidelines and methodology, as described in the Traffic Study, included as Appendix N to the RDEIR. However, based on a study of trip reductions for mixed-use projects in Irvine conducted by Fehr and Peers for the City of Irvine Climate Action Plan, there is a direct correlation in trip reduction based on increased density and mixed use.

Economic and social effects of a project, such as affordability of future residential units to those working in the IBC Vision Plan area, are not treated as significant effects in accordance with CEQA Guidelines 15131 (see also response to Comment A15-39). These comments will be forwarded to decision makers for their review and consideration. Jobs-housing balance is discussed in Section 5.10, Population and Housing. The City of Irvine’s adopted population growth standard, based on census data, is 1.3 average residents per condominium unit. Employment rates are based on the Land Use Element of the General Plan, which estimates that there are 1.9 employees per thousand square feet of office and industrial and 2.0 employees per thousand square feet of commercial land uses. No trip capture is assumed in these assumptions.

- A15-27 See response to Comment A15-1 regarding the public review comment period.

The commenter states that it was somehow denied access to a document entitled “Working Draft of 2008 Citywide Circulation Phasing Report, PB 2009.” That document was provided in Appendix N-1 of the RDEIR and was therefore available to commenter throughout the comment period. In addition, the commenter requested, and the City provided, the latest Citywide Circulation Phasing Report during the public comment period. The timing for the City’s production of that document to the commenter was directly related to the timing of the commenter’s request for that document.

- A15-28 Comment A15-28 sets forth the commenter’s view of the law with regard to the detail in responses to comments. Beyond setting forth the commenter’s view of the law, the comment does not call for any specific response. Please see response to comment O5-16.

The EIR for the proposed project was recirculated in its entirety in response to comments. In accordance with CEQA Guidelines Section 15088.5(f) when an EIR is substantially revised and the entire document is recirculated, as is the case with the IBC Vision Plan, the lead adjacent can require reviewers to submit new comments and need not respond to those comments received during the earlier circulation period. The City has exceeded this requirement by providing responses to previous comments in the RDEIR (Appendix Q). A description of why the EIR was recirculated and changes to the DEIR is contained on page 3-9 of the RDEIR in accordance with Section 15088.5(g). See also response to comments A15-29 through A15-117

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A15-29 The RDEIR incorrectly included the Air Quality Appendix to the DEIR. Appendix C to this FEIR includes the correct Air Quality Appendix to the FEIR. A copy of this appendix was directly e-mailed to the commenter on March 12, 2010. The URBEMIS modeling output sheets reflect the data included in the RDEIR. Therefore, the RDEIR provided the public with the information required to evaluate air quality impacts of the project. The significance conclusions stated in the RDEIR do not change as a result of this updated information.

A15-30 See response to Comment A15-29. The RDEIR incorrectly included the Air Quality Appendix to the DEIR. Appendix C to this FEIR includes the correct Air Quality Appendix to the FEIR.

A15-31 See response to Comments A15-7 through and A15-12 regarding ARB Designation.

A15-32 The commenter again attempts to tether the environmental analysis in the Vision Plan RDEIR to that in the 1992 IBC EIR. Please see responses to Comments A15-20 through A15-25.

The RDEIR evaluates full buildout of the IBC Vision Plan area in the post 2030 scenario. Significant unavoidable impacts were identified in Chapter 6 of the RDEIR. The mitigation improvement at intersection #145, Jamboree and Michelson that would bring this location to acceptable LOS is infeasible because of the operational constraints of triple left turn lanes, not the available capacity at the intersection. The Traffic Study (Appendix N of the RDEIR) conducted a preliminary feasibility assessment associated with traffic improvements. Right-of-way acquisitions were considered to be a constraint and the least preferred mitigation strategy because they would require the relocation of, and compensation for, business and residences.

A15-33 Please see response to Comment O5-33. The project is consistent with objective B-1 in that the traffic analysis in the Vision Plan EIR demonstrates that certain roadway widenings previously contemplated are no longer required (ITAM 8.4). Therefore, without those roadway widenings, the “existing arterial roadway system would continue to function as planned.”

The arterial downgrades identified in the Traffic Study (see Appendix N) are included as part of the project because under the constrained network (most conservative) analysis, the widening of these arterial facilities to meet future forecast conditions is unnecessary. Furthermore, the MPAH amendment is listed as an approval required in Chapter 3, Project Description; and therefore, the MPAH amendment is part of the project.

A15-34 See responses to Comment A15-6 and O5-31. Current regulations ensure that all projects meet neighborhood and community park requirements. For neighborhood parks, land and amenities are provided within individual projects pursuant to the City’s Subdivision Code and the Quimby Act. The Vision Plan encourages additional neighborhood park space by providing public park credit for neighborhood parks open to the public. For community parks, the City of Irvine has long acknowledged there is insufficient land for such park in the IBC, and is therefore looking for space for this use in adjacent open space areas. The City has collected over \$12 million in community park fees for this purpose pursuant to the City’s Subdivision Code and the State Quimby Act.

Project applicants 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. Page 5.12-10 discusses impacts on surrounding cities. As describes in this



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section several parks within Irvine are closer than parks in the surrounding facilities, and four parks within three miles include lighted fields for sports activities. Because in-lieu fees would mitigate impacts to park facilities by contributing to the expansion/improvement of park facilities within proximity to residents within the IBC, the project would not result in a cumulative impact on adjacent cities.

A15-35 Current development regulations and trip caps place sufficient restrictions on a project site so that an overall density limitation is irrelevant. There are no anticipated impacts from this proposed amendment. The City agrees that subsequent environmental review will be necessary for future development requests, including TDRs not assumed in the RDEIR, which does include analysis of pending projects and TDRs. See also response to Comment A15-18.

A15-36 Please see Responses to Comments O5-17, and A5-2 through A5-7 regarding the 1992 baseline setting. The cumulative impacts of previously approved projects are accounted for as part of the existing baseline conditions. This is precisely the analytic approach that is mandated by CEQA and the CEQA Guidelines. The commenter claims that there is a “failure to provide the public and decision makers with information that will enable them to intelligently take account of the Project’s environmental consequences.” However, the commenter fails to explain how adding the entire future development of the IBC on top of existing conditions fails to fully account for the impacts of the Project, both direct and cumulative. Cumulative impacts were addressed in Chapter 5, Environmental Analysis, of the RDEIR for each respective area. Past projects within the IBC Vision Plan area were included within the existing baseline environmental analysis. The proposed project considered cumulative effects associated with an increase in residential density within the IBC Vision Plan area.

A15-37 See response to Comment A15-38. While the Gobar surveys from 2005 and 2007 indeed suggest a higher persons per household figure, the City is required by State Law, in particular the Quimby Act, to use U.S. census data to derive this figure. The Tustin Legacy project is a residential and commercial development north/northeast of the proposed project. Existing uses include medium- to high-density residential, commercial, institutional, office, and industrial land uses, the same mix of land uses as the IBC. Intensifying residential uses within the IBC Vision Plan area was evaluated in the RDEIR on adjacent jurisdictions.

A15-38 See response to comment A15-37. The RDEIR adequately evaluates cumulative impacts of the project in the individual topical sections in Chapter 5 of the DEIR. For instance, the traffic analysis includes a cumulative analysis in its buildout scenario, which is based on assumed population density of 1,000 persons per 80 acres (ITAM ver. 8.4).

Cumulative impacts with regard to the construction of parks are measured by the park needs generated by the project, which are in turn based (as required by law) on census data. More specifically, as required by Government Code Section 66477, the City 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.

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The Commenter also suggests that the Alfred Gobar survey results from 2005 and 2007 should be used in lieu of the census data. The Gobar analysis was based, however, on a response rate between 5 and 10 percent, as compared to the 100% response rate utilized in the 2000 census. 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.

Finally, It should be noted that the City of Irvine already provides a disproportionately large amount of the County's public parks and open space for recreational opportunities.

- A15-39 The issue of affordable housing is beyond the scope of CEQA, and will be discussed in the recommendations to the decision-making bodies (see also response to Comment A15-26). All projects are subject to the City's affordable housing provisions as outlined in Chapter 2-3 of the Zoning Code. Furthermore, the proposed project includes incentives for affordable housing units. The IBC Vision Plan caps development at 15,000 residential units. 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. 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 RDEIR.
- A15-40 See response to Comment A15-39.
- A15-41 See response to Comment A15-34 regarding recreational impacts and Comment A15-38 regarding use of 1.3 persons per household.
- A15-42 See responses to Comment A15-6, A15-34, and O5-31. A specific location for a new community park has not yet been determined, therefore, to analyze a specific location would be speculative under CEQA. The City has an established fee program which has collected over \$12 million in funds to secure a new community park facility, and will continue to collect more with additional residential development. Subsequent environmental review will be conducted once a location and design are proposed.
- A15-43 See response to Comments A15-6, A15-34, A15-42, and O5-31 regarding recreational impacts.
- A15-44 See response to comments A15-6, A15-34, A15-42, and O5-31 regarding recreational impacts. A total of \$9.5 million in Community Park fees have been collected from IBC developments for use towards improvements in Bill Barber Park. The Vision Plan proposes additional connections to this park, thus strengthening the connection of this community park to the IBC.



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- A15-45 Section 5-5-1004D(1) is a part of the Subdivision Code, not the Park Standards Manual. The proposed municipal code changes are discussed in the RDEIR and will be included in the final code text changes presented to the decision-making bodies.
- A15-46 The reference to the 1/3 per acre park size is part of the current environmental setting and requirements. The RDEIR and its appendices reference the removal of this requirement as part of the project.
- A15-47 See response to Comment A15-37 and A15-38 regarding recreational land uses and use of 1.3 persons per household.
- A15-48 The commenter cites a “rebuttable presumption” provision in the Quimby Act as a basis to require the City to use the 2005-07 Gobar survey figures of persons per household rather than the set mandated figures from the U.S. Census. Please note that this section of the Quimby Act goes on to state that the alternative allowed under the Quimby act is a state-certified census subject to similar procedures as the U.S. census. The methodology of the Gobar Survey does not meet these requirements.
- A15-49 The City agrees with the commenter that the type of development in the IBC is different from that of the single-family homes in the rest of Irvine. It is for this reason that the park requirements are proposed to be expanded to allow for more opportunities for public open space, either through private development or through development of public parks by the City consistent with the Vision Plan. Also, because of the difference in the type of residential development in the IBC, the City intends to use its community park fees collected from the IBC to acquire community park space where open space land is available adjacent to the IBC Vision Plan area. See responses to Comments A15-6, A15-34, A15-42, and O5-31.
- A15-50 The proposed project includes features such as additional opportunities for public neighborhood park space to address the very concerns raised by the commenter on this issue. The City has a long-stated goal of acquiring community park land to serve the IBC Vision Plan area. In the meantime, the IBC Vision Plan outlines the park facilities available to serve the IBC residents, and details extensive open space areas adjacent to the IBC Vision Plan area, including the San Diego Creek and San Joaquin Marsh areas, for which improved access from the IBC is proposed as part of the Vision Plan project. See responses to Comments A15-6, A15-34, A15-42, and O5-31.
- A15-51 As the parks in the Tustin Legacy project have yet to be constructed, one can only speculate as to their use by Irvine residents. Given the location of proposed parks in the Legacy project at the north end of the Specific Plan area away from Barranca Parkway, and the proximity of Bill Barber Park adjacent to the IBC Vision Plan area, it is more likely that residents of the IBC will use this closer facility in Irvine.
- A15-52 See responses to comments A18-1 and A18-2.
- A15-53 Chapter 3, Project Description, and Section 5.12, Recreation, of the RDEIR summarized the proposed changes to the park standards. Changes to the park standards were also specifically outlined in Appendix D of the RDEIR, as referenced in prior comments by the commenter. The analysis concludes that there is no significant adverse impact to parks given that new residential developments are required to mitigate impacts consistent with the Quimby Act and implemented through the City’s Subdivision Ordinance. The proposed park provisions of the project would improve the provision of park space in the IBC Vision Plan area as opposed to generating any adverse impacts.

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A15-54 See responses to Comments A15-37 and A15-38 regarding recreational land uses and use of a 1.3 persons per household.

A15-55 See response to Comment A15-37 and A15-38 regarding the use of 1.3 persons per household for the IBC Vision Plan area. The commenter is correct that the total City population reference in Section 5.12, Recreation is incorrect. The population for the City of Irvine in 2035 is projected to be 270,009. This has been revised in the FEIR:

At buildout, a total of 17,038 residential units are projected for the IBC (including 9,015 existing and approved residential units and 440 density bonus units), generating a total of 22,149 residents. Based on the City's Park Code, buildout of the IBC would generate a need for a total of 110.2 acres of parkland at buildout. According to the General Plan, a total of 127,311 residential units are projected for the City's buildout, generating a total of 165,504 residents the Orange County Projections for the City in 2035, the City of Irvine is projected to have a population of 270,009 people. Based on the City's Park Code, buildout of the City of Irvine would generate a need for a total of ~~827.5~~ 1,350 acres of parkland. Currently, there are a total of 493.7 acres of parkland throughout the City. Therefore, recreational needs of future residents of the IBC, in conjunction with cumulative development in accordance with the adopted General Plan, would add to citywide and regional demand for parks and recreational facilities...

As such, recreational needs of future residents of the IBC area, in conjunction with cumulative development in accordance with the adopted General Plan, would add to citywide and regional demand for parks and recreational facilities, and the appropriate land and/or improvements and fees for city required parks will be exacted in conjunction with approval of individual residential development projects.



A15-56 See responses to Comments A15-37 and A15-38 regarding recreational land uses and use of a 1.3 persons per household.

A15-57 The City acknowledges that existing neighborhood park facilities in the IBC Vision Plan area are private. The proposed project provides for additional opportunities for credit for public neighborhood park space, which would address the commenter's concern.

A15-58 The commenter notes a lack of specific detail as to park locations and sizes. Given that this is a program level EIR, and no detail as to specific sites, sizes and designs are available, providing such information would be speculative under CEQA (CEQA Guidelines Section 15064). The general locations of future parks are identified at a TAZ level, typical of what is found in a program-level EIR.

A15-59 In 2008, the City Council approved the recommendations of the IBC Task Force, which included the development of a community park south of the Interstate 405 (I-405), thus identifying this matter as a City Priority.

A15-60 See response to Comment A15-48 regarding recreational land uses and use of 1.3 persons per household.

A15-61 See response to Comment A15-48 regarding recreational land uses and use of 1.3 persons per household. Park facility costs cannot be determined until specific locations and designs have been identified. Development of future neighborhood parks depends on specific designs of

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residential development in a given area. Land and improvement costs are appraised at the time of the development proposal, not during a program-level analysis.

With regard to Parks in the City of Tustin, information on the closest community parks in Tustin is provided in Table 5.12-5. Proposed parks, such as those in the Legacy project, are not listed as existing.

- A15-62 The Creekwalk design is schematic in nature, and is analyzed at that level, particularly in Section 5.3, Biological Resources, Section 5.7, Hydrology and Water Quality, and Section 5.12, Recreation. See also response to Comment A15-42.
- A15-63 The City of Irvine's park requirements do provide the necessary mitigation for impacts to recreational facilities by ensuring that neighborhood park facilities are constructed as part of the associated residential development.
- A15-64 See response to Comment A15-63 and A15-59 regarding recreational land uses.
- A15-65 Irvine has consulted with the City of Tustin during the IBC Vision Plan scoping and environmental process and has provided appropriate information to Tustin under CEQA guidelines. The commenter makes general reference to the claim that "the RDEIR does not correct some of the core deficiencies identified by Tustin and other agencies." This statement is at odds with the representations of Tustin staff members, made during multiple meetings with Tustin concerning the RDEIR. To the extent specific asserted "deficiencies" are identified in later comments in the comment letter, specific responses are provided below.
- A15-66 Table 5.13-10, Study Area Committed Roadway Improvements (see also Tables 2.9 and 2.10 of the Traffic Study, Appendix N of the RDEIR) indicate the funded and unfunded arterial and intersection improvements within the IBC study area. Table 5.13-10 identifies one fully funded roadway improvement (Barranca between Red Hill and Jamboree) sourced as a Tustin Legacy improvement. The lane configuration assumptions in the 2015 interim year analysis are based on information provided by the City of Tustin in terms of construction improvements expected to be completed by 2015 (for the interim analysis). Table 5.13-10 has been revised to include the five Tustin Legacy intersection improvements located in Irvine and detailed information regarding the Tustin Legacy improvements (i.e., extent of the improvement project, implementation schedule, funding source responsibility) will be incorporated once Tustin provides this level of detail.

A footnote has been added to Table 5.13-10 to identify that the two fully funded improvements at Red Hill and MacArthur and Red Hill and Dyer/Barranca (both funded in part by the 1992 IBC Fees) will be constructed by 2015 and are assumed to be in-place in the 2015 interim year analysis.

The lane configuration assumptions in the Post-2030 build-out year analysis are consistent with adjacent Cities' build-out of their General Plans, including the City of Tustin's build-out of its General Plan Circulation Element. For certain improvements that Tustin has included as part of its General Plan but that are partially funded by IBC fees (i.e., widening of Red Hill from six lanes to eight lanes between Barranca and Edinger), the City of Irvine removed these assumptions from the build-out analysis due to lack of funding and to reassess the need for the 1992 mitigation measures. It was determined through analysis that the unfunded 1992 mitigation measures (including the widening of Red Hill from six to eight lanes) were no longer needed, but that mitigation improvements resulting from the constrained network were necessary. All improvements resulting from the analysis of the constrained network, including

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an improvement at intersection #754 Red Hill & Carnegie, are documented in Chapter 6 of the Traffic Study (see Appendix N of the RDEIR).

*Table 5.13-11
Study Area Committed Intersection Improvements*

Funding Status of 1992 IBC Intersection Improvements - March 2008				
Stage	ID	Location	Improvements	Status [1]
Stage I				
	49	Red Hill & Main	3rd EBT; 3rd WBT	Complete
	78	MacArthur & Main	4th SBT; 3rd EBT; Free WBR	Complete
	79	MacArthur & I-405 NB Ramp	Free 2nd NBR; 4th SBT; 4th NBT; Free 2nd	Complete
	80	MacArthur & I-405 SB	2nd SBL; 4th SBT; 4th NBT	Complete
	82	MacArthur & Michelson	4th SBT; 4th NBT; NBR; WBT	Complete
	84	MacArthur & Campus	4th SBT; 3rd EBT; 3rd WBT	Complete
	138	Jamboree & Alton	3rd WBT; 4th NBT; 4th SBT	Complete
	141	Jamboree & Main	4th SBT; 4th NBT; 3rd WBT; 3rd EBT	Complete
	143	Jamboree & I-405 NB Ramp	3rd NBT & 4th SBT	Complete
	144	Jamboree & I-405 SB	4th SBT; 3rd & 4th NBT	Complete
	145	Jamboree & Michelson	4th SBT; 4th NBT	Complete
	188	Harvard & Michelson	2nd EBL	Complete
	42	Red Hill & Dyer/Barranca	2 nd WBL; 4 th EBT; 4 th WBT	Fully Funded ¹
	47	Red Hill & MacArthur	3 rd WBT; 3 rd EBT	Fully Funded ¹
	47	Red Hill & MacArthur	4th WBT; 4th EBT	Not Funded
	82	MacArthur & Michelson	2nd NBL	Not Funded
	84	MacArthur & Campus	EBR	Not Funded
	143	Jamboree & I-405 NB Ramp	4 th NBT	Not Funded
	145	Jamboree & Michelson	EBR	Not Funded
	188	Harvard & Michelson	Free SBR	Not Funded
Stage II				
	133	Jamboree & ICD	Grade Separation	Complete
	138	Jamboree & Alton	2 nd NBL; 2 nd SBL; 3 rd EBT	Complete
	150	MacArthur & Jamboree	NBR; 2 nd NBL	Complete
	42	Red Hill & Dyer/Barranca	4 th SBT; 4 th NBT; 2 nd EBL	Fully Funded
	47	Red Hill & MacArthur	3rd SBT; 3rd NBT; 2 nd NBL	Fully Funded
	47	Red Hill & MacArthur	4 th NBT	Not Funded
	49	Red Hill & Main	3 rd & 4 th SBT; 3 rd NBT; Free NBR	Not Funded
	78	MacArthur & Main	Replace 1 WBT (VLD) with 3 rd WBL (VLD)	Not Funded
	136	Jamboree & Barranca	Grade Separation	Not Funded
	138	Jamboree & Alton	5 th NBT; 5 th SBT	Not Funded
	184	Harvard & Barranca	WBR; 2 nd SBL; 2 nd NBL	Not Funded
	186	Harvard & Main	Free SBR	Not Funded
Stage III				
	234	Culver & Michelson	2 nd NBL; SBR; WBR	Complete
	47	Red Hill & MacArthur	Replace 1 SBT (VLD) with 3 rd SBL (VLD); Replace 1 EBT (VLD) with 3rd EBL (VLD)	Not Funded
	97	Von Karman & Barranca	Free NBR; 2 nd WBL; 4 th WBT; 4 th EBT	Not Funded
	136	Jamboree & Barranca	Free EBR	Not Funded
	141	Jamboree & Main	4 th EBT	Not Funded
Tustin Legacy				
	49	Red Hill & Main	Free SBR	Committed
	102	Von Karman & Michelson	2 nd EBL	Committed
	138	Jamboree & Alton	5 th NBT	Committed



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Table 5.13-11 Study Area Committed Intersection Improvements				
Funding Status of 1992 IBC Intersection Improvements - March 2008				
Stage	ID	Location	Improvements	Status [1]
	<u>185</u>	<u>Harvard & Alton</u>	<u>2nd NBL</u>	<u>Committed</u>
	<u>227</u>	<u>Culver & Warner</u>	<u>2nd EBL</u>	<u>Committed</u>

Notes: [1] Status as of March 2008
¹ The two fully funded improvements at Red Hill & MacArthur and Red Hill & Dyer/Barranca (both funded in part by the 1992 IBC Fees) will be constructed by 2015 and are assumed to be in-place in the 2015 interim year analysis.

Legend:
 EBT = Eastbound Through Lane
 WBT = Westbound Through Lane
 NBT = Northbound Through Lane
 EBR = Eastbound Right
 SBR = Southbound Right
 SBT = Southbound Through Lane
 EBL = Eastbound Left
 WBR = Westbound Right
 WBL = Westbound Left
 NBL = Northbound Left
 VLD = Variable Lane Deployment
 NBR = Northbound Right

A15-67 Table 5.13-10 of the Traffic has been updated to include the five intersection improvements documented in the comment (see Chapter 4 of the FEIR). Note that the Marine Corps Air Station (MCAS) Tustin Reuse EIR identified the improvement at Culver and Warner as an additional eastbound left-turn lane, rather than an additional eastbound right-turn lane. All five improvements resulting from the MCAS Tustin Reuse Project were correctly assumed in the analysis. See also responses to Comment A15-66 and response to Comment A15a-3.

A15-68 Chapter 7 of the Traffic Study (Appendix N of the RDEIR) articulates the proposed downgrading of certain arterial segments (Alton Parkway and removal of the Alton/SR-55 interchange as well as Von Karman Avenue and the removal of the Von Karman/I-405 interchange) that would be inconsistent with the County's Master Plan of Arterial Highways (MPAH). Included in Chapter 7 of the Traffic Study is a description of the process by which the City of Irvine will work with the Orange County Transportation Authority (OCTA) and affected jurisdictions to prepare a cooperative study for the proposed downgrades that are inconsistent with the County's MPAH. Following approval of the MPAH amendment by the OCTA Board, the City can move forward with the City's General Plan Amendment to downgrade these arterial segments.

The five arterial roadway segments identified in this comment (Barranca between Red Hill and Jamboree; Jamboree between Barranca and McGaw; Main Street between Red Hill and Harvard; MacArthur between Fitch and Main; and Red Hill between Barranca and Main) are currently designated in the City's General Plan "over and above" the County MPAH roadway designation. Therefore, the downgrade of these five arterial segments will be consistent with the County's MPAH and a cooperative study with OCTA is not necessary. There are no inconsistencies related to downgraded arterials listed in the various sections of the traffic study.

The proposed downgraded facilities would keep these roadways in their existing condition, removing the need to widen the roadways. The existing conditions of these roadways are walkable.

The City of Irvine removed the improvement assumptions from the build-out analysis in those cases where there is no identified funding source for improvements. It was determined through analysis that the unfunded 1992 mitigation measures were no longer needed, but that

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mitigation improvements resulting from the constrained network were necessary, and these improvements are documented in Chapter 6 of the Traffic Study.

A15-69 The text in the Traffic Study refers to the original 1992 Irvine Business Complex General Plan Amendment and Rezoning Project study area.

A15-70 The Traffic Study (Appendix N of the RDEIR) conservatively evaluates impacts and Mitigation Measures using a “ground to plan” approach for the 2015 interim year analysis as well as the build-out Post-2030 analysis (see response to Comment A15-6). The differences in trip generation within the IBC Vision Plan area under the existing condition, 2015 No Project and Post-2030 No Project are therefore negligible. The trip generation tables referenced in this comment are reflective only of the IBC Vision area rather than reflective of the areas outside the IBC where build-out growth is assumed. Trip generation tables for the entire study area are included in the appendices to the Traffic Study.

A15-71 The traffic impact analysis considered “extra-jurisdictional development” consistent with assumptions used in regional traffic models. This regional data has been forwarded, per the commenter’s request (see response to Comment A15-1).

A15-72 No significant parking impacts related to neighborhood parks in the IBC Vision Plan area would occur because neighborhood parks would be developed as part of an overall residential development. However, Community Parks draw from a larger area; and therefore, parking would be provided pursuant to City standards.

A15-73 See responses to Comments A15-8 through A15-11 regarding ARB designation.

A15-74 Based on meetings with the adjacent Cities on the traffic modeling for the DEIR (ITAM 8.1), the RDEIR uses a new version of ITAM (ITAM 8.4) based on improvements suggested by the adjacent Cities including a review of OCTAM 3.2 forecasts. At the time of the preparation of the traffic analysis, OCTAM 3.3 was not available for official use.

ITAM 8.4 was validated through the same processes as previous versions of ITAM. For the IBC Vision Plan, existing year 2008 counts were grouped into travel corridors referred to as screenlines and then compared to 2008 forecasted volumes to verify that differences were reasonable and appropriate in accordance with the National Cooperative Highway Research Program Report 255 (NCHRP 255). Based on this validated model (ITAM 8.4), future forecasted volumes identified in the RDEIR and the traffic study are reasonable and appropriate. The model has been approved by OCTA as a valid sub-area model.

OCTAM forecasts do not confirm the need for larger capacity arterials as they are consistent with the RDEIR when reasonable variation between model forecasts are taken into account. The RDEIR does look at downgrading some arterial facilities. Revisions to the City of Irvine’s General Plan Circulation Element that may affect the County MPAH must be made in conjunction with similar action by OCTA based on a cooperative study. Irvine will follow the appropriate protocol for the reclassification of MPAH roadways.

A15-75 The likely development patterns associated with the buildout of the Vision Plan are a part of the proposed Project assumptions. In making those assumptions, further assumptions concerning the source of probably development intensity transfers were made. See response to Comment A15-6 regarding use of the 1992 baseline.



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- A15-76 See response to Comment A15-18. Discretionary review (a CUP or Master Plan) is still required for residential development in the IBC as specific in the current zoning code, and traffic impacts are evaluated at the time such development is proposed. The updated TDR provisions eliminate the need for a CUP only for TDR's proposed within the same TAZ, as an incentive to promote compact development and limit the amount of trips transferred around other areas of the IBC. Discretionary review is still required for the rest of the proposed project.
- A15-77 See response to Comments A15-16 and A15-17 regarding pending projects and specificity of a program EIR.
- A15-78 The Traffic Study, included as Appendix N to the RDEIR, details traffic counts taken for the proposed project (see Section 2.3, Traffic Counts). See also response to Comment A15-3 related to traffic count data
- A15-79 Section 2.5 of the Traffic Study (Appendix N of the RDEIR) articulates the detailed methodologies used for the arterial analysis, including the Average Daily Trips (ADT) analysis, as well as the peak hour link analysis applied in the City of Irvine. Methodologies applied for arterial segments were based on the protocol of that jurisdiction in which the arterial segments lie. As documented in the traffic study, the City of Tustin evaluates ADT but assesses impacts at the intersection. The arterial analysis resulted in one confirmed arterial impact location: MacArthur Boulevard between Main and SR-55 located in the City of Santa Ana.
- A15-80 The performance standard adopted for the IBC is LOS E and is consistent with other parts of the City with unique development characteristics that include office, retail and residential uses. In the absence of existing thresholds of significant impact for state facilities, the threshold of significance for freeway facilities described in Section 5.13, Transportation and Traffic, and Chapter 2 of the Traffic Study (Appendix N to the RDEIR) was proposed by Caltrans and through joint discussions and coordination with Caltrans staff, has been codified as the accepted threshold of significance for this project. This performance criteria appropriately addresses direct and cumulative traffic impacts
- A15-81 Tables that clearly identify project impacts and mitigation strategies by location and year analyzed are included in Section 5.13, Transportation and Traffic, and within the Executive Summary section and Chapter 6 the Traffic Study (Appendix N to the DEIR).
- A15-82 The existing condition at the intersection of Red Hill and Dyer/Barranca is within acceptable levels of service (LOS E).
- A15-83 The Irvine Technology Center project includes 1,000 residential dwelling units and is split between two neighboring geographical TAZs. Figure 5.13-11 (Figure 3.7 of the Traffic Study) correctly identifies 1,000 residential dwelling units (404 units in TAZ 545 and 596 units in TAZ 543.)
- A15-84 Project-related significant impacts for the 2008 Existing Plus Project scenario are discussed in the RDEIR and Traffic Study in Chapter 6 (Appendix N to the RDEIR). Mitigation measures are proposed for these improvements. The impacts are considered theoretical in that it is impossible for the entire project to be built instantly without requisite circulation system improvements as new projects come in. For the identified projects that will be constructed by 2015 (which include the seven projects referenced in the comments), the 2015 improvements are identified. In other words, an analysis of the project buildout without the planned and

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funded circulation system improvements yields a set of impacts that cannot occur. The Traffic Study and RDEIR will be revised to clarify this point. The project related significant impacts as well as mitigation strategies are proposed for the Existing Plus Project scenario as required by CEQA and the project will contribute a fair share (or full share for Irvine intersections) for improvements that are identified under interim year and build-out conditions, with the expected circulation improvements under those analysis years

A15-85 Two impacts are identified in the City of Tustin under the 2008 Existing Plus Project analysis: Franklin & Walnut and Red Hill & El Camino Real. At the intersection of Franklin & Walnut, the interim year 2015 and build-out Post-2030 analyses indicate that although this intersection is deficient, the IBC Vision Plan Project does not contribute to that deficiency based on Tustin's threshold of significance. At the intersection of Red Hill & El Camino Real, the interim year 2015 analysis indicates a deficiency, but no contribution from the IBC Vision Plan Project. The build-out Post-2030 analysis indicates that Franklin & Walnut is no longer deficient. For any deficiencies located in adjacent jurisdictions that are not identified as project-related significant impacts, the project is not responsible for fair-share funds towards the improvement that may be needed. Implementation of the improvements to mitigate these non-project-related deficiencies are the responsibility of the governing jurisdiction. See also responses to Comments A15-84 and O6-12.

A15-86 See responses to Comment A15-84 and A15-85 regarding cumulative traffic impacts.

A15-87 The thresholds of significance used for identification of arterial, intersection and freeway facility impacts for each jurisdiction were established through adopted guidelines and/or through coordination with adjacent jurisdictions, including the City of Tustin. Definition and application of these thresholds of significance by jurisdiction are documented in Section 5.13, Transportation and Traffic, and Chapter 2 of the Traffic Study (Appendix N to the RDEIR).



The interim year 2015 With Project condition includes the increase in residential units and the corresponding reduction in commercial, office and industrial square footage required to offset the increased residential uses. The 2008 Existing condition and interim year 2015 No Project condition are identical because a conservative "ground to plan" analysis was prepared for impact analysis in accordance with the CEQA Guidelines (see response to Comment A15-6).

A15-88 Tables 5.13-17 and 5.13-18 pertain to buildout land use and trip general assumptions analyzed within the IBC Vision Plan area (TAZ 395-546) only. Ambient growth outside of the IBC Vision Plan area, consistent with the General Plans of adjacent cities and in Orange County as a whole, was assumed in the buildout analysis, as documented in the Traffic Study (Appendix N to the RDEIR). This regional data is available on the City's IBC website (see response to Comment A15-1) at:

http://www.cityofirvine.org/cityhall/cd/planningactivities/ibc_graphics/default.asp

Two intersections are identified in the interim year 2015 analysis to be impacted by the project, as documented in Section 5.13, Transportation and Traffic, and Chapter 6 of the Traffic Study:

- #93. Tustin Ranch & El Camino Real
- #134. Loop/Park & Warner.

Section 5.13 and Chapter 5 of the Traffic Study adequately describes the Post-2030 Vision Plan build-out conditions assumed and analysis of impacts. Section 5.13 and Chapter 7 of the

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traffic study adequately describes the two alternative build-out scenarios: 1) Post-2030 Vision Plan build-out condition under the MPAH network and 2) Post-2030 General Plan build-out condition. Conditions under each of these alternative scenarios are described and potential impacts identified in the RDEIR.

The Traffic Study and RDEIR have been revised to include additional detail related to the intent of the MPAH analysis, as included in Responses to Comments A15b-8 and A15b-9. See Chapter 4 of this FEIR for changes in response to comments.

See also response to Comment A15-68 related to downgrading of arterial roadways.

- A15-89 The proposed arterials to be downgraded in the future would remain in the non-hazardous condition that exists today, rather than being widened in the future. Impacts related to land use compatibility are specifically discussed in Section 5.2, Air Quality, Section 5.6, Hazards and Hazardous Materials, Section 5.8, Land Use and Planning, and Section 5.9, Noise.
- A15-90 Administrative Relief is a current discretionary process applied on a case by case basis. To predict which future unknown projects would apply for parking relief pursuant to these provisions would be speculative under CEQA (CEQA Guidelines Section 15064).
- A15-91 Proposed improvements and location of such improvements are clearly outlined in Section 5.13, Transportation and Traffic, and Chapter 5.3 of the Traffic Study (Appendix N). Specific construction impacts cannot be identified until such projects have been formally sited and designed. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). 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 traffic improvements that would be constructed at a later date (CEQA Guidelines Section 15146). No traffic impacts are anticipated as a result of the operation of these proposed improvements, which will likely improve traffic conditions in the IBC Vision Plan. However, as stated in prior responses, the traffic study conservatively estimates no trip reduction measures so as to maximize traffic mitigation.
- A15-92 See pertinent responses provided pertaining to the issues summarized in the comment.
- A15-93 The City's traffic model (ITAM 8.4) is built upon the regional OCTAM model. ITAM 8.4 has been validated through the same processes as previous versions of ITAM. The model has been approved by OCTA as a valid sub-area model and the methodology has been established through many years of accepted results for projects within the City of Irvine. The City of Irvine has coordinated with Tustin in the past on the efficacy of mitigation strategies, and results of impacts and mitigation for the project have been shared with the City of Tustin. The City of Irvine is committed to working with Tustin on the proposed traffic mitigations within the City of Tustin and fair shares as identified in the RDEIR and Traffic Study.

All traffic model-related data that the City of Tustin requested has been provided, including the external station data, which is regional data that specifies trip generation outside the project area including areas outside Orange County. Any potential differences in results between ITAM 8.4 and sub-area model versions used by the City of Tustin may stem from a number of factors:

- Each city's traffic model contains more detail within that city and relies on the county-wide regional model in areas outside of that city's jurisdiction.

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- Tustin and Irvine traffic models may assume different build-out years.
- The traffic counts used to forecast future volumes in the Irvine and Tustin traffic models were likely not taken in the same year and therefore would result in different forecasted volumes. Note that existing counts taken by both Cities must be compared to determine if volume differences exist. Existing counts taken by the City of Irvine can be found in the Appendix to the Traffic Study (Appendix N to the RDEIR).

Finally, the commenter inaccurately claims that Irvine “refused to produce documents with information concerning the external station data input into the model.” The statement is untrue. The commenter requested that the City generate new (as opposed to existing) documentation for the commenter. Because the documentation requested simply did not exist, the City of Irvine informed the commenter that no responsive documentation was available. Nevertheless, in an effort to further facilitate the commenter’s review, the City generated and provided the requested information to the commenter in connection with these responses.

A15-94 See response to Comment A15-67 regarding traffic improvements.

A15-95 Irvine has identified the mitigation strategies and fair shares and is committed to working with and entering into agreements with all affected jurisdictions to outline the specific improvements, timing of fair share funding transfer, etc.

A15-96 Please see response to comment O6-12. Caltrans does not have an identified fee program for the improvements. Nevertheless, the City has extended beyond its legal obligations and agreed to make a fair share contribution. Irvine continues to work with Caltrans on feasible improvements that mitigate impacts identified on freeway facilities. That commitment will be memorialized in an agreement with Caltrans outlining the specific improvements, timing of fair share funding transfer, etc. Note that the 12,000th unit refers to the approximate threshold of residential units that are expected to be completed by interim year 2015 at which time a number of the Caltrans improvements would be required.

A15-97 Mitigation measures are proposed for all project-related impacts identified in the interim year 2015 analysis as documented in Section 5.13, Transportation and Traffic, and Chapter 6 of the Traffic Study (Appendix N to the RDEIR), regardless of whether the location is impacted in the build-out condition. For all impacts that are identified in both the 2015 and build-out Post-2030 analyses, it is recommended that the improvement be expedited to mitigate interim year 2015 conditions, also documented in the traffic study. The following has been incorporated in Section 5.13, Transportation and Traffic, in the FEIR:

5.13.6.1 Summary of Mitigation Program

In summary, one arterial segment and 21 intersections are forecast to operate at a deficient LOS under 2015 and Post-2030 conditions. Mitigation measures are proposed for all project-related impacts identified in the interim year 2015 analysis regardless of whether the location is impacted in the build-out condition. Of the 21 deficient intersections, a project impact is forecast for 15 of the deficient intersections. The arterial segment deficiency is a project related impact. Additionally, a number of freeway mainline segments and ramps are forecast to operate at a deficient LOS. As a general rule, mitigation measures for arterials or intersections begin with identification of any measures that might have been recommended as part of other traffic studies in the area. These



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mitigation measures are then applied to determine whether they result in roadway segment or intersection operation within acceptable thresholds.

A15-98 A cumulative deficiency was identified at the intersection of Red Hill & El Camino Real in the interim year 2015 analysis. Section 5.13, Transportation and Traffic, correctly identifies this location as a cumulative deficiency, not a project-related impact.

A15-99 The HCG Irvine project (Hines) is included as a pending project in the IBC Vision Plan. The mitigation improvement at intersection #145, Jamboree and Michelson that would bring this location to acceptable LOS is infeasible because of the operational constraints of triple left turn lanes, not the available capacity at the intersection.

Feasible improvements are identified for all impacts except at the intersection of Jamboree and Michelson. Feasible improvements identified are considered feasible based on engineering layouts, technical field review, preparation of conservative cost estimates and coordination with adjacent jurisdictions.

The operation of Jamboree and Michelson would benefit from implementation of a pedestrian bridge across Jamboree because the bridge would allow for a reduced east-west through phase at the intersection that is currently required to accommodate the pedestrian movement across Jamboree. A decrease in the signal timing phasing required for the through phase would allow for an increase in the problematic southbound left-turn and westbound left-turn phases. This would benefit the operation and level of service at the intersection.

The elimination of setback requirements may contribute to additional building takes for future IBC intersection expansion for new residential projects if needed; however, a majority of the intersection improvements are located in areas where there is available land for expansion of the intersections. The setbacks, as outlined in the zoning code, allow for future widenings by defining setbacks in relation to the curb face of the ultimate planned right-of-way.

A15-100 Timing of implementation of proposed improvements is based on the year in which the impact is identified (interim year 2015 and/or buildout Post 2030). Additionally, the City of Irvine intends to prepare periodic traffic analysis updates (every five years) to further define the appropriate timing in which improvements must be implemented.

The improvement costs within Irvine will be funded by the IBC Nexus Fee Program and any outside grant funds that the City may receive. The fair-share of improvement costs in adjacent jurisdictions, as identified in Chapter 6 of the traffic study, will be funded by the IBC Nexus Fee Program. If an adjacent jurisdiction does not have a fee program identified, there is no guarantee that the improvements outside Irvine can be implemented beyond the fair share provided by IBC fees. A statement of overriding considerations is required. The City of Irvine will work with the adjacent jurisdictions to prepare agreements codifying the fair share costs, and details related to the transfer of funds for the improvements.

A15-101 The IBC Vision Plan EIR imposes on the City adequate and enforceable mitigation. It requires the development of a fee program as a prerequisite to future development in the IBC in accordance with the RDEIR. To clarify this issue, the following mitigation measure appears in the DEIR:

Prior to the issuance of the first building permit pursuant to the proposed project, the City of Irvine shall update the IBC Development Fee program pursuant to the AB 1600 Nexus Study identified in Mitigation Measure 5.13-1. The IBC Development Fee program was

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established to fund area-wide circulation improvements within the IBC and adjoining areas. The improvements are required due to potential circulation impacts associated with buildout of the IBC. 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. The development fees collected are applied toward circulation improvements and right-of-way acquisition in the IBC and adjoining areas. Fees are calculated by multiplying the proposed square footage, dwelling unit or hotel room by the appropriate rate. The IBC Fees are included with any other applicable fees payable at the time the building permit is issued. The City will use the IBC development fees to, among other things, fund construction (or to recoup fees advanced to fund construction) of the transportation improvements identified in Mitigation Measure 5.13-1. ***The IBC Development Fee program will be structured to assure that period traffic analyses (every five years) will be conducted to re-prioritize, if necessary, the sequencing of improvements and ensure that development creating impacts does not outpace the construction of improvements to mitigate those impacts.***

A15-102 See response to Comment A15-101. Specific impacts cannot be identified until such projects have been formally sited and designed. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). 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 the environmental document to be prepared for the specific traffic improvements that would be constructed at a later date (CEQA Guidelines Section 15146).

A15-103 The comment relies upon assertions in other comments for the claim that impacts have been unreported or underreported. Specific responses to those allegations are contained in other responses to Comments. Where implementation of extra-jurisdictional mitigation measures is necessary, a statement of overriding considerations has been proposed because the City lacks the power to compel other agencies to implement mitigation measures. In addition, it is recognized that some adjoining agencies lack an identified fee program for necessary improvements. Despite that lack of a plan, the City has agreed to provide fair share funding for its contribution to deficiencies at such intersections.

All statements of overriding considerations will be supported by substantial evidence in the record.

The nexus for retaining the downgraded arterial segments as a substitute for impacts to Caltrans facilities is inappropriate. The City of Irvine and Caltrans are working to establish feasible improvements that mitigate impacts on freeway facilities.

A15-104 The commenter claims, based on the *EPIC* court case, that the RDEIR does not consider the cumulative impacts caused by the proposed project. Beyond that broad claim, however, the comment does not specifically explain which facet of the RDEIR fails to account for cumulative impacts. To the extent that explanation is provided in another comment, the response is addressed in the response to that other comment.

See response to Comment A15-8 and A15-9 regarding the ARB Designation and ***The i Shuttle***.

A15-105 See responses to Comments A15-34 through A15-63. According to Appendix G of the CEQA Guidelines and as stated on page 5.12-5 of Section 5.12, *Recreation*, of the RDEIR, the



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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 RDEIR, 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. Page 5.12-10 discusses impacts on surrounding cities. As describes in this section several parks within Irvine are closer than parks in the surrounding facilities, and four parks within three miles include lighted fields for sports activities. Because in-lieu fees would mitigate impacts to park facilities by contributing to the expansion/improvement of park facilities within proximity to residents within the IBC, the project would not result in a cumulative impact on adjacent cities.

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.

- A15-106 See response to Comment O5-17 regarding use of a 1992 Baseline. The threshold of significance applied in this analysis is consistent with the City's Traffic Impact Analysis Guidelines and is an accepted threshold used by many local and regional jurisdictions. Although Irvine agreed to use Tustin's 0.01 change in LOS or ICU impact identification methodology for locations within Tustin, Irvine does not agree with the suggested use of the minimal 0.01 change in LOS or ICU as the threshold of significance for impact identification in Irvine.

The city's threshold of significance for project-related and cumulative traffic impacts is detailed on page 5.13-16 of the RDEIR.

- A15-107 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. Chapter 7, *Alternatives to the Proposed Project*, compares the impacts of the proposed project to the project alternatives in accordance with Section 15126.6 of the CEQA Guidelines. The IBC Vision Plan EIR evaluates a reasonable range of alternatives. The RDEIR 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.

- A15-108 The land use methodology report, including as Appendix F to the RDEIR, details the intensity values used in the IBC Vision Plan area. The 572 square feet of non-residential intensity per residential unit is an average of unit sizes in the IBC.

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- A15-109 The No Project/No Development Alternative would prohibit all new development, restricting urban growth to its current extent. This alternative assumes that no additional development and growth within the Planning Area would occur beyond what is already approved. Approved units are included as part of the No Project Alternative because these uses have been entitled, require no further discretionary approval, and hence will be constructed regardless of the proposed project.
- A15-110 Alternatives selected for the analysis were based on their ability to reduce or eliminate the project's significant environmental impacts. The RDEIR provides additional analysis to support the determination that the alternatives do not meet the objectives cited.
- A15-111 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. Chapter 7, *Alternatives to the Proposed Project*, compares the impacts of the proposed project to the project alternatives in accordance with Section 15126.6 of the CEQA Guidelines. No significant park impacts were identified. In accordance with CEQA Guidelines Section 15126.6, the EIR considered a reasonable range of potentially feasible alternatives.
- A15-112 The commenter makes an incorrect distinction between trips under the 1992 zoning and trips in the traffic analysis. In the original 1992 traffic study, the proposed trip intensities for zoning allowances were the same as the vehicle trips analyzed in the traffic study. Over time, traffic study methodology has been refined, while the trip intensity limits in the zoning remain unchanged. To clarify this distinction, the proposed code language proposed to change "trips" measured for zoning intensity to "development intensity values", so the term "trips" will continue to apply to trips as evaluated in the traffic analysis.
- With regard to the general comments that the RDEIR does not address the unique traffic and recreational impacts that differ from those impacts that would be caused by non-residential development at buildout, the RDEIR analyzes the changes to the physical environment compared to the existing baseline setting as a result of the proposed project.
- A15-113 The growth inducing impacts of the project are described throughout Section 5, *Environmental Analysis*, and Chapter 10, *Growth Inducing Impacts*, of the RDEIR. For the increase in residential units there is a corresponding decrease in non-residential square footage. In addition, the project does not extend infrastructure to areas that are not currently served. The IBC Vision Plan area has been previously developed with office, commercial, and industrial land uses. The project would redevelop existing land uses within the IBC Vision Plan area. Therefore, while density would increase within portions of the IBC Vision Plan area, this portion of the City has been previously developed and residential would replace existing non-residential land uses.
- A15-114 Page 10-2, Chapter 10, *Growth Inducing Impacts*, clearly states that the project is expected to increase demand for fire protection services, police services, school services, and library services. However, the project was not considered to have a significant growth inducing effect in this regard because Citywide plans, programs policies would ensure that growth in service capabilities parallel growth in the IBC Vision Plan area. Furthermore, one of the objectives of the proposed project are to provide residential development in areas of the IBC where adequate supporting uses, public services, and facilities are provided.
- A15-115 See response to Comment A15-8 and A15-9 regarding the ARB Designation.



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- A15-116 Page 10-2, Chapter 10, Growth Inducing Impacts, states that the economic effects of the project would be minimized to the balance of land uses within the IBC Vision Plan area. One objective of the proposed project are to provide residential development in areas of the IBC where adequate supporting uses, public services, and facilities are provided. Therefore, economic effects would be balanced.
- A15-117 The residential cap proposed as part of the project is 17,038 units (including bonus density units). If applications for new development project exceed the development caps of the proposed project, subsequent environmental review and General Plan amendments would be required.
- A15-118 See response to the previous comments. Recirculation of an EIR is only required when the addition of new information to a DEIR deprives the public of a meaningful opportunity to comment on substantial adverse projects, feasible mitigation measures, or alternatives that are not adopted (14 Cal. Code Regs. § 15088.5(a); Laurel Heights II 6 Cal. 4th at 1129). Recirculation is required:
- When the new information shows a new, substantial, environmental impact resulting either from the project or from a mitigation measure;
 - When the new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;
 - When the new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt it;
 - When the DEIR was "so fundamentally and basically inadequate and conclusory in nature" that public comment on the DEIR was essentially meaningless.

As none of these conditions have been met, recirculation of the RDEIR is not warranted.

2. Response to Comments

LETTER A15a – Remy, Thomas, Moose and Manley, Attachment A (5 pages)

ATTACHMENT A

Comment letter regarding
RDEIR from the City of Tustin



2. Response to Comments

Community Development Department

February 16, 2010

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



SUBJECT: RECIRCULATED DRAFT EIR FOR CITY OF IRVINE IBC VISION PLAN/MIXED USE OVERLAY ZONE

Dear Mr. Jacobs:

Thank you for the opportunity to provide comments on the Recirculated Draft Environmental Impact Report (RDEIR) for a City-initiated project that consists of a General Plan Amendment to establish a cap of 15,000 dwelling units (plus 2,038 density bonus units, for an overall 17,038 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-1 of the RDEIR is the traffic study, Appendix N-2 is a compilation of the worksheets and data utilized for the analysis, and Chapter 5.13 is the Transportation and Traffic Analysis section of the RDEIR. It is somewhat surprising to see that a newer version of the Irvine Transportation Analysis Model (ITAM 8.4) has been developed and is being used for the traffic analysis, but that the assumptions and inputs into ITAM 8.4 have not been disclosed in any of the RDEIR documents. The City consistently expressed concern with the use of ITAM 8.1 and the resultant traffic forecast volumes generated by the model. The use of ITAM 8.4 raises similar questions since we have not been afforded an opportunity to review any of the features, inputs, or results generated by this version of ITAM. The ADT volumes reported in the analysis sections appears to be closer to the OCTAM 3.3 model, but we cannot confirm its consistency or validation. The Notice of Availability for this project indicates that the RDEIR contains minor revisions to the Project Description and a new traffic study based on negotiations with various stakeholders with an interest in the IBC. However, as explained further below, the revised traffic model has raised several new issues along with previous concerns.

A15a-1

2. Response to Comments

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- | | |
|--|--------|
| 2. In Section 5.13.1.5. Existing Conditions: It states that for the existing conditions, "the City of Irvine's traffic model, the Irvine Transportation Analysis Model (ITAM) 8.1 was applied to forecast future traffic conditions for the study area." It appears from this statement that there may have been a mix of models used for different conditions. If this quoted statement is incorrect, and ITAM 8.4 was used for all scenarios, including existing conditions as well as future year scenarios, then the RDEIR must be corrected to reflect this fact. | A15a-2 |
| 3. Table 5.13-10 lists the Study Area Committed Roadway Improvements. This table does not mention the MCAS Tustin Settlement Agreement mitigation improvements, nor are they mentioned anywhere within the document, but they are shown in the ICU worksheets in Appendix N-2 in the 2030 scenarios without any explanation. If these mitigation improvements remain necessary and if they are assumed to be in place at buildout (or sooner), then the RDEIR must provide additional information regarding the implementation of these improvement, including the source(s) of funding and the timing of implementation. | A15a-3 |
| 4. In the RDEIR the City of Irvine intends to downgrade seven arterial roadways through a General Plan amendment (Appendix N-1, Section ES.1.6). These are shown on the MPAH and as such, the OCTA MPAH Amendment Process will need to be followed to reclassify these streets. | A15a-4 |
| 5. Jamboree Road is proposed to be reclassified from a 10-lane arterial to an 8-lane arterial between Barranca Parkway and McGaw Street. However, in Table 1-2 of the Executive Summary, it identifies the addition of a fifth northbound through lane on Jamboree Road as project mitigation at intersection #136, Jamboree Road/Barranca Parkway. Explain how this is going to be achieved. Also explain whether this proposed mitigation is inconsistent with the proposed downgrading of Jamboree. | A15a-5 |
| 6. The mitigation improvement at intersection #138, Jamboree Road/Alton Pkwy is to add a fifth northbound through lane on Jamboree Road. Again, this needs an explanation of how this works on an 8-lane roadway, as is proposed as part of the downgrading of Jamboree's MPAH designation. | A15a-6 |
| 7. In Table 2.9: Study Area Committed Roadway Improvements, of the traffic study, please revise the improvements shown for Red Hill Avenue between Edinger Avenue and Barranca Parkway. Pursuant to the Red Hill Avenue Study, prepared by Irvine in conjunction with Tustin, Red Hill Avenue is planned to be 8-lanes in this section of roadway. This needs to be shown throughout the analysis including the ICU worksheets. The intersection of Red Hill/Carnegie (#754) is shown as deficient in the 2030 scenarios. However, the four through lanes on Red Hill Avenue are not shown in the ICU analysis. All of the | A15a-7 |



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intersections along Red Hill Avenue between Edinger Avenue and Barranca Parkway need to be re-checked for consistency with the arterial classifications.

A15a-7
cont'd.

8. The analysis indicates that the daily projected ADT's for the Post 2030 cumulative baseline no project scenario (Figure 5.1) are substantially lower than the OCTAM 3.3 forecast volumes for the 2035 scenario. Since it is reported that the ITAM 8.4 is consistent with OCTAM, the forecast volumes should be similar. Please explain the discrepancy in results produced by Irvine's and the County's traffic models.

A15a-8

9. Throughout the traffic analysis for all scenarios, Newport Avenue between Edinger Avenue and Valencia Avenue needs to be shown as a 6-lane divided arterial. This roadway was constructed in 2007/2008 and is open to traffic. This configuration will affect the ICU analysis.

A15a-9

10. In Chapter 6.4.5 of the Traffic Study, improvements are identified for locations in Tustin. However, due to the modeling discrepancies and lack of reliable information there may be other locations where impacts are not shown. We are not convinced, based upon some of the above questions and comments, that the traffic analysis is reliable. This may necessitate discussions to work through the modeling process.

A15a-10

11. After Tustin is satisfied with the modeling results, it will be appropriate for revised mitigation exhibits and cost estimates to be submitted for impacted locations in Tustin. It is noted that the RDEIR now lists some impacted Tustin locations that were not included in the original DEIR. Absent revised mitigation exhibits, conceptual costs of these improvements should be included in the RDEIR.

A15a-11

12. In Chapter 9.0 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.

A15a-12

13. Page 5.12-1 – The RDEIR should indicate the distance from Bill Barber Community Park to the farthest potential locations of residential development in the Irvine Business Complex, as only a portion of the residential development would be within the indicated 0.5 mile.

A15a-13

14. The RDEIR should include a study that analyzes how far residents in a suburban community are willing to travel to reach a community park. Otherwise, there is no justification to the claim that Bill Barber Park is close enough to adequately serve as a community park for the entire Irvine Business Complex. As a

A15a-14

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comparison, the study should also analyze the distances from other Irvine residential neighborhoods to their nearest community parks.

A15a-14
cont'd.

15. Page 5.12-8 – The RDEIR indicates that there were 1.3 persons per dwelling unit in the Irvine Business Complex, based on the 2000 Federal Census. Although it is stated in the RDEIR that surveys conducted in 2005 and 2007 yielded higher persons per household estimates and that these estimates are not legally binding for determining parkland dedication requirements under the Quimby Act, the RDEIR needs to consider the potential environmental impacts resulting from an increased demand for parkland pursuant to the California Environmental Quality Act, which would allow the use of data from other credible sources. The 2005 and 2007 surveys conducted by Alfred Gobar Associates clearly demonstrate that the 2000 Census figure is no longer valid for determining potential recreational impacts. Furthermore, the number of housing units upon which the Census figure was derived in 2000 is significantly less than the housing unit counts in 2005 and 2007, given the number of housing units that were constructed and occupied between 2000 and 2007.

A15a-15

16. Page 5.12-11 – Table 5.12-5 lists existing parks and recreational facilities that are in close proximity to the Irvine Business Complex, but not located in Irvine. However, the table does not identify the parkland proposed at Tustin Legacy in the city of Tustin. Approximately 280 acres of parkland is planned at Tustin Legacy pursuant to the MCAS Tustin Specific Plan. These parks will feature state of the art facilities and will be attractive to residents from nearby areas that are deficient in parkland, such as the Irvine Business Complex. Therefore, the proposed Tustin Legacy parkland should be identified in Table 5.12-5, and the project evaluated in the RDEIR needs to include additional parks for the IBC that will adequately serve the residents of the IBC such that these residents will not cause the parks at Tustin Legacy to be overutilized or contribute to an accelerated deterioration of the Tustin Legacy parks over time.

A15a-16

Thank you again for the opportunity to provide comments on the Recirculated 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 Recirculated DEIR and again recirculate the document for public review and comment rather than proceeding directly with the preparation of the 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.

A15a-17



2. Response to Comments

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2. Response to Comments

A15a. Response to Comments from City of Tustin – Remy, Thomas, Moose and Manley, Attachment A: Community Development Department, dated February 16, 2010.

- A15a-1 See responses to Comments A15-74 and A15-93.
- A15a-2 The typo-graphical error in the RDEIR has been corrected to reflect that ITAM 8.4 was used for all traffic analyses conducted. The traffic study correctly identifies the use of ITAM 8.4
- This section describes the current state of the existing land uses and circulation system within the study area. The City of Irvine’s traffic model, the Irvine Transportation Analysis Model (ITAM) ~~8.4~~ 8.4 was applied to forecast future traffic conditions for the study area.
- A15a-3 See responses to Comment A15-66 and A15-67.
- A15a-4 Comment noted. See response to Comment A15-68.
- A15a-5 The improvement at intersection #136 Jamboree and Barranca is not inconsistent with the downgrading of Jamboree between Barranca Parkway and McGaw Avenue from a 10-lane facility to an 8-lane facility. The improvement of a fifth northbound through lane is designated only at the intersection itself. The proposed improvement at the intersection will include the conversion of the existing northbound free-right turn lane to a standard right-turn lane and a fifth northbound through lane that extends past the intersection and transitions back to existing conditions north of the intersection. The analysis of the arterial roadway capacity along Jamboree between McGaw and Barranca as an 8-lane facility was conducted and no arterial deficiencies were identified.
- A15a-6 At intersection #138 Jamboree and Alton, the build-out baseline condition assumes a fifth northbound through lane at the approach to the intersection itself. This is a committed improvement identified as a mitigation measure in the Tustin Legacy EIR. The intersection improvement is not inconsistent with the proposed downgrade of Jamboree between McGaw and Barranca. The analysis of the arterial roadway capacity along Jamboree between McGaw and Barranca as an 8-lane facility was conducted and no arterial deficiencies were identified.
- A15a-7 See Response to Comment A15-66.
- A15a-8 In order to assess the changes to the physical environment from existing baseline environmental conditions in accordance with CEQA Guidelines Section 15126.2 (a ground-to-plan analysis), the build-out Post-2030 No Project scenario analyzed future regional growth but did not analyze any future land use growth within the IBC. Projected build-out ADT volumes resulting from this analysis are expected to be lower than those observed in the regional OCTAM 3.3 build-out forecasts which assume build-out of all areas including the IBC area. See also responses to Comments A15-74 and A15-93.
- A15a-9 Newport Avenue between Edinger and Valencia is correctly assumed to be a 6-lane facility in the traffic model (ITAM 8.4); however, it is incorrectly reflected as a 4-lane arterial in the arterial analysis and will therefore be re-analyzed and traffic study tables updated to reflect the assumed 6-lane condition under both existing and future scenarios. Reanalysis of this segment results in the removal of the identified daily ADT deficiency under interim and build-out conditions in the traffic study and these results will be documented in the FEIR. This does not affect the conclusions or mitigation strategies identified in the traffic study.



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The Intersection ICU analysis at this location, Newport and Edinger, as it is based on the intersection lane configuration provided by the City of Tustin for the interim year and build-out analysis, assumes the widening and future improvements on Newport Avenue. The forecast results at this location are consistent with the future build-out and operation of the intersection.

- A15a-10 See responses to Comments A15-74 and A15-93.
- A15a-11 See responses to Comments A15-74 and A15-93. The City of Irvine is committed to working with the City of Tustin on the proposed traffic mitigations (cost estimates and preliminary engineering layouts) in Tustin as identified in the RDEIR and Traffic Study; however, this level of detail will not be included in the EIR.
- A15a-12 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- A15a-13 Community Parks are publicly owned and maintained by the City of Irvine. As such, community parks are available to residents Citywide. In general, a typical service area radius for community parks is two miles. As such, this would allow the majority of the IBC area residents to be served by Col. Bill Barber Park Memorial Community Park. The portion of the IBC between Teller and Campus would be just outside this radius. For this reason, the City is looking at community park opportunities south of Interstate 405 as part of the Vision Plan project.
- A15a-14 See comment A15a-3. The typical service area radius for a community park is two-miles. Distances to parks are shown in Tables 5.12-1, 5.12-2, and 5.12-5. This service radius is consistent with other community parks in the City. Furthermore, lead agencies are not required to generate their own original research; however, where specific information is currently, available the analysis includes that information (CEQA Guidelines Section 15144). It should be noted that page 5.12-5 identifies the Bill Barber Marine Corps Memorial Park as a recreational facility that serves the IBC Vision Plan Area.
- A15a-15 See response to Comment A15-37 and A15-38 regarding persons per household estimates. 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.
- A15a-16 The RDEIR lists exiting parks to serve the needs of IBC residents, consistent with CEQA Guidelines Section 15126.2 (a ground-to-plan analysis) in the RDEIR. The planned completion date for the Tustin legacy parks is unclear, particularly with respect to the planned neighborhood park in the Columbus Grove neighborhood. This park was scheduled to be built as part of the portion of this neighborhood within the City of Tustin, however, the homes have been completed without this park, and the City of Irvine is aware of complaints from Columbus Grove residents over not having a park, and asking the City of Irvine to improve the vacant piece of property adjacent to their neighborhood for use as a park for Tustin residents.

In addition, the number of units built at Tustin Legacy without a park in place to support them suggests that Tustin residents would likely be using closer City of Irvine public facilities for their community park needs

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The 280 acres of proposed parkland planned at Tustin Legacy is noted. As this parkland is planned and not existing, this parkland is not included in Table 5.12-5. As discussed in Impact 5.12-1, there are several parks in Irvine that are in closer proximity than the parks in the surrounding cities (see Tables 5.12-1 and 5.12-2), it is the project would have a significant impact on the surrounding city's parks and recreational facilities.

A15a-17 Comment noted. See response to Comment A15-118. The City of Tustin will be notified of all future public hearings regarding the IBC Vision Plan project.



2. Response to Comments

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2. Response to Comments

LETTER A15b – Remy, Thomas, Moose, and Manley, Attachment B (29 pages)

ATTACHMENT B

Comment letter regarding RDEIR from the
City of Tustin's traffic consultant,
Smith Engineering and Management,
dated February 11, 2010



2. Response to Comments



SMITH ENGINEERING & MANAGEMENT

February 11, 2010

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 Recirculated
Draft Environmental Impact Report – State Clearinghouse #
2007011024

Dear Mr. Jacobs:

On behalf of the City of Tustin (hereinafter the "City"), I have reviewed Recirculated Draft Environmental Impact Report (hereinafter the "RDEIR") for the Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (hereinafter the "Project"). I previously commented on the original Draft Environmental Impact Report (hereinafter the "DEIR") for this Project in a letter dated May 12, 2009, a letter that the RDEIR now refers to as part of a grouping designated Letter A11. My qualifications to perform this review are thoroughly documented in the May 12, 2009 letter and my professional resume attached thereto. My detailed comments on the subject RDEIR follow.

Changes in the Traffic Analysis from the Original DEIR Are Not Adequately Explained

Please explain all the differences in traffic analysis methodology, trip generation and other data assumptions and circulation network assumptions between the original DEIR traffic study and the one presented in the RDEIR. This includes information for the traffic analysis zones (TAZs) outside the IBC boundaries and for the external stations to the ITAM model as well as the validation and refinement procedures and results embodied in the ITAM 8.4 traffic model (which representatives of the City of Tustin have not been given the opportunity to review). We note here that outside legal counsel for the City of Tustin requested the above information under the Public Records Act from the City of Irvine. The City of Irvine replied in a letter dated 2-10-10 from Jill M. Schroder, CRM, Municipal Records Manager, refusing to provide trip data for the ITAM external

A15b-1

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stations. This letter stated as follows: "With regard to your request for trip information for all ITAM 8.4 external stations for all traffic analysis scenario runs of the model, please be advised that public records within the specific compilation of data that you request do not exist, as that information is stored as raw traffic model data." This is comparable to claiming that a Microsoft Word document does not exist as a public record because it is stored on a computer rather than in paper copy. In our 43 years of experience dealing with traffic forecast models, we have never encountered a traffic model software that could not quickly and efficiently print out trip end summaries by trip purpose for all zones in the model including the external stations or, for that matter, actual zone-to-zone trip tables, by purpose, for all zones including external stations. The denial of the ability to furnish this information is unreasonable and unfounded. Please comply with the data request.

A15b-1
cont'd.

As grounds for this request, we note that the results of the RDEIR traffic study are vastly different than the original DEIR. Consider the following examples:

- The Post-2030 With Project analysis in the original DEIR found that 18 specific intersections would operate at unacceptable Level-Of-Service (LOS) in the PM peak hour. However, the RDEIR analysis finds that for the Post-2030 With Project scenario, only 14 intersections would operate at unacceptable LOS. However, 8 of the locations found to be deficient in the original DEIR traffic analysis are not among those so identified in the RDEIR traffic analysis. And 4 new locations not identified as deficient in the original DEIR traffic study are now identified as being in unacceptable condition in the RDEIR. *So there is a difference of 12 deficient intersections between the original DEIR and the RDEIR for this scenario.* Moreover, in the AM peak hour, both the DEIR and the RDEIR found 6 intersections deficient. However, 2 intersections identified as such in the DEIR are not so identified in the RDEIR and 2 intersections not so identified in the DEIR are disclosed in the RDEIR. *So there is a difference of 4 intersections, identified as deficient.*
- For the arterial segment Average Daily Traffic (ADT) analysis, also in both instances for the Post-2030 With Project scenario, the original DEIR identifies 26 arterial segments as operating at unacceptable LOS; the RDEIR so identifies only 21. However, of those arterial segments identified as deficient in the DEIR, 12 are not so identified in the RDEIR; meanwhile, the RDEIR identifies as deficient 7 other intersections not so identified in the DEIR. *So there is a net difference of 19 road segments identified as deficient between the two studies.*
- In the freeway mainline segment analysis, for the AM peak, also in both instances for the Post-2030 With Project Scenario, the original DEIR identifies 17 freeway segments as operating at unacceptable LOS while the RDEIR traffic analysis identifies 24 locations at unacceptable LOS.

A15b-2

A15b-3

A15b-4

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Recognizing that the RDEIR reporting combines 3 of the deficient segments reported into the DEIR as a single deficient section, *there is a net of 15 different freeway mainline sections reported as deficient between the two studies* (5 sections deficient in the DEIR not so in the RDEIR; 12 sections deficient in the RDEIR not so in the DEIR. For the PM peak, for the same comparable scenarios, the original DEIR reports 8 freeway mainline segments operating at deficient LOS; the RDEIR reports 24 freeway mainline segments at unacceptable LOS. However, 5 of the deficient mainline segments reported in the original DEIR are not so reported in the RDEIR. Meanwhile, 21 locations not reported as deficient in the original DEIR are reported as deficient in the RDEIR. Hence, there is a *net difference between the studies of 26 freeway mainline segments reported as deficient in the PM peak.*

A15b-4
cont'd.

- In the freeway ramp analysis, for the AM peak, also in both instances for the Post-2030 With Project Scenario, the original DEIR identifies 28 freeway ramps as operating at unacceptable LOS while the RDEIR identifies only 13 as unacceptable. However, 22 of the specific ramps identified as deficient in the original DEIR are not so identified in the RDEIR while 7 ramps identified as deficient in the RDEIR are not so identified in the original DEIR. Hence, *for the AM period, there is a net difference of 29 ramps identified as deficient between the DEIR and the RDEIR.* For the PM peak in the same Post-2030 With Project scenario, the original DEIR identifies 13 ramps as operating at unacceptable LOS; the RDEIR identifies 19. However, 10 of the deficient ramps identified in the DEIR are not among those identified in the RDEIR; 16 of the ramps identified as deficient in the RDEIR are not among those identified as deficient in the original DEIR. *So for the PM peak, there is a net difference of 26 ramps identified as deficient between the DEIR and the RDEIR.*

A15b-5

These are vast differences in findings that go to the fundamental purposes of the traffic study. Since neither the definition of the Project nor the traffic generation within IBC have been meaningfully changed between the DEIR and the RDEIR, these vast differences in the traffic results must reflect changes between the DEIR traffic analysis and the RDEIR traffic analysis including, but not limited to:

- a) traffic generation assumed in the ITAM model's traffic analysis zones outside IBC and its' external stations,
- b) traffic network assumptions including linkages, capacities and travel speeds, differences in trip distribution patterns,
- c) differences in analysis procedures including differences in traffic forecast "refinement processes", traffic LOS analysis procedures or ADT to peak hour relationships.

A15b-6

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None of this is to say that either the original DEIR traffic study or the RDEIR is "right" or "wrong". However, in the face of the vast differences in results, the public has sound reason to question whether the RDEIR findings with respect to traffic are reliable. The RDEIR must provide a coherent, detailed and illuminative description of all the factors that contribute to the differences between its traffic study and that of the original DEIR exist. The explanation for the analysis must be transparent so that the public and concerned agencies can understand the RDEIR's results. The copious information in the RDEIR appendices is incomplete. It is also, in some instances, unintelligible to the layman. The absence of any explanation for the substantial differences in traffic analysis results is insufficient under CEQA.

A15b-6
cont'd.

The Traffic Data Input To the RDEIR's Air Quality Analysis Is Obsolete, Rendering the Air Quality Analysis Inadequate

We examined the RDEIR's air quality analysis and supporting appendix for consistency with the RDEIR's new traffic study. At pdf pages 87 thru 89 plus 95 of the RDEIR Appendix G¹, the document indicates that the interim year analysis is for 2013 (the year of the now obsolete traffic forecasts in the original DEIR), not for 2015 (the RDEIR's interim forecast year). Also, the dates in the lower right hand corners of the referenced pages indicate the work was prepared (or printed out) on March 4, 2009, a date prior to circulation of the original DEIR. Consistent entries of 2013 for the interim analysis years on the referenced pages suggest they are not typographical errors.

It might theoretically be argued that at the macro scale of the air quality analysis documented on the referenced pages, the changes in the traffic inputs from the DEIR's 2013 traffic analysis to the RDEIR's 2015 traffic analysis are immaterial to the air quality outcome. However, given the very substantial changes between the original DEIR traffic forecasts and those in the RDEIR, such a facile explanation would be purely speculative and would need to be backed up by quantified technical analysis. Even if true for the broad area analyses documented in the pages noted above, it certainly is not true for the air quality projections of the CALINE analysis which are site-specific to particular intersections. We observe that RDEIR Appendix G pdf pages 13 and 14, which are the traffic inputs to the site-specific air quality analyses, are also dated March 4, 2009, meaning they come from the obsolete DEIR traffic study, not the RDEIR traffic study. We note that, elsewhere herein, we extensively document that the RDEIR's new site-specific traffic projections are significantly different than the old ones from the original DEIR. Hence, all parts of the RDEIR's air quality analysis that rely upon traffic inputs must be redone, using data from the RDEIR's traffic study.

A15b-7

¹ The pages of RDEIR Appendix G are not sequentially numbered, so the reference to pdf page numbers must suffice.



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The RDEIR's Analysis of the MPAH Projects Is Inadequate

The RDEIR analysis of the value of the MPAH improvements is excessively simplistic and rigid, employing a narrow criterion of benefit that fails to measure the full usefulness of the MPAH improvements. In addition, the RDEIR analysis considers the consequences of the MPAH improvements at each road segment, intersection, freeway segment and freeway ramp as individual isolated entities and, as a consequence, it fails to consider the systematic value of the MPAH improvements. Finally, the RDEIR only considers the group of MPAH projects as a whole; it fails to evaluate whether some components of the MPAH improvement group have more value than others.

The RDEIR's sole criterion for valuing the net effects of the MPAH improvements is the numbers of locations where those improvements, in aggregate, at the post 2030 level of development in conjunction with the Vision Plan land use development project, cause more individual road segments, intersections, freeway segments and freeway ramps, each considered in isolation from the others, to change from unacceptable LOS to acceptable LOS or vice-versa. This is too simplistic and narrow a criterion. For example, if the MPAH measures improve LOS from say LOS D to LOS B at several intersections, this is a substantial benefit to the affected public but it isn't accounted in the RDEIR's method of valuing the benefit of the MPAH measures. The RDEIR analysis of the MPAH improvements should consider all levels of perceptible improvement or worsening, to whil:

- Consider how many road segments, intersections, freeway segments and freeway ramps are improved (or worsened) at a level perceptible to the driving public (though not at a level that changes the LOS designation). This category would also include those locations that are changed at a level perceptible to the driving public though remaining in an unacceptable LOS range.
- Consider how many road segments, intersections, freeway segments and freeway ramps are improved (or worsened) at a level that changes conditions by a whole LOS rating (though not changing conditions from unacceptable to acceptable or vice-versa).
- In addition to considering how many road segments, intersections, freeway segments and freeway ramps are improved (or worsened) at a level that changes conditions from unacceptable to acceptable or vice-versa, consider changes that do not cross the acceptability criterion but that are of a magnitude indicative of a significant alteration of functionality (for instance, a condition deeply into LOS F versus one that is marginally across the threshold of LOS F).

A15b-8

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- In the case of facilities already operating at unacceptable levels of service in the Post-2030 No Project condition, consider changes that lower V/C with the Post-2030 With-Project MPAH Network back to or below that in the Post-2030 No Project condition (where the V/C in the Post-2030 With-Project Constrained Network is higher) to have a benefit similar to that of returning V/C to an acceptable level of service. This is justified by the RDEIR's criterion that considers, in cases where a facility is already operating at an unacceptable level of service, that a project's impacts are fully mitigated by a measure that simply returns V/C to the level prevalent in the corresponding No Project condition.

In addition, the RDEIR's MPAH analysis should:

- Consider whether the deficiencies that appear as the outcome of certain MPAH projects could and should be easily and logically eradicated with refinement measures that can easily and would ordinarily be incorporated within the scope of the particular MPAH component project. For apparently impacted sites that are located outside the immediate project areas of any of the MPAH projects but that could be readily mitigated through other minor improvements, define and implement those measures.
- Consider the interactive effects of adjacent locations analyzed. For instance, the RDEIR analysis of MPAH should consider whether the difference in conditions on particular freeway on-ramps is enough to affect whether or not ramp traffic will queue back into upstream intersections, thereby causing the LOS there to deteriorate from that predicted in the ICU analysis or whether or not the difference at an off-ramp will cause that ramp to queue back onto the freeway mainline segment, thereby causing LOS to drop precipitously from the calculated LOS on the mainline and seriously compromising safety.

More careful and thoughtful analysis of the information already generated in the RDEIR can do these things or can be used to pinpoint locations where more detailed queuing analysis is appropriate (and supply the input data to the queuing analysis procedures).

To demonstrate that the MPAH analysis results presented in the RDEIR, if more carefully examined, support a conclusion completely opposite from the one the RDEIR has reached, we performed a more detailed evaluation of the MPAH analysis data. Instead of solely considering as meaningful those situations where comparison of the 2030 Vision Plan Project and proposed roadway network versus that of the 2030 Vision Plan land use plus MPAH network resulted in one having acceptable LOS while the other had unacceptable LOS,

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we ranked the outcome of the V/C-LOS performance comparison into seven categories as shown on the following table.

Neutral	No perceptible change in V/C-LOS
Perceptible Benefit and Perceptible Worsening	V/C changed enough (better or worse) to be perceptible to driving public, but not so much as to change LOS. Within the better LOS ranges (A – D) this is interpreted as a change of at least 0.05 V/C. Within LOS E and F ranges, this is the 0.01 to 0.02 LOS range the affected local jurisdictions employ as a threshold of significant impact.
Substantial Benefit and Substantial Worsening	V/C changed enough (better or worse) to change the LOS designation, though not from unacceptable category to acceptable or vice versa.
Highly Substantial Benefit and Highly Substantial Worsening	V/C changed enough (better or worse) to change LOS designation from unacceptable to acceptable or vice versa. Also, within unacceptable range, V/C changed so extensively as to significantly change functionality of operations at the location considered or changed with MPAH to return V/C to the No Project level when V/C is higher with the Constrained Network.

A15b-9
cont'd.

Road Segment Analysis

The RDEIR finds that, in the Post-2030 With-Project condition and with the MPAH Network improvements assumed, two road segments that would be in unacceptable condition in the Post-2030 With-Project condition and with the Constrained Network assumptions in place would be improved to acceptable conditions. One of the deficient segments improved to acceptable conditions was identified as a significant impact of the Project. The RDEIR also notes that one road segment that is in acceptable condition in the Post-2030 With-Project condition and with the Constrained Network assumptions in place is worsened to unacceptable conditions in the Post-2030 With-Project condition and with the MPAH Network improvements assumed. The RDEIR later concludes that the value of these changes in conditions, together with changes in conditions on freeway ramps, freeway mainline segments and at road intersections do not justify implementation of the MPAH improvements.

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However, if one applies the above rating system to the comparative data presented on RDEIR Appendix N-1 Table 7.8, the following findings are disclosed:

- 5 road segments are Highly Substantially Benefited; only 1 road segment is at a Highly Substantially Worsened.
- 17 road segments are scored Substantially Benefited versus only 3 scored Substantially Worsened.
- 28 road segments are scored Perceptibly Benefited versus only 7 scored Perceptibly Worsened.
- As expected, with so many road segments considered over a large area, many of them remote from the locations of the MPAH improvements, a large number are not perceptibly affected (Neutral). A total of 214 of the 275 road segments represented on the Table are scored Neutral.

The net result, 50 road segments benefited (5 Highly Substantially, 17 Substantially and 28 Perceptibly) versus 11 worsened (1 Highly Substantially, 3 Substantially and 7 Perceptibly) indicates a very strong net benefit from the MPAH measures, contrary to the findings of the RDEIR conclusion.

The one road segment that changes from acceptable to unacceptable performance is the segment of Alton Parkway between Daimler Street and Red Hill Avenue. This segment of Alton is the road segment connecting directly to the proposed Alton Avenue overcrossing of SR 55 on the west and the proposed widening of Alton from Red Hill to Jamboree on the east, both of which are MPAH measures in the RDEIR analysis. The problem on this segment should be viewed as one of an incomplete conceptual scoping of the Alton overcrossing project or Alton widening project rather than as a negative consequence of the MPAH improvements. Alton has a curb-to-curb width of approximately 70 feet at the Daimler end of the segment and about 80 feet along most of its' length to Red Hill, so it should be a simple and low cost matter to restripe to a lane configuration that averts the apparent deficiency. This item should not be regarded as a sound reason for failure to implement the MPAH projects.

Intersection Analysis

The RDEIR's evaluation of the content of its' comparative analysis of intersections the Vision Plan versus MPAH road systems that is presented on Table 7.10 of Appendix N-1 is that there would be 5 intersections that improve from unacceptable conditions to acceptable ones and 5 other intersections that worsen from acceptable conditions to unacceptable ones. On this simple basis, it concludes that the MPAH measures have no systematic value overall to

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intersections in the study area. However, if one applies the above rating system to the comparative data presented on RDEIR Table 7.10, the following findings are disclosed:

- 18 of the intersections are scored Perceptibly Benefited versus only 7 scored Perceptibly Worsened.
- 26 intersections are scored Substantially Benefited versus only 7 scored Substantially Worsened.
- 13 intersections are scored Highly Substantially Benefited versus only 6 scored Highly Substantially Worsened.
- As expected, with so many intersections considered over a large area, many of them remote from the locations of the MPAH improvements, a large number are not perceptibly affected (Neutral). A total of 146 of the 223 intersections represented on the Table are scored Neutral.

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The net result, 57 intersections benefited (13 Highly Substantially, 26 Substantially and 18 Perceptibly) versus 20 worsened (6 Highly Substantially, 7 Substantially and 7 Perceptibly) indicates a very strong net benefit from the MPAH measures, contrary to the findings of the RDEIR conclusion.

At several of the intersections where the data on Table 7.10 indicates the MPAH measures would worsen conditions, that conclusion is spurious, most often because the intersection would logically be modified as a concomitant feature of an MPAH project, since the intersection is located within the limits of the project or on its immediate threshold. Hence, the problem is one of inadequately refined project definitions for the 1992 IBC Plan and Zoning mitigation measures, not a deficiency caused by the MPAH projects. Examples include:

- The intersections of Halladay East and Halladay West with Alton are located at the immediate western threshold of the proposed Alton-S.R. 55 overcrossing, one of the MPAH projects. The RDEIR indicates that conditions at these intersections would worsen respectively "highly substantially" and "substantially" as the result of the MPAH projects. This is a predictable outcome based on their proximity to the overcrossing project, which would attract traffic to this area of Alton. Given that proximity and predictability, it is entirely expected that as project definition and design for the overcrossing project advanced, necessary improvements to maintain operations at acceptable levels at these intersections would be incorporated in the project. The approaches to the intersections have sufficient curb-to-curb width so that simple restriping will be sufficient to maintain adequate conditions at these intersections, consequently resulting in negligible additional cost to the overcrossing project. All that is needed is a little more careful and sensible design of the project scoping and details.

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- The intersection of Alton with Von Karman sits at the crossroads of two of the MPAH measures that are analyzed for deletion in the RDEIR – the widening of Von Karman to 6 lanes from Barranca to Michelson and the widening of Alton to 6 lanes from Red Hill to Jamboree. The RDEIR finds that operations at this intersection would deteriorate from acceptable to unacceptable conditions in the P.M. peak as a consequence of the MPAH measures. However, it is nonsensical and inconceivable for the RDEIR to presume that this intersection would not be widened as necessary within the scope of the two widening projects that intersect there in order to maintain intersection operations in acceptable conditions. In fact, the right of way and building setbacks at the intersection appear to anticipate such improvement.
- The RDEIR projects that the intersection of Red Hill and Alton would deteriorate to unacceptable LOS condition with the implementation of the MPAH measures. This intersection is at the intersection of two MPAH measures, the widening of Alton from Red Hill to Jamboree and the widening of Red Hill from Barranca to Main. It is also directly in between the Alton widening and another MPAH measure, the proposed Alton overcrossing of SR 55. It is inconceivable that improvements to maintain this intersection at an acceptable level of service would not be included within the scope of one of the two MPAH widening projects.
- The RDEIR projects that the intersection of Von Karman with Michelson would deteriorate to unacceptable LOS with implementation of the MPAH projects. This intersection is the south limit of the proposed widening of Von Karman to 6 lanes, one of the MPAH measures. It is inconceivable that the detailed scoping and design of that widening project would not include improvements necessary to maintain its' terminus intersection at an acceptable level of service. Right of way and setback provisions at this location appear sufficient for necessary intersection improvements to take place.
- The RDEIR predicts that the intersections of Redhill Avenue at Paularino Avenue and Red Hill at Baker Street would deteriorate to unacceptable levels of service with implementation of the MPAH measures. These two intersections are located in the City of Costa Mesa, respectively slightly less than and slightly more than a mile south of the south limit of the MPAH measure widening Red Hill as far south as Main provide important undercrossings of and ramps to SR 55 for development located west of John Wayne Airport. Inspection reveals that there is sufficient curb-to-curb width at both of these locations such that acceptable operations could be maintained through lane restriping. In these cases, the superficial nature of the RDEIR's analysis of the effects of the MPAH measures unreasonably elevates an important detail that needs to be

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taken care of into a purportedly major reason for not implementing the MPAH measures.

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Freeway Ramp Analysis

The RDEIR comparative analysis of freeway ramp performance with and without the MPAH measures is presented on Table 7.12. The RDEIR examines the performance results, evaluating this data solely in terms of the inappropriately narrow consideration of whether unacceptable performance conditions are eliminated or induced. It finds that the MPAH improvements eliminate unacceptable conditions on 2 ramps and result in unacceptable conditions on 1 ramp. Its proceeds from this finding to the ultimate conclusion that the MPAH measures do not provide sufficient benefit to justify implementing them.

As in the intersection analysis, we examined the comparative ramp performance data in RDEIR Table 7-12 of Appendix N-1 using the same valuation protocol as described above. The results follow:

- As might be expected given the size of the study area and the many ramps evaluated that are quite remote from the MPAH improvement sites, 66 of the 98 ramps in the Table experienced effects rated Neutral.
- Adding the MPAH measures were projected to result in Perceptible Benefit to 20 of the ramps while resulting in Perceptual Worsening to only 1 ramp.
- Adding the MPAH measures were projected to result in Substantial Benefit to 4 ramps while not resulting in Substantial Worsening on any ramp.
- Adding the MPAH measures were projected to result in Highly Substantial Benefit to 6 ramps while resulting in Highly Substantial Worsening on only 1 ramp.

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The net result, 30 ramps benefited (20 perceptibly, 4 substantially and 6 highly substantially) with conditions on only 2 ramps worsened (1 perceptibly, 1 highly substantially) indicates a very strong net benefit from the MPAH measures, contrary to the RDEIR's conclusion. We note that Appendix N-1 Table 7-12 did not include the Post-2030 No Project analysis, so it did not disclose which locations already in unacceptable condition the MPAH measures may have mitigated back to the Post-2030 No Project levels from worse V/C under the Post-2030 With-Project Constrained Network scenario. Hence, the benefits of the MPAH measures may have been greater.

In addition to the above, the superficial nature of the RDEIR's evaluation fails to recognize important reasons for implementing the MPAH improvements. Examples include:

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- At the I-405 southbound off ramp to Jamboree, the RDEIR's own results show that queuing under the Post-2030 With-Project Constrained Network projections would likely extend back into the freeway mainline lanes, having compounding adverse operational and safety consequences. Under the Post-2030 With-Project MPAH network, the ramp queuing would not likely extend back into the freeway mainline lanes. The RDEIR fails to perform the queuing analysis that would be an appropriate follow-up to the indications of the data and gives no recognition to this significant difference in favor of the MPAH measures.
- At the I-405 northbound off ramp to MacArthur, the RDEIR's own results show that queuing under projections would likely extend back into the freeway mainline lanes, having compounding adverse operational and safety consequences. Under the Post-2030 With-Project MPAH network, the ramp queuing would be less likely to extend back into the freeway mainline lanes. The RDEIR fails to perform the queuing analysis that would be an appropriate follow-up to the indications of the data and gives no recognition to this significant difference in favor of the MPAH measures.
- At the SR 55 southbound on ramp from Baker Street in Costa Mesa, the on ramp deficiency projected in the RDEIR for the Post 2020 With-Project Constrained Network scenario is likely to cause ramp traffic to queue back into and obstruct the ramp intersection with Baker. The RDEIR projections show that this would not occur in the scenario with the MPAH measures. However, the RDEIR fails to perform the queuing analysis that would be an appropriate follow-up to the indications of the data and gives no recognition to this significant difference in favor of the MPAH measures.
- At the SR 55 northbound on ramp from Paularino Avenue in Costa Mesa, the on ramp deficiency projected in the RDEIR for the Post-2030 With-Project Constrained Network scenario is likely to cause ramp traffic to queue back into and obstruct the ramp intersection with Paularino. The RDEIR projections show that this is less likely to occur or would occur considerably less frequently in the scenario with the MPAH measures. However, the RDEIR fails to perform the queuing analysis that would be an appropriate follow-up to the indications of the data and gives no recognition to this significant difference in favor of the MPAH measures.
- At the SR 55 southbound off ramp to MacArthur Boulevard, the projection data in the RDEIR indicates that off ramp traffic is likely to queue back into the freeway mainline lanes, having compounding adverse operational and safety consequences whereas the RDEIR projections indicate this is likely to occur considerably less extensively and frequently in the scenario with

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the MPAH measures. However, the RDEIR gives no recognition to this significant difference in favor of the MPAH measures.

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- At the SR 73 northbound on ramp from Campus Drive, the RDEIR data shows that in the AM, ramp traffic is likely to queue back into the ramp intersection with Campus in the Constrained Network scenario, but that this is less likely to occur or would occur considerably less frequently in the scenario with the MPAH measures. However, the RDEIR fails to perform the queuing analysis that would be an appropriate follow-up to the indications of the data and gives no recognition to this significant difference in favor of the MPAH measures.

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Freeway Mainline Segment Analysis

In considering a total of 60 freeway mainline segments in the study area, the RDEIR finds that, under its narrow valuation criterion, one freeway segment improves and one deteriorates.

However, if one applies the above rating system to the comparative data presented on RDEIR Table 7.11 of Appendix N-1, the following findings are disclosed:

- 21 freeway mainline segments are Perceptibly Benefited whereas only 2 mainline segments are Perceptibly Worsened.
- 2 freeway mainline segments are substantially benefited whereas none are substantially worsened.
- 3 freeway mainline segments are highly substantially benefited whereas only 2 are highly substantially worsened.

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Overall 26 freeway mainline segments are benefited at some level, 4 are worsened and 30 are neutrally affected. We note that Appendix N-1 Table 7-11 did not include the Post-2030 No Project analysis, so it did not disclose which locations already in unacceptable condition the MPAH measures may have mitigated back to the Post-2030 No Project levels from worse V/C under the Post-2030 With-Project Constrained Network scenario. Hence, the benefits of the MPAH measures may have been greater.

As with the case of road segments, intersections, and freeway ramps, these results show very strong benefit to freeway mainline segments from the MPAH measures. This is in direct contradiction to the conclusions of the RDEIR based on its' unreasonably narrow valuation criterion.

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Summary Re MPAH Evaluation

In summary, valuing the MPAH improvements by more comprehensively relevant criteria results in a finding that 163 of the road segments, freeway segments, ramps and intersections would be benefited at a perceptible level or more significantly; only 37 locations would be worsened at a perceptible level or more significantly. Hence, contrary to the finding in the RDEIR, there is a very significant benefit to the MPAH improvements. The RDEIR's finding that the MPAH mitigations do as much harm as good is exposed as an illusion created by unreasonably narrow evaluation criteria.

As we note at the outset of this section, the fundamental flaw in the RDEIR evaluation of the MPAH improvements is that it solely values the improvements as being effective or ineffective based on whether or not conditions on the roadway cross the threshold between acceptability and unacceptability. This is the equivalent of saying it is suitable for all of the components of the street and highway system to deteriorate to the transition point to LOS F (or the transition point to LOS E where E is regarded as unacceptable) but not over the transition point. In reality, neither LOS E or LOS F are desirable at all. It is desirable that facilities operate at LOS D or better and that those which are in LOS E or LOS F operate at as low a V/C ratio as possible.

It must be realized, of course, that the so-called package of MPAH improvements are actually the sub-set of uncompleted mitigation measures for the 1992 Plan and Zoning that the City of Irvine now no longer wishes to implement. Those mitigation measures were proposed as mitigation for the deterioration of service on the roadway network caused by the *whole development* of the 1992 IBC Plan and Zoning. Those measures were, even back in 1992, incomplete in mitigating the full traffic impacts of the IBC Plan and Zoning since the City certified the EIR after finding significant and unavoidable traffic impacts and adopting a statement of overriding considerations. Whether it is because the original 1992 traffic mitigations were incomplete or because non-IBC traffic has grown more extensively than anticipated in 1992, the unconstructed 1992 mitigations now grouped as the MPAH improvements should not be expected to solve all the deficiencies now disclosed in the current analysis nor should they be dismissed because they do not do so.

The RDEIR has produced a mountain of traffic analysis data and presented it in attractive formats, creating the illusion of a thoughtful analysis of the MPAH improvements. But once the inadequacies of the evaluation criteria are understood, it becomes evident that the RDEIR's MPAH analysis is no more than a transparent attempt to jettison and evade the responsibility for those portions of the 1992 mitigation program that the City of Irvine no longer wishes to

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implement.² Irvine hasn't supported with substantial evidence its decision to delete these mitigation measures and has not demonstrated that these measures are "no longer necessary."

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The RDEIR's Estimates of the Trip Generation of the Residential Land Use Component in IBC Is Understated

The RDEIR's analysis of traffic generation (as well as its' analysis of parkland needs) has been based on an assumption of an average occupancy of 1.3 persons per dwelling unit in IBC, derived from the 2000 U.S. Census. Subsequent studies of the IBC residential occupancy density performed on behalf of the City of Irvine in 2005 and 2007 by Alfred Gobar Associates after many more residential units had been built in IBC than at the time of the 2000 Census indicated considerably higher residential unit occupancy densities.

The RDEIR traffic study's socioeconomic trip generation rates for many trip types, including 'home based work trip productions', 'home based shop trip productions', 'home based other trip productions', 'home based university trip productions', 'home based school trip productions' and 'other based work trip productions', are all functions of either population or employed residents, as can be seen on RDEIR Appendix N-1, page 12, Table 2.1. The assumptions of both population and employed residents in each traffic analysis zone are directly driven by the assumptions of person occupancy per dwelling unit. Significantly higher person-occupancy per dwelling unit translates directly to significantly higher trip generation for traffic analysis zones where residential units are located.

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The RDEIR's disregard of the evidently more reliable IBC residential occupancy data from the Gobar surveys for the less representative data from the 2000 census understates project trip generation (leading to potential failure to disclose impacts, the severity of impacts and the extent of mitigation needed) is an unreasonable 'cherry-picking' of data to bias the results toward ones the City prefers (less Project traffic impacts) and is not consistent with the good faith effort to disclose impacts that CEQA demands.

The RDEIR Fails To Adequately Mitigate Impacts Disclosed

Existing + Project Conditions

The RDEIR discloses traffic impacts in the Existing + Project scenario but declines to mitigate them on the grounds that the impact conditions are "theoretical". This rationalization is ridiculous since any traffic forecast, including

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² We also observe that there are many more sophisticated methods for evaluating the effectiveness of a major highway improvement program that are not reflected in the RDEIR's analysis or our comments here.

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the future land use and socioeconomic variables input to it and the procedures of trip distribution and route assignment, is theoretical. If being "theoretical" is an accepted basis for being exempt from mitigation requirements, then any traffic impact disclosed through a traffic forecast is similarly exempt from mitigation. In point of fact, the Existing + Project scenario is less theoretical than future year scenarios the City of Irvine prefers to rely on. At least the Existing traffic (which accounts for the vast majority of all traffic) in the Existing + Project scenario is actual measured traffic. In the future year scenarios the City of Irvine prefers to rely on traffic estimates, including the representation of existing traffic, that are theoretically synthesized.

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The RDEIR fails to conform to CEQA requirements to disclose and implement feasible mitigation for all significant impacts of the project and to define a project's impacts from the baseline of the environmental conditions as they exist at the time of the Notice of Preparation.

Intersections

The RDEIR identifies a significant project traffic impact at the intersection of Jamboree and Michelson but declares the needed mitigation infeasible because of physical constraints and cost considerations. However, the physical constraints are not a reasonable basis for overriding considerations since the constraints were substantially created by the City of Irvine's own approval of the HCG development project adjacent to the intersection of Jamboree and Michelson, an approval in 2009 with waivers of setback from plan lines that was done with knowledge that this could constrain necessary traffic mitigation measures. The City of Irvine cannot use constraints it created as a justification for declaring the mitigation infeasible. In addition, the HCG development project is the subject of a pending lawsuit brought by the City of Tustin and the City of Newport Beach. Irvine has discretion to rescind the approvals for this project, thereby removing a physical constraint to mitigating disclosed impacts to Jamboree and Michelson.

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Similarly, the City of Irvine cannot reasonably cite cost of this intersection mitigation improvement as a justification for declaring the mitigation infeasible. The RDEIR has made no disclosure of a cost estimate to overcome the physical constraints and construct the proposed intersection mitigation. Moreover, through Vision Plan, the City of Irvine proposes to free itself of the obligation to widen several miles of arterial roadways (see MPAH Projects) that it committed to construct as part of the mitigation in the 1992 IBC Plan and Zoning EIR. Compared to the cost savings on the 1992 mitigation measures now proposed to be excised from the mitigation program, the cost to overcome the physical constraints and construct the intersection mitigation at Jamboree and Michelson

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is minor, akin to small pocket change. The City should require that the Jamboree-Michelson intersection mitigation be implemented.

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Freeway Mainline and Ramp Systems

The RDEIR identifies the fact that the Project would have a number of significant impacts on freeway segments and freeway ramps in both the 2015 and Post-2030 analyses. But it treats these as if they were independent and isolated traffic problems. RDEIR Figures 5.13-33 and 5.13-34 display the 2015 Cumulative With Project freeway and ramp deficiencies for the AM and PM peaks respectively; Figures 5.13-48 and 5.13-49 display the same type deficiencies for the Post-2030 Cumulative With Project development scenario. On the figures, particularly the ones for the Post-2030 Cumulative With Project development scenario, the freeway and ramp system that rings the IBC on three sides and splits it into north and south sectors have such extensive red markings (indicative of deficient conditions) that it appears the color red is merely intended to distinguish the freeway/ ramp system from the surface roadway system. In fact, the deficiencies indicated on the freeway and ramp system are so extensive as to constitute a paralysis of the system during the peak hours. The RDEIR is deficient in failing to draw this conclusion of broad area paralysis. We note that the RDEIR projects these deficiencies to exist despite the fact that the Post-2030 analysis assumes completion of all freeway and ramp improvements that OCTA and Caltrans have currently identified in their programs.

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The RDEIR identifies the Project's significant adverse traffic impacts on the freeway mainline and ramp system as significant and unavoidable. Procedurally, this befits the circumstances where the traffic impacts are on facilities over which the City of Irvine has no direct jurisdictional ability to implement mitigation. However, the RDEIR must have made a good faith effort to define and implement feasible mitigation. It has not done so. The RDEIR simply parrots conventional wisdom that further freeway mainline improvements are infeasible, and identifies its mitigation strategy as "coordinating" with OCTA and Caltrans, and paying fair shares of whatever mitigations those agencies might conjure up. Delegating to Caltrans and OCTA the responsibility to identify mitigation measures for the City's Project is simply an evasion of responsibility for a good faith effort to identify feasible mitigation. Furthermore, the vague promise of 'coordinating' with Caltrans is an improper deferral of mitigation.

A good faith effort on the part of the RDEIR to identify feasible mitigations to the Project's significant freeway system impacts would, at a minimum, involve a reasonable reconnaissance level engineering study to define at a conceptual engineering level what further mitigation measures, beyond the improvements already assumed, might be feasible. The RDEIR provides no evidence that such a reconnaissance/conceptual engineering effort has been made. It cannot simply

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assume that because Caltrans and OCTA have not announced any freeway/ramp improvement proposals, that the RDEIR's obligations to define feasible mitigations is simply to "coordinate" and wait for Caltrans to figure out more improvements.

Furthermore, it is quite evident that one of the ways to mitigate the Project's significant freeway impacts is to implement the so-called MPAH Projects, the arterial widenings, freeway overcrossings and HOV ramps that are major remaining parts of the mitigation program that Irvine committed to as the result of the 1992 Plan and Zoning EIR, improvement commitments that Irvine now wishes to jettison. The analysis of the MPAH improvements herein, based on the data in the RDEIR, clearly shows that the MPAH improvements have significant mitigative effects on the freeway and ramp system. It shows that peak hour conditions on 30 freeway ramps and 26 freeway mainline segments are benefited while only 2 ramps and 4 mainlined segments are worsened as the result of the MPAH projects. These improvements are, with few exceptions, under direct control of the City of Irvine in its own jurisdiction. Thus, Irvine must implement the MPAH improvements as part of the mitigation of extensive freeway and ramp system impacts caused by the Vision Plan project.

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The Residential Portion of the Project, as Defined in the RDEIR, Continues To Be a Piecemealed Part of the Residential Transformation of the IBC Likely To Take Place by the Planning Horizon of Post-Year 2030

Our comments on the now labeled Comments A11-110 through A11-112 pointed out in detail that the existing, under-construction, approved and pending residential projects that the DEIR assumed would be built out by 2013 would comprise 85 percent of the Project's 15,000 residential unit cap, and that at anything like the presumed absorption rate of units, the entire cap would be built out by 2015, leading to the reasonable deduction that the Project's stated residential cap of 15,000 was an understatement of the residential transformation likely to take place by the Post-2030 scenario, and hence is a piecemealing of the likely residential transformation.

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The RDEIR responds by stating:

- Since the crash of the housing market, demand for new housing in IBC has severely declined, so much so that the RDEIR no assumes the interim buildout year (when all the under construction, approved and pending units would be built-out) to be 2013, but 2015 instead.
- Due to the housing market crash, it is unlikely that the full 15,000 unit cap would be absorbed by 2015, and
- Referring the reader to Section 3 of the RDEIR.

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This response is a denial of the obvious. The RDEIR continues to assume that 85 percent of the units allowed under the 15,000 cap will be built by just 5 years from now (2015). At the absorption rate for that to happen, the rest of the units under the cap would be absorbed within a couple years thereafter so there is no fundamental difference in what can be deduced from the assumptions in the RDEIR versus the DEIR. Although the RDEIR rightly recognizes the recent severe slackening in absorption of housing units, what it characterizes as a "housing market crash" is really a crash of the financial and lending markets; there is no slackening in the underlying demand for housing.

A15b-31
cont'd.

The RDEIR land use section makes clear that the 15,000 unit residential cap originated purely by City Council direction; it was not the product of a technical analysis of how many units might feasibly be developed by Post-2030 buildout on sites in IBC that might be reasonably be available for and suitable for re-use as residential sites. If the 15,000 unit cap is reached much sooner than Post-2030, as the evidence here still suggests it will, the Council can simply issue another direction to raise the cap and piecemealing will have become confirmed. Such a scenario would repeat the pattern of piecemeal development since the 1992 IBC PEIR was certified.

Future Residential Development Components of the Project Are Still Assumed In Unrealistically Small Concentrations. This Results in the RDEIR Understating Potential Traffic Impacts of the Project

In our comments on the original DEIR we observed that the assumed distribution of new residential units that are not part of then currently known projects was at considerably less density than in the 'known' (that is, existing, under construction, approved, and in process) residential development in IBC and that this dispersal as assumed would lead to less disclosure of localized traffic concentrations and impacts, than if the remaining residential units were assumed to be distributed in higher concentrations more typical of the known projects.

The RDEIR responds by referencing the commenter to Section 3.3.2.6 of the RDEIR's Land Use Chapter. Upon review of this material and the RDEIR's revised Appendix F, we find the following facts. The RDEIR disperses the 3,950 residential units under the proposed residential cap that are not part of now known developments into 17 traffic analysis zones. If the units in each TAZ were considered an individual development, the average development size would be 232 units, or 313 if each 'development' achieved maximum numbers of density bonus units. By comparison, the existing, under construction and approved residential developments in IBC average 408 units per development or 428 per development if density bonus units are considered. Although the average concentration of units-per-development assumed in the RDEIR is closer to that of the existing, under construction and approved residential developments in IBC than was the case in the original DEIR, the RDEIR's assumptions are still

A15b-32

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significantly lower than actual development experience, and this understatement of unit concentrations will tend to result in failure to disclose traffic impacts.

As we noted in our original comments on this subject, the assumption of significantly lower numbers of units per development than in the residential developments that have been approved to date is unreasonable and likely to cause the RDEIR's failure to disclose the actual traffic impacts of residential concentrations. This is especially true given the elimination of the maximum density restrictions for the IBC and the establishment of a 30 units-per-acre minimum density.

This section of our original comment on the DEIR concluded with the suggestion (now designated Comment A11-114) that what the analysis 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. The RDEIR's response is a completely irrelevant reply about a sensitivity analysis of domestic water supply and wastewater collection systems. Please perform the actually suggested traffic sensitivity analysis described above. And please provide a cogent and relevant reply to this comment.

A15b-32
cont'd.

The DEIR Fails To Assess the Impact of Transfer of Development Rights (TDR)

In comments on the NOP and the original DEIR, representatives of the City of Tustin requested that the traffic study explicitly evaluate the impacts of TDR in concert with the Vision Plan Project. The RDEIR's response to our May 12, 2009 comment on the absence of a thorough analysis of TDR in the original DEIR (a comment now labeled A11-116) is as follows:

"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 undated accordingly (see Appendix N).

A15b-33

This reply creates the illusion of being responsive to the comment. However, the actual sole reference to TDR in RDEIR Section 5.13 is a single paragraph, specifically Section 5.13.1.2. This paragraph describes Irvine's TDR procedure (already understood by the commenter), asserts that the "trip budgets" for the IBC area will be maintained in the aggregate (again a matter that was not at issue in the comment), notes that the TDRs involved in pending projects are reflected in the RDEIR traffic study, and states that the details of the TDRs in those pending projects are summarized in Appendix J to the traffic study (apparently referring to Appendix J of Appendix N-1 to the RDEIR).

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The final 2 (non-blank) pages of Appendix J of Appendix N-1 are comprised of tables tracking the trip budgets of pending projects involving TDR (as well as the trip budgets of "sending sites"). This material is generally irrelevant to the comment.

What is missing from the RDEIR traffic analysis that has been repeatedly requested in comments and is the subject of a court order is this: a thorough and meaningful analysis of Vision Plan with and without TDR. All of the traffic analysis scenarios contain an admixture of TDR. There is no such thing as a Post-2030 With Project / No TDR scenario to use as a baseline for comparison.

None of the hypothetical projects that the City has identified for purposes of the DEIR involves TDR (except possibly within the same traffic analysis zone where it could have no possible effect on the external circulation system. 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 "With Project / No TDR" scenario could have been created by removing the TDR units from pending proposals and creating an additional hypothetical residential site or sites with an equivalent number of units to the foregone TDR units. A representative "with Project / With TDR" scenario could have been created by leaving as currently proposed those pending developments that have TDR, and concentrating the 3950 balance of the proposed cap units on a lesser number of hypothetical sites where the units are assumed to be located to create an average development size of 363 units per site (about 11 TAZ sites instead of the 17 assumed in the RDEIR). TDRs as necessary to develop that number of units on the reduced number of sites would be assumed. The TDR sending sites could be assumed to be the sites that the RDEIR analysis designates as "fixed sites" that have the largest unused trip budgets. Such an analysis should be done to make the RDEIR adequate as well as consistent with the City's response on the NOP.

A15b-33

The other aspect of TDR that has been of concern to the City of Tustin and that is not addressed in the RDEIR traffic study relates to the "sending sites" of TDR trips (the sites from which unused trip budgets are transferred away). Many of the sites that have excess trip budgets are, in a physical sense, fully built-out with modern buildings that are not likely to be redeveloped or further developed by anytime soon beyond Year 2030. The RDEIR has already acknowledged this in its' analysis of land use optimization in Chapter 3 and Appendix F, characterizing many of the sites with excess trip budgets as "fixed projects" in recognition that they are unlikely to be redeveloped or further developed in the planning horizon. The excess trip budgets for these sites can only become real trips in a Post-2030 scenario wherein other sites with obsolete buildings are redeveloped at intensities that exceed the trip budgets for their own sites and the shortfall is made up by transfer through TDR of the excess trip budgets from the "fixed project" sites that cannot realistically be redeveloped to use them. Hence, the

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trip generation of the unused trip budgets of sites designated "fixed projects" in the land use optimization analysis should be assumed not to occur in the Post-2030 With Project / No TDR scenario.

A15b-33
cont'd.

The RDEIR should include an analysis as described above.

The RDEIR's Effort To Comply With CEQA Guidelines 15125(a) Is Inadequate. The RDEIR's Compilation of Traffic Impacts Based on a Flawed Hypothetical Compilations of Future Baselines Understates Project Traffic Impacts.

Our comment letter of May 12, 2009 pointed out that 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. We also pointed out that, although the DEIR did perform an analysis of how the Project would alter and impact the existing traffic environment, the DEIR did not satisfy CEQA's requirement to disclose mitigation for those impacts.

The RDEIR responds to our comment, now labeled Comment A11-118 by stating that "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". However, although the RDEIR incorporates revised traffic forecasts resulting in somewhat different disclosures of impact in a comparison of the Existing + Project scenario to the existing conditions, it still declines to mitigate the traffic impacts of the Project relative to existing traffic conditions. It so declines under new reasoning³: (1) that the Existing + Project scenario is a hypothetical condition, the analysis of which is only intended to give an "early glimpse" of the potential impacts of the Project, a theoretical exercise to assess where project trips are likely to concentrate and impact the circulation system, and (2) that the Project is not responsible for mitigation of impacts from the Existing Conditions with Project scenario. However, this strained rationalization does not comport with CEQA Guidelines § 15125 (a), which clearly states that the ordinary baseline for measurement of environmental impacts is the environmental conditions that exist at the time of the NOP.

A15b-34



As with the original DEIR, the RDEIR's traffic analysis improperly constructs the future traffic scenarios. The RDEIR claims, in Section 4.1 of the Appendix N-1 traffic study, that the 2015 'No Project' and 'With Project' scenarios were developed "using the existing conditions as a baseline". However, there is no

³ The reasoning in the original DEIR was that since the Project would not be built out until the post-2030 era, its impacts should only be analyzed in the context of the post-2030 roadway network conditions. That reasoning was demolished by our comment pointing out that about 85 % of the real change involved in the Project, the swapping of certain numbers of residential units for certain trip-equivalent square footages of office or industrial uses, was forecast to be complete by the near-term interim forecast year (2013 for the DEIR; now 2015 for the RDEIR).

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actual direct connection to the existing traffic conditions baseline. Both 2015 traffic scenarios are entirely synthetic and the composition is flawed. They are based on presumed traffic generating properties of generalized land use categories and socio-econometric trip generation variables related to land use. The RDEIR tracks the transition between quantities of land use in the various categories in the existing condition and that in the 2015 scenarios in detail (as it subsequently does the transitions in land use quantities to the Post-2030 scenarios). The problem is that in the existing condition, some of the land use, particularly older obsolete office and industrial facilities, is either vacant, heavily underutilized or utilized in ways far less traffic intense than the typical uses in the general land use category (example: the industrial or warehouse building used for temporary dead storage of unused construction equipment). These underutilized buildings contribute little traffic in the existing traffic condition. When full trip generation rates are applied to vacant or heavily underutilized properties, the traffic generated by obsolete, underutilized properties is vastly overstated and the baseline linkage to the existing traffic condition (and any shred of compliance with Guidelines §15125 (a)) is lost. The trip generation, and hence traffic conditions, of the 2015 No Project Baseline scenario is artificially bloated. And since most of the office and industrial uses that are swapped for residential and retail in the 'With Project' scenario are properties that are vacant or underutilized, rather than uses generating traffic at normal occupancy levels, the comparisons of "With Project" to "No Project" scenarios understate the traffic differentials and impacts the Project causes.

A15b-34
cont'd.

The RDEIR Post-2030 Traffic Analysis Continues to Assume Prior Completion of Traffic Improvements in Other Cities that are not Fully Funded

As stated on page 147, Section 5.2 of Appendix N-1, the RDEIR traffic study assumes as a background condition to the Post-2030 traffic analysis the completion of certain traffic improvements in the cities surrounding IBC that are included in the General Plans of those cities. However, many of these assumed improvements are unfunded and are likely to remain unfunded and unconstructed unless there are funding contributions paid by outside sources to contribute the fair share portion of cost of the improvement that is necessitated by traffic growth from projects outside the jurisdiction of the city in which the General Plan traffic improvement is located. By unrealistically assuming that these improvements in other jurisdictions are already in place in the Post 2030 baseline roadway network, the RDEIR shields the Vision Plan Project from being found to have impacts contributing to the necessity for these improvements and from making fair share payments to mitigate its impacts. The RDEIR should instead reassess the Project's Post-2030 traffic impacts assuming the unfunded improvements in neighboring jurisdictions are not in place, identifying Project traffic impacts in the unimproved condition and fair share contributions toward implementing the identified mitigations.

A15b-35

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This comment was elaborated on in our comments of May 12, 2009 on the original DEIR; the comment on the topic is now labeled as Comment A11-119 in the RDEIR. The RDEIR replies to the comment with the following formulaic statement, creating the illusion that it has been responsive to the comment:

"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).

A15b-35
cont'd.

In fact, nowhere does RDEIR Section 5.13, Appendix N or any other section of the RDEIR or its appendices directly address the subject comments. As noted above, please reassess the Project's Post-2030 traffic impacts assuming the unfunded improvements in neighboring jurisdictions 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 Tustin Are Inadequate and the RDEIR's Cost Estimates For Them are Understated

In discussions between the cities of Irvine and Tustin related to the original Vision Plan DEIR, Tustin representatives carefully reviewed the mitigation measures and the City of Irvine's estimated costs for those mitigation measures. Following is a summary of Tustin's comments on this topic that were made as part of our May 12, 2009 comments on the DEIR. The comments on this topic are now sequentially labeled A11-120 through A11-125.

In general, Tustin found 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. Comments pertaining to site-specific mitigation proposals included need to reflect right-of way costs, need for more extensive physical length and or width of proposed added lanes, and potential need to accelerate certain mitigation measures the City of Tustin had not planned to implement until 2030 forward to the interim forecast year.

A15b-36

The RDEIR replies to each of the six detailed comments with the same formulaic statement, creating the illusion that it has been responsive to the comment:

"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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In fact, nowhere does RDEIR Section 5.13, Appendix N or any other section of the RDEIR or its appendices directly address the subject comments. These comments must be addressed directly and in good faith. Leaving these comments unaddressed or inadequately addressed undermines the evidence supporting Irvine's conclusions regarding the effectiveness of proposed and planned mitigation measures.

In addition, in the case of intersections in Tustin or in shared jurisdiction with Tustin that are newly identified as having project traffic impacts by the RDEIR, the City of Irvine has not produced preliminary engineering drawings or cost estimates for the mitigation measures comparable to those that were provided for impacted locations in conjunction with the original DEIR for Vision Plan. Mitigation has only been defined at crude narrative conceptual detail that does not permit sufficient analysis to know whether the mitigation will be effective or feasible and is insufficient to gain a reasonable sense of costs. Moreover, as noted elsewhere herein and in separate letters from Tustin officials, neither the RDEIR nor the City of Irvine acting independently have been provided with sufficient materials about the new ITAM 8.4 model (including the related assumptions, data inputs, validation and post-processing procedures) to judge whether or not the RDEIR has adequately disclosed traffic impacts and mitigation needs in Tustin. Consequently, the City of Tustin reserves the right to make further comments regarding the adequacy of impacts and mitigation measures once the details of the workings of the ITAM 8.4 model have been reasonably disclosed.

A15b-36
cont'd.

The RDEIR Fails To Provide Information Needed To Establish The Reasonableness of Its Traffic Forecast and Analysis Procedures Despite Response-To-Comment Indicating Compliance With Prior Requests

The City of Tustin continues to have concerns that the RDEIR's traffic forecasts, procedures and results, that form the basis of the RDEIR's findings regarding traffic impacts and mitigation, are unreliable and inadequate. The RDEIR continues to be deficient as an informational document because details of traffic analysis procedures are not sufficiently described to demonstrate whether an adequate traffic analysis has been performed

A15b-37

The City of Tustin has repeatedly expressed its concerns regarding adequacy and reasonableness of the Vision Plan Project traffic analysis traffic forecast model assumptions, input data and refinement procedures in comments on the NOP(s), the original DEIR and on the EIRs for other IBC developments, and in informal working meetings between the staffs of the three cities concerning the traffic study for the original DEIR. The concerns relate to numerous facets of the traffic analysis procedures that are detailed in our comment letter of May 12,

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2009, in comments that are now designated comments A11-127 through A11-134, and in other letters of comment on the original DEIR by Tustin officials.

The RDEIR replies to these highly detailed technical comments with variations of these formulaic responses:

"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 traffic study has been revised in response to comments made by the commenter and is included in Appendix N of the Recirculated DEIR."

"Please refer to Appendix N of the Recirculated DEIR for a complete copy of the revised traffic study."

However, no part of RDEIR Section 5.13, Appendix N or any other part of the RDEIR and its' appendices clearly responds to the issues and questions these comments pose. Nowhere in the RDEIR are the complete ITAM model assumptions, input data, validation details, refinement procedures and complete records of refinement adjustments documented.⁴ The fact the RDEIR traffic analysis relies upon a new version of the ITAM traffic model, ITAM 8.4, which City of Tustin representatives have had no opportunity to inspect intensifies the need for complete documentation of all those details of the traffic forecast analysis.

Perhaps the City of Irvine would prefer that the City of Tustin would accept on faith the reasonableness of the assumptions, procedures, validation, inputs, outputs and adjustments of the ITAM model as applied in the RDEIR traffic analysis. However, the RDEIR is under obligation to provide, in appendices, information sufficient to permit reviewing agencies and members of the public to make assessment of the reasonableness and thoroughness of the analysis on which findings of significant environmental impacts are based. 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

⁴ We note that the RDEIR Appendix N-2 does provide zonal trip generation information and the zonal land use information on which the trip generation is based. But even this is incomplete because the information is only for zones within IBC, not for the portions of other jurisdictions within the traffic study model area and for its' external stations. In addition, the socioeconomic data input to the trip generation equations is lacking.

A15b-37
cont'd.



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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."

A15b-37
cont'd.

As the paragraphs above make evident, the RDEIR has failed to comply with this section of the CEQA Guidelines in numerous critical instances. Please document the requested information in the RDEIR.⁵

Contribution of Accessory Retail Business to the Project's Traffic Impacts Is Still Not Assessed

Our comment on the original DEIR, now designated as A11-136, observed that the City's recently adopted Ordinance 09-02 providing that 100 percent of the trip generation that would ordinarily be estimated for retail business in a category designated "Accessory Retail Business" would be presumed 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. Our comment noted that the authoritative reference source on internal trip capture, *Trip Generation Handbook*, published by the Institute of Transportation Engineers, indicates the likely trip capture for accessory retail in a residential complex is only about 24.5⁶ percent of the trips to and from the retail and about 12.5⁷ percent of trips to and from the accessory retail in an office complex. Hence, the contribution to traffic of any accessory retail business in residential or office development under the IBC Vision Plan and Mixed Use Overlay Zoning Code would be understated 75.5 to 87.5 percent, thus leading to failure to disclose its traffic impacts. The RDEIR, in fact, does not acknowledge any traffic generated by an undisclosed amount of retail businesses that may be introduced to the IBC as "Accessory Retail Businesses."

A15b-38

The RDEIR responds to Comment A11-136 by stating that "a description and analysis regarding the recently adopted Accessory Retail Business designation has been incorporated into Chapter 4, *Environmental Setting of the Recirculated DEIR*." The following is the totality of the content of the so called "description and analysis" of the Accessory Retail Business designation in RDEIR Chapter 4.

⁵ We note that special counsel to the City of Tustin has submitted a request to Irvine, under the Public Records Act, for this missing information.

⁶ Average of 38 percent of trips inbound to retail from residential and 11 percent of trips outbound from retail to residential.

⁷ 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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"In March 2009, the City adopted a Zoning Code provision to allow for accessory retail uses throughout the City. While this Citywide measure is consistent with the goals of the Vision Plan for the development of mixed uses and reducing vehicle trips, the amount and type of accessory retail permitted by right within a project is narrowly defined in the Zoning Code as to not generate additional trips beyond those associated with the primary use. Retail that does not meet the Zoning Code definition for accessory retail would be subject to the City's current discretionary and environmental review processes. For purposes of the IBC Vision Plan, the utilization of the accessory retail use designation has been assumed, although that assumption does not, by definition, yield any additional traffic generation."

A15b-38
cont'd.

As is evidenced in this content, there actually was no analysis to support the finding that accessory retail uses would generate no traffic onto the street system. The City simply determined that by fiat. Our comment that that traffic impacts of accessory retail uses in IBC are substantially understated remains unrefuted.

Conclusion

This completes my current comments on the Vision Plan RDEIR. As documented in the detailed comments above, the RDEIR traffic analysis and documentation is inadequate and must be revised and recirculated again in draft status.

A15b-39

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



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A15b. Response to Comments from City of Tustin – Remy, Thomas, Moose and Manley, Attachment B: Smith Engineering and Management, dated February 11, 2010.

- A15b-1 Differences between ITAM 8.1 and ITAM 8.4 used for the RDEIR analysis include: minor modifications to the project description, land use quantities, arterial and freeway networks, and intersection lane configurations; regrouping of land use categories; update of the model based year from 2005 to 2008; the change in interim year analysis from 2013 to 2015. All requested data pertaining to ITAM 8.4 used for the traffic analysis has been provided to the City of Tustin. See also response to Comment A15-1.
- A15b-2 The changes in the traffic results are reflective of the modifications as provided in response to Comment A15b-1. Differences in traffic results are reasonable and to be expected given these factors.
- A15b-3 See response to Comment A15b-2.
- A15b-4 See response to Comment A15b-2. For freeway mainline segments and ramps, a methodology based on V/C analysis was codified between the City of Irvine and Caltrans for use on this project. A summary of this agreed methodology is included in Chapter 2 of the Traffic Study (Appendix N to the RDEIR). This methodology is different from the HCS methodology used to identify deficiencies on freeway mainlines and ramps in the original DEIR. As agreed between the City and Caltrans and documented in Chapter 2 of the Traffic Study, the HCM analysis was performed for those locations identified as a project impact.
- A15b-5 See response to Comment A15b-4.
- A15b-6 See responses to Comments A15b-2 and A15b-4. Information provided in the RDEIR Appendices including the Traffic Study (Appendix N to the RDEIR) and appendix to the traffic study is complete and intelligible. All factors that affect the traffic study results are disclosed and explained in the traffic study
- A15b-7 The RDEIR incorrectly included the Air Quality Appendix to the DEIR. Appendix C to this FEIR includes the correct Air Quality Appendix to the FEIR. The RDEIR URBEMIS modeling output sheets reflect the data included in the RDEIR.
- A15b-8 The intent of the MPAH alternative build-out scenario analysis is two-fold:
- 1) To provide a reasonable sensitivity analysis that provides Irvine and adjacent jurisdictions with the information necessary to downgrade or upgrade facilities in their General Plan build-out configuration using reasonable and accepted methodologies for impact identification and mitigation such as Irvine's Traffic Impact Analysis Guidelines and adjacent jurisdictions' adopted methodologies; and
 - 2) To begin the County MPAH Amendment process for downgrading MPAH arterials may require preparation of a Cooperative Study with OCTA, Irvine and affected jurisdictions. The MPAH sensitivity analysis provides a tool to determine locations where, under an MPAH network, traffic redistribution may occur and additional and/or different improvements may be required to bring deficient locations to acceptable LOS. Assuming the build-out of one unfunded facility over another, as suggested in the comment, is not the charge of the IBC Vision Plan project. Rather, the MPAH analysis provides insight as to whether or not certain facilities should be built out to their MPAH configuration given funding constraints that exist. Section 5.13, Transportation and Traffic, and Chapter 7 of the Traffic Study (Appendix N to



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the RDEIR) identifies the locations that become deficient or acceptable under the MPAH scenario in comparison to the build-out of the constrained network. The build-out of the MPAH network is costly and does not contribute substantial benefits to the network.

- A15b-9 See response to Comment A15b-8. The conclusions made in the alternative build-out MPAH network analysis are based on reasonable and accepted methodologies and practices used to identify deficiencies, impacts and mitigation measures. These conclusions are appropriate and will remain unchanged. Additional discussion will be included in the MPAH section regarding possible localized benefits to building the MPAH network; however, the final conclusions will be the same
- A15b-10 See responses to Comment A15b-8 and A15b-9. The conclusions from the roadway analysis are presented in the MPAH section of the Section 5.13, Transportation and Traffic, and the Traffic Study (Appendix N to the RDEIR), Chapter 7. As noted in the section, there are two locations that deteriorate with the build-out of the MPAH network; however these deficiencies are caused by the localized traffic increases related to the SR-55 Alton Overcrossing project, an MPAH network improvement. Without the increase in traffic attracted to the Alton crossing of SR-55, these improvements are unnecessary. There are no roadway segments that deteriorate or improve to acceptable or unacceptable levels of service under the MPAH build-out scenario.
- A15b-11 See responses to Comment A15b-8 and A15b-9.
- A15b-12 See responses to Comment A15b-8, A15b-9 and A15b-10.
- A15b-13 The MPAH network analysis assumed an intersection configuration at Von Karman & Alton consistent with the MPAH designations for these arterial roadways. Due to the redistribution of traffic when the MPAH network is assumed (versus a constrained network), the sensitivity analysis indicates that specific intersection approach improvements above and beyond the typical configuration assumed for the MPAH designations may be required to bring the intersection to acceptable LOS.
- A15b-14 See response to Comment A15b-13 as this response applies similarly to the intersection of Red Hill and Alton.
- A15b-15 See response to Comment A15b-13 as this response applies similarly to the intersection of Von Karman and Michelson.
- A15b-16 The IBC Vision Plan project is not proposing any changes in MPAH designation along Red Hill Avenue south of Main Street. Under the constrained network, both Red Hill and Paularino Avenue and Red Hill and Baker Street (both located south of Main Street in Costa Mesa) operate at LOS D in the PM Peak Hour (0.88 & 0.90, respectively). The additional traffic resulting from the added capacity on Red Hill Avenue between Main and Barranca in Irvine (proposed change in MPAH designation) causes these locations to operate at LOS E (0.91 & 0.92, respectively). This is not a determining factor for implementing these improvements; rather, it is part of the overall assessment that there is not a substantial net benefit to the circulation system by implementing the MPAH improvements as it relates to project impacts.
- A15b-17 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of

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environmental analysis, but will be evaluated as part of the Project Report level of the CEQA analysis. See also response to Comment A15-102.

- A15b-18 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-19 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-20 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-21 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-22 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-23 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-24 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-25 See responses to Comment A15b-4, A15b-8 and A15b-9. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The queuing analysis suggested by the commenter is inappropriate for the programmatic level of environmental analysis.
- A15b-26 See responses to Comments A15b-8 and A15b-9.
- A15b-27 See response to comment A15-37.
- A15b-28 Project-related significant impacts for the 2008 Existing Plus Project scenario are discussed in the RDEIR and Traffic Study in Chapter 6 (Appendix N to the RDEIR). Mitigation measures are proposed for these improvements. The impacts are considered theoretical in that it is impossible for the entire project to be built instantly without requisite circulation system improvements as new projects come in. For the identified projects that will be constructed by



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2015 (which include the seven projects referenced in the comments), the 2015 improvements are identified. In other words, an analysis of the project buildout without the planned and funded circulation system improvements yields a set of impacts that cannot occur. The Traffic Study and RDEIR will be revised to clarify this point. The project related significant impacts as well as mitigation strategies are proposed for the Existing Plus Project scenario as required by CEQA and the project will contribute a fair share (or full share for Irvine intersections) for improvements that are identified under interim year and build-out conditions, with the expected circulation improvements under those analysis years.

- A15b-29 See response to Comment A15-32 and A15-99. The mitigation improvement at intersection #145, Jamboree and Michelson that would bring this location to acceptable LOS is infeasible because of the operational constraints of triple left turn lanes, not the available capacity at the intersection. The Traffic Study (Appendix N of the RDEIR) conducted a preliminary feasibility assessment associated with traffic improvements. Right-of-way acquisitions were considered to be a constraint and the least preferred mitigation strategy because they would require the relocation of, and compensation for, business and residences. Cost was not considered as the primary factor when determining whether the improvement was infeasible the intersection of Jamboree and Michelson.
- A15b-30 See responses to Comments A15-103, A15b-4, A15b-8 and A15b-9. The freeway and ramp deficiencies identified in Section 5.13, Transportation and Traffic, and the Traffic Study (Appendix N to the RDEIR) are consistent with the expected operation of freeway facilities in the peak hours through Caltrans' own operations guidelines. As documented in the Traffic Study, not all freeway facilities identified as deficient have a project-related significant impact. The freeway impacts are being overridden in the RDEIR, as the City of Irvine has no jurisdiction over Caltrans or improvements on the freeway facilities. The purpose of the traffic study is to identify significant impacts and appropriate mitigation. The coordination with Caltrans for identifying appropriate mitigation measures for the significantly impacted freeway facilities is ongoing and a strategy will be in place prior to the implementation of the 12,000th residential unit, as documented in the RDEIR. The City is not deferring mitigation, but rather, is in discussions with Caltrans to create a list of feasible mitigation strategies for which the City will contribute its fair share, consistent with CEQA Guidelines. Given that Caltrans has no identifiable fee program, or other plan to mitigate at these locations, the City has exceeded its obligations in making available a fair share toward future improvements. See response to Comment O6-12.
- A15b-31 The number of residential units expected to be constructed by 2015 is based on the tracking of units by the City in the IBC database and is reasonable. The project is not planning piecemeal analysis, rather a conservative assumption that a certain amount of development will take place by 2015 with all the associated impacts, followed by the remaining development under the 15,000 unit cap.
- A15b-32 The commenter appears to conclude that the City's analysis of the distribution of potential future units is flawed, as it would result in future projects with smaller numbers of units than existing and approved projects in the IBC. The City laid out a specific, quantifiable methodology for distribution of future land uses, all within the existing intensity limitations, and with no additional TDR's assumed outside of an originating TAZ. We understand that projects with fewer units may occur but the commenter provides no substantial evidence or justification for indicating this would have a significant adverse environmental impact.
- A15b-33 Build out of the Vision Plan requires conversions of development currently assigned to non-residential use categories to development assigned to a residential use category. As a result,

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the request for the creation of a “Vision Plan without TDR” scenario, as requested by the commenter is not possible. The commenter also criticizes the use of TDRs within traffic analysis zones. The City developed a set of reasonable assumptions concerning future TDRs and applied those assumptions in the traffic analysis. The fact that the commenter would have preferred a different set of assumptions does not create a requirement to do a further traffic analysis. However, if and to the extent the assumptions utilized by the City of Irvine prove incorrect, then an analysis of the impact of the differences between current assumptions and future realities will have to be conducted in a manner consistent with CEQA and the CEQA Guidelines.

To the extent the commenter requests a further and/or different analysis of future conditions, there is no requirement in CEQA that such an analysis be performed. (See CEQA Guideline 15204(a) [“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”].) In this instance, the City of Irvine has provided a 200+ page traffic analysis in the main body of the RDEIR, combined with a comprehensive technical appendix (with further sub-appendices thereto). The City of Irvine has further conducted multiple meetings with Tustin in an effort to identify and address all concerns.

With respect to sending sites, the TDR’s assumed in the RDEIR represent those for which specific TDR applications are in process. While some sites with excess intensity have been classified as “fixed” for purposes of the land use assumptions, intensity transfers from these sites are not precluded in the future. Additional traffic analysis would be necessary should such a transfer be proposed

- 
- A15b-34 See responses to Comments A15-84 and A15b-28. The phrase from the traffic study “using existing conditions as a baseline” identifies that the existing counts were used in ITAM to forecast future traffic growth. Existing conditions are based on existing traffic counts and not on an evaluation of the vacancy rates in the office buildings within the IBC Vision Plan area. The model has been validated for interim year 2015 analysis and provides the No Project and With Project interim year conditions within the IBC Vision Plan area.
- A15b-35 See responses to Comments A15-66 and A15-68. Typical analyses of buildout conditions assume an adjacent Cities’ build-out of their General Plan, both the build-out of land uses and the circulation network that supports those land uses. Project impacts and mitigation measures for this project were identified based on a conservative analysis that assumed build-out of all local and regional land uses, but with a constrained network in order to reassess all unfunded 1992 IBC EIR improvements.
- A15b-36 See response to Comment A15a-11.
- A15b-37 See responses to Comments A15-74, A15-93 and A15a-1. All requested information related to ITAM 8.4 has been provided to Tustin. The City of Irvine intends to include the layouts and cost estimates for all feasible mitigation measures as part of the IBC Nexus Fee Study.
- A15b-38 See response to Comments A15-8 through A15-11
- A15b-39 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.

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LETTER A15c – Remy, Thomas, Moose and Manley, Attachment C (12 pages)

ATTACHMENT C

Comment memorandum regarding RDEIR
from the City of Tustin's parks consultant,
Hogle-Ireland, dated February 16, 2010



2. Response to Comments



HOGLE-IRELAND
INC.
A Land Planning & Development Consulting Firm

MEMO

Date: February 16, 2010
To: Bill Jacobs, Principal Planner, City of Irvine
Cc: Jason Holder - Remy, Thomas, Moose and Manley, LLP
From: Hogle-Ireland, Inc.
Subject: **Analysis and Comments on RDEIR for the City of Irvine IBC Vision Plan and Mixed Use Overlay Zoning Code Project**

Introduction

The following summarizes our review of the Recirculated Draft Environmental Impact Report (RDEIR) for the City of Irvine IBC Vision Plan and Mixed Use Overlay Zoning Code Project. As directed by the City of Tustin, our review of the RDEIR focuses primarily on section 5.12 Recreation and a review of the City of Irvine's Response to Comments prepared in response to the Hogle-Ireland memo re: Vision Plan DEIR dated May 13, 2009 [herein referred to as "Memo"].

I. Response to Comments

- A. The RDEIR responses A11-138, 140, 141, 142, 144, 145, 147, 149, 150, 151, and 152 simply state:

"The DEIR has been revised to address the commenter's comments as shown in Section 5.12, Recreation, of the Recirculated DEIR." (pages 2-262, 2-263, 2-264)

This is an inadequate response to the comments provided. It does not attempt to explain how the comments have been addressed, nor where specifically in the Recreation section responses can be found. The following are just some of the comments that the City failed to respond to adequately with the above responses:

- Comment II.B, which requested that the DEIR evaluate the potential environmental impacts of the nine proposed recreation facilities, describe the amount of parkland that is to be dedicated in conjunction with these projects, and disclose whether that parkland is adequate in meeting the needs of the development.
- Comment II.H, which requested that the DEIR explain how existing funds have been planned to be used, how funds to be collected from the nine pending projects are planned to be used, what population the Bill Barber park is currently serving and what capacity it has (if any) to serve the IBC planning area.
- Comment II.I, which: (1) requested that the DEIR appropriately address the existing shortage of parkland as a baseline condition for analysis of cumulative impacts, (2) stated that the use of the population factor of 1.3 persons per household results in a flawed analysis with a net deficiency of parkland, (3)

A15c-1

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stated that the conclusion that a cumulative impact related to the provision of recreation facilities will not occur is not supported by the available data, and (4) commented that the DEIR must discuss any cumulative impact to other jurisdictions' recreational facilities (local and regional facilities) particularly when substantial evidence showing that the facilities are being utilized by City of Irvine residents has been presented.

A15c-1
cont'd.

The City should explain how they have attempted to respond to these individual comments and/or where specifically they have addressed them in the Recreation section so that any interested party can readily review the revisions to the DEIR and the adequacy of the revisions can be effectively determined. To the extent these responses and the revisions to the RDEIR do not address our previous comments, we reiterate those comments and request an adequate response.

II. RDEIR Review and Analysis

- A. The RDEIR still fails to appropriately analyze impacts to existing recreation facilities.

The RDEIR has been revised to include a table providing the location, distance from IBC boundary, size, and amenities/facilities for neighborhood parks (Table 5.12-2). Previously the DEIR only included this information for the community parks (Table 5.12-1). Despite the addition of this information, the RDEIR still does not discuss the relationship of these various park facilities to the project nor does the RDEIR address the baseline environmental conditions with respect to the existing uses of these park facilities.

A15c-2

Neighborhood Parks

The RDEIR acknowledges that there are no public neighborhood parks within the IBC. Further, the RDEIR indicates that the neighborhood parks listed in Table 5.12-2 serve residents of IBC. However, no analysis is provided. The RDEIR fails to quantify the estimated populations that these facilities serve, does not describe existing utilization of these parks and their facilities, or estimate what capacity those parks have (if any) to serve the IBC planning area. As discussed in more detail in comments II.E and II.F below, the RDEIR should include this discussion in order to assess the adequacy of these park facilities to serve the existing and future IBC residents.

A15c-3

The map below provides an estimate of the populations surrounding the neighborhood parks listed in Table 5.12-2. The populations were derived from 2000 census block group data and indicate that there is a total population of 22,916 people within a 0.5 mile radius from these parks (excluding existing IBC residents). Table 5.12-2 indicates that these neighborhood parks total 30.7 acres.



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Map by: Hogle-Ireland Inc.
Data Sources: 2000 Census, City of Irvine, ESRI

LEGEND

Irvine City Boundary

Irvine Business Complex

2000 Census Block Groups

Neighborhood Parks

1/2 Mile Park Service Area

(1162) Block Group Populations within Park Service Area

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Using the City of Irvine's neighborhood park requirement standard of 3 acres per 1,000 residents, a total of 68.7 acres of neighborhood parks should actually be provided to adequately serve this population ¹. Based on this 2000 population estimate, there is an existing shortage of approximately 38 acres of neighborhood parks in this area, which is adjacent to the IBC. The shortage is likely more severe considering the population growth in Irvine generally, and in the IBC specifically since 2000. This suggests that continued reliance upon these existing neighborhood park facilities to provide for the recreational needs of additional IBC residents is inappropriate — existing adjacent neighborhood park facilities are already not adequate to serve both the existing surrounding populations and existing IBC residents.

Again, the population estimate provided above does not include the existing IBC residents. These additional residents, who have moved to the IBC following Irvine's approval of numerous residential projects since 2000, increase the existing shortage of adequate neighborhood park acreage. The RDEIR Project Description states that there are 5,011 existing residential units, 1,892 under construction, and 2,552 approved under the existing General Plan, within the IBC area. Using the City of Irvine's population generation factor of 1.3 persons per household ², the existing IBC population alone would generate a need of 19.5 acres of neighborhood parkland in an area that currently contains no neighborhood park facilities ³. Applying the Alfred Gobar survey figure of 1.65 persons per household, the existing IBC population would generate a need of 24.8 acres (see also comment II.D) ⁴.

Therefore, in order to adequately address the impact on existing recreational facilities, the RDEIR must include a discussion of the existing populations served by the neighborhood parks in areas adjacent to the IBC, existing utilization of park facilities, and capacity (if any) of these parks to serve residents from the IBC, and the anticipated increase in the IBC's residential population that will be caused by the Vision Plan.

Community Parks

The RDEIR includes Table 5.12-1 which provides information on all 18 community parks within the City of Irvine. However, the RDEIR still does not provide a complete discussion of the relationship of these parks to the project, despite our previous comments to Irvine requesting this analysis. The only relationship that is addressed for these parks is the distance they are located from the IBC. The relevance of these distances is not addressed.

The 2000 census estimates that the population in the City of Irvine was 143,072. Based on the City's community park standard requirement of 2 acres per 1,000 residents, the City would require a total of 286.1 acres of community parks. The

¹ 22,916 population 3 acres/1,000 persons = 68.7 acres

² As discussed below, applying the factor of 1.3 residents per household results in an under-estimation of IBC residents.

³ 5011 (existing population) x 1.3 persons/household = 6514.3 x 3 acres/1,000 persons = 19.5 acres of neighborhood parkland

⁴ 5011 (existing population) x 1.65 persons/household = 8268.15 x 3 acres/1,000 persons = 24.8 acres of neighborhood parkland

A15c-3
cont'd.



A15c-4

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California Department of Finance estimates that in 2009 the population in the City of Irvine was 212,793 (a population increase of almost 70,000 people since 2000). If you use the 2009 population estimate, the actual community park requirement would be 425.6 acres. Table 5.12-1 indicates that the City has a total of 326.8 acres of community parks. Therefore, there is an existing shortage of 98.8 acres of community parks on a citywide basis.

Additionally, the RDEIR indicates that there are no community parks within the IBC, but states that Bill Barber park is located 0.5 miles east of the IBC and that Alton Athletic park is located 1.3 miles east of the IBC. As indicated above, however, the RDEIR fails to explain what populations the parks currently serve, what the existing utilization of their facilities are, who they are designed to serve, and how they relate to the project. The current shortfall in community parks in Irvine as a whole suggests that Bill Barber park and other community parks do not have capacity to serve additional IBC residents.

A15c-4
cont'd.

The City of Irvine should prepare an analysis, similar to the analysis provided above for neighborhood parks, that quantifies the existing population served by Bill Barber park and other community parks, describes utilization of the parks, and capacity (if any) of these parks to serve residents from the IBC and the anticipated increase in the IBC's residential population that will be caused by the Vision Plan. The population analysis should be based on the most up-to-date population estimates and persons per household figures in order to provide an accurate assessment.

B. The RDEIR fails to appropriately analyze impacts on surrounding cities parks and recreational facilities

The Recreation section does not provide a complete discussion or analysis of the impacts on surrounding cities' parks and recreational facilities. The RDEIR lists existing parks and recreational facilities from the cities of Newport Beach, Costa Mesa, Santa Ana, and Tustin located "close" (0.6 to 2.09 miles) to the IBC (Table 5.12-5). However, the information provided is incomplete. Magnolia Tree Park in the City of Tustin is a 4.2 acre park and Centennial Park in the City of Tustin is an 8.0 acre park. In addition, the analysis provides an expanded discussion and comparison of Newport Beach and Irvine's recreational amenities, but does not do the same for Costa Mesa, Santa Ana, and Tustin. Despite this incomplete analysis, the Recreation section concludes that:

A15c-5

"Due to the fact that there are several parks in Irvine that are in closer proximity than the parks in the surrounding cities, it is unlikely that the project would have a significant impact on the surrounding city's parks and recreational facilities." (page 5.12-11)

Distance should not be the sole factor for determining impact on surrounding cities parks and recreational facilities. In order to appropriately assess the impact on surrounding cities, the analysis must address the estimated population the facilities serve and provide a comparison of amenities/facilities to determine if adequate

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facilities are provided by the Irvine parks. As discussed in comment II.A, the neighborhood parks (Table 15.1-2), although located somewhat closer to the IBC than the Tustin parks ⁵, are already impacted by the existing populations that surround them. In addition, as discussed in comment II.A, the population being served and existing utilization of the community parks (i.e. Bill Barber and Alton Athletic Park Contrary) have yet to be addressed. Therefore, contrary to the above statement in the RDEIR, this would suggest that there could be a significant impact on the surrounding cities' parks and recreational facilities.

A15c-5
cont'd.

In addition, the analysis should also include a discussion of potential impacts to proposed parks and recreation facilities. For example, the Tustin Legacy project located immediately adjacent to the IBC proposes the following park facilities:

Proposed Tustin Legacy Park	Acreage	Distance from IBC boundary (miles)	Proposed Amenities/Facilities
Regional Park	84.5	0.7	The park will have an historic emphasis, and include outdoor recreation and the adaptive reuse of a number of existing buildings. The park, which is currently being planned may also contain general purpose turf areas, extensive tree forestation, ballfields, meandering paths for walking and bicycling, tot lots, courts for basketball, volleyball, and tennis and commercial recreational uses and concessions. Existing buildings within the park site may be reused to provide park programs, recreational classes, training, educational and interpretive programs, park maintenance/administration, animal shelter, park ranger office, snack bar, children's playhouse, and garage facility.
Community Park	24.1	1.0	Anticipated to contain a wide range of recreational facilities including softball, football, soccer, tennis, basketball, racquetball, and volleyball facilities. The park will also contain picnic areas, community center buildings, multi-purpose rooms, and supporting uses.
Community Park	46	approximately 1.0 mile or less	Anticipated to contain a wide range of recreational facilities including softball, football, soccer, tennis, basketball, racquetball, and volleyball facilities. The park will also contain picnic areas, community center

A15c-6



⁵ The neighborhood parks and the two community parks are located within 0.5 to 1.3 miles from the IBC. The two Tustin parks listed in Table 5.12-5 are located within 2 miles from the IBC.

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			buildings, multi-purpose rooms, and supporting uses.
Neighborhood Park #1	5	.15	Anticipated to contain some combination of active areas including ball fields, multi-purpose fields, game courts, tot lots, and picnic facilities, as well as passive open space areas. Ancillary structures, such as restrooms, will also be permitted. Pedestrian and bicycle access will also be provided to surrounding residential areas.
Neighborhood Park #2	5	.60	Anticipated to contain some combination of active areas including ball fields, multi-purpose fields, game courts, tot lots, and picnic facilities, as well as passive open space areas. Ancillary structures, such as restrooms, will also be permitted. Pedestrian and bicycle access will also be provided to surrounding residential areas.
Additional parkland and open space	115	Unknown	Unknown

A15c-6
cont'd.

These park facilities are located just as near or even closer to the IBC than the neighborhood parks and community parks referenced on page 5.12-1 of the RDEIR. In addition, the community park and regional park are planned to provide a greater amount of amenities/facilities than Irvine's neighborhood parks and therefore are likely to be utilized by IBC residents. The proposed parks associated with the Tustin Legacy project were identified in the Tustin Legacy EIR/EIS and therefore should have been identified and addressed in the RDEIR. The RDEIR must include a complete analysis and a comparison of the existing and proposed Tustin facilities against the recreational facilities in Irvine that are intended to serve IBC residents.

C. Inconsistencies in project component description

The proposed IBC Element (Appendix C) states that a new community park south of the 405 freeway, at least six new neighborhood parks, and a community/civic building should be provided within the IBC.

The description provided in the Recreation section is not consistent with the Element. The Recreation section states that:

"The element also advocates at least four additional public or private Neighborhood Parks should be provided in the IBC." (page 5.12-6)

This is not consistent with the six neighborhood parks referenced in the IBC Element found in Appendix C. In addition, the Recreation section acknowledges that the

A15c-7

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Element states that a new community/civic building should be provided, but fails to mention that a new Community Park should be provided south of the 405 freeway.

A15c-7
cont'd.

D. Failure to use appropriate persons per household ratio

The RDEIR states that:

"Based on the City's Subdivision Ordinance (Sec. 5-5-1004) each dwelling unit generates 1.3 persons, for the purpose of calculating park requirements. This is based on federal census data (2000) and is employed pursuant to the Quimby Act (Cal. Gov. Code Section 66477). A survey of IBC residents was conducted in 2005 and 2007 by Alfred Gobar Associates, which yielded higher persons per household estimates; however figures obtained in this manner are not legally binding under state law for use in determining park and dedication requirements. An update to the park and dedication ordinance will occur after the 2010 federal census, which will ensure that future projects comply with the most up-to-date population data for calculating park requirements." (page 5.12-8)

A15c-8

This explanation does not provide an adequate reason to disregard the results of the Alfred Gobar Associates survey for the purposes of estimating and planning for future parks in the IBC. The RDEIR should apply the 1.65 persons per household figure provided in the Alfred Gobar surveys for estimating and planning future parks for the following reasons:

- Page N-6, N-7 of the IBC Element states "Alfred Gobar Associates performed a survey of the current residents of the IBC in 2005 and an additional survey of residents and employees within the IBC in 2007. All IBC residents currently reside in higher density apartment and condo-style dwellings. The characteristics of these existing households are seen to predict fundamental demographic traits (household size, number of cars, number of children, etc.) of future residents expected to reside in new, higher density housing planned in the IBC area." These surveys were commissioned by the City of Irvine to help guide and support the Vision and future development of the IBC. The data in these surveys provided the basis for planning the whole of the IBC and therefore should also be used for planning adequate parks in the IBC, which is a component of the Vision and IBC Element.
- The RDEIR acknowledges that the 1.3 persons per household is dated. It states that "An update to the park and dedication ordinance will occur after the 2010 federal census, which will ensure that future projects comply with the most up-to-date population data for calculating park requirements." This statement acknowledges that the 1.3 persons per household figure is dated and that the park and dedication ordinance will need to be updated. Further, it recognizes that future projects will have to comply with the most up-to-date population data. This provides a good reason to use the most up-to-date persons per household information to estimate future park requirements rather than relying upon old census data and an ordinance that will be updated in the coming year. This would ensure a good faith effort is being made to address future park planning for the IBC. The information provided in the Gobar surveys provides

A15c-9

A15c-10



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more up-to-date persons per household data than the 2000 census and should be used to estimate future park requirements. In addition, the Gobar surveys specifically targeted the IBC in order to provide a true understanding of the "fundamental demographic traits" of the area and therefore are an ideal source for this data. Continued use of the 1.3 persons per household figure would result in inadequate park dedication requirements for pending and future IBC projects.

A15c-10
cont'd.

- The RDEIR does not rely on the 2000 Census to address future planning and analysis of population, housing, employment, traffic, air quality, and noise. The population and housing section indicates that OCP-2006 is used as a reference point for discussing "population, housing, and employment growth throughout this Draft EIR". In addition the RDEIR states that "It should be noted that although OCP-2006 data were used for the discussion of population, housing, and employment growth in this section, OCP-2004 were used for the traffic analysis and noise and air quality analyses that incorporated traffic data." This RDEIR discussion reveals an inconsistency in the document's approach to use of using the most up-to-date, available data (i.e. relying on 2000 census data to assess parks and recreation demand and impacts, while using more recent demographic factors for other impact topics). The inconsistent methodologies employed in various sections of the RDEIR must be resolved and the Recreation section must be updated so that it too relies on the most recent population data.

A15c-11

The RDEIR states that:

"The proposed project would potentially add a total of 5,985 units and 1,598 density bonus units (7,583 total), generating approximately 9,858 residents according to the City's Subdivision Ordinance. Based on the park Code, the project would generate a need for a total of 49.3 acres of parkland at buildout, with 19.7 acres of community parkland and 29.6 acres of neighborhood parkland." (page 5.12-8)

The RDEIR should include a discussion of the potential population and parkland demand using the 1.65 persons per household figure developed by the Gobar survey. Failing to use the more recent figure will result in inadequate mitigation of impacts to recreation caused by the Vision Plan project. Using the 1.65 figure, the population estimate for the IBC would be approximately 12,512 residents⁶. Based on the park code, this population would generate a need for 62.6 acres of parkland at buildout, with 25 acres of community parkland and 37.6 acres of neighborhood parkland⁷. The RDEIR fails to recognize and address the parkland requirements for the additional anticipated IBC residents.

A15c-12

E. Potential Future Development discussion

The RDEIR states that,

A15c-13

⁶ 7,583 units x 1.65 persons/household = 12,512

⁷ 12,512 residents x 5 acres/1,000 persons = 62.6 acres of total parkland, 12,512 residents x 2 acres/1,000 persons = 25 acres of community parkland, 12,512 residents x 3 acres/1,000 persons = 37.6 acres of neighborhood parkland

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"The City is also currently seeking adequate sites within the IBC for construction of a public community-level park. Funds from the general IBC community park account would be used for purchase of the site and construction of the park. Since there is insufficient available land in the IBC for a community-level park the City is investigating opportunities adjacent to the IBC where more land for such a use may be available and convenient to nearby residents." (page 5.12-10)

If the City has already determined there is insufficient land available within the IBC for a community park, it is not clear why the RDEIR states that they are seeking adequate sites within IBC. These statements in the RDEIR are internally inconsistent and must be resolved. Additionally, if a determination has been made that there is insufficient land available within the IBC for a community park there is already a conflict with the IBC Element which states that a new community park should be provided in the IBC south of the 405 freeway. The RDEIR must address this conflict. Moreover, by acknowledging insufficient available land for a community park within the IBC, the City admits implementation of adequate mitigation through in lieu fees is infeasible.

A15c-13
cont'd.

F. Park commitments are still unclear

As described in comment II.E above, the RDEIR does not consistently and clearly explain whether the City is seeking a community park site within the IBC or adjacent to the IBC. A community park within the IBC would best mitigate the impacts caused by increased residential use within the IBC, as such a park would be in close proximity to the residents it would serve.

In addition, the RDEIR states that "Any future projects in the IBC would be required to meet the community park requirements by payment of in-lieu fees." The RDEIR, however, does not explain how (see comment II.G, below) or when the community park will be provided. The RDEIR must address when the community park will be provided and this must correspond with the timing of residential development to ensure that IBC residents will be properly served and that other recreation facilities will not be impacted.

To be adequate, a similar analysis should be provided for the public neighborhood parks. The RDEIR states,

A15c-14

"Neighborhood park requirements have been met in the past by in-lieu fees and/or incorporating on-site recreational amenities such as swimming pools, fitness centers, community rooms, and tot lots. Actual amenities provided within future development would be determined through the Park Plan process. For neighborhood park requirements not met on-site, remaining in-lieu fees would be allocated to the general IBC neighborhood park account to be used to provide and/or improve neighborhood parks available to IBC residents." (page 5.12-10)

To date, no public neighborhood parks have been provided in the IBC. The RDEIR indicates that,

"To supplement on-site neighborhood recreational facilities in the IBC, the City is attempting to create additional neighborhood-oriented park space in the IBC, as indicated



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by the four generalized neighborhood park spaces outlined in Figure 3-4, IBC Vision Plan Framework. These neighborhood level spaces would either be developed by the City using neighborhood park in-lieu fees collected from IBC projects, or be developed for public use as part of private mixed-use developments, in which developers would receive park credit for creating public open space on the project site. Specific park locations have not yet been determined at this time.” (page 5.12-10)

There is not a clear commitment or plan to ensure that these neighborhood parks are provided to correspond with new development and to ensure that other recreation facilities are not impacted. The RDEIR needs to address how and when the public neighborhood parks would be provided. This includes addressing the adequacy of in-lieu fees (see comment II.G) to acquire land within the IBC and the timing for providing these neighborhood parks so as not to impact other recreation facilities. In addition, the above statement indicates that the City is attempting to create additional neighborhood-oriented park space as indicated by the four generalized neighborhood park spaces. This appears to be in conflict with the IBC Element which states that there should be six neighborhood parks provided in the IBC (see comment II.C, above).

A15c-14
cont'd.

G. Adequacy of mitigation fees

The RDEIR states that “Within the IBC, Community Park dedication would only be provided through payment of in-lieu fees at the required two acres per 1,000...” (page 5.12-6). The RDEIR, however, fails to address the feasibility of acquiring the necessary parkland. The RDEIR itself indicates that there is a lack of vacant land within and surrounding the IBC. Developed, underutilized properties are most likely the properties that will need to be targeted for a new community park to serve the IBC. Therefore, the RDEIR must address whether or not the in-lieu fees, which are based on vacant land acquisition, are sufficient to purchase developed, underutilized properties in the area. This should include a complete analysis, including estimated land costs and an assessment of the amount of fees necessary to purchase the land. The assessment should also address timing of parkland development, which will influence anticipated land costs and requirements for fee collection.

A15c-15

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A15c. Response to Comments from City of Tustin – Remy, Thomas, Moose and Manley, Attachment C: Hogle-Ireland, dated February 16, 2010.

A15c-1 See response to Comments A15-28, A15-35, and A15-37. 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 (CEQA Guidelines Section 15146). Specific park locations and designs are unknown at this time. As noted in the Section 5.12, Recreation, of the RDEIR, all new residential development will be required to provide park facilities at a rate of five acres per 1,000 population, which is typical, and in some cases, greater than the park dedication rates for other jurisdictions in the South County. Bill Barber Park currently serves a population of approximately 20,000 within a two-mile service area radius, consistent with other community parks within the City. Community Park in-lieu fees collected from new residential development in the IBC have been used to provide its share of amenities at Bill Barber Park, or have been banked for planning, acquisition, and development of a park site south of Interstate 405.

The amount of parkland required for the pending projects is included in Table 5.12-4 in the RDEIR. 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. Bill Barber Park is listed in Table 5.12-1. Lead agencies are not required to generate their own original research; however, where specific information is currently available the analysis includes that information (CEQA Guidelines Section 15144).

See response to Comment A15-38. 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.

A15c-2 See response to Comment A15c-1. Impacts on surrounding park facilities are discussed on pages 5.12-10 through 5.12-12. Neighborhood parks, described in Table 5.12-2, are located in the Village of Westpark, directly adjacent to the IBC Vision Plan area, and therefore, provide additional amenity space beyond those provided in neighborhood parks within the IBC Vision Plan area. These parks serve a population of over 19,000 between the Westpark and IBC Vision Plan area. The neighborhood parks within the IBC Vision Plan area normally provide amenities on site, and not open to the public. Athletic fields, amenities not found in IBC neighborhood parks, are provided in both Bill Barber Park as discussed in response to comment A15c-1, and additional athletic fields are available in Westpark as outlined below (percentages indicate portions of facilities shared with Irvine Unified School District [IUSD]):



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		<i>Needed</i>	<i>Provided</i>	<i>Surplus/Deficit</i>
<u>Soccer, Unlighted</u>				
1 per 4,250	(20% City)	0.9 fields	Have 2	Extra 1
	(80% IUSD)	3.7 fields	Have 4	Extra 0
<u>Soccer, Lighted</u>				
1 per 8,500	(90% City)	2.1 fields	Have 3	Extra 1
	(10% IUSD)	0.2 fields	Have 0	Extra 0
<u>Ball Diamonds, Unlighted</u>				
1 per 2,500	(20% City)	1.5 fields	Have 3	Extra 2
	(80% IUSD)	6.3 fields	Have 5	Minus 1
<u>Ball Diamonds, Lighted</u>				
1 per 5,000	(75% City)	2.9 fields	Have 4	Extra 1
	(35% IUSD)	1.0 fields	Have 0	Minus 1

A15c-3 See response to Comment A15c-1, A15-37, and A15c-2. Lead agencies are not required to generate their own original research; however, where specific information is currently, available the analysis includes that information (CEQA Guidelines Section 15144). The commenter's assumptions regarding required park acreage is incorrect, and no documentation of their calculations for population by census group was provided for the City of Irvine to validate. In accordance with CEQA Guidelines Section 15384 substantial evidence must include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts.

The City's park standards, pursuant to the Quimby Act, allow for an actual reduction in park acreage with the provision of an equivalent level of on-site recreational amenities based on a current land appraisal to evaluate comparative amenity costs. The actual amount of neighborhood park land acreage in the IBC is less than the three acres per 1,000 required by code, since the neighborhood parks are fully improved with an equivalent level of amenities rather than just remaining as vacant land to be developed later. The commenter incorrectly states that no neighborhood park acreage is provided, where the RDEIR clearly states that neighborhood park facilities and amenities are provided, but are not public.

As detailed in Section 5.12, development pursuant to the IBC Vision Plan and Zoning Code would be required to submit a Park Plan application to establish park dedication requirements, to be provided, the amount of in-lieu fees, if any, and the allocation of those fees. These fees are used only for developing new or rehabilitating existing park or recreational facilities. Because in-lieu fees would mitigate impacts to park facilities by contributing to the expansion/improvement of park facilities within proximity to residents within the IBC, no significant impacts were identified. Furthermore, the IBC Vision Plan is adjacent to the San Diego Creek and the San Joaquin Freshwater Marsh, which is part of a larger open space system that provides regional parkland needs. The IBC Vision Plan would create an interconnected system of streets, bikeways, and trails connecting residential development to the wider system of open space, which helps satisfy the community's parkland demand.

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A15c-4 See response to Comment A15c-1, A15c-2, and A15c-3 regarding parkland demand. See response to Comment A15-38 regarding population estimates. The recreation section reiterates that Bill Barber Park serves the community park needs for the IBC population. The other community parks listed serve to indicate that there are large community parks throughout the City which serve similar population centers.

A15c-5 Distance is not the sole factor for determining the impact on surrounding cities parks and recreational facilities. The City is in agreement, the City of Irvine provides park facilities at a rate of five acres per 1,000. The City of Tustin has a citywide rate of three acres per 1,000. The approach to assessing parkland impacts is based on the availability of recreational amenities and the proximity of recreational amenities proximate to users. There is a multitude of parkland opportunities within the IBC Vision Plan area, within the City, and within proximity to the IBC Vision Plan area outside the area. Remaining parkland needs would be met through payment of in-lieu fees that are used for developing new or rehabilitating existing parkland and on-site recreational amenities provided within the residential developments. In addition, the proposed project would provide new recreational facilities that would exceed compliance with the City's park dedication standards as a result of creation of the interconnected system of streets, bikeways, and trails connecting residential development to the wider system of open space. Therefore, no significant impacts were identified.

In addition, the City of Tustin has built a large number of homes within the Tustin Legacy project without completing the necessary park facilities. The opening of the a new community park in Tustin Legacy was just opened as these responses are being prepared, and according to the Orange County Register ("Tustin's Citrus Ranch Park is Open to the Public," Feb. 27, 2010, this new park gives the City of Tustin a total park acreage of 2.6 per 1,000. Even with the construction of the final community park at Tustin legacy, the article notes that the City's park acreage would be 3.5 per 1,000, which is 1.5 per 1,000 less than that required by the City of Irvine.)

The neighborhood park in the Tustin portion of Columbus Grove has not yet been constructed, causing Tustin residents to use Sweet Shade Park in the City of Irvine portion of Columbus Grove, and to request the City of Irvine develop the vacant property along Harvard Avenue for a park for their use.

A15c-6 Future parks proposed as part of the Tustin Legacy project are noted. See also response to Comment A15-3 and A15c-5. The sample table is beneficial for Specific Plan level projects, normally completed by one major developer, and the nature of the proposed amenities are known. However, with the multiple-levels of ownership and the uncertainty of how different sites will develop, such an analysis would be speculative. The City's park standards outline the menu of options available for various neighborhood amenities.

A15c-7 The correct statement should be that four public neighborhood parks should be provided and a new community park site to serve the IBC should be provided south of Interstate 405, as shown on Figure 3-4 of the RDEIR.

A15c-8 See response to Comment A15-37 and A15-38 regarding the Alfred Gobar Surveys. 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.

A15c-9 See response to Comment A15-37 and A15-38 regarding the Alfred Gobar Surveys. The Alfred Gobar surveys had a response rate between 5 and 10 percent. Therefore, the use of the



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adopted population factor of 1.3 persons per household from the 2000 Federal Census for this project is considered more accurate and is justified.

- A15c-10 See response to Comment A15-37 and A15-38. 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.
- A15c-11 See response to Comment A15-37 and A15-38. Persons per household in the City is derived from the 2000 Federal Census. However, total population and employment projections are based on the Orange County Council of Governments (OCCOG) most recent update to the Orange County Projections (OCP). The City of Irvine acknowledges the use of regional data for population projections- a standards practice for all CEQA analysis of this issue- for consistency with regional planning efforts, and local data where required by law, in this case the Quimby Act. We would note that the Tustin Base Reuse EIR (SCH 94071005) (Chapter 3.2, Socioeconomics) even uses both local and OCP data for population and housing analysis).
- A15c-12 See response to Comment A15-37 and A15-38. 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.
- A15c-13 See response to Comment A15c-3 and A15c-5. Community parks are designed to serve more than one planning area. The City of Irvine acknowledges this misunderstanding by reiterating that while a site within the IBC is unlikely, the City is pursuing sites south of Interstate 405 in and adjacent to the IBC Vision Plan area for open space and/or community building facilities. The City denies, however, the assertion by the commenter that implementation of adequate mitigation through collection of in-lieu fees is infeasible. The City has the ability to use these fees to plan for and develop alternative community park facilities that meet the intent and requirements of the Quimby Act.
- A15c-14 See responses to comments A15c-1, A15c-5, and A15c-7. There is a multitude of parkland opportunities within the IBC Vision Plan area, within the City, and within proximity to the IBC Vision Plan area outside the area to satisfy parkland needs. Remaining parkland needs would be met through payment of in-lieu fees that are used for developing new or rehabilitating existing parkland and on-site recreational amenities provided within the residential developments. In addition, the proposed project would provide new recreational facilities that would exceed compliance with the City's park dedication standards as a result of creation of the interconnected system of streets, bikeways, and trails connecting residential development to the wider system of open space. Therefore, no significant impacts were identified. As detailed in Section 5.12, development pursuant to the IBC Vision Plan and Zoning Code would be required to submit a Park Plan application to establish park dedication requirements, to be provided, the amount of in-lieu fees, if any, and the allocation of those fees.
- A15c-15 See response to Comment A15c-13 and A15-61. There is a multitude of parkland opportunities within the IBC Vision Plan area, within the City, and within proximity to the IBC Vision Plan area outside the area to satisfy parkland needs. Remaining parkland needs would be met through payment of in-lieu fees that are used for developing new or rehabilitating existing parkland and on-site recreational amenities provided within the

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residential developments. In addition, the proposed project would provide new recreational facilities that would exceed compliance with the City's park dedication standards as a result of creation of the interconnected system of streets, bikeways, and trails connecting residential development to the wider system of open space. Therefore, no significant impacts were identified.



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LETTER A15d – Remy, Thomas, Moose and Manley, Attachment D (21 pages)

ATTACHMENT D

Excerpts from 1992 IBC PEIR



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The El Toro U.S.M.C.A.S. is located to the northeast of IBC, although aircraft noise from the station is not anticipated to affect the IBC project site. Commercial, office and industrial facilities, much like those in the IBC, are adjacent to the IBC boundary.

C. BACKGROUND AND HISTORY

Since the 1960's, the Irvine Business Complex (IBC) has transitioned from a low rise industrial complex to a major regional business center. With its emergence as a major business center, pressures to convert the existing light industrial uses within the complex to office uses grew. With this transition came significant traffic impacts. In order to gain control of the increasing traffic impacts, the City Council approved a rezoning of the complex in 1982 (for which a Final Environmental Impact Report was certified).

In order to encourage a mix of land uses and to partially mitigate traffic impacts, the 1982 ordinance established a development credit system allowing additional development for projects that provided a mix of uses. The land use intensity regulations in the 1982 zoning ordinance were based upon the projected traffic impacts. The 1982 EIR identified specific mitigation measures to address the impacts of development anticipated within the IBC. Between 1982 and 1985, substantial development activity occurred in the IBC which deviated from the pattern and distribution of development known in 1982. In 1985, a Supplemental EIR was certified which incorporated the new land use information and identified specific funding mechanisms to implement the circulation improvements necessary to accommodate changed development patterns as identified in the 1985 EIR. This remains the most recent comprehensive traffic mitigation analysis for IBC, as Intensity increases approved as part of GPA-16, discussed below, deferred any additional IBC-wide traffic mitigation to the IBC Rezoning effort.

In 1987, the City discovered that the IBC approvals exceeded the level studied in the 1989 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.

In 1988, the City initiated a rezoning effort to address many issues that inadvertently resulted from, or were not resolved during previous efforts. A list of goals and objectives for the project was prepared and submitted to the City Council. The concept of creating an "Urban Village" in the IBC stemmed from these goals and objectives to promote a more effective mix of land uses in an integrated urban pattern.

III-6

JN 28662-3

IRV 003447

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Following an extensive series of preliminary investigations, existing conditions analyses, and intensive planning and design efforts relating to the "Urban Village Concept," a "Composite Sketch Plan" for IBC was submitted on September 25, 1989. The Urban Village scenario was to be analyzed as the "Preferred Alternative".

In late 1989, the City adopted the Conservation Open Space General Plan Amendment (GPA-16), which established a maximum development intensity limit in the IBC of 48,25 million gross square feet of Business/Industrial uses and 3,571 units of residential development. Although based on the analyses conducted for the GPA-16 impacts that were identified related to the type and intensity of development within the IBC, no additional mitigation measures beyond the 1985 Supplemental EIR were proposed. Identification of a mitigation program was deferred to the current IBC effort, which was then underway. Currently, citywide interim zoning regulations are in effect to ensure that necessary revisions and amendments to the City's Zoning Ordinance (including the IBC) are completed to reflect the provisions of the General Plan.

In March of 1990, staff was given new direction by the City Council to prepare and analyze additional land use alternatives for initial review before the City Council.

Following extensive public discussions and review (including two publicized community workshops), the City determined that there is an essential set of issues related to the IBC. This relates to issues that require immediate attention and resolution. These are issues related to the excess approvals, and the inconsistencies between the Zoning Ordinance, the General Plan and the Circulation Improvements.

To ensure that the issues are addressed as part of the IBC Rezoning effort, with consideration for the order of their expediency, the City Council approved a work program for the Rezoning on October 23, 1990. A public scoping meeting was held by the City on February 20, 1991, to receive further input on the EIR and project. In May and June of 1991, the City of Irvine Planning Commission and City Council held public hearings on the IBC General Plan Amendment (GPA) and Rezoning Project and considered the Draft EIR that analyzed the environmental impacts of the proposed GPA and Rezoning. Due to concerns raised by the community and the neighboring jurisdictions, as well as issues raised by the City's Transportation and Planning Commission and the City Council, the City Council directed staff to revise the proposed Rezoning and GPA and to recirculate the Draft EIR which analyzes the environmental impacts of the revised GPA and Zone Change. As each legal parcel within the IBC will be allocated a total "Trip Budget", development within each parcel will be limited to generate the allocated trips. The Program EIR to be



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prepared at this time will address the impacts of the IBC Rezoning (addressing issues of immediate concern).

In May and June of 1992, the Planning Commission and the City Council of the City of Irvine held public hearings on the IBC GPA/Zone Change project and considered the recirculated Draft Program EIR that analyzed the environmental impacts of the proposed GPA and Rezoning. Due to concerns raised by small business and property owners within the IBC, the City Council formed an IBC Ad-Hoc Committee to address these concerns. The Ad-Hoc Committee consisted of representatives from the City Council, the Planning Commission, the Transportation Commission, the Irvine Chamber of Commerce, the Industrial League of Orange County, small business and property owners, and City staff members. Based on discussions within the Ad-Hoc Committee and direction received from the City Council, the following revisions were incorporated in the IBC GPA/Zone Change project:

Development Potential: The establishment of development potential for vacant and under-utilized parcels is based on a formula that recognizes existing development along with a reasonable potential for additional development for all parcels which are currently below a 0.25 Floor to Area Ratio (FAR) in office trips. This change could allow 2,766 million more square feet of additional office development potential, or 3,814 PM peak hour trips. This increase in the trip maximum will allow for more flexibility for the future development of parcels which currently have under a 0.25 FAR in office trips.

Occupancy Level: Based on additional information and analysis of historical and projected economic conditions, for non-residential development at buildout (Post-2010), a realistic projection of the maximum potential occupancy has been assumed. The occupancy level considered for analysis is 85% compared to 92% under the previous proposal. The revised assumption is deemed to be a more realistic projection based on data supplied by real estate brokers familiar with the development and business community within IBC (see Appendix J, OCCUPANCY LEVEL DATA).

Transfer of Development Rights (TDR): The IBC Zoning Ordinance will include a TDR mechanism that will allow for transfer of trips between parcels/sites in the IBC subject to a discretionary review process. The proposal also calls for the establishment of a TDR Fee to supplement the funding of circulation improvements. This TDR mechanism will allow for a percentage of the sales of the development

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rights to come back to the City, to be used for IBC roadway mitigation costs (see Appendix B, PROPOSED ZONING ORDINANCE).

Funding Programs and Development Phasing: A re-evaluation of the cost and revenue assumptions to identify funding needs has resulted in ways to reduce the funding shortfall by evaluating contingency needs and funding opportunities from other agencies. The revised funding analysis identifies alternate funding sources including consideration of readily available funds to address any potential shortfall such as 'Transfer of Development Rights Fees (see Appendix D, FUNDING PROGRAM).

The aforementioned changes constitute a mid-course correction for the IBC GPA/Zone Change project and are not considered to be of a significant nature.

The EIR will assess project impacts in each specified environmental issue area, and will suggest mitigation measures and/or alternatives to reduce those impacts to acceptable levels. As allowed by Section 15162 of State CEQA Guidelines, a Program EIR will be prepared. Impacts and mitigation measures will be identified for the IBC as a whole (at "Program" level of analysis), as well as anticipated benefits and impacts of recommended transportation improvement mitigation measures. Subsequent activities will be examined in the light of the Program EIR to determine whether any additional environmental documentation must be prepared.

D. PROJECT CHARACTERISTICS

The IBC General Plan Amendment and Rezoning Project includes a Zone Change (88-ZC-0135), General Plan Amendment (7234-GA), and the establishment of a Circulation Mitigation Program and revised Funding Program including a Fee Program.

Based upon the proposed zoning concept, the Planning Area will be divided into three districts. The Multi-Use District will be comprised of all portions of the planning area south of Barranca Parkway. Parcels with existing or previously approved residential projects will be zoned residential and will constitute the Residential District in the IBC. Residential development within IBC will be limited to the existing and previously approved projects. No additional residential units beyond the existing and approved projects will be allowed within IBC. The Industrial District will include the area north of Barranca Parkway, commonly known as the Construction Circle area.



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As each legal parcel within the IBC will be allocated a total "Trip Budget", development within each parcel will be limited to generate the allocated trips. Projects can use the total allocated AM and PM trips to propose various types of non-residential land uses. The proposed zoning concept provides additional flexibility to developers in terms of the selection of land uses. As a result, it is anticipated that certain land use compatibility issues may arise as developers introduce a variety of land uses throughout the IBC. To ensure that land use compatibility issues are considered while the IBC retains its mixed use character, the City will ensure that thorough environmental analysis is conducted on project proposals. In addition, the proposed zoning ordinance specifies master plan, conditional use permit or other discretionary review processes to ensure that all aspects of proposed projects, including land use compatibility, are analyzed. Appendix B is the proposed IBC Zoning Ordinance which includes the details of land use regulations, development intensity, development standards and special development standards within the IBC.

Included in the proposed IBC Zoning Ordinance is a mechanism for Transfer of Development Rights (TDR's). The TDR mechanism allows for the transfer of trips from parcel-to-parcel and site-to-site within the IBC boundaries. Each TDR application will be required to complete a discretionary review process to allow identification of all potential impacts of the TDR, and propose appropriate mitigation. The applicant will be required to submit a traffic study to identify and address any potential traffic impacts on the circulation system to a level of insignificance. All TDR applications will also be required to be associated with a project, so as to eliminate the "Banking" of development potential on sites which have no plans to utilize the additional potential. A TDR Fee base will also be established to fund the Funding Program for the implementation of circulation improvements (see Appendix B, PROPOSED ZONING ORDINANCE).

The purpose of the project will be to amend the present General Plan and Zoning intensity standard of approximately 48,255 million gross square feet of Business/Industrial uses and 3,571 units of Residential uses, with estimated actual existing, approved and projected development of approximately 55,818 million gross square feet of non-residential development and 3,896 residential units (this is the "Preferred Alternative" addressed in the project traffic study). A slight increase in the maximum residential units is proposed as compared to the Current General Plan (refer to Table 1, IBC LAND USE SUMMARY). The proposed project (with respect to zoning, land use and square footage) will include the existing projects and approvals (approvals include all Vesting Maps, Development Agreements, Conditional Use Permits, Master Plans, Zoning Compliance, and building permits for projects within the IBC that are near completion or that have already been approved). The project will also allow for a 0.25 Floor Area Ratio (FAR) of office

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equivalent development for vacant/under-utilized parcels. Under-utilized parcels are those which are currently developed to less than 0.25 FAR of office equivalency. The project includes transportation improvements and an associated phasing and fee program to provide acceptable levels of service. Traffic modelling for IBC is planned to assume a 15% commuter trip reduction for Transportation Demand Management (TDM) measures (rail transit will not be assumed although it will be included as a mitigation). The project includes the following land use provisions and key elements:

Zone Change (88-ZC-0135)

The intent of this rezoning is to establish a mitigation program that is capable of addressing the impacts of all existing and approved development including development resulting from a maximum of 0.25 FAR on vacant and under-utilized parcels. Under-utilized parcels are those which are currently developed to less than a 0.25 FAR of office-equivalent development, based on the proposed land uses for each parcel.

To fulfill this purpose, a draft Zoning Ordinance has been prepared that regulates development intensity based upon the amount of existing built, approved and development potential of up to 0.25 FAR of office equivalency on vacant and under-utilized parcels. The parcel-specific zoning will be implemented and monitored through the establishment of Trip Budgets which correspond to the total trip generation of the buildout of the existing, approved and projected land uses within each parcel. Thus, based on the new zoning regulations and the revised intensity limit (both square footage and trip maximums), a parcel-based system has been created that links land uses and intensities with the projected traffic and other impacts.

Included in the proposed IBC Zoning Ordinance is a mechanism for Transfer of Development Rights (TDR's). The TDR mechanism allows for the transfer of trips from parcel-to-parcel and site-to-site within the IBC boundaries. Each TDR application will be required to complete a discretionary review process to allow identification of all potential impacts of the TDR, and propose appropriate mitigation. The applicant will be required to submit a traffic study to identify and address any potential traffic impacts on the circulation system to a level of insignificance. All TDR applications will also be required to be associated with a project, so as to eliminate the "Banking" of development potential on sites which have no plans to utilize the additional potential. A TDR Fee has also been established to supplement the Funding Program for the implementation of circulation improvements (see Appendix B, PROPOSED ZONING ORDINANCE).



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The proposed total development intensity and its allocation to the individual parcels within the IBC is based upon a Database compiled by the City's Community Development Department. The database, following an extensive public review process, was approved by the City Council in January 1991, and identifies the total square footage in existing, approved and remaining potential, as well as the trip maximums based on the legal parcel boundary. On a parcel-by-parcel basis for the entire IBC, the new zoning will amend development intensity as well as land use regulations within IBC. Modification of boundary areas of the zoning ordinance will be implemented and the revised General Plan intensity cap will be documented in the zoning ordinance through the zone change (see Appendix B, PROPOSED ZONING ORDINANCE).

General Plan Amendment (Project No. 7234-GA)

The project will update the General Plan regarding maximum allowable building intensity standards (in both total square footage, and also trips generated by parcel) in the IBC, and will reflect any changes to the land use designations and circulation system necessitated by the rezoning. The General Plan building intensity standard will be increased to approximately 55,078 million gross square feet of business and industrial uses and would generate 63,346 AM trips, 76,055 PM trips and 811,296 average daily trips (ADT), as compared to its present building intensity standard of 48,255 million gross feet which generates 60,292 AM trips, 71,212 PM and 748,960 ADT. The project permits 3,896 residential units which would generate 1,949 AM trips, 2,027 PM trips, and 24,545 ADT, of which 403 units are existing, and are generating a total of 201 AM trips, 209 PM trips, and 2,494 ADT (refer to Table 2, IBC TRIP GENERATIONS BY LAND USE). The General Plan Amendment will amend the Building Intensity Standards in the Land Use Element Figures A-7 (INDUSTRIAL INTENSITY STANDARDS) and A-10 (RESIDENTIAL INTENSITY), Objective A-4 (INTENT OF THE GPA AND ZONE CHANGE), the Housing Element Figures C-1 (GENERAL PLAN POTENTIAL RESIDENTIAL DEVELOPMENT) and C-2 (DWELLING UNIT RANGE), and Objective C-7 (IMPLEMENTING ACTION), and the Circulation Element Figure D-5 (ARTERIAL HIGHWAY DESIGNATION). Also, please refer to Appendix C, SUMMARY OF REVISIONS FOR GENERAL PLAN AMENDMENT. The Circulation Element will require an amendment for the segment of Redhill Avenue between Main Street and MacArthur Boulevard from "Primary" to "Major" arterial (other road widenings are occurring on major arterials and therefore will not require a Circulation Element Amendment).

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Table 1

IBC LAND USE SUMMARY

LAND USE	EXISTING (as of 7-15-92)	*CURRENT GENERAL PLAN AND ZONING	IBC GPA AND REZONING
Office	23.033 million S.F.	39.209 million S.F.	32.019 million S.F.
Retail	1.197 million S.F.	1.524 million S.F.	2.051 million S.F.
Hotel	1.571 million S.F.	2.732 million S.F.	2.580 million S.F.
Industrial/Warehouse	14.046 million S.F.	4.790 million S.F.	14.097 million S.F.
Residential (Dwelling Units)	403 D.U.	3,571 D.U.	3,896 D.U.**
"Zoning Potential"			5.072 million S.F.***
TOTAL	39.846 million S.F. 403 D.U.	48.255 million S.F. 3,571 D.U.	55.818 million S.F. 3,896 D.U.

TOTAL NET INCREASE

Over Existing Conditions: 15.972 million SF (3,493 DU)
Over Current General Plan: 7.563 million SF (325 DU)

S.F. = Square Feet
D.U. = Dwelling Units

Source: City of Irvine

* Note: Current General Plan and Zoning Ordinance Land Uses are consistent with modelling assumptions for traffic, noise and air quality. Specific land uses and corresponding building intensities for buildout projects are not legislated in the City's General Plan and Zoning Ordinance.

** Note: Includes the 87 dwelling units in the McGraw Apartments and the 360 density bonus dwelling units for Park Place Apartments.

*** Note: Zoning Potential was calculated using a 0.25 FAR office equivalency for each parcel currently developed to less than a 0.25 FAR office equivalent.

III-13

JN 28662-1

IRV 003454

2. Response to Comments

Traffic Improvement Mitigation Program and Funding Program

The project also includes a circulation improvement Mitigation Program, and a Funding Program including a Fee Program to implement the necessary circulation improvements within IBC. The Mitigation Program specifies the physical nature and priority of the necessary circulation improvements. The Funding Program including a Fee Program is based on traffic forecasts contained in Appendix F, TRAFFIC STUDY, and preliminary cost estimates for critical transportation improvements needed to achieve acceptable Levels of Service. The total cost for transportation improvements is estimated at approximately \$222.222 million. The Funding and Fee Programs are included in Appendix D, FUNDING PROGRAM.

Land Use Database

The proposed development building intensity standard within IBC of 55.818 million square feet of non-residential development and 3,896 residential units, resulting in 63,346 AM trips, 76,035 PM trips, and 811,296 ADT, is based on the following (see Table 1, LAND USE SUMMARY, Table 2b and Exhibit 4, MAJOR IBC PROJECTS, and Appendix E, LAND USE DATABASE):

39.846 million square feet Existing
48.255 million square feet Current General Plan
55.818 million square feet TOTAL MAXIMUM PERMITTED

Major IBC Projects

The following is a brief description of the ten (10) projects within the IBC that have been approved or are near completion. For additional information regarding the Major IBC Projects (the big 10), refer to Section IV.B, LAND USE, under "IBC Major Projects".

Douglas Plaza: The Douglas Plaza project is situated along the southern boundaries of the IBC and is bordered by MacArthur Boulevard on the west, Campus Drive on the south and Von Karman Avenue on the east. The project includes approximately 1,799,630 SF (square feet), consisting of approximately 1,600,935 SF of office, 68,300 SF of retail, 153,720 SF of hotel, and 86 dwelling units.

2. Response to Comments

Table 2a

IBC TRIP GENERATIONS BY LAND USE

LAND USE	1992 PROJECTED EXISTING	CURRENT GENERAL PLAN	IBC GPA AND REZONING PROJECT
Office	28,271 AM trips 30,716 PM trips 306,248 ADT	51,071 AM trips 54,462 PM trips 542,887 ADT	41,624 AM trips 44,186 PM trips 440,902 ADT
Retail	3,046 AM trips 8,334 PM trips 100,555 ADT	3,871 AM trips 10,604 PM trips 127,974 ADT	5,213 AM trips 14,278 PM trips 172,249 ADT
Hotel	975 AM trips 1,579 PM trips 23,190 ADT	1,409 AM trips 2,278 PM trips 33,480 ADT	1,625 AM trips 2,629 PM trips 38,640 ADT
Industrial/ Warehouse	6,058 AM trips 5,637 PM trips 62,712 ADT	2,156 AM trips 2,011 PM trips 22,129 ADT	6,345 AM trips 5,919 PM trips 65,125 ADT
Residential	201 AM trips 209 PM trips 2,539 ADT	1,785 AM trips 1,857 PM trips 22,496 ADT	1,949 AM trips 2,027 PM trips 24,545 ADT
"Zoning Pot"			6,590 AM trips 6,996 PM trips 69,835 ADT
TOTAL	39,151 AM trips 46,475 PM trips 495,244 ADT	60,292 AM trips 71,212 PM trips 748,966 ADT	63,346 AM trips 76,035 PM trips 811,296 ADT

TOTAL NET INCREASE

Over 1992 Projected Existing Conditions:

24,195 AM trips
29,560 PM trips
316,052 ADT

Over Current General Plan:

3,054 AM trips
4,823 PM trips
62,330 ADT

AM = Peak morning hour trips generated

PM = Peak evening hour trips generated

ADT = Average Daily Trips generated

GPA = General Plan Amendment

Source: City of Irvine

2. Response to Comments

Table 2b.

MAJOR IBC PROJECTS

PROJECT NO.	PROJECT	EXISTING S.F.	LAND USE	BUILD OUT S.F.
1.	DOUGLAS PLAZA	862,865	office	1,600,935
		43,957	retail	68,300
		153,720	hotel	153,720
		0	Indust/Wrhs	15,000
		1,060,542	Total	1,799,630 86 D.U.
2.	KOLL EAST	122,288	office	437,000
		25,260	Indust/Wrhs	0
		147,548	Total	437,000
3.	PARK PLACE	1,965,215	office	3,699,194
		0	retail	324,700
		0	hotel	160,000
		33,000	Indust/Wrhs	0
		1,989,215	Total	4,183,894 1,802 D.U.
4.	MOLA	0	office	497,070
		0	retail	240,080
		0	hotel	373,840
		0	Total	1,110,990 1,119 D.U.
5.	LAKESHORE TOWERS	407,789	office	810,000
		6,000	retail	113,440
		413,789	Total	923,440
6.	KCI WHITE	576,814	office	751,511
		7,500	retail	7,500
		584,314	Total	856,041
7.	KCI BLACK	888,628	office	1,087,810
		33,642	retail	33,642
		336,700	hotel	336,700
		1,258,970	Total	1,458,152

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JN 28662-3

IRV 003457

2. Response to Comments

Table 2b.
(Continued)

MAJOR IBC PROJECTS

PROJECT NO.	PROJECT	EXISTING S.F.	LAND USE	BUILD OUT S.F.
8.	KCI NORTH	1,422,502	office	2,302,420
		176,750	retail	191,982
		420,310	hotel	895,745
		58,336	Indust/Wrhs	77,281
		--	zon.pot.	108,257
		2,186,155	Total	3,575,685
9.	JAMBOREE CENTER	1,699,386	office	1,840,000
		3,267	retail	23,000
		423,500	hotel	423,500
		2,126,153	Total	2,286,500
		10.	CENTURY CENTER	525,118
2,604	retail			23,750
86,500	hotel			86,500
86,000	Indust/Wrhs			0
--	zon.pot.			21,477
700,222	Total			992,421
GRAND TOTAL		10,466,908 S.F. 0 D.U.	17,623,753 S.F. 3,007 D.U.	

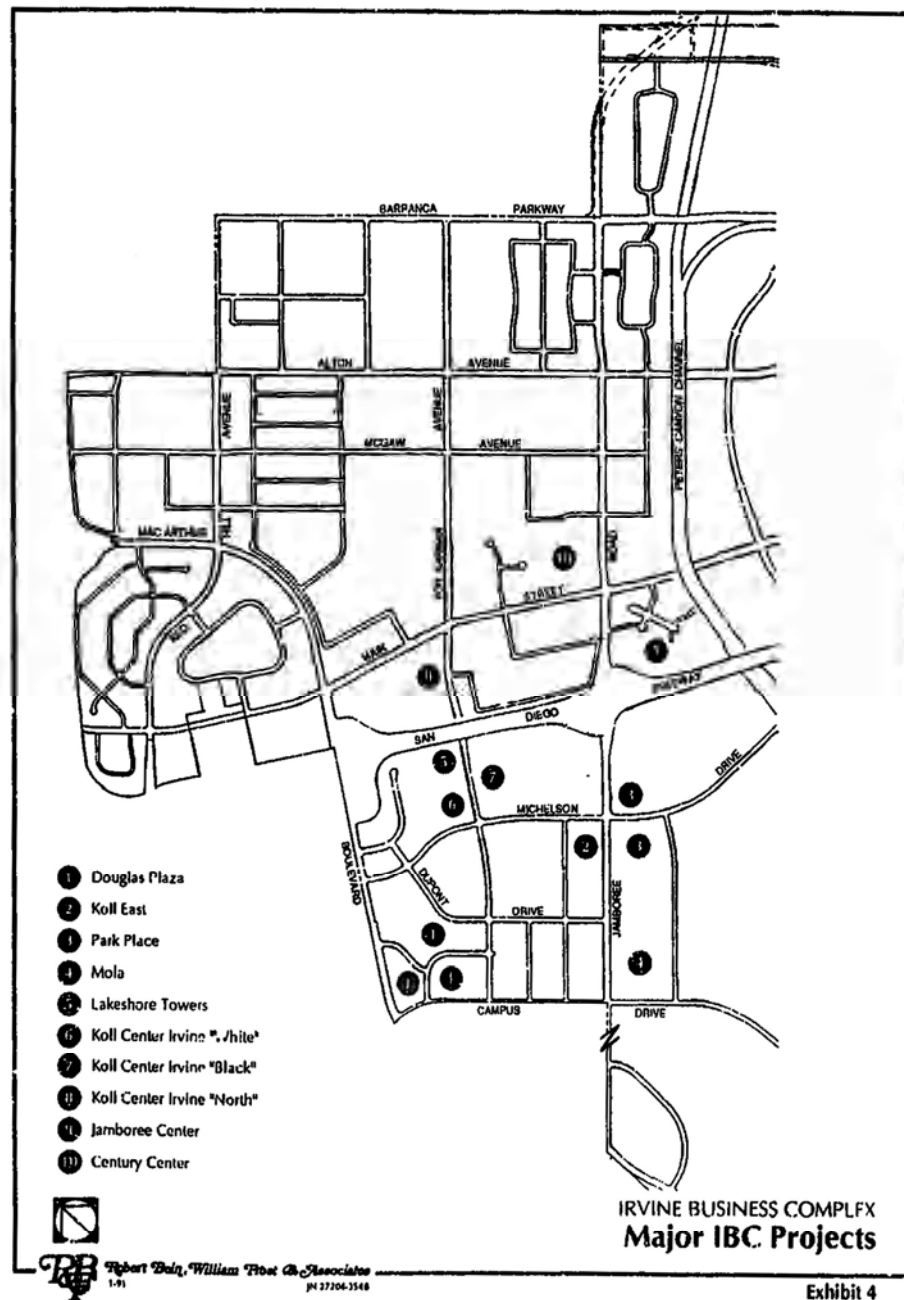
NET INCREASE PROPOSED: 7,156,845 S.F.
3,007 D.U.

KCI = Koll Center Irvine
S.F. = Square Feet
D.U. = Dwelling Units
Indust/Wrhs = Manufacturing/Warehouse/Service Industrial Uses
Zon. Pot. = Zoning Potential (assumed to be office)

Source: City of Irvine

Note: Several industrial developments will also be permitted to expand their existing facilities within the IBC (including, but not limited to Allegan Corporation, Baxter and Kendall/McGraw), the McGraw Apartments which include 87 D.U., as well as the 360 D.U. for the Park Place Density Bonus.

2. Response to Comments



IRV 003459

2. Response to Comments

Koll East: The Koll East project is situated directly west of the Park Place project and is bordered by Teller Avenue on the west, Michelson Drive on the north, and Jamboree Boulevard on the east. The project includes approximately 437,000 SF, which will all be designated for office uses.

Park Place: The Park Place project is located on the eastern boundary of the IBC, directly south of the I-405, and lies between Jamboree Boulevard on the west and the San Diego Creek Channel on the east. A portion of the project is south of Michelson Drive, bounded on the east by Carlson Avenue. The project is to include approximately 4,183,894 SF, consisting of approximately 3,699,194 SF of office, 324,700 SF of retail, 160,000 SF of hotel and 1,802 dwelling units (1,442 dwelling units, plus 360 Density Bonus dwelling units).

Mola: The Mola project is situated directly south of the Park Place project, with its western boundaries along Jamboree Boulevard and its eastern boundaries along Carlson Avenue. The project will include approximately 1,110,990 SF, consisting of approximately 497,070 SF of office, 240,080 SF of retail, 373,840 SF of hotel and 1,119 dwelling units.

Lakeshore Towers, Koll Center Irvine "White", and Koll Center Irvine "Black": These projects are located in the west central area of the IBC. The Lakeshore and the Koll Center "Black" projects are bordered by the I-405 Freeway on the north, and are divided by Von Karman Avenue on the east and west, respectively. The Koll Center "White" is bordered by the Lakeshore Towers project on the north, Von Karman Avenue on the east, and Michelson Drive on the south.

The Lakeshore Towers Project consists of approximately 923,440 SF, with approximately 810,000 SF for office and 113,440 SF for retail. The Koll Center "White" project consists of approximately 856,041 SF, with approximately 751,511 SF for office, 7,500 SF for retail and 97,030 SF of undesignated use (assumed as office). The Koll Center "Black" project consists of approximately 1,458,152 SF, which includes approximately 1,087,810 SF of office, 33,642 SF of retail and 336,700 SF of hotel.

Koll Center Irvine "North": The Koll Center Irvine "North" project is located directly north of the Lakeshore Towers project and is bordered by Main Street on the north, Von Karman Avenue on the east and the I-405 Freeway on the south. The project includes approximately 3,575,685 SF, consisting of approximately 2,302,420 SF of office, 191,982 SF of retail, 845,743



2. Response to Comments

SF of hotel, 77,281 SF of industrial/warehouse and 108,257 SF for "zoning potential" (assumed as future office).

Jamboree Center: The Jamboree Center project is located along the eastern boundary of the IBC, directly north of I-405, and lies between Jamboree Road on the west and the San Diego Creek on the east. This Project will include a total of approximately 2,286,500 SF, consisting of approximately 1,846,000 SF of office, 23,000 SF of retail, and 423,500 SF of hotel.

Century Center: The Century Center project is located in the central eastern area of the IBC and is bordered by Jamboree Boulevard on the east and Main Street on the south. The project includes approximately 992,421 SF, which includes approximately 860,694 SF of office, 23,750 SF of retail, 86,000 SF of hotel, and 21,477 SF of "zoning potential" (assumed as future office).

Additionally, application for the McGaw residential project, which will include 87 dwelling units within the IBC, was deemed complete prior to January 1, 1991, and is included as an approved project within the IBC.

E. PROJECT OBJECTIVES

Objectives of the Irvine Business Complex (IBC) Rezoning Project include the following:

- Establish a traffic mitigation Phasing Plan and revised Fee Program and/or alternatives to a revised Fee Program.
- Revise the present General Plan/Zoning Interim Building Intensity Standard of 48.255 million gross square feet with estimated actual existing and approved development of approximately 55.818 million gross square feet.
- Allow for a maximum 0.25 FAR of office equivalent development for all vacant parcels and parcels that are currently built under 0.25 FAR of office equivalent development (under-utilized parcels).
- Provide consistency between the City's Zoning Ordinance, the General Plan, and the circulation improvements within the IBC.

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JN 28662-3

IRV 003461

2. Response to Comments

F. PROJECT PHASING

In order to meet the objectives of the IBC Project, the Project includes the Program EIR for the IBC rezoning which will address impacts and feasible mitigation measures to reduce such impacts.

Actual phasing for the IBC Rezoning Project has not been determined as the project involves an area-wide Zone Change and General Plan Amendment and does not include individual detailed development plans for parcels within IBC. However, there are several existing agreements, entitlements, or approvals that are near completion or are already approved which are expected to be substantially built out within 5 to 15 years. The total IBC development cap may not be realized for 20 years or more.

G. AGREEMENTS, PERMITS AND APPROVALS

Agreements and approvals will be required as a part of the IBC Rezoning Project. Following distribution of the Draft EIR, a 45-day public review period is provided for public comment, in accordance with CEQA.

At the end of the 45-day review period and following responses to comments on the Draft Program EIR, the Irvine City Council will determine the adequacy of the Final EIR following public hearings and a recommendation by the Planning Commission. The Final EIR includes the revised Draft EIR, comments received during the 45-day public review period, and responses to the comments. Following a determination that the Final EIR is adequate and certification of the EIR by the City Council, a Notice of Determination will be issued by the City should the project be approved.

The following is a list of responsible agencies and the associated approvals and agreements anticipated to be required for the proposed project:

<u>Responsible Agency</u>	<u>Agreement/Approval</u>
City of Irvine City Council	▪ Final EIR Certification
	▪ Zone Change

HI-21

JN 28462-3

IRV 003462



2. Response to Comments

- * General Plan Amendment (Land Use, Housing and Circulation)
- * Phasing Plan
- * Reduced Fee Program

NOTE: Individual projects within IBC will require a separate review and approval process, including appropriate environmental documentation.

III-22

JN 28662-3

IRV 003463

VI.I. INVENTORY OF UNAVOIDABLE SIGNIFICANT IMPACTS

A. CIRCULATION AND TRAFFIC

The IBC Rezoning Project will have a significant impact on traffic and circulation within and surrounding the IBC. Although mitigation measures will help reduce impacts to the extent feasible, several intersections and road segments within and surrounding the IBC will not meet City performance criteria, which is considered a significant impact as a result of the IBC General Plan Amendment and Rezoning Project. Implementation of the above mentioned transportation measures and existing ordinances/programs relative to transportation management with the intent of reducing the single occupant vehicle, will further reduce this significant impact, but are not anticipated to avoid significant intersection and roadway capacity deficiencies.

B. LAND USE

Project implementation will result in a General Plan Amendment and Zone Change for the IBC, which will permit significant additional intensity over specific areas within IBC and the current General Plan land uses in zoning districts. Due to Skypark Circle's geographic relationship with John Wayne Airport, this area will continue to be impacted by commercial and private aircraft overflight, as it lies within a major air traffic corridor. Significant impacts may remain with respect to crash hazards in the Skypark Circle vicinity, due to Skypark's close proximity to John Wayne Airport and several areas within the IBC may be impacted by right-of-way acquisition necessary for proposed road improvements.

D. PUBLIC SERVICES AND UTILITIES

The following identifies issues which maintain a level of significance after mitigation.

The potential buildout of the IBC will result in the need for additional public park and educational facilities. Although parkland dedication and/or fees will meet minimum City requirements, school facility fees will contribute toward financing new district educational facilities, and a commitment from SAUSD/TUSD/IUSD that enrollment will be provided, project implementation of non-residential and residential development may result in significant impacts (depending on the nature of future development approvals).

VIII-1

JN 28662-8

IRV 003732



2. Response to Comments

As there are presently no schools within the IBC boundaries, SAUSD estimates the student population generated from the proposed 3,534 dwelling units is a significant impact to the District. Although required developer fees will substantially reduce this impact, the lack of schools within the IBC is considered an unavoidable adverse impact with the proposed zoning.

E. RELEVANT PLANNING

Other than physical impacts discussed in other sections, no significant relevant planning impacts are anticipated with implementation of the required plan amendments.

F. AIR RESOURCES

The proposed IBC GPA and Rezoning Project exceeds the regional forecasts by representing a significant cumulative amount of air emissions.

G. NOISE

Noise produced as a result of the IBC Rezoning would not significantly alter the noise environment in the area. However, during evening and late night periods of low ambient noise, truck noise would be distinctly perceptible to an observer located outdoors. With interior and exterior noise mitigation to residential units adjacent to Main Street through Westpark, and Barranca Parkway through Planning Area 38, cumulative noise levels will be brought to a level of insignificance. However, from second story units with the windows open, individual trucks may still be clearly heard. With windows closed, interior noise levels due to trucks should be largely unnoticed.

Significant aircraft attributed to John Wayne Airport and MCAS(H) Tustin will continue to be a major existing noise source for areas throughout the IBC.

H. WATER RESOURCES

Implementation of the above mitigation measures are expected to reduce any adverse impacts associated with flood control and water quality to a less than significant level. Significant impacts will remain, however, due to potential dam inundation (although the likelihood of dam failure is considered low).

2. Response to Comments

I. PUBLIC HEALTH AND SAFETY

Implementation of the recommended mitigation measures, as well as those within site specific studies, are anticipated to reduce potential impacts to less than significant levels.

J. BIOLOGICAL RESOURCES

With implementation of recommended mitigation measures, no significant impacts are anticipated to biological resources.

K. CULTURAL RESOURCES

Although certain previously unidentified cultural resources may be damaged during future grading activity, required mitigation measures are anticipated to reduce potential impacts to less than significant levels.

L. EARTH RESOURCES

The proposed mitigation measures provide for appropriate geotechnical investigations and incorporation of necessary land use design changes into the project at subsequent levels of review. These actions can reduce seismic hazards to levels currently acceptable to the City. Despite these actions, locally significant structural and infrastructure damage can be expected as the result of a major earthquake centered near the project area.

M. POPULATION AND HOUSING

No significant impacts are anticipated regarding housing and employment in the IBC upon project implementation. Adherence to the Housing Element of the City's General Plan, which is aimed at the provision of adequate housing supplies, including lower-cost housing, will help ensure adequate housing availability within the City and IBC.



2. Response to Comments

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2. Response to Comments

A15d. Response to Comments from City of Tustin – Remy, Thomas, Moose and Manley, Attachment D: Excerpts from 1992 IBC PEIR, dated Year 1992.

A15d-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.



2. Response to Comments

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2. Response to Comments

LETTER A15e – Remy, Thomas, Moose and Manley, Attachment D (3 pages)

ATTACHMENT E

Memorandum from LSA Associates, Inc. to
Irvine planner Pamela Sapetto, dated
December 5, 2000



2. Response to Comments

DEC-05-2000 10:11

GOVERNMENT SOLUTIONS

949 717 7942 P.84/87

LSA

LA ASSOCIATES, INC.
4725 EAGLE PLAZA, SUITE 200
TUSTIN, CALIFORNIA 92680

949-461-1515 FAX
949-461-1515 FAX

OTHER OFFICES:
STANLEY
PP. 21000000 21000000

MEMORANDUM

DATE: December 5, 2000
TO: Pamela Sapetto
FROM: Tony Petros
SUBJECT: Mola Centre Project Trips Entitlement History

I have prepared the attached table showing the approved trip history of the Mola Centre site (Entitlement No. 89-1356). According to the Mola Centre Traffic Impact Analysis dated February, 1989, the Mola Centre project would have generated 36,664 daily trips, 1,884 a.m. peak hour trips, and 2,907 p.m. peak hour trips. This project was approved in February, 1989. Subsequent to this approval, the Toustana Apartments community was built, entitling 5,643 daily, 287 a.m. peak hour, and 349 p.m. peak hour trips of the Mola Centre approved.

Currently, the Campus Centre project is proposing two phases of development on the Mola Centre site. The first phase, approved in 1999 (Case No. 48163-CF99), will generate approximately 2,710 daily, 115 a.m. peak hour, and 219 p.m. peak hour trips. The full set of Campus Centre is forecast to generate an additional 10,472 daily, 537 a.m. peak hour, and 968 p.m. peak hour trips.

As shown on the attached table, the Toustana Apartments project plus the set of the Campus Centre project is estimated to generate 17,826 daily, 1,487 a.m. peak hour, and 1,831 p.m. peak hour trips. As a result, approximately 18,833 daily, 299 a.m. peak hour, and 1,276 p.m. peak hour trips from the original Mola Centre entitlement will remain unused and available as remaining unused potential.

If you have any questions or need additional information, please contact me at (949) 553-8666.

Attachment

12500000Sept00History_Memo_v020

2. Response to Comments

18/11

GOVERNMENT SOLUTIONS

349 717 7942 P.05/07

12/15/00 (1/15/00) (1/15/00) (1/15/00)

Mala Centre Entitlement History

Land Use	Size	Units	Total ADT	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
Approved Mala Centre ¹									
Office	482.57	TSP	6,925	526	125	651	154	512	666
Family Restaurant	15.75	TSP	3,164	169	132	301	92	81	173
High Quality Restaurant	15.75	TSP	1,506	6	1	7	43	20	63
High Quality Restaurant w/Entertainment	20.00	TSP	1,912	8	1	9	55	25	80
Retail	41.60	TSP	3,264	11	4	15	103	116	219
Health Club	90.00	TSP	3,600	86	38	144	194	130	324
Theatre	2,600	Seats	4,680	0	0	0	260	104	364
Motel	450	Rooms	4,500	113	77	190	185	122	307
Residential	1,119	DU	7,050	112	448	560	492	213	705
Day Care	8.00	TSP	63	5	4	9	3	3	6
Total Mala Centre Entitlement			34,664	1,836	850	1,886	1,581	1,326	2,907
Toltec Apartments									
Residential	563	DU	3,643	51	236	287	236	113	349
Total Toltec Apartments			3,643	51	236	287	236	113	349
Phase I Campus Centre ²									
Office	252.00	TSP	3,330	233	70	303	66	223	289
Retail/Commercial	10.00	TSP	380	8	8	16	15	15	30
Total Phase I Campus Centre			3,710	241	78	319	81	238	319
Campus Centre Buildout ³									
Office	252.00	TSP	3,330	233	70	303	66	223	289
Retail/Commercial	7.00	TSP	267	8	5	11	10	11	21
Motel	258	Rooms	2,172	100	68	168	105	88	193
Restaurants	8.00	TSP	1,240	63	63	126	70	60	130
Apartments	535.00	DU	3,461	44	225	279	225	107	332
Total Campus Centre Buildout			10,473	448	431	881	476	489	963
Total Final Trips			17,738	741	345	1,087	791	840	1,631
Trips Remaining On-Site			10,838	294	105	399	790	486	1,276

¹ Mala Centre Traffic Impact Analysis, February 24, 1988.

² Kell Center South Interior Phase I Access Study, December 10, 1999.

³ Draft Campus Centre Traffic Impact Analysis, October 12, 2000.

12/15/00 (1/15/00) (1/15/00) (1/15/00)

C-09-001799

2C-09-001303

2. Response to Comments

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2. Response to Comments

A15e. Response to Comments from City of Tustin – Remy, Thomas, Moose and Manley, Attachment E: Memorandum from LSA Associates, Inc., to Irvine Planner Pamela Sapetto, dated December 5, 2000.

A15e-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.



2. Response to Comments

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2. Response to Comments

LETTER O1 – The Colton Company (2 pages)



THE COLTON COMPANY

February 3, 2010

Via e-mail: [hjacobson@ci.irvine.ca.us](mailto:hjacobs@ci.irvine.ca.us)

Mr. Bill Jacobs
CITY OF IRVINE
Community Development
One Civic Center
Irvine, California 92614

Subject: Comments on Recirculated Draft Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code Environmental Impact Report

Dear Mr. Jacobs:

As owner of property within the Irvine Business Complex, we have specific questions on implementation of certain aspects of the Vision Plan and Mixed Use Overlay Zoning EIR, recirculated December 23, 2009. For the record, The Colton Company and its affiliates own the properties corresponding to the following addresses:

2171 Campus	18952 MacArthur	2192 Martin
2301 Campus	18872 MacArthur	2222 Martin
2361 Campus	18912 MacArthur	2302 Martin

- | | |
|---|------|
| 1. How is the City of Irvine handling Transfers of Development Rights (TDRs) between Traffic Analysis Zones (TAZs)? Will the TDR procedures outlined in the current IBC Zoning (Zoning Code Section 9-36-17) remain as it is today, or is the City changing the procedures? Please explain. | O1-1 |
| 2. Please explain who has ownership and/or control over the "Potential Residential" units in a given TAZ. For example, TAZ 534 includes an allocation of 211 Residential Units under the Optimization program. Since 2302 Martin Street has the existing development rights, please confirm the allocation of 211 Residential Units belongs to 2302 Martin. | O1-2 |
| 3. Please confirm that all development rights granted and allocated in the current IBC Data Base and Zoning remain with the property, and that the IBC Vision Plan has no direct affect on reducing any development rights. | O1-3 |

2301 CAMPUS DRIVE, SUITE 200, IRVINE, CA 92612 • TEL: (949) 475.4200 • FAX (949) 476.8554



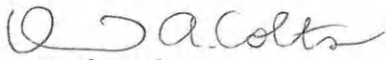
2. Response to Comments

Mr. Bill Jacobs
CITY OF IRVINE
February 3, 2010
Page 2

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,

THE COLTON COMPANY



David A. Colton
President

cc: Pamela Sapetto, Sapetto Group, Inc.
Eric Rubery, Sapetto Group, Inc.

P:\IBC\Colton-IBC Vision Plan EIR Comment Letter_DRAFT.doc

2. Response to Comments

O1. Response to Comments from David A. Colton, President, The Colton Company, dated February 3, 2010.

- O1-1 The Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone as the receiving site will not be required to process a Conditional Use Permit for the TDR.
- O1-2 No ownership/or control is assumed for the potential units allocated to a certain TAZ. These units were added considered for land use modeling assumptions and may or may not ultimately used within the TAZ in which they were identified in the traffic model. All IBC properties maintain their current entitlements in the IBC database, and the remaining potential units are available as alternative development potential on a first come-first serve basis.
- O1-3 No changes are proposed to existing entitlements in the IBC database, and no development rights are reduced. The IBC Vision Plan model only assumes changes to the database for projects and TDRs currently in process.



2. Response to Comments

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2. Response to Comments

LETTER O2 – Connor, Fletcher & Williams LLP (7 pages)

EDMOND M. CONNOR MATTHEW J. FLETCHER MICHAEL R. WILLIAMS DOUGLAS A. HEDENKAMP SHIRY TANNENBAUM	C F W CONNOR, FLETCHER & WILLIAMS LLP ATTORNEYS AT LAW	February 4, 2010
VIA E-MAIL AND OVERNITE EXPRESS		
Bill Jacobs, AICP Principal Planner City of Irvine Community Development Department P.O. Box 19575 Irvine, California 92623-0575		
Re: <i>DEIR for IBC Vision Plan and Overlay Zoning Code</i>		
Dear Mr. Jacobs:		
We are the attorneys for LBA Realty, LLC; LBA IV-PP-Land, LLC; LBA IV-PPI-A, LLC; and LBA IV-PP-PS5, LLC (collectively, "LBA"). LBA owns the land that remains to be developed at Park Place, the residential/mixed use development located at Jamboree and Michelson in the City of Irvine (the "City"). LBA currently holds all of the rights, benefits, and entitlements arising under (1) that certain "Park Place Development Agreement," dated October 24, 2002 (the "Development Agreement") and (2) that certain "Settlement Agreement (Park Place Development Agreement)," dated as of December 12, 2007.		
O2-1	LBA has asked our firm to provide you with LBA's comments on the re-circulated Draft Environmental Impact Report for the IBC Vision Plan and Overlay Zoning Code (the "Vision Plan EIR"). We have also been asked to submit comments on certain aspects of the General Plan Amendment, Zoning and Municipal Code Amendments, and Design Criteria (collectively, the "Project") addressed in the Vision Plan EIR.	
	As a threshold matter, let me commend the City on successfully completing the herculean task of preparing and revising the Vision Plan EIR. The City has obviously worked very hard to provide the public with a thorough and informative analysis of the environmental effects and feasible mitigation measures associated with the Project. This was certainly a costly and time-consuming undertaking for the City, but the end-product appears to have been well worth the effort.	
O2-2	LBA's comments on the Vision Plan EIR and the Project generally fall into two categories: (1) comments regarding how certain plans, programs, and policies ("PPPs"), project design features ("PDFs") mitigation measures ("MMs"), General Plan policies and Zoning Code requirements that are being proposed as part of the Project would be inconsistent and in conflict with the terms of the Development Agreement and thus would not be applicable to Park Place; and (2) comments regarding how the Development Agreement would prevent the	
	2600 MICHELSON DRIVE, SUITE 1450 IRVINE, CALIFORNIA 92612 T: 949.622.2600 F: 949.622.2628 E-MAIL: ec Connor@businessll.com	



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Bill Jacobs, AICP
February 4, 2010
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City from requiring LBA to dedicate the land or right-of-way needed to construct certain public improvements at Park Place that are shown in the Vision Plan EIR.

O2-2
cont'd.

I. COMMENTS RE INAPPLICABLE POLICIES, ETC.

Under section 4.1 of the Development Agreement, the City is not allowed to apply any new rules, regulations, or policies to Park Place which would be inconsistent or in conflict with the Applicable Land Use Regulations, the Existing Approvals, the Additional Development Rules, or the intent or purpose of any of the terms, standards, or conditions of the Development Agreement. Specifically, under section 4.2.17 of the Development Agreement, the City is prohibited from (1) reducing the net IBC development points allocated to the Park Place project, (2) modifying the permitted uses for Park Place or reducing the density or intensity of all or part of Park Place, (3) requiring any reduction in the square footage or total number of proposed improvements allowed for Park Place under the Applicable Land Use Regulations and the Existing Approvals or (4) attempting to regulate the timing, rate, or phase of development to be undertaken in connection with Park Place. In short, the City is prohibited from undertaking any actions that would "conflict" with the terms of the Development Agreement, the Applicable Land Use Regulations, the Existing Approvals, or the Additional Development Rules.

In addition to the protections described above, sections 1.10 and 4.2.11 of the Development Agreement allow LBA, in response to market conditions, to adjust or reallocate the development points assigned to various land uses authorized for development at Park Place as long as the overall net development points allocated under the Master CUP are not exceeded. As such, as noted in my earlier letters to you of September 3 and 15, 2009, and my letter to Assistant City Attorney Jeff Melching, dated October 7, 2009, future market conditions may require LBA to revise its current plans for the buildout of Park Place, and LBA expressly reserves the right to do so under the terms of the Development Agreement by applying for modifications to the Master CUP to, for example, convert office use into retail use in accordance with the "Point System" formulas set forth in the 1989 Zoning Code attached as Exhibit E to the Development Agreement.

O2-3

The fact that the Development Agreement allows LBA to adjust or reallocate development points at Park Place in connection with modifying the size, shape, design, use, and location of various land uses and other improvements to be developed at Park Place has been acknowledged in the Vision Plan EIR in a footnote to the Project Description for Park Place. In like manner, in the proposed amendments to the Zoning Code for the Vision Plan, there is an acknowledgement that the proposed 2010 IBC Infrastructure Improvement Fee Program would not apply to development projects that have approved development agreements. What is missing from the Vision Plan EIR, however, is a similar acknowledgement that many of the new PPPs, PDFs, and MMs that are proposed in the Vision Plan EIR would not apply to projects, such as Park Place, that are covered by development agreements.

In Exhibit "A" attached to this letter, LBA's consultants have attempted to list the various PPPs, PDFs, MMs, General Plan policies, and Zoning Code requirements set forth in the Vision Plan EIR or the related Project documents that would be inconsistent and in conflict with the terms of the Development Agreement and thus would not apply to Park Place. The attached

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list is not meant to be exhaustive, but merely illustrative, of the various features and requirements of the IBC Vision Plan from which Park Place would be exempt under the Development Agreement. To avoid any confusion in connection with the processing of any future land use approvals at Park Place, LBA would respectfully request that a general statement be added to the Vision Plan EIR and all other documents relating to the Project, acknowledging that IBC projects that have approved development agreements would be exempt from any new PPPs, PDFs, MMs, General Plan policies and Zoning Code requirements that would be inconsistent or in conflict with such development agreements.

O2-3
cont'd.

II. SITE-SPECIFIC COMMENTS

In reviewing the Vision Plan EIR, LBA's planning consultants noted five examples of what appeared to be impermissible exactions or approval rescissions being imposed on Park Place without LBA's consent:

A. Figure N-2 IBC Vision Framework Plan

A proposed trail adjacent to the San Diego Creek is shown being developed along the east side of the Park Place property. Likewise, a pedestrian bridge, crossing Jamboree Road at Michelson Drive, is shown being built on Park Place property. However, the Development Agreement would not allow the City to require LBA to dedicate the land or right-of-way needed to accommodate these public improvements because that would constitute the type of "Exaction" that is prohibited under sections 1.5 and 4.2.4 of the Development Agreement.

O2-4

B. Figure N-6 Conceptual Landscape Plan for Major Roadways

This Conceptual Landscape Plan requires a "Palm and Deciduous Mix" to be planted on Park Place property along the east side of Jamboree north of Michelson Drive. This would be in direct conflict with, and would effectively nullify, one of the Existing Approvals under the Development Agreement, specifically, the Park Place Walls and Streetscape Plan, approved January 19, 1991. The 1991 Streetscape Plan is now vested under the Development Agreement and cannot be nullified.

O2-5

C. Figure N-5 IBC Trail System

Figure N-5 indicates a proposed on-street bikeway through Park Place and crossing at mid-block on Jamboree Road to the Central Park access road. As with the creek trail and pedestrian bridge discussed above, the Development Agreement would not allow the City to require LBA to dedicate the land or right-of-way needed to accommodate this bikeway because that would constitute the type of "Exaction" that is prohibited under sections 1.5 and 4.2.4 of the Development Agreement.

O2-6



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D. Street Sections (for city Standard Plans) Michelson Drive – Jamboree Road to Carlson Avenue – Primary Highway

This proposed street section is not consistent with one of the Existing Approvals under the Development Agreement, specifically, the approved Michelson Drive Striping Plan, approved July 2, 2002. The 2002 Striping Plan for Michelson Drive does not include a raised median and provides for an eight (8) lane section. The proposed street section of four (4) lanes is not adequate for the required turning movements for Park Place. All street improvements for Michelson Drive have already been constructed pursuant to the 2002 Striping Plan. Under the Development Agreement, the City cannot impose an Exaction to require the dedication of right-of-way to accommodate this proposed street section, nor can the City nullify the 2002 Striping Plan because it is one of the Existing Approvals and thus is vested under the Development Agreement.

O2-7

LBA respectfully requests that, in responding to the above comments, the City acknowledge that the Development Agreement would prevent the City from imposing conditions of approval to require LBA to dedicate the necessary land or right-of-way to implement the creek trail, pedestrian bridge, bikeway, and street section discussed above. LBA would also request that the City acknowledge in its response to LBA's comments that the 1991 Streetscape Plan and the 2002 Striping Plan are vested under the Development Agreement and cannot be nullified by the City.

E. Traffic-Related Impacts

The list of significant and unavoidable impacts in the Vision Plan EIR should include the traffic impacts associated with the Jamboree/Michelson Drive intersection. Also, on page 20 of the revised Traffic Study (Table 2.9) in the Vision Plan EIR indicates the roadway network of ITAM 8.4, only includes IBC improvements, as well as improvements in the general vicinity, that are listed as fully funded or complete in the Funding Status of 1992 IBC Roadway Improvements. Significant roadway network revisions from ITAM 7.1 to ITAM 8.4 results in the elimination of the Interstate 405 (I-405) high-occupancy vehicle (HOV) ramps at Von Karman Avenue (post 2030). Although a constrained roadway network with fully funded improvements has been assumed in the IBC, it should be noted that the circulation system outside of the IBC assumes all funded and nonfunded improvements. The Von Karman HOV ramps should be included because it should significantly improve the Jamboree Road/Michelson Drive intersection operation. LBA would be opposed to any amendment of the MPAH that would eliminate the Von Karman HOV ramps.

O2-8

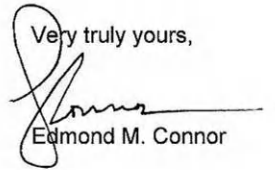
2. Response to Comments

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Thank you for your consideration of LBA's comments and we look forward to receiving the City's response to these comments.

Very truly yours,



Edmond M. Connor



2. Response to Comments

Exhibit "A"

The following list includes, but is not intended to be exhaustive of, the various plans, programs, and policies (PPPs), project design features ("PDFs"), mitigation measures ("MMs"), General Plan policies, and Zoning Code requirements, relating to the IBC Residential/Mixed Use Vision Plan and the Draft Environmental Impact Report for the IBC Vision Plan and Overlay Zoning Code, that would be inconsistent and in conflict with the Park Place Development Agreement and thus would not apply to Park Place:

PDF 2-2	Requires MERV 14 filter systems for residential development within 500 feet of I-405
PDF 2-3	Prohibits all outdoor active-use public recreation areas within 500 feet of I-405
PPP 3-1	Requires Section 401/404 permits and compliance with Section 16-2 prior to storm drain connections that discharge into the San Joaquin Marsh
PDF 3-4	Prohibits certain ornamental plantings within 100 feet of the San Diego Creek or San Joaquin Marsh
PPP 3-2	Requires 1:1 replacement of any tree removed
PPP 6-3	Requires Fire Master Plan prior to approval of a conditional use permit
PDF 6-4	Requires submittal of data on land use compatibility
PDF 8-1	Requires compliance with Residential Mixed-use Design Criteria
PDF 11-3	Requires payment of Library Impact Fee
PPP 12-2	Requires dedication of public trails
PDF 13-1	Requires Transportation Management Association
MM 13-4	Requires Caltrans agreement for 12,000 th residential unit
PPP 15-1	Requires Construction and Demolition Debris Recycling and Reuse
PDF 15-7	Requires Transportation Management Association
PDF 15-8	Requires pedestrian improvements
PDF 15-9	Requires bicycle improvements
PDF 15-16	Requires Green Point Rated Residential Buildings
PDF 15-17	Requires Energy Star Non-Residential Buildings
MM 15-1	Requires Renewable Energy and Existing Building Retrofit Program

General Plan Policies:

Building height limited to twenty (20) stories
Private Neighborhood Park minimum size criteria

Zoning Code Revisions:

Section 5-8-4	Special Development Requirements
A 1. a-b	Development Adjacent to San Diego Creek or San Joaquin Marsh
A 2. a-f	Compatibility with Surrounding Uses
A 3.	Residential Disclosure

2. Response to Comments

A 4. a-f	Air Quality Standards
A 5. a-b	Noise Quality Standards
A 6.	Hazardous Material Standards
A. 7.	GreenPoint Rated Buildings
B 1. a-b	Public Safety Standards
B 2. a-f	Public Safety Standards
C 1.-2.	Airport Restrictions
D	Libraries
Section 5-8-5	Urban Neighborhood (UN) Standards
A	Maximum Building Height
B	Creekwalk
Section 5-8-7(A-I)	IBC Infrastructure Improvement Fee Program
Section 9-38-8	IBC land use development intensity value database
Section 9-36-11	High-traffic generating commercial uses
Section 9-36-16	Required participation in mitigation measures
Section 9-36-19 (1-8)	Environmental Standards
Section 9-36-20 (1-2)	Transportation Management Association
Section 1-2-1	General Definitions
Chapter 3-2	Setback Standards
Public Park Dedication A	
Private Park Dedication B	
Street Sections (for city Standard Plans) 1. a-e	
Michelson Drive – Jamboree Road to Carlson Avenue – Primary Highway	



2. Response to Comments

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2. Response to Comments

O2. Response to Comments from Edmond M. Connor, Connor, Fletcher & Williams LLP, dated February 4, 2010.

- O2-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O2-2 Organization and formatting of the comments contained within the letter are noted.
- O2-3 The commenter makes a number of assertions concerning the legal effect of its development agreement with the City, and couples those assertions together with a generalized assertion that unspecified changes in future market conditions may cause the commenter to change its development plans. The RDEIR contains a set of reasonable assumptions concerning the development of the commenter's property. Those assumptions were necessary in order to develop reasonable forecast of environmental impacts.
- The commenter also notes that potential flexibility in implementation of its rights under the development agreement has been acknowledged in the RDEIR, but asks for further confirmation that the City will not impose any of the PPPs, PDFs, and/or mitigation measure set forth in the RDEIR to the commenter's property. The assurance requested by the commenter is not an environmental issue and, further, is overbroad. The City maintains the ability to impose requirements so long as they are consistent with the vested land use regulations imposed on the applicant. The City also maintains the ability to impose requirements that are necessary to protect the public health, safety, and welfare. Until a specific proposal is made, and until specific requirements and/or conditions are deemed necessary and appropriate for imposition in connection with such a proposal, one cannot definitively say whether a PPP, PDF, and/or mitigation measure is or is not consistent with the requirements of the development agreement. The City nevertheless reiterates that it intends to comply with the requirements of the development agreement.
- O2-4 The City of Irvine acknowledges the applicant's rights under the development agreement.
- O2-5 The Conceptual Landscape Plan is conceptual in nature, and may be revised based on site-specific conditions and previous approvals. The City is in the process of updating the city-wide Master Streetscape Plan, and is accounting for the applicant's approved landscape plan as part of this effort.
- O2-6 The City of Irvine acknowledges the applicant's rights under the development agreement.
- O2-7 The City of Irvine acknowledges the applicant's rights under the development agreement. The proposed street section will be redrawn based on the updated traffic study, and will consider the constraints on the Park Place property.
- O2-8 The comment suggests that if the Von Karman/Interstate 405 (I-405) high occupancy vehicle (HOV) ramps were assumed in the analysis that identifies impacts and mitigations, the operation at Jamboree/Michelson would improve significantly. Section 5.13.3.7 of the RDEIR and Chapter 7 of the Traffic Study (Appendix N) evaluated an alternative scenario for the Post-2030 With Project Master Plan of Arterial Highways (MPAH) Network, which assumed this HOV ramp improvement in the network. However, as discussed in these sections, Jamboree/Michelson would continue to be deficient and would require similar mitigation that was determined to be infeasible in the traffic analysis conducted for the proposed project.



2. Response to Comments

2. Response to Comments

LETTER O3 – Industrial Environmental Association (2 pages)



January 29, 2010

Mr. Bill Jacobs, Principal Planner
City of Irvine
1 Civic Center Plaza
Irvine, CA 92623
bjacobs@ci.irvine.ca.us

Re: Irvine Business Complex

Dear Mr. Jacobs

The Industrial Environmental Association (IEA) continues to closely follow the progress related to the Irvine Business Complex Plan. IEA is an organization representing manufacturing, high technology, biotechnology, and research and development companies. We have closely followed and been actively engaged in the development of land use general plans and community-based plans in many cities throughout Southern California.

During the course of the Irvine Business Complex planning process, the City did take an important step forward to appropriately recognize the critical necessity of mandating separation between industrial users and sensitive receptors by establishing a buffer zone in one portion of the planning area.

However, we are extremely disappointed that the city is treating one industrial business, in one part of the Irvine Business Complex planning area, differently than in other areas by not absolutely defining similar buffer zones throughout the entire Irvine Business Complex industrial area.

O3-1

110 West C Street, Suite 900 San Diego, CA 92101



2. Response to Comments

Page 2

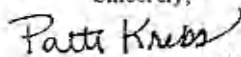
The City has set a precedent. This precedent for creating a buffer area between sensitive receptors has its roots in state planning guidelines that spell out how incompatible land uses can create adverse impacts on sensitive receptors and should be avoided. Furthermore, the need to include distance separations in municipal land use plans has been demonstrated by countless neighborhood/industrial conflicts that result due to traffic, visual, noise, design and environmental effects that may result from residential or other sensitive land uses that are allowed in close proximity to each other.

In addition, industrial facilities are at this very time and will continue to be mandated to comply with an evolving regulatory system that places even more rules and operating conditions on facilities that could have an off-site impact on their neighbors.

For these reasons, we respectfully request that the City of Irvine provide 1,000 foot buffer areas between **all industrial users** including Deft Incorporated and new residential uses (or other sensitive receptors users such as schools and churches) in the Irvine Business Complex plan.

Thank you for your consideration of our comments.

Sincerely,



Patti Krebs
Executive Director

O3-1
cont'd.

110 West C Street, Suite 900 San Diego, CA 92101

2. Response to Comments

O3. Response to Comments from Patti Krebs, Executive Director, Industrial Environmental Association, dated January 29, 2010.

- O3-1 See response to Comment O5-26. The RDEIR includes a revised discussion of impacts associated with site compatibility. Project Design Features (PDF) were incorporated into the RDEIR to ensure that site compatibility for new residential developments with regard to air quality, hazards, and noise are evaluated. PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2, were incorporated so that additional requirements are in place to ensure compatibility between existing industrial users in the IBC Vision Plan are and potential residential development. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Prohibiting residential within 1,000 feet of any industrial business is not warranted.



2. Response to Comments

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2. Response to Comments

LETTER O4 – Kilroy Realty Corporation (11 pages)



Sent Via E-mail and U.S. Mail

February 5, 2010

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

RE: Comments on the Re-circulated Draft Environmental Impact Report (EIR) for the IBC Vision Plan and Mixed-Use Overlay Zone.

Dear Mr. Jacobs,

Please find enclosed comments provided in regards to the re-circulated Draft IBC Vision Plan Program EIR ("IBC EIR") which was circulated December 23, 2009. The comments herein represent topics specific to the pending Kilroy residential project located at 17150 Von Karman Ave as identified in the IBC EIR.

O4-1

We are assuming that the IBC EIR will also serve as the EIR for the Kilroy project. Please confirm. Assuming this is true; please describe in detail the process to obtain all pending project approvals following certification of the IBC EIR.

O4-2

We appreciate the opportunity to provide comments to the above referenced documents and will be available to discuss the comments with you at your convenience.

Sincerely,

KILROY REALTY, L.P.,
A Delaware Limited Partnership

By: KILROY REALTY CORPORATION,
A Maryland Corporation,
General Partner


Robert C. Little
Vice President of Development
rlittle@kilroyrealty.com
Office 858.523.2208
Mobile 562.533.3979

Suite #550 • 3611 Valley Centre Drive • San Diego • California • 92130 • Fax (858) 523-0310 • Tel. (858) 523-0300



2. Response to Comments

LSA

LSA ASSOCIATES, INC.
20 EXECUTIVE PARK, SUITE 200
IRVINE, CALIFORNIA 92614

949.553.0666 TEL
949.553.8076 FAX

BERKELEY
CARLSBAD
FORT COLLINS

FRESNO
PALM SPRINGS
POINT RICHMOND

RIVERSIDE
ROCKLIN
SAN LUIS OBISPO
SOUTH SAN FRANCISCO

MEMORANDUM

DATE: February 5, 2010

TO: Robert Little, Kilroy Realty Corporation

FROM:  Ken Wilhelm, LSA Associates, Inc.

SUBJECT: Irvine Business Complex (IBC) Vision Plan and Mixed-Use Overlay Zoning Code Draft Environmental Impact Report Traffic Study Review and Comments

LSA Associates, Inc. (LSA) has prepared the following comments on the IBC Vision Plan and Mixed-Used Overlay Zoning Code Draft Environmental Impact Report (DEIR) Traffic Study (Parsons Brinckerhoff [PB], December 2009). More specifically, LSA has focused on the Kilroy project (Irvine Lofts) located at 17150 Von Karman Avenue to confirm accurate representation under IBC Vision Plan conditions.

It should be noted that the Sapetto Group (on behalf of Kilroy Realty Corporation) submitted comments on the IBC Vision Plan to the City of Irvine (City) on May 14, 2009. City staff provided responses to these comments (Appendix Q of the DEIR). LSA reviewed the City's responses and has provided additional comments where appropriate. The responses follow the numbering of the Sapetto Group's comments and the City's response letters (attached).

PROJECT DESCRIPTION COMMENTS

1. The current Irvine Lofts project includes construction of 469 units (347 base units and 122 density bonus units), which requires a transfer of development rights (TDR) of 875 average daily trips (ADT), 49 a.m. peak-hour trips, and 53 p.m. peak-hour trips. The sending site identified to complete the TDR for the project is MetLife (2555 Main Street). For traffic study and impact analysis purposes, the TDR is based on the transfer of office equivalency associated with the most restrictive peak-hour time period, which in this case is the p.m. peak hour. The 53 p.m. peak-hour trips equates to 38,406 square feet (sf) of office equivalency (the 49 a.m. peak-hour trips equates to only 37,692 sf of office equivalency). As such, the Irvine Lofts project requires a TDR of 38,406 sf of office equivalency from the MetLife sending site.

In order to determine whether the Irvine Lofts project is accounted for in the IBC Vision Plan Traffic Study, LSA reviewed the land use data sets (Appendix J of the Traffic Study) by traffic analysis zone (TAZ) for the current General Plan build-out and the Vision Plan build-out scenarios. After review of the 17150 Von Karman Avenue project site (TAZs 445 and 455) and the MetLife sending site (TAZ 490) land uses, it appears that 469 condominium units are included in the project site (235 units on TAZ 445 and 234 units on TAZ 455) under Vision Plan build out, while a reduction of 37,692 sf of office occurs on TAZ 490. Based on this, it appears that the current Irvine Lofts project is correctly represented on the project site; however, the number of trips transferred from the sending site (MetLife) is not correct. The correct TDR for the Irvine Lofts project is 38,406 sf of office equivalency for the 469 units (347 base and 122 density bonus units).

O4-3

02/05/10 (P:\KRY530\Vision Plan\IBC EIR Comments.doc)

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2. Response to Comments

LSA ASSOCIATES, INC.

The City should provide an explanation as to why 37,692 sf of office equivalency was reduced from the MetLife sending site when the Irvine Lofts project specifically requires a TDR of 38,406 sf of office equivalency. The ITAM modeling for the Vision Plan may need to be revised based on this change.

O4-3
cont'd.

2. While the number of dwelling units for the Irvine Lofts project is correct in the revised DEIR (i.e., 469 units including 122 density bonus units), the TDR is not. Page 3-44 of the Project Description incorrectly states that the TDR required for the project is 110 a.m. peak hour intensity values, 117 p.m. peak hour intensity values and 1,646 ADT values. These numbers are equivalent to 469 units without density bonus units, not 347 units. Trips (intensity values) do not need to be transferred for density bonus units. Furthermore, the office equivalency reduced at the sending site in the Vision Plan is not consistent with 469 units. The City should correct any text discrepancies related to the Irvine Lofts project.

O4-4

SAPETTO GROUP COMMENTS

Traffic

2. The comment requests confirmation that future project TDRs will be calculated based on peak-hour office equivalency and not ADT, consistent with the City's Zoning Code. The City's response is that ADT waivers are assumed.

The City should clarify its response. Will future TDRs be based on peak-hour office equivalency? Will future projects not be required to conduct ADT analyses since waivers have already been assumed?

O4-5

3. The comment requests clarification on whether or not the IBC Database will be updated as a result of the land use changes proposed in the Vision Plan. The City's response is that revisions have been made to the Traffic Study and the DEIR.

Page 4 of the revised Traffic Study states that "the current IBC trip budget database will not change as a result of the IBC Vision Plan." MM 13-3 on page 5.13-197 of the DEIR states that "prior to issuance of the first building permit to the proposed project, the City shall update the Irvine Business Complex Land Use and Trip Monitoring Database (IBC Database) to reflect the land use changes associated with the proposed project." The City should clarify these conflicting statements.

O4-6

4. The comment asks how future TDR applications will be tracked and where office equivalency reductions must come from to be consistent with the DEIR. The City's response is that "the TDR must originate in the same traffic analysis zone (TAZ)."

The City's response is still unclear. The City should explain the type and/or level of analysis (both traffic and environmental) required to be consistent with the Vision Plan for projects where the sending sites are located in a different TAZ.

O4-7

6. The comment says that the Sapetto Group's understanding is that payment of the IBC fees would adequately address all of the project impacts for the Irvine Lofts project. The City's response is that IBC fees address areawide traffic impacts associated with future development projects within the IBC, while other environmental impacts are not addressed by the IBC fee program.

O4-8



2. Response to Comments

LSA ASSOCIATES, INC.

The City should explain whether pending residential projects (i.e., Irvine Lofts) are subject to fees associated with improvements to the freeway system. MM 13-4 of the revised DEIR states that “prior to issuance of a building permit for the 12,000th unit within the IBC, the City shall enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities.” Clarification should be provided for how this affects proposed projects below the 12,000th unit (i.e., Irvine Lofts).

O4-8
cont'd.

If you have any questions, please call me at (949) 553-0666.

Attachments: Sapetto Group Comments and City Responses

2. Response to Comments

2. Response to Comments

LETTER 08 – Sapetto Group, Inc. (3 pages)



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. 08-1
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. 08-2

Sapetto Group, Inc. 2 Park Plaza • Suite 755 • Irvine, California 92614-8825 • (949) 262-0641 • Fax (949) 262-0642 • www.sapettogroup.com

2. Response to Comments

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Mr. Bill Jacobs
CITY OF IRVINE
May 14, 2009
Page 2

- | | |
|---|------|
| 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 |

2. Response to Comments

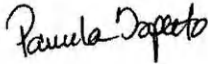
2. Response to Comments

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,

SAPEITO GROUP, INC.



Pamela Sapetto
Principal

PS:arg

cc: Robert Little, Kilroy Realty

Wilroy Irvine Letter to Bill Jacobs 03 14 09 Comments on IBC Vision Plan.doc



2. Response to Comments

2. Response to Comments

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.



2. Response to Comments

Allen Matkins

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Direct Dial: 949.851.5412 | File Number: 216326-00002/OC893114.01

February 1, 2010

Mr. William D. Jacobs, AICP
City of Irvine
Principal Planner, Community Development
One Civic Center Plaza
P. O. Box 19575
Irvine, CA 92623-9575

Dear Mr. Jacobs:

We have reviewed the draft EIR for the IBC Vision Plan and have the following comments regarding the project description for the Kilroy project. Our concern is that with changing economic conditions there may be some need for minor changes to the proposed project while staying within the framework contained within our application materials. We would like the EIR to appropriately reflect the flexibility in a project that is still being refined. Towards that end we request that changes be made in the language contained in Section 3.3.3.5. A redline version of the proposed changes is provided below.

3.3.3.5 Kilroy

The Kilroy project site consists of a 9/15-acre parcel on Von Karman between Alton Parkway and McGaw Avenue at 17150 Von Karman Avenue. The Kilroy project consists of a Conditional Use Permit (00415086-PCPU), Tentative Tract Map (00419204-PTT), and Park Plan (00415090-PPP) to allow for the development of 469 condominium units.

Access to the Kilroy project site is currently planned to~~will~~ be provided from Von Karman Avenue, by way of a private street that bisect the property north to south. Approximately 350 feet into the site, the private street terminates in a T-intersection and runs east to west. A fire lane would be along each side of the project site at the furthest east and west boundaries for emergency vehicle access.

The Kilroy project consists of up to four residential structures which will likely consist of one or both of the following~~developed with two different~~ building types. The two buildings fronting Von Karman Avenue are currently proposed to be~~would consist of~~ five-story podia over three levels of parking ~~garage (two levels are subterranean)~~. ~~These two podium style~~ buildings would comprise a combination of flats and two-story townhomes that front along

Los Angeles | Orange County | San Diego | Century City | San Francisco | Del Mar Heights | Walnut Creek



O4-9

2. Response to Comments

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Page 2

Von Karman Avenue and the internal streets. The remaining two structures located toward the rear boundaries of the project will likely consist of three-level parking garages wrapped around four-story residential units made up entirely of flats. The conceptual site plan is shown on Figure 3-13.

In addition, the Kilroy project includes the demolition of a 161,421-square-foot office/industrial building (60,008 square feet of office use and 101,413 square feet of industrial use) previously occupied by Delphi Connection Systems. The uses include a chemical storage building, plant maintenance system, water recycling area, service yard, and associated parking and landscaping.

Project Components

The following applications have been submitted to the City of Irvine for approval:

Conditional Use Permit

A Conditional Use Permit (00415086-PCPU) (CUP) is requested in conjunction with implementation of the proposed Kilroy project in order to ensure proper implementation of the City's development standards, including the Zoning and Building Codes, Subdivision Ordinance, Design Manual and engineering standards among others. The CUP would provide the approval against which all future site plans of the site are evaluated. The applicant is requesting approval of an Administrative Relief to reduce the minimum landscaped setback along Von Karman Avenue from 30 to 24 feet.

The CUP will allow for the development of up to 469 dwelling units, including up to 122 density bonus units, and approve a TDR in order to maintain the overall development intensity cap within the IBC. At maximum buildout, the TDR is required to increase allowable development intensity on the site ~~is measured as~~ an additional 110 AM peak-hour intensity values, 117 PM peak-hour intensity values, and 1,646 ADT values.

Tentative Tract Map

The Kilroy project applicant is requesting approval of Tentative Tract Map (00419204-PTT) to allow for the subdivision of up to 469 condominium residential units.

Park Plan

A Park Plan (004150900-PPP) application is being processed concurrently to establish the park dedication requirements of the proposed Kilroy residential use. It is anticipated that the project would meet neighborhood park requirements by incorporating on-site recreational

O4-9
cont'd.

O4-10

O4-11

O4-12

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Attorneys at Law

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Page 3

uses, including a pool spa, tot lot, fitness room, and multipurpose room. It is also anticipated that the community park requirements would be met through the payment of in-lieu fees.

Parking and Circulation

Access to the Kilroy site ~~is currently planned to~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south. Approximately 350 feet into the site, the private street terminates into a T-intersection and runs east to west. A fire lane will be located along each side of the project site at the furthest east and westerly boundaries for emergency vehicle access purposes. At maximum buildout (469 units) ~~the~~ The Kilroy project ~~is anticipated to~~ will provide ~~a minimum of~~ 1,038 parking spaces to serve the proposed number of units, which are located within parking garages or surface on-street parking.

O4-12
cont'd.

Phasing

The Kilroy project is planned for development in one or more phases, depending on the market and the economy ~~a single phase~~, including site preparation, grading, installation and connection of utilities, construction of access and parking, perimeter landscaping, and construction of the residential buildings. Traffic circulation, stormwater drainage, water, electrical, gas, and sewer system improvements will be integrated with the existing City- and utility-owned infrastructure as necessary."

O4-13



If you have any questions regarding these proposed changes in Section 3.3.3.5 of the EIR please feel free to contact us for further discussions.

Very truly yours,


William R. Devine

WRD:pmc

2. Response to Comments

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2. Response to Comments

O4. Response to Comments from Robert C. Little, Vice President of Development, Kilroy Realty Corporation, dated February 5, 2010.

O4-1 Comment noted. Responses to the attached letters are provided below.

O4-2 After the EIR is certified, future environmental analysis of the projects contained in the Vision Plan will build upon the information and conclusions of the IBC EIR. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, including the Kilroy project Conditional Use Permit (CUP), so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the CUP is processed. In addition, we would note that while pending residential development projects were identified in the EIR, certain site-specific project analyses were not completed as part of the EIR, primarily with respect to site-level noise, circulation, access and land use compatibility issues. Therefore, once the CUP is ready to proceed, staff will conduct a new initial environmental evaluation to determine the scope of any changes to the project and/or the surrounding environment, and will make a determination at that time regarding any additional environmental review necessary for the CUP.

O4-3 The Transfer of Development Rights (TDR) described in the Appendix J of the Vision Plan for Irvine Lofts (Kilroy), a pending project in the IBC Vision Plan, is incorrect. For traffic study and impact analysis purposes, a TDR is based on the transfer of office equivalency associated with the most restrictive peak-hour time period, which has always been the City's policy. At the time, the City believed the most restrictive peak hour was the AM peak hour of 49 AM peak hour trips, equating to 37,692 square feet of office equivalency. However, it is now clear that the most restrictive peak hour for the Irvine Lofts was the PM peak hour of 53 PM peak hour trips, which equates to 38,406 square feet of office equivalency. The difference between the office equivalency stated in the Vision Plan and the corrected amount of office equivalency for Irvine Lofts is 714 square feet.

Furthermore, staff doubled checked the other pending projects identified in the RDEIR to ensure this oversight was not repeated. Staff discovered that there were other pending projects (Martin Street Condos, 2851 Alton, ITC, and 2852 Kelvin) that did not identify the most restrictive peak-hour time period for office equivalency for their respective TDR. The total amount of office equivalency under reported for these four projects was approximately 4,500 square feet. However, on another pending project, the Element Hotel, staff over reported the development intensity by approximately 7,200 square feet of office equivalency. Therefore, the end result is that the RDEIR over reported the development intensity for the combination of all these pending projects by approximately 2,000 square feet of office equivalency. Figure 3-7a and Figure 3-7b of the RDEIR has been updated to reflect the most restrictive peak-hour time period for each of the pending projects mentioned above (see Chapter 4 of this FEIR).

An analysis was conducted to identify if the TDR discrepancy would affect the results of the traffic study. The total increase in AM volumes is approximately 50 trips which is less than 1/4 of 1 percent of the total overall AM trips, while the PM peak period was unaffected. Although three locations (Red Hill & Warner, Culver & Bryan, and Flower & Segerstrom) were close to becoming deficient if all 50 AM trips were added to each intersection, there is no realistic likelihood of this occurring. In the professional judgment of the City of Irvine's transportation staff and traffic consultant, all 50 of the additional trips would not pass through the above locations. Rather, those trips would likely be distributed evenly throughout the



2. Response to Comments

study area. Based on this analysis, no changes to the impact locations, mitigations or conclusions will result.

Therefore, the discrepancy in office equivalency for the Irvine Lofts and the above mentioned pending projects will be updated and are deemed to be de minimis with respect to impacts identified in the RDEIR.

O4-4 The project description for Kilroy under Section 3.3.3.5 of the RDEIR and Figure 3-7a and 3-7b have been updated in the FEIR to include the corrected TDR required for the project (i.e. 347 base units and 122 density bonus units). See response to Comment O4-3. Based on correspondence with Parson Brinkerhoff, no additional impacts resulted and all of the conclusions and mitigation measures as identified in the RDEIR and traffic study remain unchanged.

O4-5 The traffic model assumed waivers of Average Daily Trips (ADT), however, such waivers must still be requested by the applicant as part of the CUP process.

O4-6 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights will not be changed. The earlier City response about changing the database was meant to reflect changes necessary to accommodate the additional planned residential, and these will be reflected as a separate accounting in the IBC database, so as not to affect existing trip budgets.

Chapter 5.13 has been revised in the FEIR to reflect that the current IBC trip budget will not change as a result of the IBC Vision Plan (see Chapter 4 of this FEIR).

O4-7 To clarify the City's earlier response, the Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone (TAZ) as the receiving site will not be required to process a Conditional Use Permit for the TDR. For a project to be consistent with the DEIR, it should be consistent with the current trip budgets for the property, or if TDR's are proposed, the TDR sending site should be located in the same TAZ as the receiving site. Any additional TDR's will require a separate traffic study pursuant to the City's current Traffic Study Guidelines.

O4-8 All pending projects included as part of the project description are subject to fees associated with improvements to address freeway impacts and other traffic-related improvements identified in the traffic study and RDEIR. The feasible improvement strategies that address the impacts on freeway facilities will be determined and approved as part of the IBC Vision Fee Program Nexus Study. Mitigation Measure 13-4 merely addresses the timing by which a mitigation agreement between the City and Caltrans must be prepared.

O4-9 The City will make the text changes proposed by the applicant, however, the nature of the commenter's changes suggests more flexibility in the project development, in which case response to comment O4-2 is especially applicable if the project design substantially changes.

The project description for the Kilroy project has been updated in the FEIR:

2. Response to Comments

Access to the Kilroy project site is currently planned to ~~will~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south...

The Kilroy project consists of up to four residential structures which will likely consist of one or both of the following developed with two different building types. The two buildings fronting Von Karman Avenue are currently proposed to be ~~would consist of~~ five-story podia over three levels of parking garage ~~(two levels are subterranean)~~. These two podium-style buildings would comprise a combination of flats and two-story townhomes that front along Von Karman Avenue and the internal streets. The remaining two structures located toward the rear boundaries of the project will likely consist of three-level parking garages wrapped around four-story residential units made up entirely of flats.

- O4-10 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

The CUP will allow for the development of up to 469 dwelling units, including up to 122 density bonus units, and approve a TDR in order to maintain the overall development intensity cap within the IBC. The At maximum buildout, the TDR is required to increase allowable development intensity on the site, measured as is an additional 110 50 AM peak-hour intensity values, 117 53 PM peak-hour intensity values, and 1,646 529 ADT values. The total intensity allocation to the site will be 170 AM peak-hour intensity values, 185 PM peak-hour intensity values, and 1,840 ADT values

- O4-11 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

The Kilroy project applicant is requesting approval of Tentative Tract Map (00419204-PTT) to allow for the subdivision of up to 469 condominium residential units.

- O4-12 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

Access to the Kilroy site is currently planned to ~~would~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south. Approximately 350 feet into the site, the private street terminates into a T-intersection and runs east to west. A fire lane will be located along each side of the project site at the furthest east and westerly boundaries for emergency vehicle access purposes. At maximum buildout The the Kilroy project is anticipated to will provide a ~~minimum of~~ 1,038 parking spaces to serve the proposed number of units, which are located within parking garages or surface on-street parking.

- O4-13 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

The Kilroy project is planned for development in one or more phases, depending on the market and economy ~~a single phase~~, including site preparation, grading, installation and connection of utilities, construction of access and parking,



2. Response to Comments

perimeter landscaping, and construction of the residential buildings. Traffic circulation, stormwater drainage, water, electrical, gas, and sewer system improvements will be integrated with the existing City- and utility-owned infrastructure as necessary.

2. Response to Comments

LETTER O5 – Law Offices of Robert C. Hawkins (99 pages)

LAW OFFICES OF ROBERT C. HAWKINS

February 5, 2010

Via e-mail (bjacobs@ci.irvine.ca.us) and Messenger

Bill Jacobs, AICP, Principal Planner
Community Development Department
Irvine City Hall
One Civic Center Plaza
Post Office Box 19575
Irvine, California 92623-9575

Re: **The City of Irvine's (the "City" or "Irvine") Recirculated 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 **Recirculated** Draft Environmental Impact Report ("RDEIR") 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 all of 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.

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, hazardous materials including cancer causing agents hexavalent chromium (Cr⁶⁺) and barium chromate, and other dangerous materials.

This letter supplements and incorporates our earlier comments on the Draft Negative Declaration for the Project, our June 27, 2006 and July 24, 2006 comment letters on the Project, our

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O5-1

2. Response to Comments

Bill Jacobs

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February 5, 2010

February 21, 2007 comment letter on the Notice of Preparation and on the Project, our May 14, 2009 Comments on the DEIR 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, this letter incorporates the January 19, 2010 letter from Global Environmental Consulting Company, Inc. to this office, which is attached hereto as Exhibit "1." We also incorporate herein Global Environmental Consulting Company, Inc.'s May 11, 2009 letter to this office, which is attached as Exhibit "2" as well as its May 16, 2006 Land Use Compatibility White Paper, which is attached hereto as Exhibit "3." Both of these were attached to and incorporated in our May 14, 2009 Comment Letter on the DEIR as Attachments "A" and "B" respectively. Unfortunately, the Responses to our May 14, 2009 Comment Letter did not respond to these specific comments from Global Environmental Consulting Company, Inc. in the Attachments "A" or "B" to our May 14, 2009 letter. We submit these letters again and incorporate them herein with the goal of obtaining to these comments as well as responses to this Comment Letter including to the January 19, 2010 Global Environmental Consulting Company, Inc. letter (Exhibit "1") to this office.

O5-1
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 Defl, we offer the following comments on the RDEIR. Of course, we reserve the right to make further comments on the Project and the RDEIR based upon further review of the RDEIR, various staff reports, and other documents and oral comments.

I. Summary of Concerns.

1. Even after revision, the RDEIR still fails to comply with Judge Sundvold's orders; it must be revised to do so.
2. The RDEIR's Introduction remains inadequate and fails to accomplish its purpose; it should be revised and recirculated.
3. The RDEIR's Project Description is still inaccurate and must be revised.
4. The RDEIR's discussion of the Environmental Setting fails to use the appropriate Project baseline condition; the RDEIR should be revised again and recirculated with a true pre-Project baseline.
5. The RDEIR's discussion of air quality impacts is incomplete and requires revision by either expanding the Business Complex District north of Interstate 405 and easterly from Armstrong and MacArthur to Jamboree Road or providing for a 1,000 foot buffer between existing industrial uses and new residential uses.

O5-2

O5-3

O5-4

O5-5

O5-6

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2. Response to Comments

Bill Jacobs

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|-----|--|-------|
| 6. | The RDEIR's analysis of Project impacts on soils and geology still fails to analyze fully Program and project level impacts. | 05-7 |
| 7. | The RDEIR's analysis of Project impacts on hazards and hazardous materials remains flawed and incomplete, and fails to provide adequate protections between existing industrial uses and new residential uses. | 05-8 |
| 8. | The RDEIR also fails to analyze adequately the Programmatic and Project level impacts on hydrology and water quality. | 05-9 |
| 9. | The RDEIR still fails to analyze completely and to propose adequate mitigation for the Project's land use impacts. | 05-10 |
| 10. | The RDEIR's analysis of the Project's noise impacts remains incomplete and its proposed mitigation is impermissibly deferred. | 05-11 |
| 11. | The RDEIR fails to analyze adequately the Project's transportation and traffic impacts and defers mitigation of those impacts. | 05-12 |
| 12. | The RDEIR's analysis of recreational impacts is incomplete and must be revised. | 05-13 |
| 13. | The RDEIR's discussion of significant and irreversible impacts fails and requires revision. | 05-14 |
| 14. | The RDEIR's analysis of the Project's growth inducing impacts is incomplete and inadequate; it must be revise and recirculated. | 05-15 |

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."

05-16

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.)

Further, CEQA Guidelines section 15151 sets forth the adequacy standards for an EIR:

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2. Response to Comments

Bill Jacobs

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"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."

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.

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.

O5-16
cont'd.

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2. Response to Comments

Bill Jacobs

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"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.

O5-16
cont'd.

III. Introduction to our Comments.

As indicated in our May 14, 2009 Comments, the DEIR failed to comply with Judge Sundvold Orders that the City must perform a complete environmental review and analysis of the residential transformation of the IBC. As we indicated, 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.

The RDEIR fails to address or cure this inadequacy of the March 2009 DEIR ("DEIR"). It offers nothing in the way of a "comprehensive analysis of the potential impacts of such a transformation." Martin St. Minute Order, page 4.

To do this, as we indicated in our May 14, 2009 comment letter, the City must analyze the impacts of the entire residential transformation. This means that, as discussed below, the RDEIR must 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 which were approved by the City in recent years.

O5-17



In addition, our May 14, 2009 comment letter discussed the RDEIR's failure to include a new traffic analysis and explain the trip budget and trip transfers as required by Judge Sundvold. The RDEIR fails to discuss these items as well.

IV. Section 1, the Executive Summary, Fails to Discuss Fully the Nature of the RDEIR.

The DEIR stated that it was only a "Program DEIR" prepared under CEQA Guidelines section 15168. However, the RDEIR notes that it is also a "Project EIR" for the seven pending sub-projects. As discussed below, the RDEIR contains little project level analysis.

O5-18

However, the RDEIR is a recirculated DEIR under CEQA Guidelines section 15088.5 which requires recirculation of a DEIR when:

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"[S]ignificant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification."

CEQA Guidelines section 15088.5(a). Unfortunately, section 1 fails to discuss this recirculation and fails to identify any significant new information which requires the recirculation in order for the decisionmakers and the public to understand the revisions and changes in the RDEIR. Please identify and discuss all changes to the RDEIR and all new information which requires this recirculation.

O5-18
cont'd.

Section 1.3 addresses the Project location. It states:

"The most prominent land use in the IBC is office, with substantial amounts of industrial/warehouse uses and 4,524 medium- and high-density residential units and 45 density bonus units for a total of 4,569 existing dwelling units."

RDEIR at 1-5. This characterization is problematic for several reasons. First, Table 1-1 on the following page indicates that 5,011 residential dwelling units currently exist, **not 4,569** dwelling units, with 1,892 units under construction and another 2,552 already approved. The RDEIR must be revised to provide a correct number of existing residential dwelling units and an explanation of this error.

O5-19

Second, as indicated above and in our May 14, 2009 comments, the baseline condition includes only the 3,896 residential dwelling units approved under the 1992 EIR. The remaining 673 residential dwelling units (for the 4,569 existing units) or the 1,115 dwelling units (for the 5,011 existing units) are part of the Project and need analysis as part of the Project.

Response to Comment No. O3-17 responds that CEQA Guidelines section 15125 requires that the baseline conditions are the conditions as they exist at the time the notice of preparation is published, or if no such notice, then the baseline conditions are the conditions as they exist at the time the environmental analysis is commenced. However, this Response also notes:

O5-20

"This environmental setting will **normally** constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."

RDEIR, Appendix Q, page 2-411-412. As indicated above, the RDEIR's analysis is not the normal analysis: Judge Sundvold has ordered that the City analyze the impacts of the full residential conversion Project for the Irvine Business Complex.

Third, it conflicts with the description of the area in Section 5.7, Hydrology. Section 5.7 recognizes the true character of the Irvine Business Complex:

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"The IBC is a **business-concentrated area** located within the City of Irvine and is generally bounded on the west by the Costa Mesa Freeway (SR-55), on the south by Campus Drive, and on the east by the San Diego Creek Channel (Reach 1). The existing condition of the IBC consists primarily of commercial and office buildings, warehouses and **a few residential high rise condominiums**.

O5-21
cont'd.

RDEIR, page 5.7-1 (Emphasis supplied). The RDEIR must be revised to reflect correctly the nature of the Irvine Business Complex so that the RDEIR may correctly evaluate the nature of the Project and the character of the impacts of the Project on the "business-concentrated area."

Section 1.7 discusses areas of controversy. It states:

"The areas of known controversy concerning the proposed project are: residential development within the IBC, parks and recreation, and transportation/traffic."

RDEIR, 1-9.

However, this is an overly simplistic characterization of the controversial issues: the issue regarding residential development within the IBC is really at least three issues: First, whether or not residential development should be sited adjacent to industrial uses. Second, whether or not residential uses should be sited adjacent to industrial uses which store and use hazardous materials. Third, whether or not residential uses should be site adjacent to industrial uses which emit light, noise, odors, and other potentially significant impacts between existing industrial uses and new residential uses.

As discussed more fully below, the resolution to all three of these issues is that residential uses should not be sited adjacent to such uses, indeed, new residential uses should not be located within 1,000' of existing industrial uses. This separation ensures that incompatible uses such as new residential uses and existing industrial uses do not generate significant adverse impacts including land use impacts, and hazards and hazardous materials impacts.

O5-22

Section 1.7 also discusses prior notices of preparation and scoping meetings. However, it fails to discuss the DEIR or its precursor, the Mitigated Negative Declaration. Section 1.7 should be revised to discuss these and other documents, and hearings and other activities that took place prior to the RDEIR.

The Responses to Comments notes that the Negative Declaration was never adopted by the City and that, because of this, it is inappropriate to incorporate this document. However, the Negative Declaration is part of the administrative record for the Project and the RDEIR must reflect this fact.



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Table 1-2 is a summary of the impacts analysis, mitigation measures and significance after mitigation. As appropriate, our comments on the various subject matter on the table apply to Table 1-2 as well.

O5-22
cont'd.

V. Section 2, the "Introduction," Remains Inadequate and Requires New Information.

Section 2, the Introduction, discusses the scope and extent of the RDEIR. 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, as indicated above, the Introduction fails to discuss all of those environmental documents including the early Mitigated Negative Declaration, comments on the environmental documents, and the City's responses to such comments. The RDEIR contains both the comments and responses to the DEIR in its Appendix Q. However, Section 2 fails to reference Appendix Q which includes Responses to Comments on the DEIR. Those responses and the RDEIR fail to address the earlier comments on the DEIR. The RDEIR must be revised to address all of those comments.

Moreover, the RDEIR is supposed to be an independent, unbiased, and informative document. The DEIR failed to meet this standard, and distorted and argued with the comments. The RDEIR fails to cure this flaw. The RDEIR 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.

O5-23

Further, as we commented in May 2009, Section 2 fails to incorporate by reference properly and clearly earlier documents including EIRs for the IBC. In particular, the DEIR failed to reference properly the 1992 EIR which established the current development caps and limits. The 1992 EIR is important for other reasons including establishing the Project background. The RDEIR must be revised to consider and reference properly and completely the 1992 EIR.

In Response to this Comment No. O3-22, Appendix Q states that the DEIR and the RDEIR do not rely on the 1992 EIR and therefore it is not appropriate to reference the 1992 EIR. However, this ignores the facts and the record. As Ray Catalano explained in his "Past and Present Land Use Control Issues in the Irvine Business Complex" dated October 5, 2007, which is attached hereto as Exhibit "4," the 1992 Project and its EIR brought reforms: first, given the burgeoning residential pressures in the Irvine Business Complex, the 1992 EIR capped the residential units allowed in the Irvine Business Complex; and second, given that the transportation system seemed "obsolete," the City in the 1992 EIR established trip budgets for the Irvine Business Complex and the City commissioned a new transportation study. Indeed, the RDEIR recognizes the importance of the 1992 rezoning program which established "the development intensity assigned to each parcel [in the Irvine Business Complex]." See RDEIR, page 3-26.

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In short, the 1992 EIR is part of the Project: the 1992 EIR established the current use caps; and the 1992 EIR established the trip budget for the Irvine Business Complex. The RDEIR and the DEIR cannot ignore the 1992 EIR. Please explain why the RDEIR fails to reference and incorporate the 1992 EIR even though the RDEIR recognizes that the 1992 EIR established the trip budgets for all Irvine Business Complex parcels and established the transfer program.

O5-23
cont'd.

VI. Section 3, the "Project Description" Is Inadequate and Must be Revised.

Section 3 attempts to describe the Project. Section 3.2 discusses the Project's objectives. As indicated in our May 14, 2009 comments, the RDEIR still fails to explain how the Project will advance its goals of protecting existing job base and developing mixed use cores. Indeed, as indicated below, the Project does not develop mixed use cores. As discussed below, it develops two separate cores. As for the residential component, as indicated below, this should be developed into core areas, e.g. along Jamboree Road. The Project fails to achieve this objective because it merely lumps all residential in the Urban Neighborhood District which encompasses much of the Irvine Business Complex.

Section 3 indicates that the Project has at least nine (9) components:

1. A General Plan Amendment to adopt the Vision Plan for the Irvine Business Complex and its objectives/policies, increase the residential dwelling unit cap for the area from 9,015 dwelling units to 15,000 dwelling units together with a maximum of 1,383 density bonus units with a corresponding reduction of 4,337,727 square feet of non-residential uses, and the elimination of maximum density limits and the establishment of a minimum density of 30 dwelling units per acre with no maximum limit.
2. A Zoning Code Amendment to implement the General Plan Amendment and which would include the establishment of two regulatory overlay districts, the Business Complex District and the Urban Neighborhood District with residential uses allowed only in the latter district, an update of the traffic mitigation fee for the area, and other minor amendments.
3. A Municipal Code Amendment to add further park standards and amend Section 5-5-1004(D)(1) to remove the 50 dwelling unit per acre density cap for determining persons per household.
4. An amendment to the City's Park Standard Manual.
5. A program or policy to limit development intensity within the Irvine Business Complex based upon the trip budgets established in the 1992 EIR and Project.

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6. An Amendment to the City's Local Coastal Plan to comply with the General Plan Amendment in the area of the Irvine Business Complex within the Coastal zone.
7. The establishment of design criteria for the residential projects allowed under the Vision Plan and the overlay districts.
8. The establishment of an Irvine Business Complex infrastructure plan which would include improvements to narrow streets, erect bridges and make the area more pedestrian friendly.
9. A proposal to change the name of the Irvine Business Complex to more closely reflect the Vision Plan changes.

O5-24
cont'd.

Please confirm that each of these are part of the Project and that this is a complete list of Project components.

As we have indicated before, the Project contemplates increasing the number of residential dwelling units substantially over those approved under the 1992 EIR. As indicated above, the 1992 EIR allowed 3,896 residential dwelling units. See 1992 EIR Table 1. Please note that the RDEIR continuously refers to the 1988 EIR which approved 3,571 residential dwelling units. However, the 1992 EIR approved an additional 325 residential dwelling units for a total approved in 1992 of 3,896 dwelling units. The Project proposes to increase that number to 15,000 plus 2,038 density bonus units for a total of 17,038, a fourfold increase over 1992 levels.

In our May 14, 2009 comments, we noted this error: The Response to this Comment O3-29 states that:

O5-25

"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."

RDEIR, Appendix Q, page 2-413. The Response also states that it is inappropriate to reference the 1992 EIR. However, Table 3-1 is inaccurate and fails to comply with Judge Sundvold's orders precisely because it fails to take into account the limits and/or use caps established in the 1992 EIR and its approvals. Indeed, although the RDEIR acknowledges the importance of the 1992 EIR and its "rezoning program," which established "... the development intensity assigned to each parcel [in the Irvine Business Complex,] see RDEIR, page 3-26, the RDEIR fails to discuss this program or the 1992 EIR. The RDEIR must do more than ignore the issue: it must fully describe the Project—the residential transformation of the Irvine Business Complex—in its entirety and then analyze the impacts of the full Project. The RDEIR must be revised and

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recirculated to discuss and explain fully and completely the importance and the role of the 1992 EIR and Project in connection with this Project.

Of course, the RDEIR notes that many units of this proposed 17,038 already exist and many more have already been approved. See Table 3-1. However, as we have indicated above, any and all units over and above the 3,896 approved in 1992 are part and parcel of the Project, and must be analyzed as such.

O5-25
cont'd.

In addition, as we noted above, the RDEIR uses different totals for existing residential units. Compare RDEIR at 1-5 which refers to "4,569 existing dwelling units" to Table 3-1 which states that there are 5,011 existing units. This must be corrected and/or explained.

Section 3.3.2.2 discusses the districts proposed under the Project for the IBC. The DEIR included a multi-use district which is now gone. Instead, the Project is limited to two districts: Urban Neighborhood; and the Business Complex. Figure 3-6 shows the limits of the two districts. Although residential is allowed in the Urban Neighborhood District, it is not allowed in the Business Complex District.

However, the nature and extent of the Business District has changed substantially from the DEIR. In the earlier DEIR, the Business District was located north of Interstate 405 and west of MacArthur Blvd and Armstrong Ave. The RDEIR expands this boundary to include in addition to the area north of Interstate 405 and west of MacArthur and Armstrong, the area south of Interstate 405 and west of Jamboree Rd. Compare Figure 3-6 from the DEIR attached hereto to Figure 3-6 from the RDEIR. The RDEIR fails to explain this expansion. In order to constitute an informative document, the RDEIR must explain this significant change.

Deft understands that this changed configuration may be the result of a settlement agreement between the City and Allergan, Inc. located at 2525 Dupont Dr. in the heart of the expanded Business District. Attached hereto as Exhibit "5" is a copy of the Allergan/City of Irvine settlement agreement. As indicated in that settlement agreement, Allergan has brought many actions against the City and challenged the compatibility of residential uses adjacent to industrial uses.

O5-26

For instance, Table 2-1 is replete with Allergan's concerns about the adverse impacts of the new incompatible residential land uses with existing industrial uses. In addition, Appendix Q contains many comments by Allergan's attorneys, Sheppard Mullin, that with no restriction or separation requirements for new residential developments near existing industrial developments, the Project will have significant and adverse impacts on land use, hazardous materials and other issues. See, e.g., Comment O-7 and Responses thereto.

In effect, the RDEIR and the revised Project recognizes this significant impact for Allergan and crafts the boundaries of the Business Complex District to address Allergan's concerns about industrial adjacency with the new residential uses. The expansion of the Business District recognizes and mitigates the incompatibility of the new Project related residential uses with existing

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industrial uses but only for areas south of Interstate 405. However, under the proposed Project, those impacts recognized by the RDEIR nevertheless remain for industrial uses north of Interstate 405. Although the RDEIR proposes this expansion of the Business District, it fails to explain why it does not extend the Business Complex District to areas north of Interstate and west of Jamboree Road. More importantly, although the RDEIR recognizes that this separation from existing industrial uses is the appropriate mitigation for the impacts of new residential uses on existing industrial uses, the RDEIR fails to explain why this mitigation is not extended to other existing industrial uses in the Irvine Business Complex which are located north of Interstate 405 such as Deft. The RDEIR should be revised and recirculated to explain and address these issues and explain why other key businesses in the Irvine Business Complex which are north of Interstate 405 are not provided the same protections as businesses south of Interstate 405.

In the DEIR, Appendix D also recognized this incompatibility. Section 5-8-4A4.e of this Appendix D provides:

"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. As we indicated in our May 14, 2009 Comments, Deft is similar to chrome plating facilities. See Land Use Compatibility White Paper: Hazardous Materials Assessment by Global Environmental Consulting Company, Inc., attached to our May 14, 2009 Comments as Attachment A and attached hereto as Exhibit "2"; and the May 11, 2009 Letter from Global Environmental Consulting Company, Inc. to the Law Offices of Robert C. Hawkins, attached to our May 14, 2009 Comments as Attachment "C" and attached hereto as Exhibit "3." 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.

Although the RDEIR recognizes that Deft is sufficiently similar to chrome plating facilities, the RDEIR removes the protections provided in the DEIR including the 1,000 foot buffer. That is, the DEIR and its Appendix D prohibits residential uses within 1,000 feet of chrome plating facilities.

The RDEIR removes this restriction and only requires that if residential uses are proposed within 1,000 feet of existing industrial uses, the RDEIR only requires that the applicant "... shall submit a health risk assessment (HRA) ..." Appendix D, page 12. Further, Appendix D requires:

"If the HRA shows that the incremental cancer risk exceeds one in one-hundred thousand ($1.0\text{E}-05$), or the appropriate noncancer hazard index exceeds 1.0, the

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cont'd.

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applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (TBACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units.

Id.

Unfortunately, the HRA and the identified TBACTs will protect neither industrial uses nor residential uses. As indicated in the January 18, 2010 Global Environmental Consulting Company, Inc. report to this office, the HRA with its TBACTs are "an unacceptable dilution of community protection;" they recommended reestablishing the 1,000 foot buffer between existing industrial uses and any new residential uses. See the January 19, 2010 Report from Global Environmental Consulting Company, Inc. which is Exhibit "1" hereto.

O5-26
cont'd.

Clearly, the City cannot put the toothpaste back in the tube; in the DEIR, the City has already recognized that new residential uses should not be located within 1,000 feet from a chrome plating facilities. This separation is the appropriate Project design feature to address and lessen to insignificance the potential impact caused by siting new and incompatible residential uses near existing industrial uses.

Second, the DEIR's proposed buffer for chrome plating facilities complies with the California Air Resources Board's requirements. Under the CARB's Air Toxic Control Measure ("ATCM") for hexavalent chromium (Cr^{+6}), new hexavalent chromium facilities, in addition to installing BACTs and meeting a very stringent emission limits, are prevented from operating inside, or within 1,000 feet of an area zoned residential or mixed use, or within 1,000 feet of a school or school under construction. As indicated in the January 18, 2010 Global Environmental Consulting Company, Inc. report to this office (Exhibit "1" hereto), clearly, the 1000' buffer between existing industrial uses and new residential uses is the better planning course of action; the DEIR already recognized this.

O5-27

Third, as indicated in the January 18, 2010 Global Environmental Consulting Company, Inc. Report to this office (Exhibit "1"), the identified TBACTs including scrubbers or MERV filters will not adequately address any hexavalent chromium (Cr^{+6}) issues or other hazardous materials present at Deft and other industrial facilities. As indicated in this Report, such TBACT's are not fully effective to eliminate problems with Deft's permitted emissions. Moreover, these measures will not even address other materials including the nitrocellulose and odoriferous materials used by Deft, or other issues including light and noise generated by industrial uses.

O5-28

The only effective mitigation or project feature to address this incompatibility of uses is separation: either expand the Business Complex District north of Interstate 405 from Armstrong and

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MacArthur east to Jamboree Road or establish a 1,000' buffer between existing industrial users and any new residential uses. Indeed, under the CARB's ATCM, the requirement is 1,000' between the two zones. With appropriate setbacks, the buffer would be larger.

The RDEIR should be revised to discuss and evaluate these options of further expanding the Business District on the north side of Interstate 405 akin to its expansion under the Project south of Interstate 405; or establish a 1,000 foot buffer between new residential uses and existing industrial uses throughout the Irvine Business Complex.

O5-29
cont'd.

Another project feature is the densities of residential uses allowed under the Project:

"As a result, 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."

RDEIR, page 3-12.

Although the RDEIR recognizes "the benefit of higher density housing," it fails to recognize and appreciate the need for several individual mixed use cores. If higher density housing creates a benefit, that benefit accrues to more people are concentrated into core areas, not dispersed throughout the entire Irvine Business Complex.

As indicated in our May 14, 2009 comments, earlier in the 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 the benefit of concentrating new residential uses in core areas. They opined 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:

- 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"

O5-30

In this presentation, EDAW recommended that the Project implement the mixed use cores within the Irvine Business Complex at certain nodes, e.g. along Jamboree Road. Unfortunately, the RDEIR fails to appreciate fully the benefit of higher density housing and ignores the recommendations of its experts to embrace mixed use cores.

In the Response to our May 14, 2009 Comments, Appendix Q states that "The IBC Vision Plan does include mixed-use cores." However, the "cores" are simply the two districts in the IBC:

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the Business Complex District and the Urban Neighborhood District. This is beside the point: our comment and EDAW's presentation made clear: the Project must include residential cores within the Irvine Business Complex at specific nodes or areas, not the entire area. EDAW rejected turning large portions of the IBC, e.g. the Urban Neighborhood District, as a core because it does not allow for "focused development patterns," "trip capture," "effective transit," and "clustering" of residential."

Section 3.3.2.1 and following sections address the Project in some detail; however, these sections are sketchy and problematic. Section 3.3.2.3 discusses the General Plan Amendment required by the Project. It includes the raised caps on residential uses and lowered caps for nonresidential uses. It also proposes to delete maximum densities for residential uses which are currently 52 units per acre and opts instead for a minimum density of 30 units per acre. As indicated above, the RDEIR regards this concentration of residential uses as a benefit but without the concept of residential cores.

Figure 3-5 identifies the proposed IBC Infrastructure Improvements which are not analyzed at all in the RDEIR. Given that these improvements aka public works projects are part of the Project, the RDEIR must analyze such project features. In addition, Deft understands that the "i-Shuttle" is also part of the Project.

The RDEIR cannot defer analysis of these Project features. As indicated above, CEQA has forbid "piecemeal" review and analysis of the significant environmental impacts of a project. Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 391, fn. 2. This prohibition stems in part from CEQA itself: Public Resources Code section 21002.1(d) requires that an environmental document "consider[] the effects, both individual and collective, of all activities involved in [the] project." Further, CEQA Guidelines Section 15165 provides that:

"Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168"

Under the Guidelines, the term "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably indirect physical change in the environment" Id. at CEQA Guidelines section 15378(a).

The RDEIR must be revised to describe fully the Project including the infrastructure improvements and the i-Shuttle, to analyze the impacts of such Project features and to mitigate any significant impacts.

Section 3.3.2.6 discusses land use assumptions of the Project. Among other things, this section attempts to identify land use assumptions for the interim year 2015. However, the RDEIR

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O5-31

O5-32



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has no discussion of such assumptions. Rather, it inserts new figures, Figures 3-7a and 3-7b, without any explanation to identify the transfer of development rights assumptions. Because the RDEIR describes such transfers, not as traffic trips but development intensities, Figures 3-7a and 3-7b are inadequate and require explanation. Please provide an explanation of the figures. In addition, these figures appear to contain notes indicated by "*" without any explanation of the note. Please provide an explanation of the asterisks and explain the notes.

However, Figures 3-7a and 3-7b are interesting in their identification of the transfers of development rights. As indicated in our May 14, 2009 Comments, the DEIR and the RDEIR attempt to clarify what these transfers are all about:

"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.**"

O5-32
cont'd.

RDEIR, 3-2. However, Figures 3-7a and 3-7b do not talk about development intensities; they refer to trip budgets and allocating such trips across various land uses. Indeed, Figure 3-7b refers to am peak hour trips, pm peak hour trips and average daily trips. This is far from development intensities. The RDEIR must be revised to explain these figures, to explain how to apply these numbers as either intensities or trips, and to explain how the trip budgets work in the Project which talks about "development intensities."

In addition, the Project includes proposed amendments to the City's Circulation Element. These include: downgrade Jamboree Road from Barranca Parkway to McGaw from a 10-lane divided roadway to a 8-lane divided roadway; downgrade Main Street between Red Hill to Harvard from a 6-lane divided arterial with 2 auxiliary lanes to 6-lane divided roadway; down grade Alton Parkway between Red Hill Ave. and Jamboree Road from a 6 lane divided roadway to a 4 land divided roadway; and downgrade Von Karman Ave. between Barranca Parkway and Michelson from a 6-lane roadway to a 4-lane roadway. These latter two downgrades, Alton and Von Karman, also require amendments to the County's Master Plan of Arterial Highways ("MPAH"). The RDEIR indicates that the City will initiate the amendments.

O5-33

Also, the Project includes changes to the state and interstate freeways at Interstate 405 and Von Karman; and State Route 55 and Alton. Currently, the freeway plans call for high occupancy vehicle drop down ramps at Von Karman and Interstate 405, and Alton and State Route 55. The Project proposes to delete these as well as the proposed bridge over SR 55 at Alton.

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All of this requires environmental review as part of the Project. However, it is clear that these parts of the Project require action by other agencies including the California Department of Transportation ("Caltrans") and the Federal Highway Administration. It is also clear that the City proposes to analyze these Project features in a piecemeal fashion. As indicated throughout, CEQA forbids such piecemeal analysis. The RDEIR should be revised to describe fully these Project features, analyze their impacts and propose necessary mitigation.

O5-33
cont'd.

Section 3.3.3 is supposed to focus on the Project level description for the RDEIR. However, it fails to do so. First, Table 3-4 lists seven (7) specific residential projects which are part of the Project. The DEIR included two more projects: the 186 unit Mountain Vista proposed at 2501 Alton; and the 151 unit development at 6542 Millikan. However, the RDEIR fails to discuss what happened to these projects. Please explain what happened to these two projects in sufficient detail, explain why they are not part of the Project, and if the Project and the Overlay Zone is approved, what steps will need to be taken to resurrect these projects.

More importantly, Section 3.3.3's discussion of these individual projects fails to discuss these projects at a project level. Many, if not all, of these individual projects have undergone environmental review including preparation of EIR. The detail in these project level environmental documents should be included in the RDEIR, but it is not. The RDEIR should be revised to provide a sufficient project level analysis of the individual projects so that the decisionmakers and the public may understand their project features, their impacts, and any and all appropriate mitigation.

Moreover, the RDEIR fails to explain who the applicants are for these individual projects and where they are located. For each individual Project which is part of the Project, please identify the project applicant and provide contact information for the applicant. In addition, if other entities or groups are listed in any of these applications, provide the identity and contact information for each such entity, person or group.

O5-34

In addition, three (3) of the individual projects have subterranean parking: Martin St. Condos; 2851 Alton; and the Irvine Technology Center. However, the RDEIR fails to describe the depth of these subterranean parking structures. As we noted in our May 14, 2009 Comments, groundwater is shallow in the Project area; at many areas in the Irvine Business Complex, groundwater rises to four feet below ground level. It is crucial to understand and discuss the depth of the parking structures. Please explain in detail these features of the individual projects and identify any other subterranean features, e.g. swimming pools, which may serve to create Project related impacts on hydrology and water quality as well as any and all necessary mitigation measures.

VII. Section 4, the "Environmental Setting," Is Inaccurate and Requires Substantial Revision.

As we indicated in our May 14, 2009 Comments, the environmental setting serves as the base condition against which the impacts of the Project are measured. See CEQA Guidelines

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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. In addition to the requirements of CEQA including those of CEQA Guidelines section 15125(a), Judge Sundvold also provided direction in connection with the DEIR and now the RDEIR. 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."

Martin St. Minute Order, page 4 (Emphasis added.) As indicated in our May 14, 2009 Comments, the DEIR and Section 4 failed 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. The RDEIR continues this failing.

Moreover, the RDEIR states that:

"The last major General Plan Amendment and Zone Change for the whole of the IBC was adopted in 1988. At that time, the General Plan and Zoning Code envisioned 58.255 million square feet of nonresidential development and 3,571 dwelling units at buildout. The 1988 entitlements also included a Circulation Mitigation Program and revised funding program, including a fee program."

RDEIR, page 4-8. However, this ignores what the RDEIR calls the "1992 IBC rezoning program" by which "the development intensity assigned to each parcel [in the Irvine Business Complex.]" Moreover, it conflicts with Section 3's discussion of the state of land use controls in the Irvine Business Complex. For instance, Section 3 states:

"A General Plan amendment and rezoning project was approved by the City of Irvine for the IBC in 1992. As approved at that time, the IBC entitlements included 48.255 million square feet of nonresidential development and 3,571 dwelling units. The 1992 approvals also included a circulation mitigation program and revised funding program, including a fee program."

RDEIR, page 3-2. The RDEIR must be revised to explain this conflict and, as indicated above, please clarify and explain why the RDEIR does not refer to the 1992 EIR and Project. In addition, the RDEIR must be revised to explain fully and completely the nature and the role of the 1992 EIR and the Project in connection with the RDEIR and this Project.

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Moreover, in our May 14, 2009 Comment Letter, we noted that the Project should include discussion of the March 2009 Zoning Code Amendment regarding retail accessory uses. The Response to this Comment O3-36 states that:

"The Accessory Retail Use Ordinance is not part of the IBC Vision Plan project and was processed separately."

However, the RDEIR states:

"For purposes of the IBC Vision Plan, the utilization of the accessory retail use designation has been assumed, although that assumption does not, by definition, yield any additional traffic generation."

O5-36

RDEIR, page 4-8. In reality, the Accessory Retail Use Ordinance is part of the Project and serves to facilitate additional uses which were not earlier allowed in the Irvine Business Complex without additional traffic analysis. Moreover, the assumption— that the accessory retail uses do not generate traffic—is without foundation. The RDEIR must show that such uses will not generate traffic; it cannot simply assume that they won't. The RDEIR should be revised to provide this explanation and to show that this Ordinance does not have traffic impacts which either may affect the Project or which the Project will affect.

Finally, as we have indicated above, the baseline for analysis must not be the existing conditions on the ground today but rather the conditions that existed prior to the Project— the residential transformation of the Irvine Business Complex. CEQA Guidelines section 15125 provides that:

"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."

O5-37

The RDEIR and the Responses to Comments on the DEIR maintain that this means that the baseline condition for the Project is that condition which existed on the ground at the time of the notice of preparation. However, this creates several problems.

First, the Project has been under consideration for more than ten years. Moreover, the environmental analysis for the Project has been underway for more than four years. Hence, the baseline condition must extend, at the very least, back to when the City first began considering the Project.

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Second, this approach conflicts with Judge Sundvold's direction. As indicated above, Judge Sundvold required that the City analyze the impacts of the full residential transformation of the Irvine Business Complex. For such an analysis, the baseline must extend back to the conditions on the ground after the last programmatic analysis of the land uses in the Irvine Business Complex—back to the conditions on the ground after certification of the 1992 EIR and Project approvals.

Third, given the Project—the residential transformation of the Irvine Business Complex, the RDEIR must analyze the impacts of the entire Project. The only way to do this is to regard the base condition before this transformation in 1992. Any other baseline will include approved residential projects in the baseline.

O5-37
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The RDEIR must be revised to explain the baseline analysis, explain and analyze the baseline pre-Project in 1992, and provide a detailed discussion of the Project's impacts on the environment as it existed in 1992.

VIII. Section 5, "Environmental Analysis," is Inadequate and Must be Revised.

Section 5 attempts to address and discuss the environmental impacts of the Project. The Project has many such impacts; the RDEIR misses many such impacts and fails to analyze the impacts completely or fully. Hence, Section 5 and the entire DEIR must be revised and recirculated.

O5-38

A. Section 5.1, "Air Quality," Fails to Analyze and to Mitigate 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 and most importantly, Section 5.2.3 discusses the environmental impacts of the Project. Among other things, Section 5.2.3 sets forth existing plans, programs, and policies ("PPP") as well as proposed Project design features ("PDF"). Although regulations from the California Air Resources Board are existing plans, programs, and policies, the RDEIR regards such as Project design features. For instance, PDF 2-1 under the title "CARB Recommended Buffer Distances" requires that:

O5-39

"As described in the proposed zoning for the project and based on the recommended buffer distances of the California Air Resources Board, for all residential or residential mixed-use projects within the distances to industrial uses outlined below, the Project Applicant shall submit a health risk assessment (HRA) prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment (OEHHA) and the South Coast Air Quality Management District (SCAQMD) to the Community Development Director prior to approval of any future discretionary residential or residential mixed use project. If the HRA

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shows that the incremental cancer risk exceeds one in one hundred thousand ($1.0E-05$), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units.

- “• 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.”

RDEIR, 5.2-13. However, PDF 2-1 raises several issues. First, the California Air Resources Board recommends that no residential be sited within 1,000 feet of chrome plating facilities. See 17 Cal. Code of Regulations §§ 93102 et seq. PDF 2-1 substantially weakens this protection. Second, PDF 2-1 recognizes the significant impact of facilities using hexavalent chromium (Cr^{+6}) but improperly defers mitigation. The DEIR and the proposed Zoning Code Amendment which was part of the earlier Project properly recognized the importance of a buffer between facilities using hexavalent chromium (Cr^{+6}) and residential uses.

Third, as indicated in the reports of Global Environmental Consulting Company, Inc., the HSA and its proposed measures to limit such exposure are ineffective. In its January 19, 2010 report, Global Environmental Consulting Company, Inc. states that neither the scrubbers or the filters are applicable in this situation. They conclude:

“In our professional opinions, the replacement of the 1000 foot set-back with TBACT or MERV-14 controls is an unacceptable dilution of community protection on the part of the City of Irvine. The original 1000 foot set-back, along with the oversight provided by Agencies such as SCAQMD and OCFA provide a significant and very high level protection to the community. The 1000 foot set-back should be retained and residents should not be potentially exposed to chemical and physical hazards which are controllable.”

Global Environmental Consulting Company, Inc. January 19, 2010 report, page 6. As we have already pointed out, the Project analyzed by the DEIR included this 1,000 foot buffer from chrome plating facilities. Hence, the City recognizes that such a buffer is effective and feasible. The RDEIR also recognizes that any facility using hexavalent chromium (Cr^{+6}) poses a risk of exposure.

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Hence, the buffer should be extended to industrial users such as Deft. Rather than the HSA, the RDEIR must return to the 1,000 foot buffer and provide such a buffer around Deft.

In addition, it is unclear under what authority the City can require the installation of scrubbers on private property which complies with appropriate regulations. The RDEIR must be revised to discuss who bears the costs of the access, installation, operation and maintenance of these scrubbers on industrial properties. It may be that the regulators such as the South Coast Air Quality Management District would not allow third parties to perform these tasks and/or that the industrial users would not allow third parties access and/or the ability to perform such tasks.

If the City proposes to impose this duty on industrial users, then those costs are another significant impact as a result of the Project. Moreover, such costs would work a taking on industrial businesses in the area and be in violation of state and federal constitutional protections.

Finally, this requirement for separation between existing industrial users and new residential uses is not new to the City. The City already requires substantial setbacks for certain uses. For instance, Section 2-13-7 of the Zoning Ordinance requires that residential uses be separated from hazardous waste residual depositories by a buffer of 2,000 feet.

The RDEIR must be revised to analyze this impact fully and propose a 1,000 foot buffer between new residential uses and existing industrial uses which use hexavalent chromium (Cr⁺⁶).

O5-39
cont'd.

PDF 2-1 is really unworkable and will not provide the protections the City must require. The earlier Project had a much more effective and workable measure: 1,000 separation between new residential uses and existing industrial uses which use hexavalent chromium (Cr⁺⁶). The RDEIR and the Project must be revised to include this measure.

Further, Impact 5.2-5 requires revision. Impact 5.2-5 addresses the Project's potential to expose sensitive receptors to air quality emissions. Although the RDEIR's analysis of Impact 5.2-5 has expanded somewhat, it fails to identify and evaluate the Project's potential to expose new sensitive receptors, e.g. new Project residents, to toxics and other hazardous materials in the area. It fails to identify any such industrial sources: it simply defers the analysis until the preparation of a health risk assessment. This is improper. The DEIR earlier recognized the feasible and effective mitigation for such impacts: distance. The RDEIR should incorporate this feature and/or mitigation measure and require that new residential uses are set back from existing industrial uses by a buffer of 1,000 feet or expand the Business Complex District north of Interstate 405 to include all Key Businesses in the area including Deft.

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 allows residential uses to be sited within the CARB limitations. This raises several problems. First, the RDEIR must be revised to reflect the Project: residential uses should be sited outside of the CARB limits. Second, although the Impact 5.2-6 references the CARB 1,000 foot buffer for chrome plating

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facilities, it contains no discussion of such a restriction. (Also, the analysis of Impact 5.2-6 refers to the "Multi-Use and Urban Neighborhood District." This must be corrected.)

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 (Cr⁶⁺). Deft has similar emissions and qualifies for a 1,000 foot buffer from any residential uses, not as the Project indicates, residential structures.

O5-39
cont'd.

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 address fully and fairly all air quality impacts of the Project including the potential to expose residents to hexavalent chromium (Cr⁶⁺) emissions.

B. Section 5.5, "Geology and Soils," Again Fails to Analyze Program and Project Impacts.

Section 5.5 tries unsuccessfully to address the Project's impacts on IBC's geology and soils.

First, as we indicated in our May 14, 2009 Comments, Section 5.5 fails to discuss fully and completely the Project's impacts on soils including liquefaction. Although Section 5.5 has been revised to address the shallow groundwater issues, it fails to propose adequate features or mitigation measures to address such impacts. Moreover, it fails to state how high the groundwater levels are. For instance, Impact 5.2 recognizes that "future development could potentially be subjected to seismic related ground failure, including landslides, lateral spreading, subsidence, liquefaction, or collapse, resulting in risks to life." With the existing plans, programs and policies, Section 5.5 concludes that this impact will be less than significant.

O5-40

However, the existing plans, programs and policies do not support this conclusion. For instance, PPP-3 states:

"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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RDEIR, page 5.5-9. Or again, PPP-5 provides:

"In accordance with the City of Irvine Grading Code (Municipal Code Title 5, Division 10) and Grading Manual, grading and earthwork shall also be performed under the observation of a Certified Engineering Geologist to provide professional review and written approval of the adequacy of natural ground for receiving fills, the stability of cut slopes with respect to geological matters, and the need for subdrains or other groundwater drainage devices. The geologist shall geologically map the exposed earth units during grading to verify the anticipated conditions, and if necessary, provide findings to the geotechnical engineer for possible design modifications."

RDEIR, page 5.5-9. However, these impermissibly defer the analysis of the geologic impacts of the Project and any necessary mitigation to some future time and some future study. See Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276. The City cannot now await a report from some consultant to determine what is necessary to mitigate or eliminate a geologic impact of the Project. The RDEIR must analyze the impact and propose necessary mitigation.

In addition, Impact 5.5-2 is entitled:

"FUTURE DEVELOPMENT COULD POTENTIALLY BE SUBJECTED TO SEISMIC RELATED GROUND FAILURE, INCLUDING LANDSLIDES, LATERAL SPREADING, SUBSIDENCE, LIQUEFACTION, OR COLLAPSE, RESULTING IN RISKS TO LIFE AND PROPERTY."

O5-40
cont'd.

RDEIR, page 5.5-11. After analysis, the RDEIR concludes that this impact is insignificant. However, the analysis is not specific and fails to provide a project level analysis as indicated in the RDEIR. The RDEIR must be revised to provide this project level analysis so that the decisionmakers and the public may understand the full nature and extent of the Project and the individual projects, their impacts and consider any necessary mitigation.

For instance, under Impact 5.5-2, the RDEIR discusses the potential for dewatering activities. It notes:

"For projects where the existing groundwater level is above the subterranean floor level, the floor slabs may be subject to hydrostatic uplift. In addition, there is potential for water seepage through floor slabs and walls which may result in water accumulation and ponding in the basement. Therefore, it will be necessary to incorporate adequate water-proofing and drainage measures for subterranean walls and floor slabs. Also, an active dewatering system consisting of well-points and pumps (with automatic or manual controls) around the buildings may be necessary to control groundwater level and to mitigate water flow into basements during an

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emergency. The well-points installed for construction dewatering may be incorporated into the dewatering."

RDEIR, page 5.5-12. However, given that at least three of the individual projects which are subject to a project level review have subterranean garages, it is unclear what is required for these projects. The RDEIR cannot defer this analysis and/or mitigation; it must provide the analysis and propose mitigation now. Indeed, the dewatering systems may cause their impacts.

The RDEIR must be revised to discuss these issues, provide sufficient information regarding any and all subterranean features of the Project including swimming pools, parking and other features, provide a complete analysis of all such impacts and develop appropriate mitigation measures.

Moreover, as indicated above, Section 5.5 fails to state what the groundwater levels are in the Project area. However, under Impact 5.5.3, the RDEIR states:

"Excavations extending deeper than about two feet are expected to encounter wet soil conditions and groundwater may be encountered at depths greater than 10 feet during construction."

O5-40
cont'd.

RDEIR, page 5.5-12. However, this conflicts with the estimates in Section 5.6, "Hydrology and Water Quality." There, the RDEIR states:

"Based on previous geotechnical investigations performed in the region of the Irvine Business Complex, groundwater may occur at depths ranging from 5 to 10 feet below ground surface (bgs) for portions of the project sites."

RDEIR, page 5.7-48. This conflict undercuts Section 5.5's analysis in connection with the potential for liquefaction. Because of this, the RDEIR must be revised to account for the impacts of the Project on geology given these high groundwater levels.

The RDEIR must be revised both at the program level and at the project level. It fails to include any project level features for the seven (7) individual projects and to provide specific project features or mitigation which can be enforced. On the programmatic level, the RDEIR fails to provide any specifics about dewatering, how and when it will occur, and under what authority it will occur. The RDEIR 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.

C. Section 5.6, "Hazards and Hazardous Materials," Must be Revised to Include an Adequate Buffer for Existing Industrial Uses from New Residential Uses.

O5-41

Section 5.6 proposes to address the Project's impacts on Hazards and Hazardous Materials. As before, it is inadequate for several reasons.

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First, Section 5.6.1.1 discusses the regulatory background including federal, state, and regional regulations. However, it ignores the City's own regulations. As indicated above, Section 2-13-7 of the Zoning Ordinance requires that residential uses be separated from hazardous waste residual depositories by a buffer of 2,000 feet. The RDEIR must be revised to review and analyze the applicability of both City and County regulations regarding hazardous materials, conform the Project to such regulations and propose any necessary mitigation.

Second, it is odd that the RDEIR for the Project— the residential transformation of the Irvine Business Complex— focuses on the regulatory environment for hazardous materials, rather than the regulations which prevent siting residential uses near existing industrial uses. These regulations include the California Air Resources Board's requirements as well as the City's own requirements. Please remember that the Project is not the siting of a new hazardous materials facility in the City; rather, the Project is bringing new residential uses in areas adjacent to existing industrial uses which use hazardous materials. Please explain how various regulations may affect the siting of new residential uses in the vicinity of existing industrial uses, why the RDEIR and the Project fail to include such regulations, what Project impacts are related to failing to consider such regulations and what necessary mitigation is necessary for the Project which may conflict with such regulations.

O5-41
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Third, Section 5.6 refers to a technical report by Environmental Data Resources, Inc. on the Irvine Business Complex dated September 9, 2008. The DEIR relied on this same report. The RDEIR notes that: "[a] complete copy of the Environmental Data Resources Report is included in Appendix J." RDEIR, page 5.6-1. However, Appendix J includes only the Executive Summary and several maps; it does not include the full Environmental Data Resources, Inc. Report.

O5-42

Section 5.6.1.2 addresses the local setting regarding hazards and hazardous materials. It provide no programmatic analysis and attempts to conduct the analysis based upon the seven (7) specific projects. However, it is unsuccessful for many reasons.

At the outset, the Project setting is the entire Irvine Business Complex which has "511 regulated facilities in or in the immediate vicinity of the IBC" which are subject to regulation by the South Coast Air Quality Management District for hazardous air emissions. These 511 may affect air quality emissions throughout the Irvine Business Complex. Yet, the RDEIR fails to discuss these 511 regulated facilities in any detail or discuss their potential to create significant Project related hazardous materials or air quality impacts. Please explain and discuss the impacts of Project on such regulated facilities and how the Project will protect such facilities and the new residential users.

O5-43

The DEIR noted: "14 are identified as Title V facilities (see Figure 5.6-1)." DEIR, 5.6-8. However, without explanation, the RDEIR states that "Of these, 8 are identified as Title V facilities within the confines of the IBC (see Figure 5.6-2)." Given that the DEIR and the RDEIR rely on the same EDR Report dated September 2008, it is unclear how these can be different; one must be incorrect. Moreover, RDEIR offers no explanation of the difference in number of facilities within the nine month intervening period and with no new technical study. The RDEIR must be revised to

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discuss this difference and provide an appropriate explanation with reference to a correct technical report.

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Further, the Project level analysis of the seven pending projects is itself inadequate. Table 5.6-2 is really a summary analysis but it is the only analysis in the RDEIR. Table 5.6-2 is replete with suggestions for further study. For instance, Table 5.6-2 discusses the Avalon Jamboree II project and states:

"Further evaluation of the potential risk to project occupants associated with exposure to toxic and carcinogenic air emissions from Cosmotronic, Inc. and B. Braun was recommended."

RDEIR, page 5.6-10. See also the Irvine Technology Center Project ("Further evaluation of the potential risk to project occupants associated with exposure to the toxic and carcinogenic air emissions was recommended."); the Kilroy Project ("While emissions from these facility were characterized as low to moderate, an air exposure assessment was recommended to quantify the potential risk to human health and determine compatibility with the proposed residential project."); the Alton/Millikan Apartments ("Further evaluation of the potential risk to project occupants associated with exposure to the toxic and carcinogenic air emissions was recommended."); the 2852 Kelvin Project ("Diesel particulate may be emitted by the generators. Further evaluation of the potential risk to project occupants is recommended.").

O5-44

These recommendations must be pursued **now**, not when the applicant conducts a health risk assessment. As indicated above, CEQA requires that the analysis must occur now and the mitigation proposed now; it cannot await some experts' reports which are not subject to public review and comment. Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276.

Also, Tables 5.6-2 (Title V Facilities) and 5.6-3 (Hazardous Substance Releases) reference an acronym: "IAA." This is not explained in the RDEIR. Presumably, it refers to the Industrial Adjacency Assessment which has been rejected in the proposed Project Zoning Code Amendment. Given that the City has rejected such analysis, it is unclear what relevance the IAA's for the pending projects have. Indeed, together with the IAA, the pending projects had DEIRs drafted and circulated for public review and comment. The RDEIR should refer to these documents. As for the IAA analysis, given that the proposed Zoning Code and PDF 6-5 requires HRAs for such projects, the project proponents should prepare health risk assessments for those projects. The RDEIR should be revised and recirculated to include such assessments and to explain what the IAA is and what is its utility given that the Project does not require such studies.

O5-45

More appropriately, the RDEIR should consider substantial set backs to solve this adjacency problem. Rather than wait for further studies to determine whether the siting of these new residential projects is safe, as recommended by Global Environmental Consulting Company, Inc., the City should establish well recognized buffers around existing industrial users such as Deft so that the safety issue is clear now. Also and importantly, such buffers will address the future

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concerns about incompatibility: the residential users will be concerned about industrial users next to them. If the City establishes substantial buffers, this potential problem will dissolve with the application of such good and sound planning principles.

Unfortunately, the RDEIR fails to follow good and sound planning principles. Instead, the RDEIR employs two weak PDFs which it hopes will serve as a replacement. The PDFs do not serve this purpose.

First, PDF 6-4 provides:

"As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, 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."

Second, PDF 6-5 states:

"For all residential projects located within 1,000 feet of an industrial facility which emits toxic air contaminants, the Project Applicant shall submit a health risk assessment prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment and the South Coast Air Quality Management District to the Community Development Director prior to approval of any future discretionary residential or mixed-use project. If the HRA shows that the incremental cancer risk exceeds one in one hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value filters rated at 14 or better at all residential units."

RDEIR, page 5,6-23. PDF 6-5 is similar to PDF 2-1 and has similar problems. As indicated in the Global Environmental Consulting Company, Inc.'s various reports including the January 19, 2010 report, the scrubbers and filters will not work; the appropriate project feature was identified in the DEIR: 1,000 foot buffers between existing industrial users and new residential users.

Further, as noted in the Global Environmental Consulting Company, Inc.'s January 19, 2010 report at page 5, nitrocellulose also poses a substantial problem for adjacent residential uses. They note:

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"If a fire extends to the nitrocellulose storage area and causes a detonation, it will be the equivalent of 1,900 pounds of TNT detonating, causing extensive damage over 1,000 feet beyond the plant boundary."

This report also notes other problems including fire and spills for which the appropriate mitigation or project design feature is separation. Indeed, the only way to protect residential users and Deft from such a potentially disastrous event is to establish a substantial buffer, e.g. 1,000 feet, between Deft and any new residential uses. Given these potential problems, the DEIR's proposal to separate facilities which use hexavalent chromium (Cr+6), and the expansion of the Business Complex District, please explain why the RDEIR does not expand the Business Complex District north of Interstate 405 westerly from Jamboree Road to MacArthur and Armstrong or require a 1,000 foot buffer between new residential uses and existing industrial uses.

PDF 6-4 fails for several reasons. First, it impermissibly defers analysis and mitigation. Second, it lacks any standards by which the Director of Community Development may evaluate the relevant data.

For both of these features, the better approach, the good and sound planning approach, is to require 1,000 foot separation between existing industrial uses and new residential uses or expansion of the Business Complex District west of Jamboree Road. The RDEIR should be revised to discuss these issues and evaluate the impacts of a revised project which includes these features.

Impact 5.6-1 recognizes that the Project may expose "development of sensitive land uses in proximity to facilities that handle, store, or transport hazardous materials." RDEIR, page 5.6-24. Surprisingly, the analysis of this impact relies upon federal and state regulation to mitigate such uses from exposure to accidental releases from such facilities.

However, accidents really cannot be regulated other than by separation of incompatible land uses such as existing industrial uses and new residential uses. Moreover, relying upon regulation of industrial uses to site residential uses adjacent to such uses is problematic: the such regulations require reasonable distances between existing industrial uses which employ hazardous materials and new residential uses.

In addition, the analysis of Impact 5.6-1 relies upon disclosures to residential uses to mitigate such exposure. Such disclosures may protect developers, public agencies and others responsible for siting new residential uses near existing industrial uses but it will neither protect the residential users nor the existing industrial users. The only method to protect such uses is distance: a 1,000 foot buffer between existing industrial uses and new residential uses; or expand the Business Complex District north of Interstate 405 easterly from Armstrong and MacArthur to Jamboree.

Further, the analysis of Impact 5.6-1 recognizes that future study is necessary to finalize the analysis. For instance, the RDEIR states: "Further evaluation of the toxic and carcinogenic air

O5-47
cont'd.



O5-48

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emissions would be necessary to determine the risk to project occupants.” However, the focus of this analysis is the occupants of the pending projects. All potential residents within the Project area may be exposed to such emissions. Indeed, the RDEIR must state the potential for any Project resident to be exposed to toxic and carcinogenic air emissions from the Project. As indicated above, the RDEIR cannot permissibly defer such analysis. The RDEIR must be revised to discuss these impacts and propose necessary mitigation and/or project features including establishing a 1,000 foot buffer between new residential uses and existing industrial uses and/or expanding the Business Complex District north of Interstate 405 and west of Jamboree Road.

Importantly, this analysis also notes that PDF 6-5 may address this potentially significant impact. It states:

PDF 6-5 states that for all residential projects located within 1,000 feet of an industrial facility which emits TACs, the Project Applicant shall submit an HRA, prepared in accordance with recognized policies and procedures, to the Community Development Director prior to approval of any tentative tract map. If the HRA shows that the recognized risk and/or hazard thresholds are exceeded, the applicant will be required to identify and demonstrate that T-BACTs are capable of reducing risks and/or hazards to an acceptable level. TBACTs may include, but are not limited to, installation of pollution control equipment at the industrial facility, or installation of MERV filters at all residential units.”

O5-48
cont'd.

RDEIR, page 5.6-25-26. However, this shows why PDF 6-5 is inadequate: it may be ineffective; and the Director has no power to deny the Project based upon the HRA. PDF 6-5 must be strengthened to require 1,000 foot buffer between industrial uses which employ hazardous materials and new residential uses.

Finally, under Impact 5.6-1, the RDEIR states that PDF 6-2 requires disclosures to new residential users of the new residential uses. However, it also states: “The language for this disclosure shall be as specified by the Community Development Director.” Given the importance of such disclosure, the RDEIR should state the nature and extent of such disclosure and the standards for such disclosures.

O5-49

Impact 5.6-2 also recognizes that the Project area includes various hazardous material sites. Again, the discussion of this Impact relies upon PDF 6-1, 6-2, 6-3 through 6-8. However, the analysis fails to discuss how the Project including all PDFs protects existing industrial users which employ hazardous materials from new residential uses and it protects new residential users from existing industrial uses. This analysis must be revised to discuss and identify how the PDFs may protect existing industrial uses and the new residential uses including a discussion of the DEIR’s proposal to separate chrome plating facilities from new residential by a 1,000 foot buffer.

O5-50

Section 5.6.5 concludes that the Project will have less than significant impacts on hazards and hazardous materials. However, this analysis relies extensively upon existing regulations of

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industrial users with hazardous materials. These regulations can neither serve to evaluate and protect existing industrial uses from new and adjacent residential uses nor to evaluate and protect new residential uses. The better and sound planning policy is to separate such incompatible uses: this is the appropriate local regulation. This is the regulation that the City must incorporate in the Project.

O5-50
cont'd.

Finally, as noted above, the DEIR recognized the need to separate facilities with hazardous materials such as hexavalent chromium and nitrocellulose from new residential uses. The RDEIR also recognizes the need to separate existing industrial uses from new residential uses by prohibiting residential uses near Allergan and establishing the Business Complex District where the City had earlier proposed residential uses. All of this means that the City recognizes that adequate separation between existing industrial uses such as Deft and new residential uses is effective and feasible. The RDEIR and the Project must revised to include Project features which establish a 1,000 foot buffer between Deft and new residential uses and/or expand the Business Complex District north of Interstate 405 westerly from Jamboree Road..

O5-51

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. As noted above, in contrast to the rest of the RDEIR, Section 5.7 correctly characterizes the Irvine Business Complex:

"The IBC is a **business-concentrated area** located within the City of Irvine and is generally bounded on the west by the Costa Mesa Freeway (SR-55), on the south by Campus Drive, and on the east by the San Diego Creek Channel (Reach 1). The existing condition of the IBC consists primarily of commercial and office buildings, warehouses and a **few residential high rise condominiums.**"

O5-52

RDEIR, 5.7-1 (Emphasis supplied.). Section 5.7 also correctly notes that groundwater is quite high in the Project area:

"Based on previous geotechnical investigations performed in the region of the Irvine Business Complex, groundwater may occur at depths ranging from 5 to 10 feet below ground surface (bgs) for portions of the project sites."

RDEIR, page 5.7-48. Unfortunately, it fails on many other fronts.

First, in our May 14, 2009 Comments, we stated that Section 5.7 included a discussion of bioswales and other water conservation/water quality improvements. We noted that these features may adversely affect the already high groundwater levels. The Response to this Comment No. O3-55 states:

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"Due to the developed nature of the IBC, there are very few opportunities to construct detention basins or bioswales within individual project sites."

RDEIR, Q-148. However, Section 5.7 goes on for pages about the City's Local Implementation Plan ("LIP") under the County of Orange's Drainage Area Management Plan ("DAMP") which LIP includes best management practices which will be included in the Project including bioswales and detention basins. Indeed, under Impact 5.7-5, the RDEIR states that:

"Since infiltration BMPs, such as pervious pavement and infiltration trenches, require a depth of 10 feet or greater to groundwater to minimize impacts from storm water pollutants, infiltration BMPs are not proposed to serve as primary treatment BMPs for storm water runoff in areas with high groundwater. Any pervious pavement used at these sites will require impermeable linings and underdrain systems to eliminate contact with groundwater and reduce the potential for ponding water on the surface."

O5-52
cont'd.

RDEIR, page 5.7-48. As indicated below, this statement creates problems for several areas of the impact analysis.

Section 5.7 also recognizes that an alternative approach is to participate in a regional and basin treatment systems such as the Irvine Ranch Water District's San Diego Creek Natural Treatment System Program. However, Section 5.7 lacks specifics on how the City or project proponents could or would participate in such established programs or how such regional programs would avoid local runoff and local water quality problems. Please explain how the Project and its applicants would participate in such regional programs, and/or is the RDEIR proposing additional regional programs which would require additional environmental analysis.

Interestingly, although the RDEIR refers to the City's LIP and to a model LIP under the County's DAMP, the RDEIR does not state when or if the City has adopted a LIP and what are its specific best management practices. The RDEIR should be revised to discuss the City's LIP, when it was adopted and what are its components.

O5-53

Impact 5.7-1 states that the Project would not adversely affect groundwater recharge because it would not substantially increase impervious surfaces. It continues:

"It is reasonable to assume that the proposed General Plan amendment will not increase the amount of impervious surfaces in Irvine Business Complex, but more likely reduce the imperviousness, as industrial sites generally have a greater percentage of impervious surfaces in comparison to residential sites."

O5-54

RDEIR, page 5.7-42. However, this raises several problems. First, the RDEIR should not assume anything. The Project can require increased use of pervious surfaces. Second, as noted above, the Project area suffers from high groundwater, as high as four feet below grade at the Deft site.

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Increasing pervious surfaces may have an adverse impact on groundwater recharge by causing rising groundwater and flooding in the Project area. Indeed, as noted above, the RDEIR recommends installing impervious layers below pervious layers where groundwater is within ten feet of ground surface. This condition permeates the Irvine Business Complex. Hence, it is likely that the impervious surfaces will increase and may create problems for groundwater recharge. (The RDEIR notes that some of the Project area soils do not percolate well so that infiltration in some areas may not occur. However, the technical appendix K and its reports do not provide any basis for such an assertion.)

Moreover, Impact 5.7-1 notes that the individual projects will also not cause significant hydrology impacts, because these also will not interfere with groundwater recharge. However, as indicated in Section 5.5 and later in Section 5.7, these individual projects and other may require dewatering activities which will adversely affect groundwater recharge by sending stored water into some disposal site and away from beneficial uses. Dewatering is required because the individual projects may suffer from rising groundwater and therefore inundation in connection with various subterranean project features such as parking, swimming pools and other such features. Such results are adverse to groundwater recharge and may require groundwater storage activities to be cut back.

O5-54
cont'd.

Impact 5.7-3 addresses impervious surfaces and surface water impacts. It concludes that the Project will not result in increased impervious surfaces and will not adversely affect storm water run-off. This is incorrect.

As indicated above in our comments on Section 5.5, the Project will intercept groundwater and be required to dispose of it. Groundwater which rises to the surface or is otherwise brought to the surface will mingle with surface waters. However, as noted below and in Impact 5.7-5, such groundwater may have contaminants and/or other problems which would render it unfit for disposal into storm drains as proposed by the Project. The RDEIR must be revised to address this concern and to develop a method of disposal.

Impact 5.7-5 addresses whether the Project may violate water quality standards. It concludes that it will not create significant impacts on water quality. However, the groundwater analysis is deficient for several reasons. First, it is unclear that the City and/or project proponents will have the right to intercept groundwater. The City and/or project proponents will produce groundwater and dispose of that groundwater into the storm drains. That disposal will constitute a waste of water in violation of California Constitution Article 10, Section 2. The City and/or project proponents who plan on intercepting groundwater, dewatering their sites, and disposing of the potentially contaminated water in the storm drains will need permission from the Orange County Water for such a special water project and perhaps a permit from the State Water Resources Control Board for the waste of water. The RDEIR must be revised to address the rights and responsibilities of entities seeking to produce groundwater in the Orange County Water District boundaries. Moreover, again, this appears to be piecemealing the Project analysis.

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Second, Appendix K's Water Quality Technical Report states that:

"Due to the relatively shallow groundwater levels within portions of the San Diego Creek and Newport Bay watersheds, excess pollutants in groundwater may pose threats to surface water quality when discharged. Discharges that may pose a threat to water quality include wastes associated with well installation, development, test pumping, dewatering from subterranean seepage, and groundwater dewatering wastes from construction sites."

Appendix K, page 8. Although this report indicates that the Santa Ana Regional Water Quality Control Board may permit limited discharges, permanent discharges would require their own permits. The three projects with subterranean garages would require such individual permanent permits for permit discharge. Other projects may have subterranean features such as swimming pools which would also require dewatering. These would also require such permanent permits.

Third, it is unclear that the intercepted water with "excess contaminants" would be permitted discharge rights without first some treatment to meet the standards of the permit. The RDEIR must be revised to provide the character of the groundwater proposed to be discharged and discuss the standards for discharge under the temporary permit by the Santa Ana Regional Water Quality Control Board.

O5-55
cont'd.

Fourth, the analysis under Impact 5.7-5 states:

"The requirement to obtain a permit from the RWQCB to allow discharge of water from dewatering operations into storm drains would be incorporated into the Storm Water Pollution Prevention Plan for the project."

RDEIR, page 5.7-48. However, several things remain unclear and require answer: What is the quality of the water proposed to be discharged? What are the contaminants in such water? Will the Santa Ana Regional Water Quality Control Board allow such contaminant water to be discharged into storm drains which empty into San Diego Creek and Upper Newport Bay which already suffer substantial water quality problems recognized in the RDEIR? The RDEIR should be revised to address these and other questions.

Moreover, the City cannot defer such permits and measures until after the City's project approvals. This amounts to piecemeal environmental review. The Santa Ana Regional Water Quality Control Board may not issue the permit or may condition it substantially. All of this study and discussion must occur now for the pending projects. It cannot await some hearing at the Regional Board. The RDEIR must be revised to review and analyze completely the Project full impacts on hydrology and water quality and propose any necessary mitigation measures.

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E. Section 5.8, "Land Use and Planning," Again Fails to Analyze Fully the Project's Land Use Impacts.

Section 5.8 attempts to address the Project's land use impacts; again it is unsuccessful. Section 5.8 begins with a characterization of existing land uses. It notes that:

"Several companies, like Allergan, Edwards Life Sciences, St. John Knits, and Taco Bell have located their company headquarters in the IBC, some of which date prior to the City of Irvine's incorporation in 1971."

RDEIR, 5.8-1. Dett Incorporated proudly counts itself as having located their headquarters and a production facility in Irvine since 1975. Allergan lies within the Business Complex District and St. John Knits have moved their facility to an area in the Business Complex. Unfortunately, other businesses are not within the Business Complex District; this creates the land use compatibility impact which the RDEIR recognizes.

For instance, Section 5.8 contains moments of candor. For instance, 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."

RDEIR, page 5.8-8 (Emphasis supplied). However, the "land use compatibility issues" cannot be addressed by data or reports approved by anyone including the Director of Community Development. The incompatibility can only be mitigated by adequate separation between incompatible uses. See Global Environmental Consulting Company, Inc.'s January 19, 2010 letter to this office which is incorporated herein.

As noted above, Urban Neighborhood District boundaries and the Business Complex District boundaries have changed since the DEIR. Under the DEIR, the Urban Neighborhood District extended south of Interstate 405 and from east of Jamboree to MacArthur Blvd. Under the RDEIR, the Business District now consumes much of this area. The reason for the change is the City's settlement with Allergan, Inc. which objected to residential uses on its borders. The City recognized this incompatibility and redrew the boundaries. However, this revision left other industrial uses such as Dett to continue to suffer the land use incompatibility of having residential uses on their borders.

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As stated above, Global Environmental Consulting Company, Inc. has stated that the only effective way to limit and mitigate such land use incompatibility is to separate new residential uses by more than 1,000 feet from existing industrial uses. Surprisingly, as discussed below, Section 5.8 agrees.

Impact 5.8-1 addresses the Project's potential to divide existing communities; it concludes that the Project will have a less than significant effect in creating such division. This is incorrect. Indeed, with the revised Project as a result of the Allergan settlement, this division becomes patent. The Business District south of Interstate 405 extends from Jamhoree Road to MacArthur. The DEIR earlier had indicated that this would be in the residential district.

However, north of Interstate 405, the Business District begins well west of most industrial uses, extends westerly from MacArthur and up along Armstrong Ave. to the City boundaries. This leaves many of what the Vision Plan formerly called "Key Businesses" potentially surrounded by residential uses. That is, it cuts off-divides- the industrial businesses north of Interstate 405 such as Dell from the businesses south of Interstate 405 within the Business Complex District.

The only way to eliminate this potentially significant impact is to redraw the Business Complex District north of Interstate 405 from Armstrong and MacArthur to Jamhoree. This would unify the Business Complex District and eliminate the potentially significant impact which would divide the industrial businesses which have historically flourished in the Irvine Business Complex. The RDEIR and the Project should be revised to include this expansion of the Business Complex District, discuss how this Project feature alleviates many Project impacts including issues regarding land use incompatibility, and discuss mitigation measures, if any, akin to any mitigation measure required by the expansion of the Business Complex District south of Interstate 405.

Impact 5.8-2 addresses the Project's potential to conflict with applicable adopted land use plans. As indicated in our May 14, 2009 Comment letter, the Project conflicts with the City's General Plan and other land use plans.

For instance, the analysis for Impact 5.8-2 states the Project is consistent with the City's General Plan, Land Use Element, Objective A-2 which provides that the City will "[r]etain and attract manufacturing and industrial uses within designated business centers." RDEIR, page 5.8-11.

This analysis indicates that the Project establishes two districts within the Irvine Business Complex, the Urban Neighborhood District and the Business Complex District, and that the Business Complex District will serve to retain and attract manufacturing and industrial uses.

However, the entire Irvine Business Complex was once such a district for industrial and manufacturing uses; with the Project- the residential transformation of the Irvine Business Complex- businesses are being ignored or moved into the narrowly drawn Business Complex District, e.g. St. John Knits. The Project has changed the location and area of the business district; the RDEIR cannot claim that it will attract and retain businesses and that it will not hurt businesses in the redrawn and expanding residential district. It is like the game of musical chairs: businesses

O5-57
cont'd.

O5-58

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without seats in the new and smaller Business Complex District will be out of business. Without an enlarged Business District which includes industrial businesses north of Interstate 405 and west of Jamboree Road, the Project conflicts with Objective A-2. Please explain how the Project retains and attracts industrial businesses north of Interstate 405 and east of Armstrong Ave. without substantial buffers or expansion of the Business Complex District.

O5-58
cont'd.

Or again, the analysis for Impact 5.8-2 states that the Project is consistent with the City's General Plan, Land Use Element, Objective A-6 which provides that the City will:

"Ensure, through the discretionary review process, the public health, safety, and welfare of sensitive receptors/land uses when locating such uses in close proximity to the following land uses):

- Uses which handle, generate, and/or transport hazardous substances (as defined by federal and state regulations).

RDEIR, page 5.8-13. The analysis states that Section 5.6 shows that the Project will preserve public health, safety and welfare, and that the disclosures required by the Project will further this goal.

As indicated in our comments on Section 5.6, the Project threatens to expose sensitive receptors to a whole host of hazards and dangers. The only effective method of ensuring that public health, safety, and welfare is maintained while retaining and preserving existing industrial uses is either to expand the Business Complex District to include Deft and other industrial users north of Interstate 405 or to establish a buffer of 1,000 feet between the existing industrial users and the new residential users. Although the Project described in the DEIR adopted the latter option, the Project in the RDEIR protects neither new residential users nor existing businesses. Hence, the Project conflicts with Objective A-6. Again, given that the only effective project design feature and/or mitigation measures to ensure safety is separation, please explain why the RDEIR has rejected the 1,000 buffer set forth in the Project analyzed by the DEIR. Also, please explain how and by what principled analysis the boundaries of the Business Complex District were narrowly drawn so as to exclude within that District many Key Businesses located north of Interstate 405.

O5-59

For instance, the analysis of Impact 5.8-2 which notes that the Project may conflict with applicable land use plans notes that the Project is consistent with the SCAG RCP Consistency Analysis. The Impact 5.8-2 analysis finds that the Project is consistent with the SCAG Air Quality Action Plan, because it provides:

"As outlined in PDF 2-1, based on the recommended buffer distances of the California Air Resources Board, applicants for new residential developments in the IBC are required to place residential structures outside of the recommended buffer distances to the following stationary air pollutant sources:

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- 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 operation.

RDEIR, page 5.8-41. PDF 2-1 contains no such prohibition. Hence, the conclusion here must be the reverse: the Project which contains no such prohibition on siting of residential uses adjacent to industrial uses must therefore be inconsistent with SCAG's RCP Consistency Analysis. Therefore, the Project will create a significant impact on land use and conflict with approved and applicable land use plans.

However, the City can easily address this inconsistency: The RDEIR must be revised to bring the Project in line with SCAG's RCP Consistency Analysis and forbid residential uses within 1,000 feet of chrome plating facilities and facilities using hexavalent chromium (Cr^{+6}). The RDEIR must be revised either to recognize this significant impact or to modify the Project to provide for a 1,000 foot buffer between new residential uses and chrome facilities or facilities using hexavalent chromium (Cr^{+6}).

Further, as indicated throughout, the Project conflicts with other elements of the City's General Plan including the Seismic Element, Noise Element, and other elements.

O5-59
cont'd.

As for cumulative impacts, the RDEIR states that:

"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. In light of the mixed-use nature of the IBC, 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. Land use compatibility is determined after a complete evaluation of potential land use conflicts. Cumulatively, placing additional residential projects in the IBC after a land use compatibility analysis, as is the current practice, would provide needed housing in the IBC while still retaining the mature industrial development and its associated job base. As a result, cumulative impacts to land use and planning are not considered significant."

RDEIR, page 5.8-50. However, this does not address the land use incompatibility between existing industrial uses and new residential uses. As indicated above, the only method to address this incompatibility is separation: either enlarge the Business Complex District from Armstrong to Jamboree, north of Interstate 405; or establish a buffer of 1,000 feet between new residential uses and existing industrial uses. The RDEIR and the Project should be revised to enlarge the Business

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Complex District as indicated above; or require a substantial buffer between existing industrial users and new residential users.

Finally, Section 5.8 concludes that, as revised and with existing regulations, the Project will not create a significant impact in connection with the Project's potential to divide an existing community (Impact 5.8-1). However, as indicated above, the City cannot rely on existing regulation on industrial businesses to lessen the significance of this impact. Rather, the City should either enlarge the Business Complex District as indicated above, or require a substantial 1,000 foot buffer between existing industrial uses and new residential uses.

O5-59
cont'd.

As for Impact 5.8-2, consistency with appropriate land use plans, the RDEIR notes that the Airport Land Use Commission ("ALUC") has not yet reviewed the revised Project. The Council could override the Land Use Commission and adopt a Statement of Overriding Considerations relating to ALUC. However, as indicated above, Project creates other inconsistencies which must be addressed. The RDEIR must be revised to resolve these inconsistencies and to create substantial protections for existing industrial uses including expanding the Business Complex District as indicated above, and/or establishing a 1,000 foot buffer between existing industrial uses and new residential uses.

F. Section 5.9, Noise Impacts of the Project, Still Fails to Address the Core Noise Issues.

In our May 14, 2009 Comments, we noted that the Project will create substantial noise impacts from stationary sources by exposing residential uses to loud noises generated by industrial uses including loading and unloading, equipment testing and so forth. The Response to Comments and the RDEIR state that these impacts are less than significant due to PPP 9-2 which requires applicants prior to issuance of building permits to submit an acoustical report to the satisfaction of the Director of Community Develop which shows that the project will be sound attenuated against present and projected noise levels, including roadway, aircraft, helicopter and railroad, to meet City interior and exterior noise standards. However, as we indicated in our May 14, 2009 Comments, this is insufficient and fails to satisfy the requirements of CEQA.

O5-60

As indicated above, the RDEIR cannot defer analysis and feasible mitigation. As indicated above, "... 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. Here, the City is going too far by deferring this noise analysis and not addressing it now.

Further, as we indicated in our May 14, 2009 Comments, Table 5.9-4 which sets forth the requirements of the City's Noise Ordinance displays the problems clearly. 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

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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. This 20 dBA increase for industrial uses is significant when residential uses are located adjacent to a existing industrial use which emits a maximum 90 dBA. As indicated throughout, the appropriate way to resolve this noise impact is separation of the incompatible land uses; further expand the Business Complex District north of Interstate 405 from Jamboree to MacArthur and Armstrong; or establish a substantial 1,000 foot buffer between existing industrial uses and new residential uses.

O5-60
cont'd.

The RDEIR and the Project must be revised to provide protection from noise impacts of the Project by exposing Project residences to industrial generated noise.

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, this is incorrect.

Section 5.12.2 lists the thresholds of significance for recreational resources:

- "R-1 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.
- "R-2 Includes recreational facilities or requires the construction or expansion of recreational facilities which might have an adverse physical effect on the environment."

O5-61

RDEIR, page 5.12-5. However, Section 5.12 really only analyzes threshold R-1 and virtually ignores R-2.

Impact 5.12-1 which allegedly addresses both R-1 and R-2 recognizes that:

"THE PROPOSED PROJECT WOULD GENERATE APPROXIMATELY 9,858 ADDITIONAL RESIDENTS, WHICH WOULD INCREASE THE USE OF EXISTING PARK AND RECREATIONAL FACILITIES. [THRESHOLDS R-1 AND R-2]"

RDEIR, page 5.12-8. Further, the analysis of Impact 5.12-1 states:

"Based on the Park Code, the project would generate a need for a total of 49.3 acres of parkland at buildout, with 19.7 acres of community parkland and 29.6 acres of neighborhood parkland."

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However, the Irvine Business Complex contains no parks or recreational areas. Table 5.12-1 shows the City's parks; only Bill Barbour Park is in close proximity (.5 miles) from the Irvine Business Complex. Table 12-5 shows that Bonita Canyon Sports Park in the City of Newport Beach lies within .6 miles of the Irvine Business Complex. However, the RDEIR contains no analysis that the increased population brought to the Irvine Business Complex by the Project will adversely impact the Bonita Canyon Park. The RDEIR should be revised to address this impact.

Moreover, as indicated above, Threshold R-2 addresses the potential that the Project will require creation of new parks or expansion of existing parks. Section 5.12 states that:

"The City is also currently seeking adequate sites within the IBC for construction of a public community-level park. Funds from the general IBC community park account would be used for purchase of the site and construction of the park. Since there is insufficient available land in the IBC for a community-level park, the City is investigating opportunities adjacent to the IBC where more land for such a use may be available and convenient to nearby residents."

O5-61
cont'd.

RDEIR, page 5.12-10. The Project requires this new public community level park within the Irvine Business Complex; it is part of the Project. However, the RDEIR fails to analyze the Project under Threshold R-2. Again, the City seeks to engage piecemeal analysis which is forbidden by CEQA. The RDEIR improperly segments the Project into the residential project and then the park project. As indicated above, CEQA requires that the RDEIR analyze the entire Project including the acknowledged new community level park. The RDEIR must be revised to analyze this part of the Project and develop any necessary mitigation measures.

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.

O5-62

Section 5.13.1.1 discusses the Project study area. In contrast to the candid characterization of the Irvine Business Complex in Section 5.7, Hydrology and Water Quality, Section 5.13 is vague about the existing uses in the Irvine Business Complex:

"The Irvine Business Complex, also referred to within the City of Irvine as Planning Area 36, is a mixed-use area that encompasses approximately 2,800 acres, located wholly within the City of Irvine."

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RDEIR, 5.13-1. This broad characterization is unfortunate because Section 5.13 uses the area's land uses to predict traffic patterns and volumes. Section 5.13.1.1 should be revised to state clearly the predominant uses in the Irvine Business Complex as stated in Section 5.7 or similar refer to the characterization in Section 5.7.

Section 5.13.1.2 discusses the transfer of development rights ("TDR") which it acknowledges were established in 1992. As indicated above, the RDEIR must include a discussion of the 1992 Project, the establishment of the TDR program, and the 1992 EIR. Interestingly, this section states:

"Although the land use assumptions for the Vision Plan will supersede the 1992 assumptions, the existing TDR mechanism, and the existing development intensity, i.e. 'trip', budgets will remain in place. The current IBC development intensity database will not change as a result of the IBC Vision Plan; however, as new land uses are proposed, the database will be updated accordingly and reconciled with the City's traffic model, which assumes buildout of the land use assumptions of the Vision Plan."

Id. This is unclear. Please explain how the Project assumptions will supercede the 1992 assumptions but the 1992 mechanism will still work. For cons, putting new wine in old bottles has always been a bad idea. Indeed, it is unclear that the existing trip budgets and transfers which have already occurred will fit with the Project assumptions. Please explain how this occurs.

O5-62
cont'd.

Section 5.13.1.4 discusses the traffic analysis methodology. Among other things, this section discuss the trip budget. It indicates that:

"For industrial land uses the AM peak hour trip rate was utilized, for all other land use categories the PM peak hour trip rate was utilized."

RDEIR, page 5.13-12. It is unclear that this is the most conservative or realistic method to calculate traffic within the Irvine Business Complex. Indeed, it is unclear why the RDEIR is using only one peak hour trip rate rather than both AM and PM for all uses. In addition to number of trips, the RDEIR must also consider and analysis the timing and direction of those trips in order to provide a true and conservative characterization of the Project's traffic impacts.

Also, this Section notes that the trips for new residential uses were based upon "land use trip rates for multi-family residential units." RDEIR, page 5.13-12. It is unclear that this is the most conservative method of calculating trips for the new residential or if this is the methodology used for prior transfers. Please explain this methodology on both issues and why it is the most conservative traffic calculation method.

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Section 5.13.1.5 addresses existing conditions. It begins:

"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.** Land use quantities for 2008 Existing Conditions (No Project) have been developed by the City of Irvine and are illustrated in Table 5.13-7."

RDEIR, page 5.13.21 (It appears that Table 5.13-7 has resolved its earlier conflicts with Tables 3-1 and 4-2.) However, as we noted in our May 14, 2009 Comments, the "redevelopment patterns [which] have been slowly transforming the IBC into a mixed-use community, through integration of residential and supporting land uses" are part of the Project. As indicated above, Judge Sundvold already found that the City had never fully analyzed this residential transformation of the Irvine Business Complex. The RDEIR must do this. In order to accomplish this task, the RDEIR must not use "[l]and use quantities for 2008 Existing Conditions (No Project)" but rather the land use quantities for 1992 Existing Conditions as the No Project condition. Only in this manner can the RDEIR evaluate the traffic impacts of the Project, the residential transformation of the Irvine Business Complex. Please explain how the RDEIR has adequately evaluated these traffic impacts and provided necessary mitigation.

O5-63

Impact 5.13-1 states:

"**BUILDOUT OF THE IBC PURSUANT TO THE PROPOSED PROJECT WOULD GENERATE ADDITIONAL TRAFFIC VOLUMES AND IMPACT LEVELS OF SERVICE FOR THE EXISTING AREA ROADWAY SYSTEM. [THRESHOLD T-1,T-2]"**

RDEIR, page 5.13-38. However, it is unclear whether such Project impacts can be mitigated. Rather, the Conclusion for the analysis of Impact 5.13-1 discusses changes in planned but unfunded roadways, bridges and on ramps as indicated above. It is further unclear how such changes are warranted if the Project will generate additional traffic volumes and impact levels of service.

O5-64

For instance, one of the proposed changes to the MPAH is to reduce Von Karman from 6 to 4 lanes between Barranca and Michelson. However, when volumes increase along Jamboree and MacArthur, traffic will divert to Von Karman. Please explain why this traffic diverted together with the downgrade will not adversely affect traffic on Von Karman.

Section 5.13.3.4 addresses the existing traffic conditions plus the Project. This Section notes:

"Table 5.13-12 presents the land use quantities by ITAM code for the IBC traffic study area, while Appendix N (see Appendix J of the traffic study) presents land use

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quantities by type and by IBC TAZ as well as a land use summary by individual project.”

O5-65
cont'd.

RDEIR, page 5.13-43. Table 5.13-12 and Appendix N's Appendix J show existing land use, projected Project land use and the percentage changes. However, it is unclear how the changes in nonindustrial land uses were calculated. Please explain and support these calculations.

The Project residential change is clear based upon Table 3-1. However, residential uses and the trip transfers may come from a variety of a variety of uses including office, industrial, warehouse, retail, and even hotel. Nonetheless, Table 5.13-12 projects that, with the Project, residential uses will increase by 240%, retail uses will increase by 29%, hotel uses will increase by 24%, office uses will increase by 28%, industrial uses will decrease by 10%, miniwarehouse uses will decrease by 53% and extended stay hotel uses will increase by 244%.

However, it is unclear where all of the trips will come for the increase residential, retail, office and extended stay hotel. Miniwarehouses do not generate many trips; industrial uses generate fewer trips than office uses. Neither Section 5.13.3.4 nor the Traffic Study offer an explanation for where the trips for the increases will come. Moreover, what is the basis for the projections? The Project fixes the increased residential uses; all other uses are up for grabs. So, how does Section 5.13.1.4 and/or the Traffic Study accurately predict that industrial and miniwarehouse uses will decline at a certain number or percentage or that retail and office will increase by a certain number or percentage? Moreover, each use generates trips at different rates. How can the RDEIR and the Traffic Study make any accurate assumptions about increased and decreased use square footage and then translate that into trips?

O5-66

Further, Table 5.13-20 clearly shows a substantial increase in traffic in the Irvine Business Complex for both 2015 and 2030 with Project as compared to the same years without the Project. However, the traffic counts remain unclear. For instance, the peak hour trips and the average daily trips are constant with the Project in 2008 and 2030. However, the Park Place Project will only be developed after 2015. Hence, the numbers for 2030 must be larger. Table 5.13-20 is crucial to understand the traffic impacts of the Project, yet it appears that its numbers are incorrect. Please revise the numbers and explain the nature of the error or why it is not in error.

O5-67

Impact 5.13-2 discusses the Project's potential to increase hazards due to a design feature or incompatible uses. The analysis focuses upon the design issue: the City's roadway standards insure that the Project will not create a hazard due to a design feature. However, the analysis is silent on the potential for hazard due to incompatible uses. Although the Project brings sensitive receptors to the IBC with hazardous materials which are delivered on roadways, the analysis does not address this issue. Please explain why the Project which may site new residential uses adjacent to industrial uses which receive and transport hazardous uses will not potentially increase hazards to Project residents due to the transport of hazardous materials.

O5-68

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In addition, the Traffic Study attempts to explain the Project's program of the transfer of development rights. The Traffic Study states:

"Since 1992, the IBC Planning Area has had provisions in place to allow for Transfers of Development Rights (TDRs) through the creation of a trip budget system in which an allocation of AM, PM and ADT trip budget were assigned to each property in the IBC."

O5-69

Traffic Study, Appendix N-1, page 4. Although the Traffic Study references the 1992 program which established the transfer program, it fails to discuss the 1992 Project, the 1992 EIR or its Traffic Study in any detail. The Project and the RDEIR continue to build on the 1992 Project and the 1992 EIR without discussing or explaining it. The Traffic Study and the RDEIR should be revised to discuss the 1992 Project, its EIR and the Traffic Study, and then explain how the Project differs from the 1992 Project and discuss the traffic impacts in the RDEIR.

Finally, the RDEIR and the Traffic Study projects substantial for Von Karman from Barranca to Alton and further to Main are of particular concern. Beginning in 2015 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 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.

O5-70



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, Impact 5.2-6 states:

"DEVELOPMENT OF RESIDENTIAL USES WITHIN THE IRVINE BUSINESS COMPLEX COULD BE LOCATED WITHIN THE CALIFORNIA AIR RESOURCE BOARD'S RECOMMENDED BUFFER DISTANCES FROM 1-405 OR EXISTING DISTRIBUTION CENTERS, CHROME PLATERS, DRY CLEANERS, OR GAS STATIONS."

O5-71

This raises several problems. First, it is incomplete: Section 5.2 treats chrome plating facilities the same as any facility using hexavalent chromium (Cr^{+6}). Second, and most importantly, the discussion of this impact states:

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"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**."

RDEIR, 6-2. 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. Indeed, the DEIR had feasible and effective mitigation of development of new residential in the Irvine Business Complex with chrome plating facilities and facilities using hexavalent chromium (Cr^{6+}): a substantial buffer of 1,000 feet between new residential uses and existing industrial uses. The RDEIR is implicit with another mitigation measure or PDF which would mitigate such impacts: as with Allergan south of Interstate 405, the Project could expand the Business Complex District north of Interstate 405 easterly from Armstrong and MacArthur to Jamboree. Either of these mitigation measures or PDFs are feasible and effective: the DEIR embraced the former and the RDEIR embodies the latter south of Interstate 405.

O5-71
cont'd.

Further, Impact 5.9-3 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 feasibly and effectively mitigated: separating residential uses from stationary noise sources by a sufficient buffer, e.g. 1,000 feet; and/or by placing such noise generating stationary industrial uses in the Business Complex District.

O5-72

Also, Impact 5.13-1 states that the intersection of Jamboree Road and Michelson Drive will remain at unacceptable levels and cannot be mitigated. As we indicated in our May 14, 2009 Comments, this impact can be mitigated. For instance, three of the corners of this intersection 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.

O5-73

However, 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 mitigation: this is poor planning. The Project should be revised and downsized to accommodate the traffic of the downsized Project alternative.

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.

O5-74

The other alternatives include:

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- “• No Project/Existing General Plan Alternative
- Reduced Residential Alternative
- Increased Residential (20,000 du) Alternative
- Increased Residential (25,000 du) Alternative”

RDEIR, 7-5. As indicated throughout, the No Project Alternative is incorrect: the No Project Alternative should mirror the appropriate baseline: the uses in the Irvine Business Complex immediately after the approval of the 1992 Project and certification of the 1992 EIR. The residential number of units was 3,896 dwelling units, not the 9,455 dwelling units considered in the RDEIR. Any units over the 1992 dwelling unit count are part of the Project– the residential transformation of the Irvine Business Complex. The RDEIR should be revised to study the true No Project Alternative which is the conditions on the ground after the 1992 Project was approved and the 1992 EIR was certified.

O5-74
cont'd.

Also, Section 7 states that the No Project Alternative fails to achieve any of the objectives of the Project. However, the No Project Alternative would serve to preserve the existing jobs base and would retain existing businesses. None of the other Alternatives meet this objective in the fashion and to the extent that the No Project Alternative meet this objective.

As in the DEIR, the increased residential alternatives, 20,000 dus and 25,000 dus, 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 RDEIR simply continues this assumption without support. However, given that much of the Project is already built, the RDEIR should be revised to determine whether residents in the Project area do in fact work in the Project area.

O5-75



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. The discussion of all of the Alternatives requires further discussion and explanation.

Section 7 concludes that the Reduced Intensity Alternative would:

O5-76

“... reduce impacts associated with air quality, hazards and hazardous materials, land use and planning, noise, public services, recreation, local traffic and utilities and services. However, this alternative would have greater population and housing and global climate change impacts and increase regional VMT. All other impacts would be similar.”

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RDEIR, page 7-18. However, Section 7 concludes:

"In addition, this alternative reduces overall allowable development intensity within the IBC below what is currently allowed and would impact existing entitlements."

Id. If true, this would be a significant land use impact. Unfortunately, Section 7's analysis of the land use impacts for the Reduced Intensity Alternative concludes that this Alternative would have fewer land use impacts than the Project. Further, a comparison of Table 3-1 which tabulates the units and square footage allowed under the Project with Table 7-1, a Summary of the Alternatives, appears to show that the Reduced Intensity Alternative would not affect existing entitlements. Please explain how the Reduced Intensity Alternative would adversely affect existing entitlements, identify which entitlements are affected and how the comparison of Table 3-1 and Table 7-1 misses this impact.

O5-77

Finally, as with the DEIR, the RDEIR identifies the Reduced Intensity Alternative as the environmentally superior alternative. 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 and part of the Reduced Intensity Alternative. The RDEIR must be revised to conduct this analysis, determine the preferred alternative and analyze the other alternative given this analysis.

Unfortunately, Section 7.8 states that the Reduced Intensity Alternative

"... would lessen some environmental impacts, it would not avoid the significant environmental impacts to air quality, land use and planning, noise, or transportation/traffic."

O5-78

RDEIR, page 7-28. However, as indicated above, Section 7.5.8 which discusses the land use impacts of the Reduced Intensity Alternative states:

"Under the Reduced Intensity Alternative, 5,333 fewer residential units would be constructed than under the proposed project. However, this alternative would still require a General Plan Amendment and Zone Change to allow for the increase in residential units and the increase in density requirements. However, the decrease in residential development in the IBC would result in fewer potential conflicts with existing and future commercial land uses. As a result, land use impacts under this alternative would be reduced."

RDEIR, page 7-16. Given this discussion and analysis, please explain how this means that this Alternative will have significant land use and planning impacts.

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Finally, the DEIR analyzed a Reduced Urban Neighborhood Alternative which proposed to move residential development north of I-405 and froze residential development south of I-405. Although the numbers differ slightly, the Project is the Reduced Urban Neighborhood Alternative. As we have argued above, this alternative must be expanded north of Interstate 405 to avoid or mitigate a whole host of impacts which arise from the siting of new residential uses in close proximity with existing industrial uses. Either the Business Complex District should be expanded or the City should require a 1,000 foot buffer between existing industrial uses and new residential uses.

O5-79

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.

XI. Section 8, "Impacts Found Not to be Significant," Requires Revision.

Section 8 refers to the Initial Study for its discussion of Impacts Found Not to be Significant. Among other things, the Initial Study concluded the Project would not expose people to the potential for wildfires because the area is urbanized.

However, in our February 21, 2007 Comments on the Initial Study, we stated that:

"Unfortunately, the IS concluded that the Project will have no impact by exposing people or structures to wildfires. The IS states that:

'The IBC (Planning Area 36) project area currently consists of flat, graded land. The site is surrounded by urban development and is not adjacent to, or intermixed with, wildlands.'

O5-80

"However, Figure 5 of the IS recognizes that the Project will include recreational amenities through and near the rural area of San Diego Creek. This area is a wildland and is subject to wildfires. The DEIR should discuss the Project's impacts in connection with its residential development near such an area with the potential of wildfires."

Moreover, Figure 3-6 shows that the Project is adjacent to the San Joaquin Marsh which is a wildland and has the potential of wildfires.

The RDEIR should be revised to address this issue and explain how and why this impact will be insignificant with the Project.



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XII. 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. As we stated in our May 14, 2009 Comments,

"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.

O5-81

"Second, the IBC itself under its current configuration and entitlement represents a significant irreversible commitment: Delf's land and improvements which are specially built for Delf'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."

May 14, 2009 Comment of Delf Incorporated, page 9-10. Please note that we quote this section because Response to Comment 105 did not address it. We have incorporated the May 14, 2009 Comments in these comments in their entirety; we make this quotation for special emphasis only.

The RDEIR must fully analyze the current irreversible commitment and the Project related impacts on such commitments.

XIII. Section 10, "Growth Inducing Impacts," Requires Substantial New Analysis and Must be Revised.

Section 10 addresses the Growth Inducing Impacts of the Project. However, this analysis was and remains stilted and incomplete. Regarding the Project's tendency to remove obstacles for growth, Section 10 concludes that the Project may have a growth inducing impact because the Project would increase the cap for residential uses. However, it also notes that:

O5-82

"However, the increase in residential units is offset by a corresponding decrease in nonresidential intensity in the IBC."

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RDEIR, page 10-2. The decrease in nonresidential intensity is largely from miniwarehouses and industrial uses. These are not intense uses. Please explain how the decrease in miniwarehouse and industrial uses provides a corresponding decrease to the increase in residential uses.

Moreover, 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. The RDEIR should be revised to conduct this analysis and, if necessary, propose adequate mitigation.

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 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 facilitating 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."

RDEIR, 10-2. As we noted in our May 14, 2009 Comments, this is incorrect. 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.

O5-82
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The RDEIR must be revised to address all of the growth inducing impacts of the Project and, if necessary, propose adequate mitigation.

O5-82
cont'd.

XIV. Conclusion: The RDEIR Must Be Revised to Analyze Fully the Project and Must Address and Mitigate Project Impacts including Establishing a Buffer for Existing Industrial Users.

The RDEIR fails to explain fully the Project and all of its aspects including the individual projects. Although the RDEIR purports to be a program level RDEIR, 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.

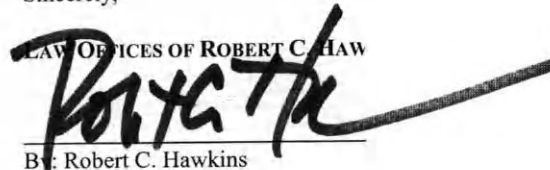
Importantly, although the RDEIR recognized that the Project will have important air quality, land use and hazardous materials impacts, it proposed Project features—a 1,000 foot buffer between existing chrome plating facilities and new residential uses—for uses such as chrome plating facilities which do not exist in the City. The RDEIR removed this protection and instead required a health risk assessment be prepared for any new residential developments within 1,000 feet of existing chrome plating facilities or similar facilities using hexavalent chromium (Cr⁶⁺). However, as fully discussed above, the health risk assessment does not offer any protections to new residential uses or existing industrial uses. As we have stated throughout, the Project must be revised to include either: an expansion of the Business Complex District north of Interstate 405 easterly from Armstrong and MacArthur to Jamboree; or the establishment of a 1,000 foot buffer between new residential uses and existing industrial uses. The RDEIR must be revised to provide this protection for all facilities including Deft which use hazardous materials that may adversely affect new residential uses.

O5-83

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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Exhibit “1”

January 10, 2010 Letter from Global Environmental Consulting Company, Inc.
to the Law Offices of Robert C. Hawkins
regarding
Comments on Proposed Revisions to the City of Irvine’s Zoning Code



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11502 Alborada Drive
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January 19, 2010

Robert C. Hawkins, Esq.
Law Offices of Robert C. Hawkins
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Newport Beach, California 92660

RE: Comments on proposed revisions to the City of Irvine Zoning Code

Dear Mr. Hawkins:

Comments on proposed revisions to the City of Irvine Zoning Code

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, California 92614 in an area known as the Irvine Business Complex ("IBC"). The site, which is approximately 6 ½ acres, consists of one approximately 100,000 ft² building which houses administrative offices; production areas which include paint mixing; warehouse space; packaging, shipping and receiving areas; and quality laboratories. This building was built in 1975 for Deft Inc., and the then County Fire Department required that the building be built with reinforced concrete on all sides including the ceiling. The building was and is rated H-4 occupancy under the Building Code to allow for storing, processing, and manufacturing of flammable materials including solvent, nitrocellulose, and other such materials.

O5-84

Physically, the site is located between McGraw Avenue and Main Street, just north of the railroad tracks. The City of Irvine is currently considering revising its zoning code to allow up to 15,000 dwelling units in the IBC. the construction of a 445 unit residential condominium complex within 1,000 feet of the Deft facility. As part of this process, the City has proposed modifications to the zoning ordinance. The applicable wording of the recirculated proposed ordinance is:

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For all residential or residential mixed-use projects located within the distances to industrial uses as outlined below the Project Applicant shall submit a health risk assessment (HRA) prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment (OEHHHA) and the South Coast Air Quality Management District (SCAQMD) to the Community Development Director prior to approval of any future discretionary residential or residential mixed use project. If the HRA shows that the incremental cancer risk exceeds one in one-hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (TBACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. TBACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units.

- 1,000 feet from an existing chrome plating facility, or existing facility using Hexavalent Chromium.*

This recirculated proposed City ordinance dilutes community protection from adverse impacts of activity at existing industrial businesses such as Deft by removing the 1,000 foot buffer zone contained in the original zoning proposal. The recirculated proposal proposes alternative control measures, which are less protective than the 1,000 foot buffer zone. This is not good safety practice and it is not wise community planning. This report addresses the risks associated with the recirculated proposal and presents potential consequences of its implementation, based on reasonably foreseeable, not worst case, situations.

This same conclusion was reached in a 16 May 2006 report¹ prepared for Deft which stated "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." Under the proposed changes to the City Zoning Ordinance, residential locations, that is "sensitive receptors" will be allowed within the 1,000 foot set-back by requiring Deft to either (1) provide mechanical air filtration to the residences or (2) install appropriate air scrubbers (emission control technologies).

O5-84
cont'd.



O5-85

Land Use Compatibility White Paper: Hazardous Materials Assessment Proposed
2323 Main Street Development, 16 May 2006

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DEFINITION

The recirculated, proposed zoning ordinance uses two technical terms which must be clearly understood in the context of this report and the proposed ordinance.

BACT – Best Available Control Technology: An emission limitation based on the maximum degree of emission reduction (considering energy, environmental, and economic impacts) achievable through application of production processes and available methods, systems, and techniques. BACT does not permit emissions in excess of those allowed under any applicable Clean Air Act provisions. Use of the BACT concept is allowable on a case by case basis for major new or modified emissions sources in attainment areas and applies to each regulated pollutant².

Minimum Efficiency Reporting Value, commonly known as *MERV Rating* is a measurement scale designed in 1987 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) to rate the effectiveness of air filters.

The scale is designed to represent the worst case performance of a filter when dealing with particles in the range of 0.3 to 10 micrometres. The MERV rating is from 1 to 16. Higher MERV ratings correspond to a greater percentage of particles captured on each pass, with a MERV 16 filter capturing more than 95% of particles over the full range.

CURRENT ENGINEERING CONTROLS AT DEFT

Deft has a number of specific hazards for which risks are controlled by a combination of engineering controls and best management practices. These hazards were addressed in the 2006 report, and the current control measures are explained in this report.

Deft, Inc currently uses Best Available Control Technologies to limit the release of hexavalent chromium (Cr⁶⁺). The controls are approved by the South Coast Air Quality District and operated in compliance with the SCAQMD-issued Permit. Even with these controls, permitted released of hexavalent chromium (Cr⁶⁺) occur to the amount of (approximately) 0.3 pounds per year. It is noteworthy that the California Air Resources Board concluded that hexavalent chromium (Cr⁶⁺) is a human and animal carcinogen and should be treated as a chemical without a carcinogenic threshold³. This means that the City of Irvine should implement strategies to achieve a zero exposure objective.

In addition, Deft is permitted to store 2,800 pounds of the highly flammable and explosive chemical nitrocellulose (a.k.a.) “gun cotton”. This is stored and handled as permitted by the Orange County Fire Authority. Even with the strict adherence to safe

O5-86

O5-87

O5-88

² U.S. EPA, Glossary of Terms
³ CARB Staff Report, 1985

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handling procedures, this is the equivalent of storing (approximately) 1,900 pounds of TNT.

Defl is also permitted to store up to 10,000 gallons of flammable liquids. These are stored and handled as permitted by the OCFA and Cal/OSHA. This is the equivalent of two fully loaded gasoline delivery trailers at the facility.

O5-88
cont'd.

Further, the site uses some chemicals with strong odors. No specific engineering controls are in place to control the odor. The site generates reasonable levels of industrial noise and dust. No specific controls are in place for these community irritants. No controls are required by any Agency. However, the buffer zone currently in-place is a necessary and sufficient control.

O5-89

HEALTH RISK ASSESSMENT

The Defl facility is analogous to a metal plating operation in terms of hexavalent chromium (Cr^{+6}) impact on the community. Hexavalent chromium (Cr^{+6}) is a known potent 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 $1.5 \times 10^{-1} \text{ ug/m}^3$ which means that a person's chance of developing cancer due to exposure to one ug/m^3 of hexavalent chromium (Cr^{+6}) over a 70 year lifetime would be about 146,000 chances per million people exposed. California Air Resources Board (CARB) 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 CARB has worked diligently to set policy and promulgate rules and regulations to minimize hexavalent chromium (Cr^{+6}) emissions from stationary sources into the atmosphere.

O5-90

Air Toxic Control Measures (ATCMs) have been established that regulate hexavalent chromium (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.

Based on the current conditions at Defl, a conservative estimate of the excess cancer risk to residents within 1,000 feet of the facility is 20 per million. This drops off significantly beyond 1,000 feet from the facility⁴.

Defl, Inc. Internal report in support of SCAQMD permitting requirements, 9 Aug 2006



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IMPACT OF REASONABLY FORESEEABLE SCENARIOS ON THE COMMUNITY

Failure of emission control technology. The emissions control system is an active system and active systems fail in various ways. For example, if a particulate filter rips, then particulates containing hexavalent chromium (Cr^{+6}) will be released into the air. These are relatively large and will drop out onto the soil after a few hundred feet.

O5-91

Fire. A fire at an industrial facility is always a concern. If a fire extends to the nitrocellulose storage area and causes a detonation, it will be the equivalent of 1,900 pounds of TNT detonating, causing extensive damage over 1,000 feet beyond the plant boundary.

O5-92

A fire which extends to the flammable liquid storage will be partially controlled by the plant fire suppression system. If this system is overwhelmed, radiant heat would be sufficient to cause structural damage extending about 200 feet from the source of the fire.

Spill. In the event of a spill of a drum of ammonium hydroxide, an irritant odor would be anticipated out to 300 to 400 feet from the spill.

O5-93

NON-APPLICABILITY OF MERV-14 CONTROLS

The recirculated proposed zoning ordinance suggests that Minimum Efficiency Reporting Value filters should be installed by Defl on residences within the 1×10^{-5} zone. These devices impose strict use conditions on the occupants of the residence and do not protect against any non-particulate hazard, such as fire, explosion, odor or noise. In addition, ongoing maintenance of these devices would require regular access to the residences by maintenance personnel and would increase energy use by each residence. MERV filtration is not a reasonably viable alternative.

O5-94

NON-APPLICABILITY OF SCRUBBERS

Defl's operations are not compatible with wet scrubbers (which seem to be the intent of the language in the recirculated, proposed ordinance). The dist/mist collection system is equipped with High Efficiency Particulate filters in compliance with SCAQMD requirements. This is the Best Available Control Technology for operations at Defl.

O5-95

However, Defl cannot be expected to install, operate and/or maintain equipment and filters required by off-site residential projects. Nor can Defl or any other existing industrial facility allow a contractor controlled by a third party (eg, Project Applicant) access to their site to perform such activity.

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APPLICABILITY OF BACT AND A 1000 FOOT BUFFER ZONE

Deft is a well-engineered, properly operated industrial facility. Like other facilities in Irvine, such as Allergan, Deft recognizes that its best engineering and operating controls may not always be adequate to protect the community. Deft management recognizes that the best protection to the community is to provide well-engineered, properly operated production and to reduce the overall risk by separating the facility from sensitive receptors, including residences.

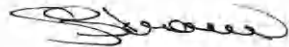
O5-96

CONCLUSION

In our professional opinions, the replacement of the 1000 foot set-back with TBACT or MERV-14 controls is an unacceptable dilution of community protection on the part of the City of Irvine. The original 1000 foot set-back, along with the oversight provided by Agencies such as SCAQMD and OCFA provide a significant and very high level protection to the community. The 1000 foot set-back should be retained and residents should not be potentially exposed to chemical and physical hazards which are controllable.

O5-97

Sincerely,



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2. Response to Comments

Exhibit “2”

Land Use Compatibility White Paper: Hazardous Materials Assessment
by Global Environmental Consulting Company, Inc.
dated May 16, 2006

2. Response to Comments

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:



May 16, 2006



2. Response to Comments

Land Use Compatibility White Paper: Hazardous Materials Assessment Proposed 2323 Main Street Development

Executive Summary

- 1.0 Introduction
 - 2.0 Hazardous Materials Impact Assessment
 - 2.1 Air Toxics
 - 2.1.1 Hexavalent Chrome
 - 2.1.2 Diesel
 - 2.2 Nitrocellulose
 - 2.3 Proposition 65 Chemicals
 - 2.4 Hazardous Waste
 - 2.4.1 Waste Treatment and Security
 - 2.5 Other Nuisance
 - 3.0 Buffer Zones
 - 4.0 Conclusions
 - 5.0 Limitations
- References

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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

O5-98

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.



2. Response to Comments

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 ft² 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

O5-99

2. Response to Comments

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.”

O5-100

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

O5-101



2. Response to Comments

respectively, contained on this List, are of particular concern given the proposal to construct residential units near to the site: hexavalent chrome and diesel.

O5-101
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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.

O5-102

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.

O5-103

2. Response to Comments

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.

O5-103
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O5-104

2. Response to Comments

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 teratogens¹ by the state of California. Listed chemicals such as ethylbenzene, benzene, and ethyl acrylate are known carcinogens².

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 (OEIHA 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.

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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.

O5-106
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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).

O5-107

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.

O5-108

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



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evening as a security measure. As a result, daily operating lighting and evening lights could potentially impact nearby residents.

O5-108
cont'd.

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} .

O5-109

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

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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).

O5-109
cont'd.

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 neighborhood³ 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 Cr⁶ 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 Cr⁶ had been detected in air samples taken from within the neighborhood.

O5-110



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.

2. Response to Comments

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 Quality 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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O5-112

2. Response to Comments

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2. Response to Comments

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<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

2. Response to Comments

Exhibit “3”

May 11, 2009 Letter from Global Environmental Consulting Company, Inc.
to the Law Offices of Robert C. Hawkins



2. Response to Comments



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 $1.5 \times 10^{-1} \text{ ug/m}^3$ 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.

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2. Response to Comments

GECCo, Inc.

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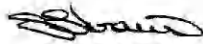
The ARB's Air Quality Land Use Handbook (April 2005) makes the following recommendation: Avoid siting new sensitive land uses within 1,000 feet of a chrome plater. It is evident this guidance document and the above-mentioned ATCMs do not specifically address the types of manufacturing activities that take place at the Deft facility. However, the primary concern and the reason for the policies are emissions of Cr^{+6} to the atmosphere.

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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



2. Response to Comments

Exhibit “4”

August 2009 Settlement Agreement and Mutual Release between
Allergan, Inc. and the City of Irvine

2. Response to Comments

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. **PARTIES:** This Settlement Agreement ("Agreement") is entered into by and between Allergan, Inc. ("Allergan") on the one hand and the City of Irvine and the City Council of the City of Irvine (the "City Council") (collectively "Irvine"), on the other hand. Allergan and Irvine are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

2. **RECITALS:** This Agreement is made with reference to the following facts:

2.1 Whereas Allergan is a multi-specialty health care company with its International Corporate Headquarters (the "Allergan Property") located in the City of Irvine. More specifically, the Allergan property is located within the Industrial Business Complex ("IBC") area at the City of Irvine.

2.2 Irvine has approved the construction of a number of residential units within the IBC.

2.3 Allergan has brought a number of administrative and court actions challenging the Irvine approvals of residential units within the IBC.

2.4 By entering into this Agreement, the Parties intend to resolve the administrative challenges and all causes of action (including pending motions on either side) reflected in or relating to *Allergan v. Irvine*, (Martin Street) Orange County Superior Court Case No. 07CC01268, Appellate Case Nos 0040755, G040751, G041088 and 0041106, Consolidated Appeal of *Allergan v. Irvine*, (2851 Alton) Orange County Superior Court Case No. 07CC01267, Appellate Case Nos 0040752, G040754, G041087 and 0041066, *Allergan v. Irvine*, (IAA) Orange County Superior Court Case No. 06CC11295, *Allergan v. City of Irvine*, (Shuttle) Orange County Superior Court Case No. 30-2008-00070690, and *Allergan v. City of Irvine*, (ARU) Orange County Superior Court Case No. 30-2009-00264668 (collectively "the Cases").

3. **AGREEMENT:** In consideration of and in return for the promises and covenants made by all Parties to this Agreement, including the releases given by all Parties, the Parties agree as follows:

3.1 **Zone Change Ordinance:** The City Council shall consider for approval a zone change ordinance establishing a zone in which residential uses will be limited as shown on Exhibit "A" attached hereto (the "Zone Change"). As part of this approval Allergan may, in its sole discretion, submit to Irvine a series of proposed findings for either the Zone Change, the California Environmental Quality Act ("CEQA") document accompanying the Zone Change or both (the "Findings"). Irvine shall reasonably consider the Findings as part of the approval of the Zone Change and/or the accompanying CEQA document.

3.2 **General Plan Amendment:** The City Council shall also consider a General Plan Amendment which includes the language necessary to render the General Plan consistent with the Zone Change. Irvine shall undertake all necessary review and approvals required under CEQA as part of the consideration of the General Plan Amendment, and the Zone Change. Any other land use and planning enactments considered by the City Council prior to or

2. Response to Comments

simultaneously with the General Plan Amendment and Zone Change shall be consistent with both the General Plan Amendment and the Zone Change.

3.3 **Stay of Pending Litigation:** Upon the execution of this Agreement by all Parties, the Parties, through their respective counsel, shall all request that the Court in each of the Cases stay all matters until the completion of the Expiration of the Challenge Period as defined in Paragraph 3.4 herein or until either party opts out of this Agreement pursuant to Paragraph 3.5 herein. In the event that either (1) the Court in any of the Cases refuses to stay any of the Cases, or (2) the staying of any of the Cases would eventually result in a dismissal pursuant to California Code of Civil Procedure Section 583.310, then the Parties may move forward with those Cases that are not or cannot be stayed. As to those Cases that are not stayed and therefore move forward, the Parties agree that upon the completion of the litigation for each of those Cases, the Parties stipulate through this Agreement that any judgment or decision issued on those Cases shall be stayed and not enforced until either the Expiration of the Challenge Period as described in Paragraph 3.4 herein, or either Allergan or the City opt out of this Agreement pursuant to Paragraph 3.5 herein. Either Party may reinstitute the Cases if it elects to opt out of this Agreement pursuant to Paragraph 3.5 herein.

3.4 **Dismissal of Cases/Withdrawal of Administrative Challenges:** Upon the approval of the Zone Change and the General Plan Amendment and upon the later of (1) the expiration of any applicable statute of limitations to challenge the Zone Change and General Plan Amendment, including initiative or referendum as well as the CEQA process undertaken to review the environmental impacts of those approvals, or (2) the completion of any litigation, including appeals and approval by the Court of Court ordered returns, if any, challenging the approval of the Zone Change, the General Plan Amendment or the CEQA process undertaken to review the environmental impacts or legal validity of the Zone Change and/or General Plan Amendment (collectively the "Expiration of the Challenge Period"), Allergan shall (1) dismiss each and every one of the Cases and agrees to waive its attorney fees that it has been awarded as a result of the prosecution of the Cases; (2) withdraw any administrative challenges pending against any residential approval on residential projects within the IBC; and (3) dismiss with prejudice any other pending litigation against Irvine. Allergan shall have no obligation to dismiss the Cases in the event that Irvine is unsuccessful in efforts to defend litigation described in this paragraph and/or the Zone Change and General Plan Amendment are never effectuated. Allergan shall have no duty or obligation to pay for any costs of defense relating to defense of the litigation described in this paragraph.

3.5 **Opt Out:** Prior to the Expiration of the Challenge Period, either Party may elect to opt out of this Agreement for any reason by providing the other Party with written notice of its intent to withdraw from this Agreement.

3.6 **Mutual Release:** Upon dismissal of all of the Cases, the Parties hereby agree and generally release each other as follows:

3.6.1 Upon the Expiration of the Challenge Period, the Parties hereby release, remise, and forever discharge each other and their agents, employees, representatives, administrators, attorneys, insurers, lenders, shareholders, owners, officers, directors, divisions, affiliates, partnerships, partners, joint venturers, parents, subsidiaries, and related corporations,

2. Response to Comments

assignors, assignees, heirs, and successors in interest, and each of them, from any and all claims, demands, and causes of action, arising out of, connected with, or incidental to the Cases.

3.6.2. The Parties acknowledge that they may have sustained damages, losses, costs, or expenses which are presently unknown and unsuspected and that they may sustain additional damages, losses, costs, or expenses in the future including but not limited to claims arising out of, connected with, or incidental to the Cases.

3.6.3. The Parties specifically waive the benefit of the provisions of Section 1542 of the Civil Code of the State of California, as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

3.6.4. Notwithstanding the provisions of Section 1542 and for the purpose of implementing a full and complete release, the Parties expressly acknowledge that this Agreement is intended to include all claims that each Party has brought or could have brought including but not limited to claims arising out of, connected with, or incidental to the Cases and any of the facts and circumstances giving rise to the allegations made by any of the Parties in the Cases which they do not know or suspect to exist in their favor at the time of the execution of this Agreement, and that this Agreement will extinguish any such claims. This release is limited to known and unknown claims arising from the Cases and does not extend to legal claims, issues or causes of action arising from an independent factual basis such as, by way of example only: (1) Irvine's adoption or implementation of new municipal taxes or fees; (2) claims against Irvine by Allergan related to any pending or future development applications brought by Allergan; (3) claims against Irvine by Allergan related to any future development applications brought by developers after the Expiration of the Challenge Period; or (4) claims against Irvine by Allergan related to any future land use action implemented by Irvine after the Expiration of the Challenge Period.

3.7. **Irvine Cooperation:** Irvine shall reasonably cooperate, to the fullest extent allowable by law but at no cost to Irvine, with Allergan in: (1) the processing of any land use applications submitted by Allergan to Irvine; and (2) Allergan's efforts to expand its business and operations in the City of Irvine.

3.8. **Notices:** Any notice required pursuant to the terms of this Agreement shall be provided as follows:

For Allergan:

William N. Scarff Jr., Esq.
Chief Litigation Counsel
Allergan, Inc.
P.O. Box 19534
Irvine, CA 92623-9534



2. Response to Comments

And with a copy to: Geoffrey K. Willis
Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626

For Irvine: Sean Joyce
City Manager
City of Irvine
One Civic Center Plaza
Irvine, CA 92606

And with a copy to: Philip D. Kohn
City Attorney
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

4. **MISCELLANEOUS:**

4.1 **Advice of Counsel:** The Parties have entered into this Agreement upon the legal advice of their attorneys, who are the attorneys of their choice. The terms of this Agreement have been completely read and explained by such attorneys, and such terms are fully understood and voluntarily accepted by each of the Parties.

4.2 **Entire Agreement:** This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing signed by all Parties.

4.3 **Severability:** Each provision of this Agreement is separate, distinct, and severable from the others. If any provision is held unenforceable, the rest of the Agreement shall be enforced to the greatest extent possible.

4.4 **Successors and Assigns:** This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their agents, employees, representatives, administrators, attorneys, insurers, lenders, shareholders, owners, officers, directors, divisions, affiliates, partnerships, partners, joint venturers, parents, subsidiaries, and related corporations, assigns, heirs, and successors in interest, and each of them.

4.5 **No Presumption Against Drafting Party:** All Parties have cooperated in the drafting and preparation of this Agreement. Consequently, the interpretation of this Agreement shall not be construed against any Party.

4.6 **Choice of Forum and Applicable Law:** This Agreement is intended to be construed pursuant to the laws of the State of California, and each of the undersigned Parties agrees that the only proper venue for any action arising out of the breach of this Agreement or other document delivered pursuant to any provision hereof, shall be the Superior Court of California for the County of Orange.

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2. Response to Comments

4.7 **Attorneys' Fees/Prevailing Party:** In any judicial proceeding, arbitration, or mediation between Irvine and Allergan seeking enforcement of any of the terms and provisions of this Agreement (collectively, "Action"), the prevailing Party in such Action shall recover all of its actual and reasonable costs and expenses (whether or not the same would be recoverable in the absence of this Agreement), including expert witness fees. The prevailing Party's attorneys' fees, including costs of investigation and preparation prior to the commencement of the Action shall also be recoverable. However, the prevailing Party's recovery shall be limited to the number of hours actually spent, at the hourly rate paid by Irvine pursuant to its legal services contract for the same or similar services.

4.8 **Ability to Perform:** Each Party represents and warrants to each other Party that it has the ability to carry out the obligations assumed and promised hereunder, and is not presently aware of any pending event which would, or could, hamper, hinder, delay, or prevent its timely performance of said obligations.

4.9 **Further Acts and Amendments:** Each Party to this Agreement agrees to perform all further acts and execute all further documents necessary to carry out the intent and purposes of this Agreement.

4.10 **Section Headings:** The captions, subject, section and paragraph headings in this Agreement are included for convenience and reference only. They do not form a part hereof, and do not in any way modify, interpret, or reflect the intent of the Parties. Said headings shall not be used to construe or interpret any provision of this Agreement.

4.11 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed one and the same instrument.

4.12 **Effective Date:** The effective date of this Agreement is the last date upon which it is executed by all Parties.

Dated: August 10, 2009

By: Ray Diradarian

Dated: August 18, 2009

By: SUKHEE KANG, MAYOR

ATTEST:

Shawn Ann
CITY CLERK OF THE CITY OF IRVINE

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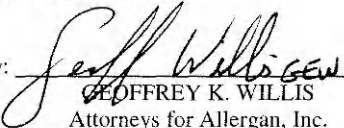
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2. Response to Comments

Approved as to form and content:

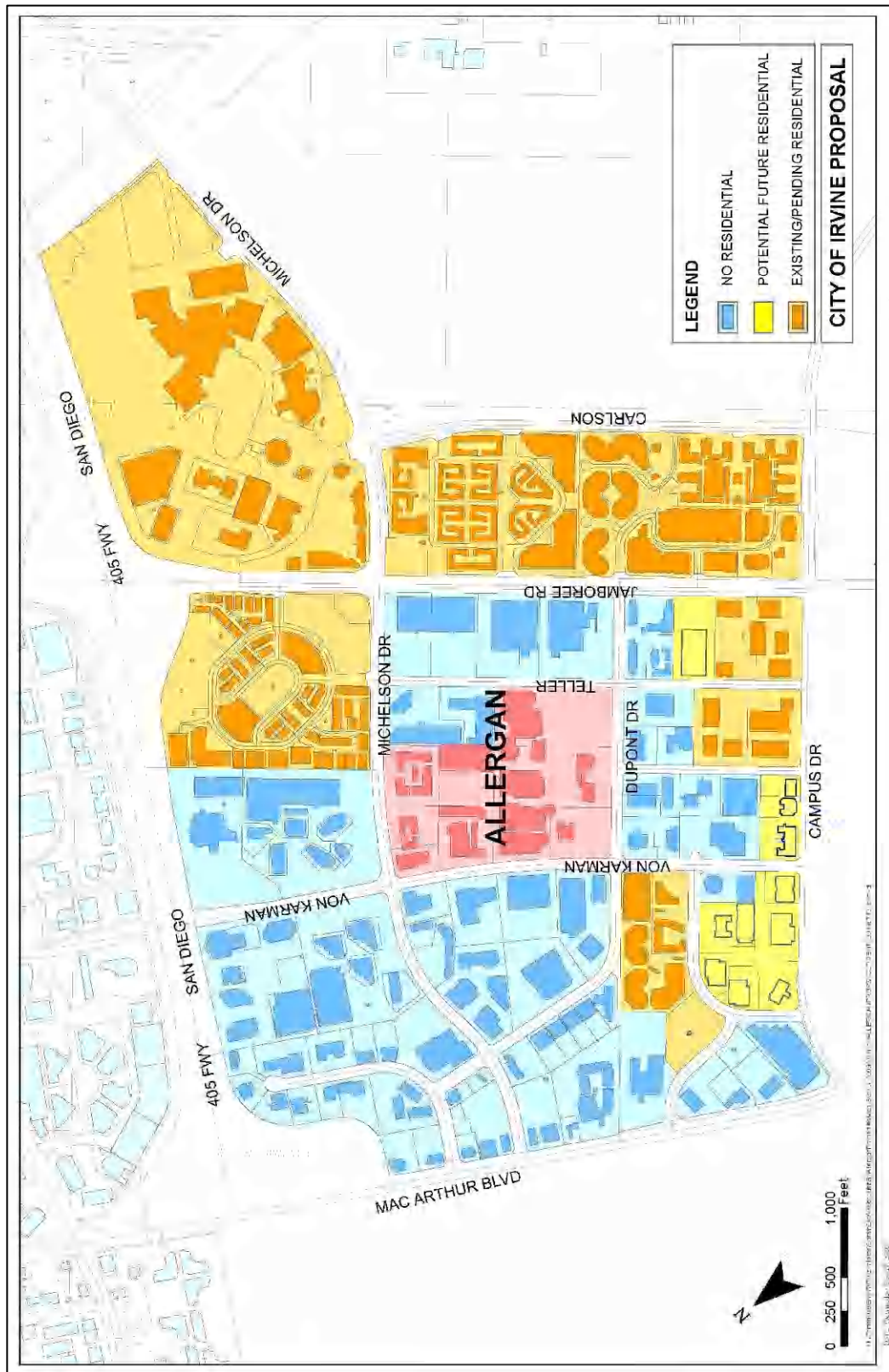
SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

By: 
GEOFFREY K. WILLIS
Attorneys for Allergan, Inc.

RUTAN & TUCKER LLP

By: 
JEFFREY T. MELCHING
Attorneys for the City of Irvine and the City
Council of the City of Irvine

2. Response to Comments



2. Response to Comments

Exhibit “5”

Past and Present Land Use Control Issues in the Irvine Business Complex

dated October 5, 2007

by Ralph Catalano, Professor of Public Health,
University of California, Berkeley

to Douglas Williford, Director of Community Development, City of Irvine

2. Response to Comments

Past and Present Land Use Control Issues in the Irvine Business Complex

Prepared by Ralph Catalano

Submitted October 5, 2007 to

Douglas Williford, Director of Community Development,
City of Irvine



2. Response to Comments

INTRODUCTION

I am providing the following history and recommendations to the City of Irvine as agreed with Douglas Williford, Director of Community Development for the City. The work reflects my training, research, and teaching in urban planning, as well as my service on the City of Irvine Planning Commission and City Council. While I intend the assessment to be as objective as possible, my involvement in the City's regulation of the Irvine Business Complex inevitably affects my views. I trust you will keep this circumstance in mind when considering the following.

I thank Victor Carniglia (City of Antioch, formerly City of Irvine), Douglas Williford (City of Irvine), Brian Fisk (City of Irvine), Anthony Petros (LSA), Timothy Strader (Starpointe Ventures), Larry Agran (IBC Task Force), and Sukhee Kang (Chair, IBC Taskforce) for answering my questions regarding the 1984 and 1992 zoning, as well as the current circumstances in IBC. I, however, am solely responsible for the opinions expressed in this report.

HISTORY

Background and Zoning Strategies

The area now referred to as the Irvine Business Complex (i.e., IBC) has attracted much investment because its location promises high return to those who best anticipate costs and returns of development options. This attraction, however, has raised the cost of land in IBC, forcing developers to aggressively manage risks when bringing uses to market. Part of the risk developers must confront comes from land use regulations devised to minimize externalities of development rather than maximize return on investment.

Irvine has attracted many residents who paid a premium to live in a well-planned community. The City of Irvine has, therefore, had to reconcile high expectations from both developers and residents when devising regulations

2. Response to Comments

for IBC. Investors want the City to reduce their risk by allowing developers to respond quickly to opportunities presented by the market. Residents want the traffic, noise, and other potentially adverse effects on residential areas held to levels generally understood and accepted when making the choice to live in Irvine.

The City's attempt to reconcile these often competing demands led to two important reforms of the original IBC controls inherited from the County of Orange at incorporation. I provide a non-technical history of these reforms because the circumstances leading to, and following from, them explain the dilemma the City now faces.

The most common form of zoning regulates the use, lot coverage, and massing of improvements that developers put on the land. The logic connecting this "use" zoning with health, safety, and welfare has traditionally been that a given land use, industrial for example, generates a more or less knowable amount of traffic, noise, pollution, fire risk and so on per unit of space (e.g., square foot). These "performance characteristics," in turn, have more or less measurable effects on public health, safety, and welfare. Regulating use and intensity, therefore, has the end effect of protecting health, safety, and welfare because regulating use regulates performance.

This static "use" regulation, however, does not respond well to changes in market realities and severely restricts the options available to developers. These regulations may not allow the most profitable use even when it affects public health, safety, and welfare no differently, or even less, than the allowed use.

The Irvine Industrial Complex West Industrial Use Zoning

The City of Irvine, upon its incorporation in 1971, inherited "use" regulations of what we then knew as the Irvine Industrial Complex West (i.e., IICW)



2. Response to Comments

from the County of Orange. The regulations reflected good planning practices for their era but made uses other than industry possible only through arduous and time consuming general plan and zone changes.

By the early 80's, the growing regional economy had diversified and the demand for office space near John Wayne Airport increased dramatically. Office space generated more profit per square foot than industrial space. Land owners, developers, and investors began appealing to the City for exceptions to the industrial use requirement. These appeals made the argument that the performance characteristics of a square foot of office would affect health, safety, and welfare less than a square foot of industrial space. The public, therefore, should have no objection to an amount of office space that generated the same health and safety effects as the previously permitted industrial use.

This argument became problematic when applied to traffic effects or "trip generation." The Orange County General Plan and first Irvine General Plan called for a road system in and around the IICW that would service the originally permitted uses. The capacity of the system, in other words, fit manufacturing uses. While offices may generate fewer health and safety risks than an equivalent amount of manufacturing, the former generates more "peak hour trips" and, therefore, more traffic congestion. The courts had long included such congestion among the threats to public welfare that the state could regulate.

Early applicants for relief from the IICW use zoning noted that at the time of their request, the existing road system had capacity to service their projects even if the project would generate more trips than the previously permitted use. Much to the chagrin of land owners not in the appeals "queue," the City granted several early appeals. These decisions triggered a "permit rush" because entrepreneurs understood that the limited capacity of the road system would soon be "used up" leaving all remaining applicants with no argument for relief from the industrial use zoning. The City staff also

2. Response to Comments

expressed concern that the IICW would become a mix of uncoordinated uses frozen in place when the capacity of the planned road system had been fully committed.

The 1984 IBC Performance Zone

The permit rush in IICW led to a 1983 moratorium on zone changes and a "crash" program to reform IICW land use regulations. This program yielded a landmark zoning code that shifted the logic of regulation from "use" to "performance" management. If protecting public health, safety, and welfare provided the legal justification for zoning, why not regulate the performance characteristics of development rather than land uses? Regulating performance characteristics would protect the public and allow developers to respond to their understanding of market cues. Developers could use whatever technology or means available to make uses fit within performance criteria set by the City and other regulatory agencies responsible for environmental quality and health.

Finding mechanisms to manage the traffic, or "trip generating," effects of land uses impeded quick implementation of performance zoning in IICW. After much analysis and debate, the City decided that the 1984 zoning reforms would manage the trip generation problem with two mechanisms. The first converted the industrial entitlement owners had under the original County zoning to "trip rights." Owners could, in theory, ask for any use that generated trips less than or equal to their rights. Assuming the proposed use did not violate any other performance criterion, the project would be approved. The sum of all projects each generating the trips assumed by the original industrial zoning would have effects on the remainder of the city no greater than the original zoning. In other words, if every land owner asked for uses within their trip rights, the regional road system assumed by the original industrial use zone would be adequate although it served a much more diverse pattern of land uses than originally envisioned by the County.



2. Response to Comments

Of course, at least several developers wanted to develop office commercial uses at intensities well beyond their entitled trip rights. To do so required that they either buy rights not used by other owners, or contribute to a fund that would be used to upgrade the County-planned road system. The City organized an effort to identify and price regional transportation upgrades that could serve IICW development above the entitled level without adding congestion to surrounding residential areas. The cost of these upgrades was converted to a per trip fee. Developers who requested approval for uses that generated more trips than their own and purchased rights had to pay the fee for each trip over the entitled allotment.

The combination of the performance zoning and the two trip management schemes described above solved, at least temporarily, the problems faced by the City in 1984. No land owner need rush to get permitting for uses other than industrial because congestion rights equivalent to those under the original zoning could be held, used for any development that fit performance criteria, or sold. Developers who wanted to go beyond their entitled trip rights had to meet all performance criteria and pay substantial fees to fund improvements that ensured congestion outside IICW would not exceed that expected from the original zoning. The residential community in Irvine could be assured that the effects of IICW development, regardless of the actual uses, would not exceed those they had expected from the industrial zoning.

I have simplified the zoning in several ways. The system did not actually allocate trips but rather used trip-based "points" to create a token economy that could be used not only to manage traffic congestion but also encourage specific uses such as schools, clinics, child care facilities, and the like. I also simplified the timing of fee collection and transportation improvements. As might be imagined, the issue of phasing of road improvements raised questions regarding when a developer had to pay the fees levied against a project.

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Despite these complexities, the new land use regulations earned the unanimous support of the Planning Commission, Transportation Commission, and City Council. No affected party testified against the regulations although several expressed concern over the complexity and novelty of the scheme. The area name became the Irvine Business Complex (i.e., IBC) to signal a new era. The IBC rules allowed Irvine land owners, developers, and investors to respond creatively to what they read as market demand. The residential communities in and around Irvine did not have to bear effects greater than those expected under the pre-existing zoning. Irvine, in no small part due to IBC, became an example of prosperity, entrepreneurship, and quality of life envied publicly and privately by all those who knew it.

The 1992 Reforms

When developing the 1984 IBC performance zoning, we understood that requests for residential development would eventually become more common than the single application (i.e., "Douglas Plaza Condominiums") to that date. Residential uses would presumably have brought benefits including a reduction of peak hour trips by allowing those who worked in IBC to live there, a demand for evening activities that would make IBC a more interesting place that could "hold" trips in the area during the evening traffic peak, and an increase in sales tax from commercial uses that served IBC residents and others. Having residents in IBC would also create a political constituency for good planning in the area.

We also understood that residential uses would bring challenges. Three stood out. First, how would the City and affected School Districts finance and locate schools? Second, how would the City meet recreation needs in an area where parks would be difficult to establish? And third, how would the City assess and resolve issues of intra-IBC compatibility among residential, industrial, office, and commercial uses?



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Many of us who worked on the 1984 performance zoning suspected that the issue of compatibility between IBC industrial facilities and residential use would eventually come to the fore. That suspicion proved correct when, in the early 1990's, applications for residential uses in the IBC increased dramatically. Approximately 3,500 units of housing had been approved or proposed by 1992 and owners of industrial facilities began to fear encroachment of neighbors who would complain to regulators about noise, pollution, and other real or imagined threats to well being. School and park policies had not, moreover, been formulated for the area.

In addition to the above issues, another problem had emerged. The 1984 assessment of the potential capacity of regional transportation systems appeared obsolete. Many of the regional transportation improvements anticipated by the 1984 zoning had been superseded by more ambitious projects or made impossible by other developments.

The City tried to remedy these problems in 1992 through two changes to the IBC zoning. First, the new zoning "capped" residential use at the sum of units then approved or in the approval process. The cap allowed fewer than 4,000 units in IBC regardless of the performance characteristics of additional units.

Second, the City commissioned a new transportation study. Results included a new list of upgrades (ranked by how quickly they would most likely be needed), as well as the finding that more trips than those unallocated from the 1984 zoning could be awarded to IBC land owners willing to pay fees. The 1992 traffic study estimated that the City had allocated or entitled approximately 52% of the trips that the upgraded road system could accommodate. The 1992 zone change substituted the new upgrades, trip estimates, and fees for those of the 1984 zoning. Land owners received a fraction of the remaining 48% of the "trip budget" equal to their fraction of IBC land area. These trips could not be

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used for residential projects unless an owner successfully applied for a general plan amendment and zone change.

While the 1992 reform of the transportation plan and trip allocation system improved upon the 1984 zoning, I can find no compelling argument in the public record for the decision to stop residential development in the IBC. The City and region lost the obvious benefits of having residential units in those areas of IBC with no compatibility problems, and the restraint inevitably created a regulatory impediment to good land use management.

The Current Circumstance

As history would predict, developers eventually responded to market cues by asking permission to build more housing in IBC. Their arguments typically reduced to a simple question. Why can I not build housing if I have the trips; the proposed housing affects the remainder of Irvine less than would industrial use; and intra-IBC compatibility issues either do not apply or have been solved in my case? Lacking a compelling answer to this question, the City has approved several of these requests. Doing so, however, has induced the fear, if not reality, of a new "permit rush." This fear, in my opinion, has much less justification than in the early 80's when the fact of a limited supply of road capacity required no analysis to comprehend. The current concern appears, in contrast, to arise from vaguer circumstances. First, some unknown fraction of the now unused trips allocated in 1992 may have been "absorbed" by development outside IBC unanticipated by the 1992 analyses. Second, the regional road upgrades assumed by the 1992 analyses to occur in the then "out years" will soon be needed and their feasibility remains unclear. The long anticipated policies regarding school and recreation facilities in IBC, moreover, remain unformulated. The uncertainty arising from these circumstances has not only induced the fear of a "permit rush," but also has been cited, perhaps opportunistically, by nearby cities as justification for litigation to stop further permitting in IBC.



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The City understands that approving more requests for general plan amendments and zone changes to allow housing would raise important regulatory questions in Irvine and elsewhere. Should, for example, Irvine continue these approvals without formally addressing the issues of parks and schools? Does Irvine have a process to resolve disputes over the compatibility of proposed residential and existing manufacturing uses? Do the 1992 assumptions regarding trip generation, infrastructure upgrades, and fee structure remain sufficiently sound to guide current decisions? The last of these has to be answered definitively because, as noted above, neighboring cities have sued to stop Irvine from issuing more approvals without first assessing the validity of these assumptions.

The City has responded in three ways to these circumstances. First, it has appointed a task force, chaired by Councilman Sukhee Kang, to develop options and recommendations for changes in IBC land use regulations. Second, it has begun traffic and environmental assessments of options developed by the Task Force. Third, it has reached out to those who live in IBC to better assess how their experiences might help in planning the environment and services that additional residents would encounter in the area.

I understand that efforts continue to reach agreement among the school districts that serve the IBC for the provision of facilities including a possible tri-district school. I also understand that the Task Force has creative and feasible plans to provide recreation opportunities to existing and future IBC residents. These opportunities would apparently be supported in whole or in part with fees collected from residential developers under the permitting process. The issue of the current validity of the 1992 traffic studies remains the principal impediment, in my opinion, to the orderly build out of IBC.

RECOMMENDATIONS

The City of Irvine has the experience, talent, and resources to manage the challenges presented by the maturation of IBC into a remarkably successful center of entrepreneurial activity. All involved should, moreover, celebrate that this success has been enjoyed without sacrificing the quality of Irvine's residential communities. The recommendations I make below sum to small, but important, adjustments in the course charted nearly 25 years ago and since followed by several generations of community, business, and staff leaders.

Based on the above understanding of the current circumstances in IBC, I recommend the following actions by the City of Irvine.

1. Reaffirm the policy that the City regulates land uses in the Irvine Business Complex with performance, not use, based controls. Returning to use regulations would ensure that every real or perceived change in market opportunities will bring a cascade of applications for general plan amendments and zone changes in IBC. This circumstance would not only unnecessarily impede the orderly supercession of uses in the Complex without benefit to Irvine residents, but also again invite litigation from neighboring cities and others. It would also imply that a City made famous for sound planning had lost its compass and lurches from one crisis to another.
2. Raise the cap on housing units in the IBC to the highest level allowable under the pending environmental and traffic assessments. The cap made little sense in 1992, makes none now, and has hindered IBC evolution by requiring developers to ask for general plan amendments for projects everyone acknowledges would not make congestion worse



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and would improve the jobs to housing ratios. Remember that the trips associated with these residential units would substitute for, not add to, those that would have been generated by the industrial, office, or commercial development foregone to build housing.

3. Any new scheme for allocating trip rights to owners should recognize that location within IBC should influence the allocation of trips. These schemes should also allow for adjustment of congestion rights at the time a developer proposes a use because morning and evening peak hour effects could differ by use.
4. The City should require persons renting or buying housing in IBC to sign material informing them that they live in area in which the City regulates development by effects and not by use. I am sure that many new IBC residents believe that their neighborhood has been planned to the same level of physical detail as the remainder of Irvine. Learning otherwise may lead many to needlessly fear that the City has less interest in their well-being than in that of other Irvine citizens. Understanding that performance zoning actually protects residents as well as, or better than, use zoning should allay this fear.
5. Provide the IBC a new name and identity that reminds residents and businesses alike of the dynamic nature of this special place.
6. Encourage IBC residents to participate in the governance of their neighborhood and of the City as a whole.
7. Do not attempt now to force the formation of residential centers based on idealized notions of neighborhoods in IBC. Doing so will simply lead to the costs of use zoning without its meager benefits. If the placement of schools, parks, and other public services requires some anticipation

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of residential concentration; wait as long as possible before committing. Time and the aggregation of resident behavior informs such decisions better than theories of neighborhood that come and go among us academic planners and architects.

8. Do not confuse regulation of design features with sound planning. We planners tend to obsess over, for example, street and landscape designs while ignoring more technically demanding tasks such as modeling traffic and fiscal effects. This problem particularly vexes the implementation of performance zones because their success depends more on continuity in the enforcement performance criteria than on compliance with design standards.
9. Devise a process for assessing compatibility between existing industrial facilities and proposed residential uses in the very few cases in which problems may arise. These procedures could be specified in pending environmental impact assessments as mitigating measures where potential incompatibilities arise. Unless industry has withheld information regarding health or safety threats emanating from their properties, I doubt the City will face many difficult decisions regarding adjacency. I assume that industry would cooperate with the City by providing information regarding threats that might emanate from existing industrial facilities.



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O5. Response to Comments from Robert C. Hawkins, Law Offices of Robert C. Hawkins, dated February 5, 2010.

O5-1 The commenter has requested that its “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 projects within the IBC” be included in the Record of Proceedings associated with RDEIR. The City will include within the Record of Proceedings those matters required to be included pursuant to Public Resources Code section 21167.6(e). Included among those documents will be the comments submitted by the commenter on June 27, 2006, July 24, 2006, February 21, 2007 and May 14, 2009. In incorporating these documents, however, the City does not agree that the projects analyzed or at issue in those prior comment letters are the same as the project under analysis in the RDEIR. As the commenter is aware, the details of the Vision Plan Project under analysis in the RDEIR has changed and evolved over time. The analysis in the RDEIR represents the complete analysis of the Vision Plan project.

Separately, the commenter indicates that it incorporates by reference “our comments on other projects in the IBC.” While the City understands the commenter’s efforts to preserve all available opportunities to challenge the RDEIR, the vague incorporation of “comments on other projects in the IBC” is not sufficient enough as to give the City any ability to respond to said comments in the context of the instant, separate and distinct project.

The City acknowledges that letters from Global Environmental Consulting dated January 19, 2010 and May 11, 2009, and May 16, 2006 have been attached as Exhibits 1, 2, and 3 to the Comment Letter.

O5-2 The commenter claims that the RDEIR fails to comply with a Superior Court judge’s orders, made in connection with two project-specific EIRs – the Martin Street Condominiums Project and the 2851 Alton Residential Project. While the orders on those projects are instructive in the context of those projects, they are not binding on the Vision Plan environmental review process. The City has endeavored to, and has, seen that the RDEIR complies with the requirements of CEQA and the CEQA Guidelines.

O5-3 The commenter claims that the RDEIR’s Introduction “remains inadequate and fails to accomplish its purpose” but does not specifically identify any inadequacies or unaccomplished purposes. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-18 through O5-22 below regarding Chapter 2, Introduction.

O5-4 The commenter states that the “project description is still inaccurate and must be revised.” The comment does not describe with any particularity the inaccuracies that the commenter claims require revision. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-24 through O5-37 regarding Chapter 3, Project Description.

O5-5 The commenter claims that “the environmental setting fails to use the appropriate project baseline condition.” The Project baseline condition utilized in the RDEIR is in conformance with CEQA Guideline 15125 which states:

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 the environmental analysis is



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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. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

Consistent with Guideline 15125, Guideline 15126.2 states:

[I]n 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 published, or where no notice of preparation is published, at the time the environmental analysis is commenced.”

In compliance with both of the foregoing Guidelines, the City utilized existing environmental conditions at the time of the issuance of the Notice of Preparation for the Vision Plan Project as the baseline for the environmental analyses in the RDEIR. To the extent more specific concerns regarding baseline conditions are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-38 through O5-70 regarding Chapter 5, Environmental Analysis.

- O5-6 The commenter claims that “the RDEIR’s discussion of air quality impacts is incomplete and requires revision,” but does not explain in the comment how the analysis is either incomplete. Nor does the comment explain what facet of the analysis requires revision. To be sure, the comment suggests revisions to the Vision Plan Project description (geographic expansion of the Business District designation, and creation of a 1000 foot buffer between existing industrial and new residential uses), but the reasons for suggesting those modifications are not evident from the comment. To the extent those reasons are detailed in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-39 regarding air quality impacts of the project (Section 5.2, Air Quality) and use of a 1,000 foot buffer.

It should be noted, however that the RDEIR considered land use compatibility issues, including land use compatibilities between industrial and residential uses, on a variety of dimensions, including but not limited to hazardous materials, noise, light and glare. Where potential impacts were identified, mitigation was proposed. In addition, specific features have been included in the zoning code to ensure that project-specific consideration of those compatibility issues are addressed in connection with the proposal of specific projects.

- O5-7 The commenter claims that “the EIR’s analysis of project impacts on soils and geology fails to analyze fully program and project level impacts.” However, the comment does not identify any specific deficiencies in the RDEIR or aspects of the RDEIR that do not analyze soils and geology impacts. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-40 regarding Section 5.5, Geology and Soils.
- O5-8 The commenter claims that “project impacts on hazards and hazardous materials remain flawed and incomplete, and fails to provide adequate protections between existing industrial uses and new residential uses.” Without a more detailed articulation of the flaws and omissions that the comment claims exist in the RDEIR, it is impossible to evaluate and respond to the asserted environmental concerns. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later

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comments. See response to Comments O5-41 through O5-51 regarding Section 5.6, Hazards and Hazardous Materials, and a 1,000 foot buffer.

- O5-9 The commenter claims that the RDEIR “also fails to analyze adequately the programmatic and project-level impacts on hydrology and water quality.” Beyond that general statement, however, the comment articulates no specific concerns regarding hydrology and water quality. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-52 through O5-56 regarding Section 5.7, Hydrology and Water Quality.
- O5-10 The commenter claims that the RDEIR “fails to analyze completely and to propose adequate mitigation for the Project’s land use impacts.” The comment does not raise specific land use impact analysis concerns, nor does it indicate how mitigation strategies are ineffective. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-57 through O5-59 regarding Section 5.8, Land Use and Planning.
- O5-11 The commenter claims that “analysis of the Project’s noise impact remains incomplete and its proposed mitigation is impermissibly deferred.” The comment does not explain what omissions exist in the analysis of the Vision Plan Project’s impacts. Nor does it explain how the proposed mitigation is “deferred” much less how it is “impermissibly deferred.” The RDEIR analyzes noise impacts, and finds them to be significant on at least four separate environmental dimensions. Having identified potentially significant impacts, the RDEIR explains that an effort was made to mitigate those impacts, but no feasible mitigation measures were available. Accordingly, the RDEIR discloses that the impacts are significant and unavoidable. To the extent specific concerns with that approach are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-60 regarding Section 5.9, Noise, and associated mitigation measures.
- O5-12 The commenter claims that “analysis of the Project’s transportation and traffic impacts remains incomplete and its proposed mitigation is impermissibly deferred.” The comment does not explain what omissions exist in the analysis of the Project’s impacts. Nor does it explain how the proposed mitigation is “deferred” much less how it is “impermissibly deferred.” To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-62 through O5-70 regarding Section 5.13, Transportation and Traffic. The Traffic Study and RDEIR analyzed the traffic and transportation impacts of the proposed project by identifying intersections, arterial segments, and freeway segments and freeway ramps that would be significantly impacted by the proposed project according to the traffic impact criteria established by the City of Irvine and surrounding jurisdictions. The City has proposed feasible improvements that will return the circulation system to an acceptable LOS and has identified fair share percentages for providing funding to implement those improvements.
- O5-13 The commenter claims that the “analysis of recreational impacts is incomplete and must be revised.” No specific detail concerning the asserted omission of information and/or need for revisions is provided. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-61 regarding recreational impacts of the project (Section 5.12, Recreation).
- O5-14 The commenter concludes that “discussion of significant and irreversible impacts fails and requires revision.” The comment does not describe how significant and irreversible impacts



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“fail” nor does it indicate which revisions are “required.” To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-81 regarding Chapter 9, Significant and Irreversible Changes Due to the Proposed Project.

O5-15 The commenter claims that “analysis of the Project’s growth inducing impacts is incomplete and inadequate.” However, the comment does not indicate which information is allegedly not provided. Nor does it describe how the analysis is inadequate. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-82 regarding Chapter 10, Growth-Inducing Impacts of the Proposed Project.

O5-16 The commenter cites various provisions of the Public Resources Code, the CEQA Guidelines and a number of published California cases. However, the comment does not raise any specific environmental concerns. CEQA Guideline 15088 provides:

The written responses shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections).

Consistent with Guideline 15088’s focus on environmental issues, Guideline 15204(a) provides in relevant part:

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environmental and ways in which the 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, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. 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.

(c) 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.

Consistent with the foregoing, the City has endeavored in these responses to comments to provide responses to expressed environmental concerns. The fact that the City has not used these Responses to Comments as an opportunity to express its agreement or disagreement with the commenter’s characterization of the law is not an indication of agreement or disagreement with the commenter’s characterization; rather, the City has attempted to confine its responses to the task at hand – namely, addressing specific environmental concerns raised by the commenter.

O5-17 Please see response to Comment O5-5. The commenter claims that “the appropriate baseline conditions are those that existed in the IBC immediately after the approval of the 1992 IBC

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Program EIR.” The comment is not consistent with the requirements of CEQA. Guideline 15125(a) establishes the baseline as the “on the ground” conditions that exist as of the date of the publication of the Notice of Preparation. The RDEIR utilized that date for purposes of its environmental analysis.

As to the commenter’s remaining assertions concerning the Superior Court’s Minute Order in connection with the Martin Street Condominiums project, the following additional observations are appropriate. First, the Superior Court’s Minute Order is not binding on the current environmental review process because the project under analysis in the RDEIR is not the same as the projects that were the subject of the Minute Order.

Second, the Superior Court’s judgment in the Martin Street Condominiums case is on appeal, such that the Superior Court’s minute order has not current binding effect even on the Martin Street Condominiums project.

Third, the projects approved by the City within the IBC between 1992 and 2010 that the commenter urges be included in the “baseline” are well beyond any applicable legal challenge period. (See. Gov’t Code § 65009, Pub. Res. Code § 21167.)

Fourth, the effects of previously built projects – both residential and non-residential, and both within the IBC and outside the IBC – are included as part of the environmental analysis in the RDEIR. Those projects are included in the baseline conditions and to the extent that, combined with the Vision Plan Project, they result in an additional environmental impact to which the Vision Plan Project provides a cumulatively considerable contribution, the Vision Plan project is required to mitigate on a fair share basis for that impact. By proceeding in this manner, the RDEIR provides an accurate platform upon which to assess the impacts of future development.



Finally, the commenter claims that the RDEIR did not include a “new traffic analysis and explain the trip budget and trip transfers.” This statement is inaccurate. The RDEIR contains an entirely new traffic analysis from that presented in connection with the Martin Street Condominiums and/or 2851 Alton project (See RDEIR, Chapter 5.13 and the Irvine Business Complex Vision Plan Traffic Study, Parsons Brinckerhoff, December 2009, included as Appendix N). In addition, extensive discussions of trip budgeting and intensity transfers are provided in the RDEIR at page 5.13-1, and at Section 1.4 (page 4) of Appendix N. As disclosed on page 5.13-1 of the RDEIR, specific TDR assumptions are included as Appendix J to the traffic study provided at Appendix N.

O5-18

After the EIR is certified, future environmental analysis of the projects contained in the Vision Plan will build upon the information and conclusions of the IBC EIR. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the Conditional Use Permit (CUP) is processed. In addition, we would note that while pending residential development projects were identified in the EIR, certain site-specific project analyses were not completed as part of the EIR, primarily with respect to site-level noise, circulation, access and land use compatibility issues. Therefore, once the CUP is ready to proceed, staff will conduct a new initial environmental evaluation to determine the scope of any changes to the project and/or the surrounding environment, and will make a determination at that time regarding any additional environmental review necessary for the CUP.

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The commenter appears to suggest that the RDEIR Executive Summary was required to include a description of new information added to the EIR between the time of the circulation of the original DEIR and the RDEIR. However, the commenter cites no authority for that proposition, and we are aware of none that exists. Although not required by the CEQA Guidelines, Appendix Q provides written responses to the comments received on the DEIR. A description of why the EIR was recirculated and changes to the DEIR is contained on page 3-9 of the RDEIR.

- O5-19 There are currently 4,779 units and 232 density bonus units, for a total of 5,011 residential units currently constructed in the IBC Vision Plan area (see Table 3-1, IBC Development Summary). At the request of the commenter, the Introduction will be revised:

... The most prominent land use in the IBC is office, with substantial amounts of industrial/warehouse uses and ~~4,524~~ 4,779 medium- and high-density residential units and ~~45~~ 232 density bonus units for a total of ~~4,569~~ 5,011 existing dwelling units.

- O5-20 See response to Comment O5-5 and O5-17.

- O5-21 The commenter claims that the brief description of the Vision Plan Project contained in Section 5.7 Hydrology is in conflict with the description provided in the Executive Summary of the RDEIR. However, on review of the two descriptions, they are consistent. Section 1.3 of the RDEIR states that “the most prominent land use in the IBC is office.” It then goes on to note that there are industrial/warehouse and high density residential units. Consistent with that description in Section 5.7, the RDEIR notes that the IBC is a business-concentrated area that includes a few high rise residential condominiums. Both of these descriptions are true and accurate characterizations of the IBC.

- O5-22 The commenter attempts to add its own characterization of the specific contours of the controversy in the IBC with regard to residential development, parks and recreation, and transportation and traffic. The City acknowledges that the commenter has characterized the areas of controversy from its perspective, and the commenters’ comments will be included in the FEIR. However, in Section 1.7 of the RDEIR, the City sought only to identify areas of controversy, and it achieved that purpose.

The commenter then reaches the conclusion that “new residential uses should not be located within 1,000 feet of existing industrial uses.” The RDEIR analyzes compatibility between new residential uses and existing businesses in the context of land use, hazards and hazardous materials, air quality, and other environmental dimensions. (See, e.g., RDEIR Section 5.6.) However, the RDEIR does not reach the conclusion that the 1,000 foot separation suggested by the commenter is appropriate in all cases. Rather, the project is designed to ensure that land use compatibility issues are considered in a context-specific manner. Specifically, PDF 6-5 provides:

For all residential projects located within 1,000 feet of an industrial facility which emits toxic air contaminants, the Project Applicant shall submit a health risk assessment prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment and the South Coast Air Quality Management District to the Community Development Director prior to approval of any future discretionary residential or mixed-use project. If the HRA shows that the incremental cancer risk exceeds one in one hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best

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Available Control Technologies for Toxics are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value filters rated at 14 or better at all residential units.

Through this measure, the RDEIR provides a mechanism to evaluate land use compatibility issues in connection with future project specific applications, and to conduct that analysis using established protocols.

The commenter also claims that Section 1.7 of the RDEIR, which is devoted to areas of controversy, should have discussed the DEIR as it was originally circulated and a prior mitigated negative declaration. Those documents, however, are not “areas of controversy.” Rather, they are environmental documents that were previously released for public review.

The commenter also claims that the RDEIR must reflect the fact that the negative declaration previously released for public review “is part of the administrative record for the Project.” This comment does not raise an environmental concern but rather an assertion about the proper content of the Record of Proceedings that would exist if litigation over the City’s consideration of the Vision Plan EIR is ultimately commenced. The City notes that the mere request that a document be included in an Record of Proceedings does not render that document part of the Record of Proceedings. That determination is ultimately guided by the requirements of Public Resources Code section 21167. Separately, and in addition, there exists no requirement that every document that is part of the administrative record must be “reflected” in the environmental impact report. To the contrary, the CEQA Guidelines emphasize that the discussion in an EIR should normally be simple (Guidelines 15140), concise (Guidelines 15141), focused on relevant information (Guidelines 15143), and to a level of detail that is commensurate with the project under analysis (Guidelines 15146). Summarizing documents in the RDEIR merely because they are assertedly part of the Record of Proceedings is not consistent with the above-noted principles.



O5-23 In the first paragraph of Comment O5-23, the commenter reiterates that the introduction section of the RDEIR was somehow required to discuss a prior mitigated negative declaration proposed for a prior iteration of the IBC Vision Plan. Please see Response to Comment O5-22 for a discussion of that issue. The commenter also claims that the “Introduction Section” was required to reference Appendix Q to the RDEIR and that the failure to do so requires a revision of the document. The commenter provides no authority for that proposition. Appendix Q, which is part of the RDEIR, includes comments and responses on the DEIR. That information is, and has been, available for public review.

In the second paragraph of Comment O5-23, the commenter claims that the RDEIR is not independent and unbiased. However, the commenter does not provide any specific examples of a lack of independence or the existence of bias. The environmental document has been prepared by an independently hired consulting group, The Planning Center. The environmental document has been prepared without influence from any commercial interests.

In the third paragraph of Comment O5-23, the commenter attempts to impose upon the RDEIR a requirement that it “incorporate by reference properly and clearly earlier documents including EIRs for the IBC.” Incorporation by reference is an optional, not mandatory, approach that may be employed when earlier environmental documents are relied upon in a later environmental document. (See Guidelines § 15150 [“An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public

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record and is generally available to the public.). Other environmental documents have not been incorporated by reference here because the City does not rely upon other environmental documents in conducting environmental analysis in the RDEIR.

The commenter also claims that there is reliance upon the 1992 IBC Program EIR by relying on a PowerPoint presentation dated October 5, 2007. The PowerPoint presentation, however, merely described the intensity management devices that were put in place in 1992, and are currently part of the City of Irvine's Zoning Code. The RDEIR does not rely upon the 1992 IBC Program EIR to describe current baseline conditions and/or to forecast future conditions. Those two steps are achieved by surveying existing conditions and by forecasting future development using existing and proposed zoning and other land use devices. Neither of those steps required or involved reliance upon the 1992 IBC Program EIR. It should be noted, in addition, that the commenter's comment is based fundamentally upon a plan-to-plan comparison approach whereby development under the 1992 IBC Program EIR would be compared to development under the Vision Plan Project. CEQA requires a plan-to-ground analysis and that is what has been conducted in the RDEIR.

- O5-24 In the introductory paragraph to Comment O5-24, the commenter states that the RDEIR fails to explain how the Project will advance its goals of protecting existing job base and developing mixed use core. 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 RDEIR for a description of the various PPPs and PDFs intended to protect the existing job base.

The commenter also requests confirmation that the nine components of the Vision Plan Project identified in Section 3 are part of the Project. The components of the Vision Plan Project listed in Chapter 3 of the RDEIR are all part of the Project. The commenter also requests confirmation that the nine components are a complete list of project components. The nine components describe, by category, the components of the Project under analysis in the RDEIR.

- O5-25 The commenter devotes most of Comment O5-25 attempting to reiterate its argument that conditions authorized under the 1992 IBC EIR and/or conditions existing in 1992 should have served as the baseline for analyzing environmental impacts in the RDEIR. Please see responses to Comment O5-5 and O5-17 to address those issues. In addition, please note that the comment conflates (i) an earlier environmental analysis document, i.e., the 1992 Program IBC EIR, with (ii) the zoning approved with that environmental analysis document, i.e., the Zoning Code as it existed in 1992. While neither the intensity allowed under the 1988 zoning or the intensity contemplated in the 1992 IBC EIR are relevant for purposes of this analysis, it does bear emphasis that the 1992 EIR was not a regulatory document but rather an environmental disclosure document.

The comment also claims that the RDEIR does not analyze the impacts of the full project. However, the commenter's assertion is based on the commenter disagreement with the Vision Plan Project description. The project description analyzes ultimate development as contemplated in the Vision Plan Project. That is what is described in Chapter 3 of the RDEIR. The environmental impacts of that project are examined by comparing ultimate buildout of the Vision Plan Project against existing conditions. That is the analysis required by CEQA and conducted in the RDEIR.

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The text on page 1-5 of the RDEIR has been corrected to match the existing residential dwelling units within the IBC Vision Plan area shown in Table 3-1 (see Chapter 4 of the FEIR).

- O5-26 In Comment O5-26, the commenter requests clarification concerning the reasoning for various changes in the Vision Plan Project description in the area around the Allergan campus, south of Interstate 405. The commenter asserts that the changes in the Vision Plan Project description derive from a settlement agreement between the City and Allergan. The commenter is partially, but not entirely, correct. The City arrived at the settlement with Allergan not only as a means for solving existing litigation, but also after an analysis of realistic residential development opportunities in the areas south of Interstate 405 and a preliminary determination (pending appropriate environmental review and exercise of legislative discretion by the City's policy-making bodies) that confining future residential development to the areas indicated in the RDEIR made good land use planning sense.

The commenter then asserts that the RDEIR and the revised project "recognized this significant impact for Allergan and crafts the boundaries of the business complex district to address Allergan's concerns about industrial adjacency within the new residential uses." While it may be the case that the changes to the Project description address Allergan's concerns at some level, the changes do not constitute an admission by the City or an acknowledgment by the City that those concerns amounted to environmental impacts under CEQA. Nor do they suggest that the "impacts" supposed by the commenter cannot be mitigated or avoided in other ways, such as the ways set forth in the RDEIR.

Building upon its premise that the RDEIR somehow acknowledged land use impacts in connection with the treatment of Allergan south of the 405, the commenter claims that similar treatment should be afforded to industrial uses north of the 405. Again, the City's land use planning decisions or suggestions south of the 405 were based on a combination of factors including an identification of the areas within which the City staff believed development south of the 405 was most likely to occur in the future. City staff has made a similar assessment north of Interstate 405, and understands that the commenter does not agree with that assessment. The City has, however, conducted land use and other environmental analyses to see whether incompatibilities between existing industrial and business uses exist with areas where proposed residential development may occur. (See, RDEIR, Sections 5.2 [Air Quality], 5.6 [Hazards and Hazardous Materials], and 5.8 [Land Use and Planning].)

The commenter suggests that the RDEIR's obligation was to "explain why this mitigation is not extended to other existing industrial uses in the Irvine Business Complex which are located north of Interstate 405 such as Deft." The comment is a misstatement of the RDEIR's obligations. The RDEIR is designed to identify potential environmental impacts, to identify appropriate mitigation for those impacts, and to assess the level of significance after mitigation. The RDEIR accomplishes those purposes (See, RDEIR, Sections 5.2 [Air Quality], 5.6 [Hazards and Hazardous Materials], and 5.8 [Land Use and Planning].)

CARB's recommended buffer distances are provided to lead agencies as guidance when siting new sensitive land uses. Prohibiting residential within 1,000 feet of any industrial business is not warranted. Section 5.2, Air Quality, PDF 2-1 and PDF 2-4 allows for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4. For responses to the January 19, 2010 Global Environmental Consulting Company, Inc report, see response Comments O5-84 through O5-97. New residential land uses within 1,000 feet of a facility that emits toxic air contaminants is required to conduct a health risk assessment. If cancer risk exceeds 10 in one



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million, then applicants for new residential developments would be required to show that implementation of specific measures either on-site or at the source would reduce risk or be prohibited from development of residential land uses. If gaseous pollutants contribute significantly to health risk, then MERV filters would not be an effective mitigation strategy. Alternative strategies would be required or residential development would not be permitted. Adherence to this requirement would ensure that the public is protected against elevated concentrations of air contaminants.

- O5-27 In accordance with CARB's Airborne Toxic Control Measure (ATCM), Title 17 of the California Code of Regulations, beginning October 24, 2007, new hexavalent chromium electroplating and chromic acid anodizing facilities would be prohibited from constructing new facilities within 1,000 feet of a boundary of an area that is zoned for residential or mixed uses, or within 1,000 feet of a school (existing or under construction). This rule does not apply to existing land uses. See response to Comment O5-26. Section 5.2, Air Quality, PDF 2-1 and PDF 2-4 allows for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4.
- O5-28 For responses to the January 19, 2010 Global Environmental Consulting Company, Inc report, see response Comments O5-84 through O5-97. If cancer risk exceeds 10 in one million, then applicants for new residential developments would be required to show that implementation of specific measures either on-site or at the source would reduce risk or be prohibited from development of residential land uses. If gaseous pollutants contribute significantly to health risk, then MERV filters would not be an effective mitigation strategy. Alternative strategies would be required or residential development would not be permitted.
- O5-29 In Comment O5-29, the commenter suggests that the only effective mitigation or project feature to address incompatibility would be to impose a separation requirement between industrial and residential uses. In essence, the commenter has proposed an alternative to the proposed project that includes buffers around existing industrial development. The RDEIR, however, studies land use compatibility issues and arrives at the conclusion that impacts can be mitigated. The RDEIR also studies a reasonable range of alternatives, such that the analysis of the additional alternatives proposed by the commenter is not necessary for further analysis. Please see Responses to Comments O5-22 and O5-26 for further information responsive to Comment O5-29.
- O5-30 In Comment O5-30, the commenter focuses on the perceived wisdom of developing multiple mixed use cores within the IBC. In essence, the commenter proposes a different land use plan than that studied in the RDEIR. As an initial matter, the comment concerns land use planning policy, not environmental impacts. (Please see Response to Comment O5-16.) In addition, reasonable range of alternatives to the proposed project have been analyzed in the RDEIR (see, RDEIR, Chapter 7) and it is neither necessary nor appropriate to analyze the additional alternative hinted at in Comment O5-30 because the RDEIR has identified adequate existing regulatory mechanisms to address those issues. Finally, the IBC EIR does include mixed use cores inasmuch as the urban neighborhood district allows for development of a mix of uses.
- O5-31 The IBC infrastructure improvements do not require further analysis in the RDEIR. RDEIR discloses the existence of those improvements and acknowledges that those improvements will be constructed with the buildout of the proposed project. However, the final location and the resulting environmental impacts of the proposed improvements are not known yet and cannot be assessed at the programmatic level of analysis. As noted in Guideline 15146:

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The 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

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) an EIR on a project such as the adoption of an amendment of a comprehensive zoning ordinance or local general 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 construction projects that might follow.

Consistent with Guideline 15146, Guideline 15152(b) notes that “the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.” Further, Guideline 15145 discourages speculation, noting “If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.”

Here, without knowing the location, design, sequence, and timing of the installation of later infrastructure improvements the City does not have enough information to meaningfully forecast environmental impacts of those improvements. Depending on patterns of development and availability of sources of funds (among other factors) different improvements from the menu of potential improvements may be selected, different locations may be selected, the scale of an improvement may be tailored to fit the later-identified needs, and other “modification” may occur.



The specific concern raised regarding the environmental impacts of *The I-Shuttle* has been addressed. In adopting *The I-Shuttle* program, the City of Irvine found that the Project was CEQA exempt. That determination went unchallenged by any party and is now beyond any legal limitations period. (See Pub. Res. Code § 21167.) In addition, the use of a shuttle circulator program, if anything, would ultimately serve to reduce the number of traffic trips on a roadway system, thereby decreasing air quality impacts, decreasing noise impacts, and decreasing traffic congestion impacts.

O5-32

The comment fails to appreciate that development intensities and “trips” for purposes of the IBC database and transfer of development rights, revisions of the Irvine Zoning Code are one in the same. The City has historically used the term “trips” to refer to allowable development intensities on specific parcels in the IBC. More recently, confusion among the public has arisen because the term “trips” for purposes of intensity management, has been misunderstood as a representation concerning the amount of actual traffic generated by a use. Actual traffic is measured pursuant to the City’s traffic model and established socio-economic protocols.

Other than dictating the limits on the intensity of any type of use (e.g., office, industrial, residential), “trips” in the IBC database had no specific role in predicting the amount of traffic to be generated. The RDEIR explains that to avoid this confusion on a going forward basis, the Zoning Code is being revised to characterize what used to be known as “trips” under the IBC Zoning Code as an intensity budget. Figures 3-7a and 3-7b of the RDEIR merely use the currently applicable “trip” nomenclature. Thus, when the commenter states “Figures 3-7a and 3-7b do not talk about development intensity; they talk about trip budgets and allocating such trips across various land uses” the commenter is simply mistaken. Trip budgets and development intensities are one and the same.

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Appendix F of the RDEIR provides a detail of the existing trip budgets for each parcel and the proposed TDR's under the Vision Plan. The only TDR's assumed in the Vision Plan are those for which discretionary applications are currently in process or have been approved but not yet executed. These TDRs are all assumed to be completed in 2015, thus defining the 2015 Vision Plan scenario. No TDRs outside of their originating Traffic Analysis Zones are assumed beyond 2015.

O5-33 For those arterial roadways such as Von Karman and Alton Parkway that require an amendment to the Master Plan of Arterial Highways (MPAH), approval by Orange County Transportation Authority (OCTA) will be required, as is documented in the traffic study and RDEIR. Arterial downgrades along Von Karman and Alton will not require approval by the Federal Highway Administration (FHWA).

O5-34 See response to Comment O5-18. The commenter identifies various proposed amendments to the Master Plan of Arterial Highways (MPAH). These amendments derive principally from the fact that the traffic analysis for the RDEIR confirms that previously contemplated roadway expansions will not be necessary, i.e., at buildout the IBC will not consume the roadway capacity envisioned on MPAH. Thus, the assertion that the amendments to the MPAH require further environmental analysis misunderstands the conclusions from the RDEIR. It is because the City has conducted an environmental analysis that it has discovered that future expansions of roadway systems, together with their environmental impacts, need not take place.

A description of the pending project and pending project location is included in Chapter 3, Project Description.

Chapter 5.5, Geology and Soils, identifies potential impacts associated with subterranean parking garages (see Impact 5.5-2).

O5-35 See response to Comment O5-5 AND O5-17.

O5-36 See response to Comment O5-31 regarding *The i Shuttle*. The commenter asserts that "the assumption . . . that the accessory retail uses do not generate traffic . . . is without foundation." The commenter misunderstands the nature of the accessory retail use ordinance. That ordinance disallows any accessory retail use unless the use will not generate additional traffic. Accordingly, the statement in the RDEIR that the accessory retail use ordinance "does not, by definition, yield any additional traffic generation." is, by definition, true.

O5-37 Please refer to response to Comment O5-5 and O5-17.

O5-38 Responses are provided below for comments on the environmental analysis in the RDEIR.

O5-39 Impact 5.2-8 evaluates the potential for new receptors to be significantly impacted by existing sources of air toxics in the IBC Vision Plan area. CARB's Air Quality and Land Use Handbook is offers guidance to jurisdictions when siting sensitive land uses in the vicinity of air pollutant generators. For chrome platters and similar facilities, CARB recommends that no residential land uses be sited within 1,000 feet of the source because of the potential health risk. PDF 2-1 is based on the CARB recommended buffer distances while PDF 2-4 lists additional requirements for residential projects within 1,000 feet of other industrial facilities that emit air toxics. Both PDF 2-1 and PDF 2-4 require that if new residential development within the IBC Vision Plan area is proposed within 1,000 feet of a facility that generates air toxics impacts be mitigated to a risk of no more than 10 in one million. If cancer risk cannot

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be feasible reduced to lower than 10 in one million (because filters cannot be installed at the company or at the residences, or if such filters are not effective), residential development would not be permitted within 1,000 feet. Both PDF 2-1 and PDF 2-4 allow for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4.

- O5-40 Impact 5.5-2 of the RDEIR includes an assessment of impacts related to liquefaction and other seismic-related ground failure. New development would be required to assess the relative depth to groundwater in order to evaluate site specific conditions that affect liquefaction potential. As detailed in PPP 5-3, geotechnical investigation reports are required to be submitted and approved by the City to ensure hazards are mitigated according to the standards in the current California Building Code. The California Building Code outlines the performance standards for grading and construction in liquefaction zones and other seismic-related ground failure. No significant impacts would occur with adherence to these existing requirements. .

In addition, the RDEIR evaluates the potential for individual development projects to require dewatering under Impact 5.7-5 and Impact 5.5-3. Before water collected by a dewatering system could be discharged into municipal storm drains, individual projects would be required to obtain a permit pursuant to Order Number 98-67 that the Santa Ana Regional Water Quality Control Board (RWQCB) adopted on July 10, 1998. The requirement to obtain a permit from the RWQCB to allow discharge of water from dewatering operations into storm drains would be incorporated into the Storm Water Pollution Prevention Plan for the project.

Page 5.5-12 will be revised in the FEIR based compiled information from previous geotechnical reports.

Excavations extending deeper than about two feet are expected to encounter wet soil conditions and groundwater may be encountered at depths greater than 5 to 10 feet during construction.

- O5-41 The regulation cited refers to the siting of a new hazardous waste disposal facility. A hazardous waste Hazardous Waste Facility Permit issued by the Department of Toxic Substances Control pursuant to section 25200 of the California Health and Safety Code. Pursuant to this existing regulation, any new facility that is regulated under Section 25200 of the California Health and Safety Code would be required to comply with these regulations.

- O5-42 The Environmental Data Resources Report (EDR) included as Appendix J to the RDEIR contained the Executive Summary of the 2,500 page EDR. The complete EDR report is available on the City's IBC website at:

http://www.cityofirvine.org/cityhall/cd/planningactivities/ibc_graphics/default.asp

- O5-43 Pursuant to PDF 2-4 and 6-5, new sensitive land uses would be required to conduct a health risk assessment if they are located within 1,000 feet of a facility that generates toxic air contaminants. If the health risk assessment identifies a cancer risk of 10 in a million or higher, than mitigation would be required for future development that would ensure health risk doesn't exceed this performance standard or residential land uses would be prohibited.

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



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depicted in Figure 5.6-1. There were six facilities in the vicinity, but outside of the IBC boundaries, within the cities of Costa Mesa, Irvine, Santa Ana, and Tustin.

- O5-44 With respect to the analysis of the seven pending residential projects, sufficient information was provided in the project description and analysis to adequately review these projects under CEQA. After the EIR is certified, future environmental analysis of the projects contained in the Vision Plan will build upon the information and conclusions of the IBC EIR. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the Conditional Use Permit (CUP) is processed. In addition, we would note that while pending residential development projects were identified in the EIR, certain site-specific project analyses were not completed as part of the EIR, primarily with respect to site-level noise, circulation, access and land use compatibility issues. Therefore, once the CUP is ready to proceed, staff will conduct a new initial environmental evaluation to determine the scope of any changes to the project and/or the surrounding environment, and will make a determination at that time regarding any additional environmental review necessary for the CUP.

PDFs serve to mitigate localized project impacts related to site compatibility. For example, PDF 2-4 and 6-5 include performance standards in accordance with Section 15126.4 of the CEQA Guidelines. New residential development within 1,000 feet of an industrial facility that emits toxic air contaminants is required to ensure cancer risk does not exceed 10 in one million.

- O5-45 IAA refers to an Industrial Adjacency Assessment (IAA), a document formerly used by the City for analysis of land use compatibility for residential projects. Because several pending residential projects had conducted environmental review in accordance with CEQA prior to the proposed IBC Vision Plan project, these IAAs were included in the RDEIR. The City no longer uses the IAA its previous form. However, the IBC overlay zoning code does require land use compatibility assessments, similar to the provisions of the IAA process, to identify localized impacts for future development in accordance with the PPPs and PDFs detailed in the RDEIR, and incorporated into the overlay zoning code. Health risk assessments for the individual development projects may need to be updated in accordance with PDF 2-4 and 6-5.

- O5-46 See response to Comment O5-39. PDF 2-1 and PDF 2-4 allow for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4. If scrubbers and filters are ineffective at reducing risk because gaseous pollutants dominant health risk from the facility, then cancer risk would not be minimized to less than 10 in one million and residential land uses would not be permitted.

- O5-47 See also response to Comment O5-39 regarding air toxics. The Business Plan for an industrial facility that stores hazardous materials must include requirements for properly storing, labeling, and segregating incompatible hazardous materials. In addition, under the CalARP program which is administered by the CUPA, which is the Orange County Fire Authority (OCFA), businesses that handle more than a threshold quantity of a regulated substance is required to develop a Risk Management Plan (RMP). The RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety &

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Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1). Furthermore, PDF 6-4 requires that site compatibility for future environmental projects be evaluated with regard to hazardous materials handling and storage.

- O5-48 Table 5.6-1 includes an evaluation of CalARP facilities for each of the Pending residential development. As indicated in this table, hazardous materials were not identified to be significant. Consequently, impacts were less than significant for the pending project. In accordance with the Zoning for and PDF 2-1, PDF 2-4, and PDF 6-5, if the health risk assessment identifies cancer risk of 10 in one million or higher, then residential land uses are prohibited unless risk can be mitigated to less than 10 in a million.
- O5-49 The requirements of PDF 6-2 are detailed on page 5.6-23. The disclosure would need to indicate issues associated with living in a mixed-use environment, including compatibility with respect to noise, odors, truck traffic and deliveries, hazardous materials handling/storage, air emissions, soil/groundwater contamination, and the John Wayne Airport (see also PDF 6-4).
- O5-50 PDF 6-3 outlines requirements for remediation of existing sites. Removal of hazardous materials would be required in accordance with OCFA's conditions of approval and existing regulations for the removal, treatment, and/or disposal of such materials. Removal, treatment, and/or disposal is effective abatement to reduce hazards.
- O5-51 See response to Comments O5-39, regarding health risk, and O5-47, regarding nitrocellulose.
- O5-52 The recently adopted MS4 Permit, Order No. 2009-0030, includes a hierarchy for use of low impact development (LID) and treatment control Best Management Practices (BMPs) for new development and redevelopment projects within the Santa Ana Region. This includes the implementation of LID and treatment control BMPs in the following order: infiltration, harvest/reuse, evapotranspiration, and bio-treatment.

As part of the MS4 permit, the County of Orange will be revising the Model Water Quality Management Plan (WQMP) to incorporate the requirements of the MS4 permit, including the use of LID features and associated BMP selection hierarchy, as well as the restrictions for use of infiltration BMPs. Following the approval of the Model WQMP by the Santa Ana Regional Board (expected 2010), the City of Irvine will be required to update their LIP and storm water programs and incorporate the new Model WQMP into their discretionary approval processes for new development and redevelopment projects. All individual projects within the IBC EIR area will be subject to these updated regulations.

The permit also recognizes that for some sites, there are conditions that may limit the applicability of infiltration, including site soils, mobilization of naturally occurring contaminants such as selenium, high groundwater levels, etc. Accordingly, the permit includes provisions for the protection of groundwater resources with the use of structural BMPs (Section XII.B.5), as well as references the de-minimis NPDES permits for non-storm water discharges not covered under the MS4 permit, such as groundwater dewatering activities (Findings 58 & 59) for the long-term protection of groundwater resources. The application of these permit requirements occurs at the site-specific level during the construction level design of the project.



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The San Diego Creek Natural Treatment System (NTS) program was provided in the EIR as an example of a regional treatment program within the City of Irvine. Although the majority of NTS facilities are proposed to be located outside of the IBC project area, the program is an example of how treatment may be applied on a regional basis. The updated MS4 permit includes criteria for use of watershed-based or regional BMP systems, provided the BMPs are constructed with the requisite capacity to serve the entire common development (Section XII.E.3). The use of alternative, regional, or other in-lieu BMP programs is currently being evaluated by the County, and requirements will be incorporated into the updated Model WQMP. All BMP facilities that are ultimately approved as an alternative, regional or in-lieu facility will require separate CEQA documentation prior their implementation.

O5-53 The city of Irvine's LIP was approved by City Council in 2003, and is reviewed and updated as needed on an annual basis in conjunction with the Annual Program Effectiveness Reports (aka. Annual Storm Water Reports) per the requirements of the Orange County Drainage Area Management Plan (OC DAMP) and MS4 permit. In addition, the City's Stormwater Ordinance is reviewed on an annual basis as part of the PEA requirements, and incorporates the requirements of the LIP and OC DAMP by reference (Ordinance No. 03-16). Future updates to the City's LIP will be conducted in accordance with the schedules provided in the recently-adopted 4th Term MS4 permit.

O5-54 The assumptions that the proposed land use changes will not result in an increase in impervious surfaces are based on the percent impervious values for land use types provided in the Orange County Hydrology Manual (1986). These average impervious values are commonly used in program-level assessments. Figure C-4 of the Manual identifies a percent impervious value of 65 percent to 80 percent for multi-family residential developments, and 90 percent for industrial and commercial developments, thereby indicating the potential for a slight reduction in impervious values in the proposed condition.

In addition, the slight increase in pervious surfaces is not anticipated to impact groundwater resources due to the provisions for use of infiltration BMPs, as outlined in Section XII.B.5 of the MS4 permit.

The Santa Ana Regional Board developed general NPDES permits to regulate the discharges of dewatering wastes into receiving waters. NPDES Permit No. CAG918002 (Order No. R8-2004-0021 as amended by R8-2006-0065, R8-2007-0041 and R8-2009-0045) regulates the discharges of groundwater-related discharges to surface waters within the San Diego Creek and Newport Bay watersheds that contain petroleum hydrocarbons, solvents, metals and/or salts. Dewatering operations that do not contain these constituents are regulated under NPDES Permit No. CAG998001 (Order No. R8-2003-0061 as amended by R8-2005-0041, R8-2006-0004 and 2009-0003). Projects that would require dewatering (whether temporary or permanent) are required to apply for coverage under one of these permits, depending on the type and characteristics of the discharge. As part of the permit application process, each discharger must submit a NOI, site characterization study and report that characterizes the type of discharge, flow rates, concentration of any constituents/contaminants within the discharge, and the proposed treatment system as appropriate. Once approved by the Regional Board and permit coverage is obtained, the discharger must also adhere to the requirements of the permit, including adherence to specified effluent limitations and receiving water limitations, as well as implement a monitoring and reporting program that includes sample collection, self monitoring reports and other discharge report submittals to the Regional Board. The Regional Board may also choose, on a case-by-case basis during the permit application process, to issue individual permits for discharges that have the potential to adversely impact receiving water quality.

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Dewatering activities under the jurisdiction of the de-minimis NPDES permits are not anticipated to impact hydrology and groundwater recharge potential as compared to existing conditions.

- O5-55 See response to Comment O5-54. Dewatering activities under the jurisdiction of the de-minimis NPDES permits are not anticipated to impact hydrology and groundwater recharge potential as compared to existing conditions. The commenter's additional claims concerning groundwater rights raise legal, not environmental, issues. The impact of the project on groundwater is what is assessed in Section 5.5 of the RDEIR. In conducting that analysis, RDEIR is premised on the fundamental concept that the law has been, and will be, obeyed.
- O5-56 See response to Comment O5-54. The City of Irvine does not have regulatory authority in approving Permits. This approval is required by the Santa Ana Regional Board. The Santa Ana Regional Board developed general NPDES permits to regulate the discharges of dewatering wastes into receiving waters. As part of the permit application process, each discharger must submit a NOI, site characterization study and report that characterizes the type of discharge, flow rates, concentration of any constituents/contaminants within the discharge, and the proposed treatment system as appropriate. Once approved by the Regional Board and permit coverage is obtained, the discharger must also adhere to the requirements of the permit, including adherence to specified effluent limitations and receiving water limitations, as well as implement a monitoring and reporting program that includes sample collection, self monitoring reports and other discharge report submittals to the Regional Board.
- O5-57 See response to Comment O5-39. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial community. In fact, several residential developments have since been constructed in the IBC Vision Plan area. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-58 The proposed project included incorporation of a Mixed-Use Overlay zone. As part of the objectives of the project when incorporating the overlay zone, is to project the existing job base. 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 RDEIR for a description of the various PPPs and PDFs intended to protect the existing job base.
- O5-59 See response to Comment O5-26, O5-39, and O5-57. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial



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community. Prohibiting residential within 1,000 feet of any industrial business is not warranted.

See response to Comment Letter A1 regarding review by the Airport Land use Commission (ALUC). In accordance with Public Utility Code 21676, amendments to a specific plan or general plan affecting the JWA airport planning area is required to be submitted to the ALUC for a determination as to the consistency with the Airport Land Use Plan (ALUP). Consistency evaluation with ALUC has been initiated and recommendations to ensure airport hazards have been minimized have been incorporated into the FEIR.

O5-60 Plans, Programs, or Policies (PPP) and Project Design Features (PDFs) are based on existing federal, state, or local regulations. PDFs reference specific requirements in the City's Zoning Code or General Plan. Where PPPs and PDFs serve to mitigate project impacts, PPPs and PDFs include performance standards in accordance with Section 15126.4 of the CEQA Guidelines. For noise impacts, the City requires that new development be sound attenuated based on the performance standards in the City of Irvine's Municipal Code through use of architectural and site design features that reduce noise. The acoustic analysis must be based on the site plan for individual development applications. Applicants for new residential development would be required to mitigate noise generated at industrial properties (not vice-versa as the industrial users are an existing use) based on the residential noise standard to ensure that industrial business would not be affected. As performance standards are a clear unit of measurement, noise analysis has not been deferred.

O5-61 The commenter incorrectly asserts that there are no park or recreational areas in the IBC Vision Plan area. Such areas are provided; however, they are private, and the proposed project includes new provisions for public neighborhood park space within the IBC, so that recreational opportunities are available to the public in this area.

The proposed project would create demand for new community park space, as outlined in the RDEIR (see Section 5.12, Recreation). This impact is mitigated by payment of community park in-lieu fees, pursuant to the Quimby Act. The proposed project does not require the construction of a community park, as suggested by the commenter. The City has indicated its intent to secure a site south of the 405 freeway to meet the needs of the residents of the IBC. This is not a piecemeal analysis as suggested by the commenter, but the identification of a future facility. Specific environmental analysis cannot be performed until a specific site and design have been formalized.

The commenter also notes that the proximity of Bonita Canyon Park to the IBC was not analyzed as an impact in the RDEIR. Pages 5.12-11 and 5.12-12 provide this analysis, and specifically note the proximity of Bonita Canyon Park to the IBC Vision Plan area. Table 5.12-6 indicates that Irvine has more park facilities and fewer persons per facility than Newport Beach.

The commenter also notes that the proximity of Bonita Canyon Park to the IBC was not analyzed as an impact in the RDEIR. Pages 5.12-11 and 5.12-12 provide this analysis, and specifically note the proximity of Bonita Canyon park to the IBC Vision Plan area. Table 5.12-6 indicates that Irvine has more park facilities and fewer persons per facility than Newport Beach.

O5-62 See response to Comments O5-5, O5-17, and O5-25 regarding use of the 1992 baseline environmental setting. See response to Comment O5-21 regarding the characterization of the nature of land uses in the IBC. The existing land uses within the IBC Vision Plan area are

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clearly detailed in Chapter 4, Environmental Setting, and Table 4-2 (see Existing and Existing Development columns). There are 5,011 residential units currently within the IBC Vision Plan area. The breakdown of land uses by TAZ zone is included in the Traffic Study Appendix J (Appendix N of the RDEIR).

To calculate traffic for various land uses within the IBC, the most conservative peak hour trip rate was utilized, AM peak hour trip rate for industrial land uses and the PM peak hour trip rate for all other land uses as stated on page 5.13-12. Proposed units are high density residential units and use of a multi-family trip rate multiplier is therefore consistent with the proposed land use designation.

Please see response to Comment O4-7, O5-17, and O6-6 regarding transfers of development rights.

- O5-63 See response to Comment O5-62. The RDEIR has appropriately addressed the deficient locations and impacts from 2008 Existing Conditions and provided appropriate mitigation associated with the build-out of the IBC Vision Plan. The Proposed project has assessed the impacts associated with changes in the physical environment in accordance with the CEQA Guidelines Section 15064 and 15126.2.
- O5-64 The impacts and mitigation stemming from buildout of the IBC Vision Plan are based upon a constrained network in which the Von Karman downgrade (to existing conditions) is assumed and no high occupancy vehicle (HOV) drop-ramps to Interstate 405 (I-405) are assumed. However, an alternative buildout scenario “Post-2030 With Project (MPAH Network)” was evaluated in Section 5.13.3.7 of the RDEIR and Chapter 7 of the traffic study (Appendix N). This sensitivity analysis assumed the HOV ramp improvement and the widening of Von Karman consistent with the current MPAH. The impacts at Interstate 5 (I-5) MacArthur and I-5 Jamboree intersections are identical in the sensitivity analysis as with the constrained network. The City will continue to coordinate with OCTA in preparing a cooperative study and/or additional analysis to further identify any potential impacts as part of the MPAH Amendment process.
- O5-65 See response to Comment O5-62. The RDEIR and Traffic Study, Appendix J of the RDEIR, identify the existing and projected land use quantities for the 2008 No Project and With Project scenarios. These quantities are based on assumed land uses to be developed for each scenario. The 2008 No Project scenario is based on the existing conditions, built on the ground within the IBC area. The 2008 With Project scenario is identical to the Post-2030 With Project scenario, within the IBC Area (Planning Area 36) and the quantities in Table 5.13-12 correctly reflect this situation. The calculations are correctly based on the percent difference between the 2008 No Project and 2008 With Project scenario. The land use quantities for non-residential land uses were calculated based on an optimization process whereby the additional residential uses to be developed under the build-out of the IBC Vision Plan is trip neutral from the build-out of the existing General Plan. The methodology for this optimization process is further described in the land use section of the RDEIR.
- O5-66 The analysis requested by commenter is provided in Appendix F of the RDEIR. the methodology clearly indicates how existing development intensities are proposed to be redistributed to implement the Vision Plan, and the text discusses the rationale for this distribution. We also wish to reiterate that the proposed land use plan represents an overlay zone assumption. Development may or may not occur as predicted in the Vision Plan model, Property owners may develop under current development assumptions, which is why the proposed mitigation program mitigates to buildout of the existing General Plan.



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- O5-67 Table 5.13-20 correctly reflects the 2008, 2015 and Post-2030 land use assumptions analyzed to determine impact locations. The 2008 No Project scenario is based on existing traffic counts taken within the study area. For the 2008 With Project scenario, the traffic volumes are calculated based on the project trips associated with the full build-out of the IBC Vision Plan. The 2008 With Project scenario is required under CEQA and evaluates the full build-out of the project on the existing network. The Post-2030 With Project scenario and the 2008 With Project scenario land uses within Planning Area 36 (TAZ 395-546) are identical because this table contains only those TAZs within the IBC. The interim year 2015 With Project analysis assumes land uses consistent with development expected to be completed by 2015. The interim year 2015 No Project and buildout Post-2030 No Project analyses assume expected growth outside of the IBC area, but no growth within the IBC in order to conservatively identify impacts using a “Ground to Plan” analysis. See also response to Comment A15-70. Assumptions for buildout of the Park Place project are outlined in Appendix F of the RDEIR, and include a partial buildout of the site by 2015 and the remainder by post 2030.
- O5-68 Impact 5.5-2 in Section 5.5, Hazards and Hazardous Materials, evaluates siting residential land uses within the IBC Vision Plan area with respect to existing industrial and warehousing land uses. As described in this section, PDF 6-4 would require that 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, soil/groundwater contamination, heliports/helistops, and John Wayne Airport compatibility.
- O5-69 The commenter’s assertion is incorrect. While the development intensity levels assumed in the 1992 EIR remain in place, a comprehensive, new ground-to-plan traffic study has been completed for this project. The Vision Plan RDEIR discusses the 1992 Traffic Study in the context of the existing environmental setting of the IBC, however, the 1992 traffic assumptions are superseded by the new traffic study.
- O5-70 Consistent with the City’s Traffic Analysis Guidelines methodology, the proposed capacity along Von Karman between Barranca and Michelson was analyzed in both the AM and PM peak hour periods and found to operate at acceptable levels of service (LOS) during both peak hour periods. Based on this analysis, widening of Von Karman from four lanes to six lanes is unnecessary. See also response to Comment O5-64.
- O5-71 See response to Comment O5-39. Impact 5.2-6 was considered significant and unavoidable because outdoor private-use active areas, such as swimming pools, could be located within 500 feet of a freeway. This impact was considered significant and unavoidable. However, PDF 2-1 and PDF 2-4 required land uses to be within the 1,000 foot buffer to minimize cancer risk to the performance standards listed in the PDF. With adherence to the requirements included in the Zoning Code, no significant impact would occur with regard to health risk from proximity to industrial businesses.
- O5-72 Impact 5.9-5 was considered significant and unavoidable because 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 elevated traffic and/or airport noise. For stationary-source noise, the City requires that new development be sound attenuated based on the performance standards in the City of Irvine’s Municipal Code through use of architectural and site design features that reduce noise. No significant impact would occur from stationary sources of noise.

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- O5-73 A Statement of Overriding Considerations will be required for the intersection improvement proposed at Jamboree Road and Michelson Drive because triple left-turn lanes for eastbound Michelson and southbound Jamboree are not feasible. As documented on page 227 of the Traffic Study (see Appendix N to the RDEIR), “the City believes that triple turn movements would not provide the operational improvements intended due to the proximity of downstream destinations and likely distribution of traffic in the triple left turn lanes.” As the triple left turn lanes are the only improvement under the ICU analysis that return the intersection to an acceptable LOS, the intersection improvement is infeasible.
- O5-74 See response to Comment O5-17 regarding the 1992 baseline.
- O5-75 Comment noted. Lead agencies are not required to generate their own original research regarding whether residents within the IBC work in the IBC; however, where specific information is currently available the analysis includes that information (CEQA Guidelines Section 15144). Traffic analysis conducted by Fehr and Peers and Parson Brinkerhoff showed that without the project in Post-2030, the average vehicle trip was 6.59 miles. However, with the proposed project, the average vehicle trip was 6.33 miles. Incorporating retail, residential land, and employment centers in proximity to each other reduces the need to travel farther for these services.
- O5-76 Chapter 7, *Alternatives to the Proposed Project*, compares the impacts of the proposed project to the project alternatives in accordance with Section 15126.6 of the CEQA Guidelines.
- O5-77 To clarify, the Reduced Intensity Alternative reduces allowable development intensity within the IBC as compared to the existing General Plan, not as compared to existing approvals for development. As a result, the following revision has been made in the FEIR:
- Although this alternative would lessen some environmental impacts, it would not avoid the significant environmental impacts to air quality, noise, or transportation/traffic. It would provide less housing opportunities in close proximity to existing employment centers, retail and entertainment uses, and transportation facilities and would not promote the objectives of the City’s long-range goals for the IBC to the same extent as the proposed project. Most of the project objectives would be met, but not to the degree of the project. In addition, this alternative reduces overall allowable development intensity within the IBC below what is currently allowed by the existing General Plan and would impact existing ~~entitlements~~ development intensity values assigned to existing parcels.
- O5-78 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, including the Kilroy project Conditional Use Permit (CUP), so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the CUP is processed. Alternatives to the Pending projects are not warranted.
- As stated on page 7-16, the Reduced Intensity Alternative would still require a General Plan Amendment and Zone Change in order to permit an increase in residential units and density in the IBC Vision Plan area. While there would be fewer potential conflicts with existing land uses, impacts would still be significant, albeit reduced from the proposed project.



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- O5-79 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. No significant impacts associated with proximity to industrial land uses were identified. Therefore a 1,000 foot buffer alternative is not warranted.
- O5-80 According to CalFire, the fire hazard severity zone for the San Joaquin Marsh is moderate. The IBC Vision Plan area has been developed with office, commercial, and industrial land uses adjacent to this existing wildland area. Calfire does not list the San Diego Creek as having a high fire hazard. The IBC Vision Plan Area is classified by CalFire as Urbanized/developed areas outside of hazard zones. Redevelopment within the IBC Vision Plan area does not result in an increase in fire hazards; and therefore, the Initial Study concluded that no significant impacts would occur.
- O5-81 See also response to Comment O5-17 concerning the 1992 baseline. The project is the IBC Vision Plan and Mixed-Use Overlay Zoning Code. A General Plan Amendment is required as part of the project. The RDEIR evaluates the potential impacts associated with buildout of the proposed project from existing conditions. Existing conditions is based on a snapshot of existing development in the IBC Vision Plan in accordance with CEQA Guidelines 15126.2 the 1992 baseline is not a permissible baseline for the CEQA analysis.
- O5-82 See response to Comment O5-17 regarding the 1992 baseline and evaluation of residential land uses in the IBC Vision Plan.
- See also response to comment O5-66. The proposed increase in residential units is offset by a corresponding decrease in development intensity, based on the adopted intensity rates outlined in Chapter 9-36 of the City of Irvine Zoning Code. The Vision Plan EIR acknowledges the increase in retail demand for new residential in the IBC and has as such programmed additional neighborhood-serving retail into the IBC land use assumptions as outlined in Appendix F of the RDEIR. The Vision Plan RDEIR also acknowledges the increased demand for public services and utilities from additional residential development, and these impacts are addressed in Sections 5.11, Public Services, and 5.14 , Utilities and Service Systems, respectively.
- O5-83 The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, so when these projects are again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the CUP is processed.
- See response to Comment O5-39. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial community. In fact, several residential developments have since been constructed in the IBC

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- Vision Plan area. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-84 See response to Comment O5-39. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited.
- O5-85 See response to Comment O5-39 and O5-84.
- O5-86 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-87 In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, new residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited.
- O5-88 See response to Comment O5-47. The Business Plan for an industrial facility that stores hazards materials must include requirements for properly storing, labeling, and segregating incompatible hazardous materials. In addition, under the CalARP program which is administered by the CUPA, which is the OCFA, businesses that handle more than a threshold quantity of a regulated substance is required to develop a RMP. The RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety & Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1). Furthermore, PDF 6-4 requires that site compatibility for future environmental projects be evaluated with regard to hazardous materials handling and storage.
- O5-89 Applicants for new development are required to evaluated localized compatibility with regard to odors in accordance with PDF 2-5.
- O5-90 Applicants for new development are required to evaluate localized compatibility with regard to air toxics. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited in accordance with PDF 2-1, PDF 2-4, and PDF 6-5 when located within 1,000 feet of an industrial business or within the CARB buffer zones. The commenter cites a health risk for Deft within 1,000 feet; however, calculations that support this estimate are not included. In accordance with CEQA Guidelines Section 15384 substantial evidence must include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts.
- O5-91 Comment noted. Cancer risk is based on a lifetime exposure to toxic air contaminants and not based on unforeseen events, such as that described by the commenter.
- O5-92 See response to Comment O5-47. The commenter cites a hazard that equates the risk for nitrocellulose to be equivalent to 1,900 pounds of TNT resulting in damage beyond 1,000 feet; however, calculations that support this estimate are not included. In accordance with CEQA Guidelines Section 15384 substantial evidence must include facts, reasonable



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assumptions predicated upon facts and expert opinion supported by facts. Furthermore, the RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety & Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1).

- O5-93 Comment noted. In accordance with PDF 2-5, if a residential project is located within 1,000 feet of a facility that emits odors, an odor assessment would be required. Mitigation for odor impacts would be necessary if a facility has received three or more verified odor complaints.
- O5-94 The commenter is incorrect, the RDEIR does not require Deft or any other industrial business to install MERV filters at residential properties. MERV filters would be effective against particulates emitted by facilities or mobile sources impacted by the project and would not be effective against odors, noise, or other hazards.
- O5-95 Comment noted. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited.
- O5-96 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-97 CARB's recommended buffer distances are provided to lead agencies as guidance when siting new sensitive land uses. The RDEIR includes an evaluation of potential risks when siting residential land uses within proximity to industrial land uses. Applicants for new development are required to evaluate localized compatibility with regard to air toxics, odors, noise, hazards, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial community. In fact, several residential developments have since been constructed in the IBC Vision Plan area. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-98 See response to Comment O5-97. Applicants for new development are required to evaluate localized compatibility with regard to air toxics, odors, noise, hazards, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-99 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-100 The City acknowledges that there is a potential for health impacts for development within 1,000 feet of an industrial facility. The RDEIR evaluated compatibility of new residential land

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uses in proximity to hazards associated with industrial facilities. In order to minimize hazards, the Zoning Code requires that new residential developments within the IBC Vision Plan area evaluate compatibility with regard to air toxics, odors, noise, hazards, and site access in order to minimize these hazards.

- O5-101 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-102 Comment noted. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited.
- O5-103 PDF 2-1 requires a health risk assessment if a project is located within 1,000 feet of a facility 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. If residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-104 See response to Comment O5-47. The RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety & Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1).
- O5-105 See response to Comment O5-39. In addition to cancer risk, applicants for new residential development are required to assess risk associated with noncancer compounds and ensure a hazard index of 1.0 is not exceeded. If cancer and noncancer risk exceeded, mitigation would be required to reduce risk or residential development would be prohibited.
- O5-106 See response to Comment O5-47.
- O5-107 Comment noted. Trespassing is prohibited and is subject to action by local authorities.
- O5-108 Comment noted. In accordance with PDF 2-5, if a residential project is located within 1,000 feet of a facility that emits odors, an odor assessment would be required. Mitigation for odor impacts would be necessary if a facility has received three or more verified odor complaints.
- With regard to noise, acoustic reports are required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise (PPP 9-2).
- O5-109 See response to Comment O5-39. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-110 Comment noted. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited.



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- O5-111 See response to Comment O5-39 and O5-47. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, hazards, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-112 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-113 See response to Comment O5-39. Applicants for new residential development within 1,000 feet of an industrial facility that emits toxic air contaminants would be required to submit a health risk assessment that identifies cancer and noncancer risks. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited. Prohibiting residential within 1,000 feet of any industrial business is not warranted.

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LETTER O6 – Manatt, Phelps & Phillips LLP (6 pages)



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February 5, 2010

Client-Matter: 24904-033

Bill Jacobs, AICP
City of Irvine
Department of Community Development
One Civic Center Plaza
PO Box 19575
Irvine, CA 92623-9575

**Re: Comments on Recirculated IBC Vision Plan and Mixed Use Overlay Zoning
Code Draft Environmental Impact Report**

Dear Mr. Jacobs:

These comments are submitted on behalf of the following stakeholders within the Irvine Business Complex:

- Alton Associates
- AvalonBay Communities
- Greenlaw Partners
- Trammel Crow Residential
- KIFL
- Ygal Sonenshine
- Howard Ahmanson
- Larry Smith
- James W. Ray
- Michael D. Ray
- Starpointe Ventures
- The Irvine Company
- Sapetto Group
- General Investment Funds
- The Colton Company

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• Maguire Properties

Based on our review of Recirculated IBC Vision Plan and Mixed Use Overlay Zoning Code Draft Environmental Impact Report, we submit the following comments.

Project Mitigation

1. Many of the Plans Programs or Policies (PPPs) or Project Development Features (PDFs) do not include a standard of mitigation that would be required of mitigation measures. Since these PPPs and PDFs serve as mitigation of project impacts they should be revised to include the same standards and accountability as required for mitigation measures.

O6-1

2. In many cases the source of the PDF is referenced as the proposed zoning regulations. In other cases no reference is made. Where the PDF will be required by the zoning regulations, the section of the proposed zoning ordinance or other regulation should be cross referenced. If no source exists, these PDFs should be converted to mitigation measures so that they can be imposed on the project and future development.

O6-2

3. In many cases the impact analysis misstates the effect of the PDF. This should be reconciled by either revising the PPP/PDF or revising the analysis.

O6-3

Transfers of Development Rights

1. The DEIR reviews the potential for future transfers of development rights on a Traffic Analysis Zone (TAZ) other than for pending TDRs which are based on the sending site designated in the pending TDR applications. Please confirm that the ownership of the development intensity for each parcel within the IBC as shown on the IBC development intensity database will continue to be owned and be transferrable by the property owner of the parcels within the IBC as is the case under the current IBC regulations.

O6-4

2. It is unclear how the City is going to track future TDR applications that propose to utilize the future Vision Plan DU (3,950 potential new units [exclusive of density bonus units]) and where the reduction in office equivalency (TDR) must come from to be consistent with the DEIR. The response to the Sapetto Group comments (dated May 14, 2009) on the original draft of the DEIR indicated that TDRs for future applications must originate in the same TAZ. This is contrary to the representation that have been made to the IBC Owners Group and would be a significant adverse change in the manner which development has been conducted in the IBC potentially affecting significant property rights.

O6-5



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3. Please define and explain the protocol for processing future TDR applications. More specifically, please clarify the following: Will additional traffic studies be required for residential projects within the 15,000-DU cap? How will the City account for future TDRs, and must they be consistent with the office equivalency reductions reflected in the DEIR? O6-6

4. The revised Traffic Study does not mention whether or not any office equivalency was reduced in the 2015 analysis for the pending residential projects and what assumptions were made as to the availability of office square footage (zoning potential) to complete the required transfer of development rights (TDR) in 2015. Please explain how this was analyzed. O6-7

5. Currently, a TDR is based on the most restrictive a.m. or p.m. peak hour (whichever is higher). Based on review of the known pending projects and required TDR, the office equivalency has been reduced incorrectly from the pending sites for some of the pending projects. Please provide an explanation why the most restrictive peak hour was not used for determining the appropriate reduction in office equivalency square footage. O6-8

Traffic and Transportation

Our traffic consultant has made a detailed review of the traffic study and traffic and transportation section of the DEIR. We request that a meeting be set up to address the issues they have raised. The following is a general description of these issues.

1. There appear to be inconsistencies between the square footages described in Tables 4-8 in the Land Use Methodology report and those provided in the Traffic Study and the DEIR. It is also unclear what assumptions were used in calculating development intensity. O6-9

2. It appears that, unlike the IBC circulation system, the circulation system outside of the IBC assumes all funded and non-funded improvements. What is the basis for assuming that unfunded improvements in non-IBC areas of the Vision Plan study area will be in place when the Vision Plan is implemented? O6-10

3. It appears that a different fair share methodology is proposed for Caltrans facilities as opposed to other intersections within the study area. What is the basis of this distinction? Shouldn't the same fair share program be used for all improvements? O6-11

4. The DEIR provides that all of the Transportation/Traffic impacts will be significant and unavoidable even after mitigation. This is understandable for improvements outside of the City, which may or may not be funded, and for the O6-12

2. Response to Comments



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intersection of Jamboree Road/Michelson Drive (no feasible improvements); but it is unclear why all the other improvements in the City are considered significant and unavoidable after mitigation. Please clarify.

O6-12
cont'd.

5. No specific mitigation measures or financial obligations have been identified for significant impacts at certain Caltrans improvements. MM 13-4 states that "prior to issuance of a building permit for the 12,000th unit within the IBC, the City shall enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities." This does not appear to be an adequate mitigation measure as it relies on a future study without a specific objective.

O6-13

6. Based on review of the recommended Vision Plan mitigation measures at impacted study area intersections, some of the mitigation measures appear "infeasible" (i.e., additional right-of-way would be required to implement the improvement that could require that property be condemned). Will condemnation be feasible in these locations. CEQA requires that the feasibility of mitigation measures and their impacts be analyzed. The Traffic Study and DEIR should ensure that each improvement is 100 percent feasible and that the impact of the measures have been assessed prior to including the cost of these improvements in the updated fee program.

O6-14

7. Page 4 of the revised Traffic Study states that "the current IBC trip budget database will not change as a result of the IBC Vision Plan." MM 13-3 on page 5.13-197 of the DEIR states that "prior to issuance of the first building permit to the proposed project, the City shall update the Irvine Business Complex Land Use and Trip Monitoring Database (IBC Database) to reflect the land use changes associated with the proposed project." Please clarify and revise these conflicting statements.

O6-15

8. The DEIR does not recommend the use of Advanced Traffic Management System (ATMS) as mitigation. This has been used in the past as mitigation measures within the City and appears to be feasible. Why has the use of ATMS as mitigation measures been rejected?

O6-16

9. Page 5.13-105 of the DEIR says that there are 2,522 DU expected to be completed by 2015. However, all other pages of the Traffic Study (and the DEIR and Land Use Methodology report) state that there are 2,035 pending DU. Please revise all text to be consistent with the current project description of 2,035 pending DU.

O6-17

10. The DEIR recommends the deletion or downsizing of various arterial highway improvements. Very little justification is provided for the recommended modifications to the Circulation Element changes. The only analysis that was provided was a comparison between building all of the subject improvements versus not building any of the improvements. Additional discussion should be provided.

O6-18



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Climate Change

1. The use of a proposed renewable energy and existing building retrofit program as a mitigation measure for global climate change impacts is not appropriate as this is not a *feasible* mitigation measure. This is only a draft plan which may or may not be adopted or may be adopted in an entirely different form. Whether such a program, if adopted and implemented, would provide adequate mitigation is entirely speculative. The degree of mitigation, if any, cannot be determined. If such a program is not adopted or is adopted in a significantly different form, every project that requires discretionary approvals will be required to conduct a new environmental analysis of global climate change.

O6-19

2. The DEIR currently segregates PPPs and PDFs for transportation measures from building related measures. Since it is reasonably likely that the transportation measures will be implemented by state and federal agencies they should be considered to be feasible and the reductions from these measures should be included in the analysis of climate change impacts. It appears that if the transportation measures and building measures are considered together, it would appear that the impact of the project on global climate change would be less than significant without the proposed renewable energy and existing building retrofit program.

O6-20

3. One other issue that is raised by the analysis in this section is the potential for conflicts with state policies regarding the allocation of regional housing needs and the implementation of SB 375. SCAG has allocated a significant amount of residential development to the City of Irvine including both market rate and affordable housing. This development will need to be accommodated somewhere. That, together with the objectives of SB 375, which emphasize reductions in vehicle miles travelled by encouraging higher density residential development adjacent to jobs (such as in the IBC) or transit facilities, should be considered in this analysis. To the extent residential development can be accommodated in the IBC and other areas near jobs and transportation, a net reduction in GHG will be accomplished. The approach of this section of the EIR is to focus only on reductions within the IBC. It would be better for this analysis to be based on a demographic analysis, which accounts for per capital reductions in GHG impacts and the effect of relocating residents to jobs rich or transit

O6-21

2. Response to Comments

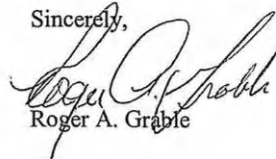
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oriented development, not the use of a gross reduction in GHG in the IBC, which will not measure the impact of residential occurring in areas where commutes will be longer.

O6-21
cont'd.

Sincerely,



Roger A. Grable

RAG:rag

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2. Response to Comments

O6. Response to Comments from Roger A. Grable, Manatt, Phelps & Phillips LLP, dated February 5, 2010.

- O6-1 The Commenter states that many of the plans, programs or policies (PPPs), or project design features (PDFs) do not include standard of mitigation that would be required of mitigation measures. PPPs have been included where there are already existing regulatory structures in the form of state, federal, local regulations or standard conditions that would be otherwise applicable to individual development projects. In those circumstances, the City has relied upon the assumption found in the California Civil Code that “the law has been obeyed.” (Civ. Code § 3548). As a result, compliance with the law has been assumed in assessing the impacts of the project. With regard to PDFs, where specific facets of the project have been included, such as specific zoning code requirements that are part of the project’s zoning text, compliance with those project design features has also been assumed. Based upon the assumption that those project designs will be carried out, as required by the project, the environmental impacts were then analyzed.
- To provide further assurances, however, the PPPs and the PDFs will both be integrated into the mitigation monitoring and reporting program, so that an established protocol exists to track and ensure compliance with both the PPPs and the PDFs.
- O6-2 PDFs reference specific requirements integrated into the Zoning Code or General Plan. While individual references to the location of the requirement in the zoning code are not made in every PDF, Appendix D of the RDEIR includes revisions to the zoning code. The final Mitigation Monitoring and Reporting Plan (MMRP) will include proper references for all PPPs and PDFs to applicable code sections or other City policies and/or regulations.
- O6-3 The commenter claims that in many cases the impact analysis misstates the effect of the PDF and that “this should be reconciled by either revising the PPP/PDF or revising the analysis.” The comment provides no specific examples concerning where the circumstances that it claims exist manifests itself in the RDEIR. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments.
- O6-4 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights and transferability of these rights will not be changed.
- O6-5 No ownership/or control is assumed for the potential units allocated to a certain Traffic Analysis Zone (TAZ). These units were considered in the land use modeling assumptions; however, they may, or may not, ultimately be used within the TAZ in which they were identified in the traffic model. All IBC properties will maintain their current entitlements in the IBC database, and the remaining potential units will be available as alternative development potential on a first come-first serve basis. The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process, after they are approved) and existing development rights and transferability of these rights will not be changed. The IBC database will be supplemented with a tracking mechanism for the additional units, which will be allocated to the appropriate IBC database project as units are approved.
- O6-6 The Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone as the receiving

2. Response to Comments

site will not be required to process a Conditional Use Permit for the TDR. The City's Traffic Study Guidelines and procedures will not change as a result of this project. Traffic studies will still be required for new TDR's beyond those considered in the Vision Plan. Additional traffic and access studies may be required for projects described in the IBC Vision Plan depending on the timing of the project review after certification of the EIR and any project redesign that may affect access.

O6-7 For the 2015 scenario, no TDRs or changes to office equivalency are proposed, beyond the projects that are already in process. Figures 3-7a and 3-7b outline the specific intensity and land use assumptions for each pending TDR.

O6-8 See also response to Comment O4-3. For traffic study and impact analysis purposes, a TDR is based on the transfer of office equivalency associated with the most restrictive peak-hour time period, which has always been the City's policy. At the time, the City believed the most restrictive peak hour was the AM peak hour. However, it is now clear that the most restrictive peak hour in some cases was the PM. Staff discovered that there were other pending projects that did not identify the most restrictive peak-hour time period for office equivalency for their respective TDR. The total amount of office equivalency under reported for these four projects was approximately 4,500 square feet. However, on another pending project, the Element Hotel, staff over reported the development intensity by approximately 7,200 square feet of office equivalency. Therefore, the end result is that the RDEIR over reported the development intensity for the combination of all these pending projects by approximately 2,000 square feet of office equivalency. Figure 3-7a and Figure 3-7b of the RDEIR has been updated to reflect the most restrictive peak-hour time period for each of the pending projects mentioned above (see Chapter 4 of this FEIR).

Additionally, based on correspondence with Parson Brinkerhoff, no additional impacts resulted from this analysis and all of the conclusions and mitigation measures as identified in the RDEIR and traffic study remain unchanged.

Therefore, the discrepancy in office equivalency for the Irvine Lofts and the above mentioned pending projects will be updated and are deemed to be de minimis with respect to impacts identified in the RDEIR.

O6-9 While the commenter did not provide specific examples of the discrepancies between the RDEIR/Traffic Study and the Land Use Methodology Report, discrepancies, the figures in the RDEIR and Traffic Study are correct.

O6-10 The buildout roadway network includes portions of adjacent cities and therefore the roadway network assumed in the city's General Plan is assumed to be fully funded and included in the buildout (Post-2030) network that was analyzed as part of this study. The exceptions to this assumption include those specific unfunded improvements identified in the 1992 IBC Rezone EIR of which the IBC Vision Plan is intended to replace. These unfunded improvements were removed in order to determine whether they are needed and to identify potential mitigations required if they are removed. Network assumptions for the Year 2015 interim analysis were based on coordination with adjacent jurisdictions.

O6-11 The fair-share methodology used for intersection improvements in adjacent jurisdictions is a standard methodology used in the industry and has been agreed upon by the City of Irvine and those affected City jurisdictions. Due to the complex nature of freeway-related improvements compared to intersection and arterial improvements, the fair-share methodology for freeway facility improvements differs slightly from the intersection and arterial improvement fair



2. Response to Comments

share. This agreed-upon methodology has been used previously in other traffic studies prepared within the City of Irvine.

- O6-12 The RDEIR does not provide that all traffic or transportation improvements will be significant and unavoidable after mitigation. Rather, it indicates that one improvement within the City at Jamboree and Michelson and certain improvements outside the City will be significant and unavoidable. (See RDEIR, § 5.13-7, pp. 5.13-198 through 5.13-200.) With regard to the improvements outside the City, the determination of significance and unavoidability is based on the fact that many adjoining jurisdictions do not have identifiable fee programs for which contributions can assuredly mitigate impacts. Under applicable law, in those instances where adjoining cities do not have a particularized funding plan for an improvement to an identified deficiency, the City of Irvine has no legal obligation to provide funding toward that improvement. (See *In Tracy First v. City of Tracy* (2009) __ Cal.App.4th __ [“the City was **not required to provide for funding** of the improvements to the intersections because the intersections were not under the control of the City and there was **no existing plan** for the county to improve the intersections.”] Nevertheless, the City has agreed to enter into funding agreements with neighboring jurisdictions to see that if and when a funding plan is developed by those jurisdictions, a contribution from the City of Irvine will be made available. However, even without that commitment (which is not legally required), the City ultimately has no jurisdictional control over whether extra-jurisdictional improvements will be constructed and, accordingly, has recommended a statement of overriding considerations to reflect that fact.

- O6-13 All pending projects included as part of the project description are subject to fees associated with improvements to address freeway impacts and other traffic-related improvements identified in the traffic study and RDEIR.

Mitigation Measure 13-4 has been revised based on the commenter’s request to specify that the mitigation obligations are required to occur prior to the adoption of the AB 1600 nexus study identified in Mitigation Measure 13-1.

- 5.13-4 Prior to adoption of the AB 1600 nexus study identified in MM 13-1, issuance of a building permit for the 12,000th unit within the ~~IBC~~, the City and Caltrans shall jointly identify feasible operational and physical improvements and the associated fair-share funding contribution necessary to mitigate project-related impacts to state transportation facilities. The City shall fund said improvements on pro-rata “fair-share” basis in accordance with the terms and conditions of an Agreement to be prepared and agreed to by both agencies. These fair-share contributions for feasible improvements shall be included in the AB 1600 nexus study ~~enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities.~~

In addition, the requirement to enter into a mitigation agreement is the most the City can do under the circumstances. Caltrans does not have a defined, fair share funding program for the identified impact. Therefore, the City has no specific mitigation obligation to Caltrans (please see Response to Comment O6-12). Nevertheless, in an effort to ensure that impacts can be mitigated if and when a fee program is identified by Caltrans, the City has put in place Mitigation Measure 13-4. As previously noted, even with the implementation of this mitigation measure, there can be no guaranty that Caltrans will implement the mitigation

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measure and therefore, there can be no guaranty that the impact will be reduced to below a level of significance.

O6-14 Based on field verification, technical layout plans and cost estimates prepared, all identified improvements that require mitigation, except one improvement located at Jamboree/Michelson, have been reviewed for feasibility and have been determined to be feasible and will be included in the IBC Vision Fee Nexus Study.

O6-15 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights will not be changed. The earlier City response about changing the database was meant to reflect changes necessary to accommodate the additional planned residential, and these will be reflected as a separate accounting in the IBC database, so as not to affect existing trip budgets.

O6-16 In order to address concerns raised by adjacent Cities during the Initial Study and Notice of Preparation phases of the Environmental Process, the Advanced Management System (ATMS) improvements were not proposed as mitigation.

O6-17 At the comment's request, the following language has been modified in the FEIR:

As part of the IBC Vision plan, the ~~2,522~~ 2,035 residential units currently in process would be expected to be completed by 2015, with the exception of 776 approved units at Park Place anticipated to be built after 2015; the remaining 3,950 units plus the 776 approved units at Park Place and associated density bonus units included as part of the Vision Plan are expected to be completed by project buildout or the Post-2030 timeframe. Please refer to Appendix N for a complete discussion of these scenarios.



O6-18 The arterial downgrades identified in the Traffic Study (see Appendix N) are proposed because under the constrained network (most conservative) analysis, the widening of these arterial facilities to meet future forecast conditions is unnecessary. Thus, the downgrades were proposed and the sensitivity analysis validated this conclusion. See also response to Comment A13-2 and O5-70.

O6-19 The Global Climate Change section has been revised in the FEIR in response to comments. On December 30, 2009, the Natural Resources Agency adopted the amendments to the CEQA guidelines concerning greenhouse gas (GHG) emissions. Pursuant to the final Statement of Reasons, a net zero increase in GHG emissions would clearly indicate that no significant impacts would occur as Section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. Consequently, the threshold has also been updated to coincide with the new CEQA Guidelines. The City's Renewable Energy and Existing Building Retrofit Program has been revised to be included as a PPP as the City has received and approved the creation of this program. Changes to the RDEIR concerning the new net-zero threshold in Section 5.15, Global Climate Change, of the RDEIR can be found in Chapter 4 of this FEIR.

PPP 15-14 Renewable Energy and Existing Buildings Retrofit Program:
Pursuant to City Council Resolution 09-52, the City has received federal funding from the U.S. Department of Energy to establish a Renewable Energy and Existing Retrofit Program. Retrofitting is designed to improve a building's energy consumption by using cost-effective measures that do not require extensive remodeling

2. Response to Comments

work. The City of Irvine is proposing to use the "whole building approach" meaning that the City will look at the following:

- Thermal envelope (i.e. the shell insulation and air leakage)
- Mechanical systems (i.e. HVAC and domestic hot water)
- Appliances and lighting that may need replacing

The approach will evaluate these areas and their interaction given usage rates, building site, and climate to assess the building's overall energy efficiency and performance and to make targeted recommendations for improvement and ultimately reduce residential demand. The City of Irvine will create a financing district to help property owners finance energy efficiency improvements and renewable energy installations. The City of Irvine is forming a Property Assessed Clean Energy (PACE) District under the Mello-Roos Community Facilities Act of 1982 and its powers as a charter city. Eligible improvements may include energy efficiency, water conservation, and renewable energy improvements to privately owned buildings or property. Potential funding for initial improvements may come from various sources including American Recovery and Reinvestment Act grants, taxable bonded indebtedness, other external financing arrangements, or City funds.

This PPP replaces the proposed Mitigation Measure 15-1 shown on page 5.15-6 of the RDEIR, which is therefore revised as follows:

5.15.6 Mitigation Measures

No mitigation measures are necessary.

~~MM 15-1~~ — ~~Prior to the issuance of building permits in the IBC Vision Plan Area, the City shall establish a renewable energy and existing building retrofit program that will establish a framework for funding and implementing renewable energy projects and energy efficiency retrofits of existing buildings within the IBC Vision Plan area or the City as a whole. Applicants for new development projects within the IBC Vision Plan area shall submit evidence to the satisfaction of the Director of Community Development that the retrofits and/or renewable energy (which may include solar thermal, solar photovoltaic, wind, or other sources approved by the City) of existing buildings equates to the reduction of greenhouse gas (GHG) emissions by 32 percent of nontransportation sources. Applicants for new development projects shall first attempt to accomplish renewable energy production or energy efficiency retrofits of existing buildings within the IBC Vision Plan area. If deemed acceptable to the Director of Community Development, applicants for new development projects can implement new~~

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~~renewable energy production or energy efficiency retrofits of existing buildings within the City of Irvine to reduce GHG emissions. However, all renewable energy production or energy efficiency retrofits must be within the City limits.~~

- O6-20 PPPs and PDFs that reduce transportation emissions generated by land uses in the IBC Vision Plan area were accounted for in the analysis. The transportation sector is regulated at the state and federal level; whereas, the non-transportation sources can be regulated by local government since the City has land use authority. While transportation and non-transportation measures, when taken together, would achieve greater than a 15 percent reduction from existing conditions, the City has identified two separate GHG reduction targets.
- O6-21 The IBC Vision Plan could provide regional GHG benefits through relocating persons from more remote locations to areas closer to jobs in Irvine as Senate Bill 375 (SB 375) envisions. The regional target for the Southern California Association of Government's (SCAG) region has yet to be established or distributed among the local council of governments (COGs). Therefore, the proposed Climate Action Plan and analysis for the IBC Vision Plan does not currently include any reduction for SB 375.



2. Response to Comments

LETTER O7 – Sapetto Group, Inc. (2 pages)



February 5, 2010

Via e-mail: bjacobs@ci.irvine.ca.us

Mr. Bill Jacobs
CITY OF IRVINE
Community Development
One Civic Center
Irvine, California 92614

Subject: Comments on Recirculated Draft Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code Environmental Impact Report

Dear Mr. Jacobs:

On behalf of our clients owning property in the vicinity of White Road within the Irvine Business Complex, we have specific questions on implementation of certain aspects of the Vision Plan and Mixed Use Overlay Zoning EIR, recirculated December 23, 2009.

- | | |
|--|------|
| 1. How is the City of Irvine handling Transfers of Development Rights (TDRs) between Traffic Analysis Zones (TAZs)? Will the TDR procedures outlined in the current IBC Zoning (Zoning Code Section 9-36-17) remain as it is today, or is the City changing the procedures? Please explain. | O7-1 |
| 2. Please explain who has ownership and/or control over the "Potential Residential" units in a given TAZ. For example, TAZ 495 includes an allocation of 473 Residential Units under the Optimization program. However, TAZ 495 has numerous Projects identified in the IBC Database each with separate land owners. How does the City envision addressing who has control and/or ownership of the optimized units? Please explain. | O7-2 |
| 3. Please confirm that all development rights granted and allocated in the current IBC Data Base and Zoning remain with the property, and that the IBC Vision Plan has no direct affect on reducing any development rights. | O7-3 |
| 4. Project Design Feature 2-3 reads: "As described in the proposed design criteria for the project, all outdoor active-use public recreation areas associated with development projects shall be located more than 500 feet from the nearest lane of traffic on the Interstate 405." This design criterion has the consequence of essentially prohibiting residential development within 500 feet of the 405 freeway, due to the fact that the City requires residential | O7-4 |

Sapetto Group, Inc. 331 East Memory Lane • Santa Ana, California 92705 • (949) 252-0841 • Fax (949) 252-0842 • www.sapettogroup.com

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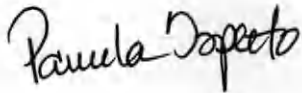
developments to include recreational facilities within the projects. Please clarify the intent of this criterion and circumstances under which it could be applied. Please note that this would essentially create a situation of several parks, and at least one school in other portions of the city to be in violation of this situation.

O7-4
cont'd.

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
CEO / President

cc: Eric Rubery, Sapetto Group, Inc.
Mr. Ygal Sonenshine
Mr. Howard Ahmanson
Mr. Larry Smith
Mr. James W. Ray
Mr. Michael D. Ray.

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2. Response to Comments

O7. Response to Comments from Pamela Sapetto, CEO / President, Sapetto Group, Inc., dated February 5, 2010.

- O7-1 The Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone (TAZ) as the receiving site will not be required to process a Conditional Use Permit for the TDR.
- O7-2 No ownership/or control is assumed for the potential units allocated to a certain TAZ. These units were added considered for land use modeling assumptions and may or may not ultimately used within the TAZ in which they were identified in the traffic model. All IBC properties maintain their current entitlements in the IBC database, and the remaining potential units are available as alternative development potential on a first come-first serve basis.
- O7-3 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights and transferability of these rights will not be changed.
- O7-4 The City acknowledges that the 500 foot distance for recreation areas will affect properties along the south side of White Road. The IBC Vision Plan project allows for greater flexibility in design of park and recreation space, therefore, should a residential use be proposed in this area, staff will work with the applicant to ensure that necessary recreation areas can be properly located.

3. Revisions to the Recirculated Draft EIR

3.1 INTRODUCTION

This section contains revisions to the RDEIR based upon (1) additional or revised information required to prepare a response to a specific comment; (2) applicable updated information that was not available at the time of RDEIR publication; and/or (3) typographical errors. This section also includes additional mitigation measures to fully respond to commenter concerns as well as provide additional clarification to mitigation requirements included in the RDEIR. The provision of these additional mitigation measures does not alter any impact significance conclusions as disclosed in the RDEIR. Changes made to the RDEIR are identified here in ~~strikeout text~~ to indicate deletions and in underlined text to signify additions.

3.2 RDEIR REVISIONS IN RESPONSE TO WRITTEN COMMENTS

The following text has been revised in response to comments received on the RDEIR.

Page 1-5, Chapter 1, Executive Summary. The following minor technical revision has been made to Table 2-2 in response to comments by the Law Offices of Robert C. Hawkins.

The most prominent land use in the IBC is office, with substantial amounts of industrial/warehouse uses and 4,524 4,779 medium- and high-density residential units and 45 232 density bonus units for a total of 4,569 5,011 existing dwelling units.

Page 1-7 Executive Summary. The following text has been revised based on the Airport Land Use Commission action on the project on June 17, 2010



3. Revisions to the Recirculated Draft EIR

3.3 SUMMARY OF PROJECT ALTERNATIVES

The CEQA Guidelines (Section 15126[a]) state that an EIR must address “a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives.” The alternatives were based, in part, on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed project:

- Air Quality
- ~~Land Use~~
- Noise
- Transportation and Traffic

Page 2-5, Chapter 2, Introduction, Table 2-1, NOP Written Comment Summary. The following minor technical revision has been made to Table 2-2 in response to comments by the Irvine Ranch Water District.

<i>Commenting Agency/Person</i>	<i>Comment Summary</i>	<i>Issue Addressed In:</i>
Irvine Ranch Water District	The conceptual location for a community park must be fully described and analyzed in the EIR. Need to discuss the impact of hydrology and water quality on the San Joaquin Marsh. The SAMP must be updated as specific projects become known.	Sections 5.7, <i>Hydrology and Water Quality</i> , 5-12 <u>5.14</u> , <i>Utilities and Service Systems</i> , and 5-14 <u>5.12</u> , <i>Recreation</i>

Pages 3-13 Chapter 3, Project Description, Figure 3-4. IBC Vision Plan Framework. The following minor technical revision has been made to Figure 3-4 to identify the land use as high density residential in response to comments by the University of California – Irvine. The revised figure is included as Appendix E to this FEIR.

Figure 3-4 IBC Vision Plan Framework

Pages 3-20 and 3-25 Chapter 3, Project Description, Tables 3-2 and 3-3. IBC Vision Plan Framework. The following technical correction has been made by City staff: The Hines Master Plan has been moved from the pending project list in Table 3-4 to the approved project list in Table 3-3.

<i>Project Name</i>	<i>Use Type</i>	<i>Description</i>	<i>Units or Square Feet by Use</i>
The Lofts on Von Karman	Residential	116-unit residential	116 units
2801 Kelvin	Residential	248-unit residential	248 units
The Carlyle	Residential	156-unit residential	156-units

3. Revisions to the Recirculated Draft EIR

Avalon/ Jamboree 1	Residential	280-unit residential	280 units
Central Park	Residential/Office/ Retail	1,380-unit residential	1,380 units, 90,000 sf office, 19,700 sf retail
CUP Childcare - 17575 Cartwright	Child Care	CUP for Child care center w/Admin Relief for Playground Area and Parking	11,580 sf school
CUP Church - 17751 Mitchell North	Church	CUP for La Puerta Abierta Church	82,000 sf church
CUP Hotel – 17061 Fitch	Hotel	CUP for 132-room Hotel	132 rooms (78,365 sf)
CUP Hotel - 2300 Main	Hotel	CUP for 170-room Aloft Extended Stay Hotel	170 rooms
Tentative Parcel Map - 17352 Von Karman	Office Condos	Tent. Parcel Map to divide 97,740 sf building	3,995 sf office; 31,903 sf mfg. 23,104 warehouse
Tentative Parcel Map - Daimler	Office Condos	Tent. Parcel Map to create one-lot for office condominiums	
Park Place	Residential/Office/ Retail	Development Agreement and CUP	2,008 units 308 hotel rooms 3.7 million sf of office 350,000 sf of retail ¹
<u>Hines Master Plan</u>	<u>18582 Teller and 2722 Michelson</u>	<u>Office/Retail</u>	Master Plan for 295,000 sf office (Phase 1), 490,000 sf office (Phase 2), 15,500 sf retail/restaurant

Source: City of Irvine 2009.

¹ Subject to change pursuant to the provisions of the existing Development Agreement.



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Table 3-3
Summary of Pending IBC Nonresidential Development Projects

Project Name	Address	Use Type	Description
Element Hotel	17662 Armstrong	Hotel	CUP for 122-room hotel
Hines Master Plan	18582 Teller and 2722 Michelson	Office/Retail	Master Plan for 295,000 sf office (Phase 1), 490,000 sf office (Phase 2), 15,500 sf retail/restaurant
Irvine Crossings Master Plan Modification and TPM	17871 Von Karman	Office/Industrial	Master Plan Modification to reduce office space and increase industrial/warehouse space in an existing building in PA 36 (4,726 sf office, 196,300 sf industrial)
Diamond Jamboree Master Plan Modification	2600–2798 Alton		Master Plan Modification for Shared Parking/reallocation of uses for Diamond Jamboree Center
Master Plan for GIFREHC Center	18691 Jamboree Road	Office/Retail/Hotel	Master Plan for GIFREH Multi-Use Center (250,000 sf office, 39,000 sf retail, 350 room hotel)
Allergan Master Plan Modification	18522 Von Karman	Office	Master Plan Modification for the addition of a 250,000 sf office building
McGaw - Tentative Tract Map	1555 and 1565 McGaw, 17173 Gillette	Office Condos	Tentative Tract Map for seven office condominiums on two lots
Modification to CUP for Park Place	3333 Michelson	Office	Minor modification to CUP 87-CP-0829 (Park Place)
Alton - Tentative Parcel Map for Non-Residential Condos	2152 Alton	Office Condos	Tentative Parcel Map 2008-189 to create 15 non-residential condo units in PA 36
Business Center - Tentative Parcel Map	2062 and 2070 Business Center Dr	Office Condos	Tentative Parcel Map 2008-137 to create 2 parcels for condominium purposes in PA 36

Source: City of Irvine 2009

Pages 3-43 through 3-49, Chapter 3, Project Description. The following minor technical revisions have been made to Kilroy project description in response to comments by the Kilroy Realty Corporation.

Access to the Kilroy project site is currently planned to ~~will~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south...

The Kilroy project consists of up to four residential structures which will likely consist of one or both of the following developed with two different building types. The two buildings fronting Von Karman Avenue are currently proposed to be ~~would consist of~~ five-story podia over three levels of parking ~~garage (two levels are subterranean). The~~ These two podium-style buildings would comprise a combination of flats and two-story townhomes that front along Von Karman Avenue and the internal streets. The remaining two structures located toward the rear boundaries of the project will likely consist of three-level parking garages wrapped around four-story residential units made up entirely of flats...

The CUP will allow for the development of up to 469 dwelling units, including up to 122 density bonus units, and approve a TDR in order to maintain the overall development intensity cap within the IBC. ~~The~~ At maximum buildout, the TDR is required to increase allowable development intensity on the site, ~~measured as is~~ an additional ~~440~~ 50 AM peak-hour intensity values, ~~447~~ 53 PM peak-hour intensity values, and ~~1,646~~ 529 ADT values. The total intensity allocation to the site will be 170 AM peak-hour intensity values, 185 PM peak-hour intensity values, and 1,840 ADT values.

The Kilroy project applicant is requesting approval of Tentative Tract Map (00419204-PTT) to allow for the subdivision of up to 469 residential attached units....

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Access to the Kilroy site is currently planned to ~~would~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south. Approximately 350 feet into the site, the private street terminates into a T-intersection and runs east to west. A fire lane will be located along each side of the project site at the furthest east and westerly boundaries for emergency vehicle access purposes. At maximum buildout ~~The the~~ Kilroy project is anticipated to ~~will~~ provide a ~~minimum of~~ 1,038 parking spaces to serve the proposed number of units, which are located within parking garages or surface on-street parking....

The Kilroy project is planned for development in one or more phases, depending on the market and economy ~~a single phase~~, including site preparation, grading, installation and connection of utilities, construction of access and parking, perimeter landscaping, and construction of the residential buildings. Traffic circulation, stormwater drainage, water, electrical, gas, and sewer system improvements will be integrated with the existing City- and utility-owned infrastructure as necessary.

Page 5.2-14, Section 5.2, Air Quality. The following PDF has been revised to identify timing of the analysis.

PDF 2-5 Prior to issuance of building permit for any ~~For all~~ residential projects located within 1,000 feet of an industrial facility that emits substantial odors, including ~~which includes~~ but is not limited to

- wastewater treatment plants
- composting, greenwaste, or recycling facilities
- fiberglass manufacturing facilities
- painting/coating operations
- coffee roasters
- food processing facilities,

the Project Applicant shall submit an odor assessment to the Community Development Director prior to approval of any future discretionary action that verifies that the South Coast Air Quality Management District (SCAQMD) has not received three or more verified odor complaints from any facility located within 1,000 feet of the site proposed for residential development. If the Odor Assessment identifies that the facility has received three such complaints, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential odors to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units

Page 5.2-14, Section 5.2, Air Quality. The following PDF has been revised based on comments received by the South Coast Air Quality Management District.

PDF 2-6 Applicants for new developments in the Irvine Business Complex shall require that the construction contractor utilize off-road construction equipment that conforms to Tier 3 of the United States Environmental Protection Agency, or higher emissions standards for construction equipment over 50 horsepower that are commercially available. The construction contractor shall be made aware of this requirement prior to the start of construction activities. Use of commercially available Tier 3 or higher off-road equipment, or:

- ~~of~~ year 2006 or newer construction equipment for engines rated equal to 175 horsepower (hp) and greater;



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- year 2007 and newer construction equipment for engines rated equal to 100 hp but less than 175 hp; and
- 2008 and newer construction equipment for engines rated equal to or greater than ~~over~~ 50 hp horsepower.

The use of such equipment shall be stated on all grading plans. The construction contractor shall maintain a list of all operating equipment in use on the project site. The construction equipment list shall state the makes, models, and numbers of construction equipment on-site.

Page 5.5-12, Section 5.5, Geology and Soils. The following minor technical revision has been made to Table 2-2 in response to comments by the Law Offices of Robert C. Hawkins.

Excavations extending deeper than about two feet are expected to encounter wet soil conditions and groundwater may be encountered at depths greater than 5 to 10 feet during construction...

Page 5.6-23, Section 5.6, Hazards and Hazardous Materials. The following PDFs have been revised based on comments received by the John Wayne Airport and the Airport Land Commission for Orange County.

- PDF 6-1 As described in the proposed zoning for the project, ~~related to~~ building height limitations, recordation of aviation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided ~~per Orange County~~ consistent with the Airport Environs Land Use Plan standards for John Wayne Airport.
- PDF 6-4 As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, 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, heliports/helistops and John Wayne Airport compatibility. Structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alternation with Federal Aviation Administration. Residential land uses shall be prohibited in Safety Zone 3.

Page 5.6-23, Section 5.6, Hazards and Hazardous. The following minor technical revision has been made to PDF 6-3 to specify applicable oversight agencies.

- PDF 6-3 As described in the proposed zoning code related to hazardous material standards, individual development sites may have existing facilities, such as underground storage tanks, transformers or clarifiers, that contain hazardous materials ~~would be demolished as part of a proposed development. To mitigate any hazardous-materials-related impacts during the removal of such~~ related to these facilities, the project applicant shall submit a Site Assessment prior to the City deeming the development application complete the Director of Community Development, in conjunction with the Orange County Fire Authority, shall include specific project conditions of approval as part of the discretionary review process for the proposed development. If hazardous materials are identified during the site assessment, the appropriate response/remedial measures will be implement in accordance with the directives of the Orange County Fire Authority (OCFA), Orange County Health Care Agency (OCHCA) and/or the Regional Water Quality Control Board (RWQCB), as appropriate. If soils are encountered during site development that are suspected of being impacted by hazardous materials, work will be halted and site conditions will be evaluated by a qualified environmental professional. The results of the evaluation will be submitted to OCFA, OCHCA, and/or RWQCB, and the appropriate response/remedial measures will be implemented, as directed by OCFA, OCHCA, RWQCB, or other applicable oversight

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agencies, until all specified requirements of the oversight agencies are satisfied and a no-further-action status is attained.

Page 5.6-23-Section 5.6, Hazards and Hazardous Materials. The following project design feature has been added pursuant to City Council direction as part of the project approval on July 13, 2010

PDF 6-6 Residential development shall not be permitted within a one-parcel buffer surrounding the property at 17451 Von Karman, based on existing parcelization as of the date of the certification of the Environmental Impact Report. The area within the one parcel buffer is depicted in Figure 1 in the City of Irvine Zoning Code Chapter 5-8.

Page 5.7-40-5.7-41, Section 5.7, Hydrology and Water Quality. The following text has been revised to address floodproofing requirements for buildings within the 100-year flood plain.

Impact 5.7-4: Portions of the project site proposed for development are located within a 100-year flood hazard area. [Thresholds HYD-7 AND HYD-8]

Impact Analysis: As discussed in Section 5.7.1.1, according to the FIRMs produced for the Irvine Business Complex area, the 100-year floodplain is conveyed within the existing drainage channels and the remainder of the areas are within Zone X, which is defined as areas determined to be outside the 500-year floodplain. However, as part of the Irvine Business Complex Master Drainage Study, several portions of the channels may be insufficient for containing the 100-year storm flows based on the updated Orange County Hydrology Manual methodologies. It should be noted that while the Irvine Business Complex Master Drainage Study includes calculations of flood inundation and proposed flood proofing elevations, these calculations are considered preliminary and are subject to verification. Final elevations will be verified by the City of Irvine, based on site-specific studies prepared by applicants' engineers which will be reviewed in conjunction with individual projects. Individual projects must demonstrate that they will not increase ponding on adjacent properties. As required by PPP 7-1, by designing each project to be elevated or flood-proofed one foot above the anticipated 100-year flood elevation, impacts related to flood zones are considered less than significant. Page 5.8-8, Section 5.8, Land Use. The following minor technical revision has been made to PDF 8-2 to specify applicable oversight agencies.



Page 5.8-8, Section 5.8, Land Use. The following minor technical revision has been made to PDF 8-2 to specify applicable oversight agencies.

PDF 8-2 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. Compatibility with adjacent uses shall be determined through consistency with local, state, and federal regulations including but not limited to the City of Irvine Municipal Code, South Coast Air Quality Management District, Orange County Fire Authority (OCFA), Orange County Health Care Agency (OCHCA) and/or the Regional Water Quality Control Board (RWQCB).

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Page 5.8-29, Section 5.8, Land Use. The following minor technical revision has been made in response to comments by the University of California – Irvine.

UCI owns and operates a property along the east side of Jamboree Road between Campus Drive and Fairchild Road, adjacent to the IBC. According to the UCI 2007 LRDP, the site, known as North Campus—which is currently occupied by academic and support facilities, an arboretum, and a child development center—is planned to be redeveloped with up to 950,000 square feet of office/research space and ~~455~~ 435 multifamily dwelling units by the year 2036...

Page 5.11-2, Section 5.11, Public Services. The following minor technical revision has been made to change the following requirement from an existing PPP to a Project Design Feature.

~~PPP 11-4~~ —PDF 11-3 A Click2Enter radio frequency access system shall be installed at any vehicle and pedestrian access point controlled by privacy gates within the project area (proposed Zoning Code).

Page 5.11-3, Section 5.11, Public Services. The following minor technical revision has been made to correct the buildout figure for the IBC

5.11.1.4 Cumulative Impacts

The geographic area for cumulative analysis of fire protection services is the service territory for OCFA. In recent history, Orange County cities and unincorporated areas have undergone a transition from undeveloped and agricultural land to urban developed areas, resulting in residential and employment population increases and associated increases in the demand for public services, including fire protection and emergency medical services. The contribution of these projects to area growth is reflected in Orange County projections and has been taken into account in long-range planning efforts on behalf of the county, the City of Irvine, and the agencies providing public services to the area. At buildout, a total of ~~7,583~~ 17,038 residential units are projected for the IBC (including units that are already approved, under construction, in process, potential new units, and density bonus units)...

Page 5.11-5, Section 5.11, Public Services. The following project Design Feature has been added to the list of applicable PDF's

~~PPP 11-4~~ —PDF 11-3 A Click2Enter radio frequency access system shall be installed at any vehicle and pedestrian access point controlled by privacy gates within the project area (proposed Zoning Code).

Page 5.11-6, Section 5.11, Public Services. The following minor technical revision has been made to update the Irvine Police Department service letter for the IBC Vision Plan project response based on the 7,583 additional units and a 1.3 person per dwelling unit multiplier.

Based on the potential for 7,583 dwelling units (including pending units, potential new units, and potential density bonus units) beyond what currently exists in the IBC, an additional ~~43~~ 10 police officers and ~~5~~ 4 nonsworn support personnel would be required...

Page 5.11-9, Section 5.11, Public Services, Table 5.11-2, IUSD School Capacity and Current Enrollment. The following minor technical revisions have been made to Table 5.11-2 in response to comments by the Irvine Unified School District.

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Table 5.11-2
IUSD School Capacity and Current Enrollment

School	Capacity	Current Enrollment
Culverdale Elementary	652	620 645
Westpark Elementary	640	583 584
South Lake Middle School	690	567 566
University High School	2360 2,444	2356 2,444

Source: Ruiz 2009.

Page 5.11-9, Section 5.11, Public Services, Table 5.11-3, SAUSD School Capacity and Current Enrollment. The following minor technical revisions have been made to Table 5.11-3 in response to comments by the Santa Ana Unified School District.

Table 5.11-3
SAUSD School Capacity and Current Enrollment

School	Capacity	Current Enrollment
Monroe Elementary School	486	508 477
McFadden Intermediate School	974	1,519 1,510
Century High School	2,048	2,540 2,339

Source: Dixon 2008.

Page 5.11-9, Section 5.11, Public Services, Table 5.11-5, IUSD Student Generation. The following minor technical revisions have been made to the text on page 5.11-11 and Table 5.11-5 in response to updated student generation factors received by the Irvine Unified School District.



There is a potential for 2,325 additional new units, including pending units, and 757 density bonus units, for a total of 3,082 residential units in the Irvine Unified School District (IUSD) portion of the IBC. The proposed project would generate an additional ~~3,477~~ 1,195 students according to the district-wide student generation rates as shown in Table 5.11-5.

Table 5.11-5
IUSD Student Generation

Grade Level	Total Units	Districtwide Generation Rate (student per dwelling unit)	New Students
K-6	3,082	0.575 0.201	1,772 619
7-8	3,082	0.325 0.060	1,002 185
9-12	3,082	0.228 0.127	703 391
Total	3,276 3,082	1.128 0.389	3,477 1,195

Source: Ruiz 2009.

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Page 5.11-12, Section 5.11, Public Services. The following minor technical revision has been made in response to comments by the Santa Ana Unified School District.

... The current SAUSD development fees, as of ~~July 14, 2008~~ September 9, 2009, are ~~\$2.97~~ \$4.84 per square foot for residential development and \$0.47 per commercial and senior housing square foot. 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.

Page 5.11-13, Section 5.11, Public Services, Table 5.11-8, Pending IBC Residential Development Projects and Number of Students Generated. The following minor technical revisions have been made to the text on page 5.11-13 and Table 5.11-8 in response to updated student generation factors received by the Irvine Unified School District.

Table 5.11-8 Pending IBC Residential Development Projects and Number of Students Generated				
Project Name	Location by District	Total Units (including Density Bonus Units)	Districtwide Generation Rate (student per dwelling unit)	New Students
2851 Alton	Irvine Unified School District	170	0.402 0.389	68 66
2852 Kelvin	Irvine Unified School District	194	0.402 0.389	78 75
Subtotal	Irvine Unified School District	364	0.402 0.389	146 142

The pending IBC residential projects would generate approximately ~~146~~ 142 students for IUSD, 760 students for SAUSD, and 176 students for TUSD...

Page 5.12-12, Section 5.12, Recreation. The following minor technical revision has been made in response to comments from the Remy, Thomas, Moose and Manley, LLP.

At buildout, a total of 17,038 residential units are projected for the IBC (including 9,015 existing and approved residential units and 440 density bonus units), generating a total of 22,149 residents. Based on the City's Park Code, buildout of the IBC would generate a need for a total of 110.2 acres of parkland at buildout. This demand in the IBC would be met through park dedications from individual residential projects. Neighborhood park acreage, or corresponding amenities, would be provided at a rate of 3 acres per 1,000 population, and in-lieu fees would be paid for community park acreage at a land value rate for 2 acres per 1,000 population. According to the ~~General Plan, a total of 127,311 residential units are projected for the City's buildout, generating a total of 165,504 residents the Orange County Projections for the City in 2035, the City of Irvine is projected to have a population of 270,009 people.~~ Based on the City's Park Code, buildout of the City of Irvine would generate a need for a total of ~~827.5~~ 1,350 acres of parkland and/or the equivalent in amenities, improvements, or fees, not including private neighborhood parkland or the equivalent in improvements or dedicated recreational amenities. Currently, there are a total of 493.7 acres of parkland throughout the City. The remainder of the 1,350 acres would be provided through neighborhood park dedication or equivalent amenities or fees in conjunction with individual residential project approvals. ~~Therefore, As such,~~ recreational needs of future residents of the IBC area, in conjunction with cumulative development in accordance with the adopted General Plan, would add to citywide and regional demand for parks and recreational facilities, and the appropriate land and/or improvements and fees for city required parks will be exacted in conjunction with approval of individual development projects...

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Appendix N, Traffic Study. Appendix F to the FEIR includes revisions to Appendix N of the RDEIR in response to comments.

Appendix F Revised Traffic Study Pages

Page 5.13-1, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Manatt, Phelps & Phillips LLP.

...The current IBC development intensity database will not change as a result of the IBC Vision Plan; however, as new land uses are proposed, the database will be updated accordingly and reconciled with the City's traffic model, which assumes buildout of the land use assumptions of the Vision Plan...

Page 5.13-2, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from the Orange County Transportation Authority.

The City of Irvine and study area are currently served by rail transit at the Irvine Station off Barranca Parkway. The Tustin Metrolink Station, located on Edinger Avenue also provides connections to the IBC area. There are ~~several almost sixty Amtrak and Metrolink trains per weekday serving the Irvine station and 25 Metrolink trains per weekday serving the Tustin station both stations, and Irvine Station is also served by Amtrak.~~ There is a current planning effort underway to implement a service expansion program by Metrolink by the year 2010. This expansion will reduce the headways of trains between Fullerton Metrolink station to the north of the study area and Laguna Niguel/Mission Viejo station to the south of the study area. This expansion will improve services at both the Irvine and Tustin Metrolink Stations.



Page 5.13-3, Section 5.13, Transportation and Traffic, Figure 5.13-2. IBC Study Area Traffic Analysis Zones. The following minor technical revision to identify TAZ 293 has been made in response to comments from the Irvine Ranch Water District. The Revised figure is included as Appendix E to this FEIR.

Figure 5.13-2 IBC Study Area Traffic Analysis Zones

Page 5.13-12, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Manatt, Phelps & Phillips LLP.

... The most conservative (highest) peak hour trip rate for each land use category from the IBC database expected to be reduced was multiplied by the appropriate quantity being reduced for industrial and office land uses. To calculate traffic for various land uses within the IBC, the most conservative peak hour trip rate was utilized, which is the AM peak hour trip rate for industrial land uses and the PM peak hour trip rate for all other land uses. ~~For industrial land uses the AM peak hour trip rate was utilized, for all other land use categories the PM peak hour trip rate was utilized.~~ By reducing the quantities of the non-residential land uses to accommodate the increased number of residential units under the Vision Plan, the proposed project is trip neutral...

Page 5.13-21, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP.

This section describes the current state of the existing land uses and circulation system within the study area. The City of Irvine's traffic model, the Irvine Transportation Analysis Model (ITAM) ~~8.4~~ 8.4 was applied to forecast future traffic conditions for the study area...

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Page 5.13-42, Section 5.13, Transportation and Traffic, Table 5.13-11, Study Area Committed Roadway Improvements. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP.

Table 5.13-11
Study Area Committed Intersection Improvements

Funding Status of 1992 IBC Intersection Improvements - March 2008				
Stage	ID	Location	Improvements	Status [1]
Stage I				
	49	Red Hill & Main	3rd EBT; 3rd WBT	Complete
	78	MacArthur & Main	4th SBT; 3rd EBT; Free WBR	Complete
	79	MacArthur & I-405 NB Ramp	Free 2nd NBR; 4th SBT; 4th NBT; Free 2nd	Complete
	80	MacArthur & I-405 SB	2nd SBL; 4th SBT; 4th NBT	Complete
	82	MacArthur & Michelson	4th SBT; 4th NBT; NBR; WBT	Complete
	84	MacArthur & Campus	4th SBT; 3rd EBT; 3rd WBT	Complete
	138	Jamboree & Alton	3rd WBT; 4th NBT; 4th SBT	Complete
	141	Jamboree & Main	4th SBT; 4th NBT; 3rd WBT; 3rd EBT	Complete
	143	Jamboree & I-405 NB Ramp	3rd NBT & 4th SBT	Complete
	144	Jamboree & I-405 SB	4th SBT; 3rd & 4th NBT	Complete
	145	Jamboree & Michelson	4th SBT; 4th NBT	Complete
	188	Harvard & Michelson	2nd EBL	Complete
	42	Red Hill & Dyer/Barranca	2 nd WBL; 4 th EBT; 4 th WBT	Fully Funded ¹
	47	Red Hill & MacArthur	3 rd WBT; 3 rd EBT	Fully Funded ¹
	47	Red Hill & MacArthur	4th WBT; 4th EBT	Not Funded
	82	MacArthur & Michelson	2nd NBL	Not Funded
	84	MacArthur & Campus	EBR	Not Funded
	143	Jamboree & I-405 NB Ramp	4 th NBT	Not Funded
	145	Jamboree & Michelson	EBR	Not Funded
	188	Harvard & Michelson	Free SBR	Not Funded
Stage II				
	133	Jamboree & ICD	Grade Separation	Complete
	138	Jamboree & Alton	2 nd NBL; 2 nd SBL; 3 rd EBT	Complete
	150	MacArthur & Jamboree	NBR; 2 nd NBL	Complete
	42	Red Hill & Dyer/Barranca	4 th SBT; 4 th NBT; 2 nd EBL	Fully Funded
	47	Red Hill & MacArthur	3rd SBT; 3rd NBT; 2 nd NBL	Fully Funded
	47	Red Hill & MacArthur	4 th NBT	Not Funded
	49	Red Hill & Main	3 rd & 4 th SBT; 3 rd NBT; Free NBR	Not Funded
	78	MacArthur & Main	Replace 1 WBT (VLD) with 3 rd WBL (VLD)	Not Funded
	136	Jamboree & Barranca	Grade Separation	Not Funded
	138	Jamboree & Alton	5 th NBT; 5 th SBT	Not Funded
	184	Harvard & Barranca	WBR; 2 nd SBL; 2 nd NBL	Not Funded
	186	Harvard & Main	Free SBR	Not Funded
Stage III				
	234	Culver & Michelson	2 nd NBL; SBR; WBR	Complete
	47	Red Hill & MacArthur	Replace 1 SBT (VLD) with 3 rd SBL (VLD); Replace 1 EBT (VLD) with 3rd EBL (VLD)	Not Funded
	97	Von Karman & Barranca	Free NBR; 2 nd WBL; 4 th WBT; 4 th EBT	Not Funded
	136	Jamboree & Barranca	Free EBR	Not Funded
	141	Jamboree & Main	4 th EBT	Not Funded
Tustin Legacy				
	49	Red Hill & Main	Free SBR	Committed
	102	Von Karman & Michelson	2 nd EBL	Committed

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Table 5.13-11
Study Area Committed Intersection Improvements

Funding Status of 1992 IBC Intersection Improvements - March 2008				
Stage	ID	Location	Improvements	Status [1]
	138	Jamboree & Alton	5 th NBT	Committed
	185	Harvard & Alton	2 nd NBL	Committed
	227	Culver & Warner	2 nd EBL	Committed

Notes: [1] Status as of March 2008

¹ The two fully funded improvements at Red Hill & MacArthur and Red Hill & Dyer/Barranca (both funded in part by the 1992 IBC Fees) will be constructed by 2015 and are assumed to be in-place in the 2015 interim year analysis.

Legend:

EBT = Eastbound Through Lane

WBT = Westbound Through Lane

NBT = Northbound Through Lane

EBR = Eastbound Right

SBR = Southbound Right

SBT = Southbound Through Lane

EBL = Eastbound Left

WBR = Westbound Right

WBL = Westbound Left

NBL = Northbound Left

VLD = Variable Lane Deployment

NBR = Northbound Right

Page 5.13-43, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

... This theoretical scenario provides an early glimpse of potential impacts associated with implementation of the proposed project. The impacts are considered theoretical because it is impossible for the entire project to be constructed instantly, without requisite circulation system improvements as new projects are built. Although this is not a feasible scenario for the IBC Vision, as the project cannot be implemented immediately, it provides a basis for evaluation of potential project impacts.



Page 5.13-66, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

Figures 5.13-20 and 5.13-21 graphically depict the ADT Traffic Volumes and deficient segment LOS, respectively, for the 2015 Cumulative Baseline No Project scenario. The analysis indicates that ~~twelve~~ eleven segments are deficient under the 2015 Cumulative Baseline No Project daily conditions, with 10 of the segments in the City of Irvine. As noted above, LOS E indicates a deficient segment for all arterial segments outside Planning Area (PA) 36 within the City of Irvine. It should be noted that daily V/C ratio analysis arterial segments in Costa Mesa, Newport Beach, and Tustin are not evaluated further and any deficiencies are addressed at the intersections. PA 36 segments are considered deficient at LOS F. Deficient segments under daily Year 2015 Cumulative Baseline No Project conditions include:

- 1585 — Newport Avenue from Valencia Avenue to Edinger Avenue (Tustin)*

*Deficient locations under daily conditions—no further analysis required.)

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Page 5.13-69, Section 5.13, Transportation and Traffic, Figure 5.13-21. 2015 Cumulative Baseline No Project Daily Arterial Deficiencies. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin. The Revised figure is included as Appendix E to this FEIR.

Figure 5.13-21 2015 Cumulative Baseline No Project Daily Arterial Deficiencies

Page 5.13-89, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

Deficient segments under daily Year 2015 Cumulative With Project conditions include the following:

- ...
 - ~~1585~~ Newport Avenue from Valencia Avenue to Edinger Avenue (Tustin)
-

Page 5.13-89, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

... This is likely due to the redistribution of trips within the IBC study area under the With Project conditions, with a greater amount of residential dwelling units, and the assumption of a corresponding a reduction in commercial, office, and industrial square footage to allow for the increased residential uses, consistent with the methodology of the Vision Plan land use. For deficient intersections or intersections that become deficient with the Proposed Project within the City of Irvine where the ICU value increases by 0.02 over the No Project conditions that intersection experiences a significant project impact...

Page 5.13-93, Section 5.13, Transportation and Traffic, Figure 5.13-30. 2015 Cumulative With Project Daily Arterial Deficiencies. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin. The Revised figure is included as Appendix E to this FEIR.

Figure 5.13-21 2015 Cumulative With Project Daily Arterial Deficiencies

Page 5.13-105, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Manatt, Phelps & Phillips LLP.

As part of the IBC Vision plan, the ~~2,522~~ 2,035 residential units currently in process would be expected to be completed by 2015, with the exception of 776 approved units at Park Place anticipated to be built after 2015; the remaining 3,950 units plus the 776 approved units at Park Place and associated density bonus units included as part of the Vision Plan are expected to be completed by project buildout or the Post-2030 timeframe. Please refer to Appendix N for a complete discussion of these scenarios.

Page 5.13-107, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

The analysis indicates that the following segments are deficient under the Post-2030 No Project daily conditions, including two segments in Costa Mesa, 12 in Irvine, one in Newport Beach, one in Santa Ana, and ~~two~~ one in Tustin. As noted above, LOS E indicates a deficient segment for all arterial segments outside Planning Area (PA) 36

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within the City of Irvine. PA 36 segments are considered deficient at LOS F. Deficient segments under daily Post-2030 Cumulative Baseline No Project conditions include the following:

- ...
- ~~1585 Newport Avenue from Valencia Avenue to Edinger Avenue (Tustin)~~

Page 5.13-111, Section 5.13, Transportation and Traffic, Figure 5.13-36. Post-2030 Cumulative Baseline No Project Daily Arterial Deficiencies. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin. The Revised figure is included as Appendix E to this FEIR.

Figure 5.13-21 Post-2030 Cumulative Baseline No Project Daily Arterial Deficiencies

Page 5.13-133, Section 5.13, Transportation and Traffic, Figure 5.13-45. Post-2030 Cumulative With Project Daily Arterial Deficiencies. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin. The Revised figure is included as Appendix E to this FEIR.

Figure 5.13-21 Post-203 Cumulative With Project Daily Arterial Deficiencies

Page 5.13-135, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

The analysis indicates that several segments are deficient under the Post-2030 Cumulative With Project daily conditions including two segments located within Costa Mesa, 15 of the segments in Irvine, one segment each in Newport Beach and Santa Ana, and ~~two~~ one segments in Tustin. Compared to the No Project scenario, there are three additional segments that are deficient under daily conditions within the City of Irvine. As noted above, LOS E indicates a deficient segment for arterial segments outside Planning Area (PA) 36 within the City of Irvine. PA 36 (IBC area) segments are considered deficient at LOS F. Deficient segments under Post-2030 Cumulative With Project conditions include the following:

- ...
- ~~1585 Newport Avenue from Valencia Avenue to Edinger Avenue (Tustin)~~

Page 5.13-147, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

The Post-2030 With Project (MPAH Network) impact analysis evaluates the proposed IBC Vision With Project scenario with the specific unfunded circulation system improvements identified in the 1992 IBC Rezone EIR assumed in the network. This buildout alternative was prepared to identify whether there were differences in resulting impacts when compared to the IBC Vision Plan network (constrained network) that removed specific unfunded improvements identified in the 1992 IBC Rezone EIR and to help determine if these improvements are necessary under buildout conditions or should be removed from the City's General Plan. The intent of the MPAH alternative buildout scenario analysis is two-fold: 1) to provide a reasonable sensitivity analysis that provides Irvine and adjacent jurisdictions with the information necessary to downgrade or upgrade facilities under General Plan buildout conditions using reasonable and accepted methodologies for impact identification and mitigation (such as Irvine's Traffic Impact Analysis Guidelines and adjacent jurisdictions' adopted methodologies); and 2) to begin the County MPAH Amendment process for downgrading MPAH arterials, which may require preparation of a



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Cooperative Study with OCTA, Irvine, and affected jurisdictions. The following improvements are included in the MPAH Network:

Page 5.13-148 through 5.13-149, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

There are 20 deficient segments under the Post-2030 With Project (MPAH Network) daily conditions, two segments located within Costa Mesa, 16 of the segments in Irvine, one segment in Newport Beach, and ~~one~~ no segments in Tustin. As noted above, LOS E indicates a deficient segment for arterial segments outside Planning Area (PA) 36 within the City of Irvine. PA 36 segments are deficient at LOS F. Deficient segments under the Post-2030 With Project (MPAH Network) conditions include the following:

- ...
- ~~1585 Newport Avenue from Valencia Avenue to Edinger Avenue (Tustin)~~

Page 5.13-153, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from the Orange County Transportation Authority.

... The IBC Vision Plan traffic study has determined that 6 lanes are unnecessary for both of these roadway segments under buildout conditions. Thus, the City of Irvine will initiate an MPAH Amendment by entering into a cooperative study with the Orange County Transportation Authority (OCTA) to determine the feasibility of downgrading both Alton Parkway and Von Karman Avenue. ~~Once this study is complete, both agencies can move forward with amendments to the General Plan and MPAH to downgrade both Alton Parkway between Red Hill Avenue and Jamboree Road as well as Von Karman Avenue between Barranca Parkway and Michelson Drive. Once the Study is complete, in order for the City of Irvine to maintain eligibility for Measure M funding, prior to amending the City's General Plan to downgrade both Alton Parkway between Red Hill Avenue and Jamboree Road and Von Karman Avenue between Barranca Parkway and Michelson Drive, the City and OCTA will work to prepare amendments to the County MPAH to be approved by the OCTA Board of Directors. If the MPAH is approved by the OCTA Board, the City can move forward with downgrading the arterial segments.~~

Page 5.13-157, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from the Orange County Transportation Authority.

MacArthur Boulevard between Main Street and SR-55 cannot be mitigated to below a level of significance without ~~changing the MPAH road classification~~ upgrading the segment from a Major Arterial (six lanes) to a Principal Arterial (eight lanes). ~~The classification would not need to be upgraded in the MPAH, as the MPAH designations represent a minimum standard which jurisdictions, such as Irvine or Santa Ana, may build upon.~~ Reclassification would provide one additional lane in each direction and potentially would require an amendment to the City of Santa Ana General Plan. This forecast deficiency constitutes a project related significant impact according to the City of Santa Ana's performance criteria. The City of Irvine is responsible for a fair-share for this improvement for the Post-2030 future scenario.

Page 5.13-161, Section 5.13, Transportation and Traffic, Figure 5.13-50. IBC Vision Study Intersection Improvement Locations. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin. The Revised figure is included as Appendix E to this FEIR.

Figure 5.13-21 Post-203 Cumulative With Project Daily Arterial Deficiencies

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Page 5.13-163, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Remy, Thomas, Moose and Manley, LLP, and the City of Tustin.

5.14.6.1 Summary of Mitigation Program

In summary, one arterial segment and 21 intersections are forecast to operate at a deficient LOS under 2015 and Post-2030 conditions. Mitigation measures are proposed for all project-related impacts identified in the interim year 2015 analysis regardless of whether the location is impacted in the build-out condition. Of the 21 deficient intersections, a project impact is forecast for 15 of the deficient intersections. The arterial segment deficiency is a project related impact. Additionally, a number of freeway mainline segments and ramps are forecast to operate at a deficient LOS. As a general rule, mitigation measures for arterials or intersections begin with identification of any measures that might have been recommended as part of other traffic studies in the area. These mitigation measures are then applied to determine whether they result in roadway segment or intersection operation within acceptable thresholds.

Page 5.13-170, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from the Caltrans.

- Intersection #232: Culver Drive and I-405 Northbound Ramps

This intersection is deficient under Post-2030 conditions with a project related significant impact. The extremely high volume and high right turn adjustment on the westbound right turn movement has contributed to the ICU deficiency in the PM peak hour and necessitated the recommendation of restriping the westbound approach of this intersection to one left turn lane, one and two right turn lanes, and a shared left right turn lane. Implementation of this improvement results in acceptable operations in both the AM and PM peak hours under the Post-2030 scenario and appears to be physically feasible.



Page 5.13-191, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from the Orange County Transportation Authority.

... Bringing State facilities closer to residences and businesses is also not a social or legal prerogative of the City however, the regional transportation agency, OCTA has identified certain improvements to the freeway mainline to be funded by the Renewed Measure M, approved in 2007-08 by the County and participating Cities including the City of Irvine. This analysis does take into consideration improvements identified through this funding source...

Page 5.13-196, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Caltrans.

Intersection #232: Culver Drive and I-405 Northbound Ramps: Restripe the westbound approach of this intersection to one left turn lane, and two one right turn lanes, and a shared left right turn lane.

Page 5.13-196, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from the Orange County Transportation Authority.

Intersection #85: MacArthur Boulevard and Birch Street: Improve the eastbound approach to two eastbound left-turn lanes and two ~~southbound~~ eastbound through lanes.

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Page 5.13-198, Section 5.13, Transportation and Traffic. The following minor technical revision has been made in response to comments from Manatt, Phelps & Phillips LLP.

- 5.13-4 Prior to adoption of the AB 1600 nexus study identified in MM 13-1, ~~issuance of a building permit for the 12,000th unit within the IBC~~, the City and Caltrans shall jointly identify feasible operational and physical improvements and the associated fair-share funding contribution necessary to mitigate project-related impacts to state transportation facilities. The City shall fund said improvements on pro-rata “fair-share” basis in accordance with the terms and conditions of an Agreement to be prepared and agreed to by both agencies. These fair-share contributions for feasible improvements shall be included in the AB 1600 nexus study ~~enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project related impacts to state transportation facilities~~.

Page 5.15-2, Section 5.15, Global Climate Change. The text of footnote 1 is being revised to clarify U.S. role in Kyoto Protocol

¹ Kyoto Protocol: Established by the United Nations Framework Convention on Climate Change (UNFCCC) and signed by more than 160 countries (including the United States, which ultimately did not ratify) stating that they commit to reduce their GHG emissions by 55 percent or engage in emissions trading.

Page 5.15-9, Section 5.15, Global Climate Change. The following minor technical revision has been made in response to the newly adopted CEQA Guidelines.

The amendments to the CEQA guidelines were adopted December 30, 2009 ~~are currently in the process of being updated to address global warming GHG emissions. The changes were approved by the Office of Administrative Law for inclusion in California Code of Regulations. The changes become effective March 1, 2010. Pursuant to SB 97, proposed changes to the CEQA Guidelines will be adopted on or before January 1, 2010. The Natural Resources Agency has circulated the proposed changes to the CEQA Guidelines as part of the rulemaking process. Based on the draft these adopted thresholds for GHG emissions, a significant impact relative to global climate change is considered to occur if the project would:~~

Page 5.15-10 through 5.15-11, Section 5.15, Global Climate Change, and Table 5.15-4, IBC Vision Plan Transportation and Nontransportation GHG Reduction Targets. The thresholds for determining significant Greenhouse Gas (GHG) emission impacts has been revised based on the newly adopted CEQA Guidelines.

While the City’s proposed Climate Action establishes a city-wide goal to achieve the reduction targets of AB 32, the CEQA Guidelines (updated December 2009) requires a lead agency to evaluate the change in existing physical environmental conditions associated with the project. In accordance with CEQA Guidelines a net zero increase in GHG emissions would clearly indicate that no significant impacts would occur as Section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance (Natural Resources Agency 2009). Therefore, GHG emissions associated with the IBC Vision Plan are compared to ~~the City’s GHG reduction target of 15 percent below~~ existing levels for transportation and nontransportation sources. The City separates emissions into these two categories because transportation emissions are indirect emissions that are regulated through federal, statewide, and regional emissions reduction programs; whereas, nontransportation sectors can be directly controlled by applicants for new projects or the City.

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To achieve this target, plans, programs, or policies (PPP) and project design features (PDF) would need to achieve a 15 percent reduction attain a net zero increase in GHG emissions. If PPPs and PDFs, identified by the project do not achieve 15 percent below the IBC Vision Plan's current GHG emissions inventory, then GHG emissions impacts will be considered potentially significant in the absence of mitigation. Table 5.15-4 shows the GHG emissions reduction targets based on the existing emissions inventory for the IBC shown in Table 5.15-3. The GHG reduction target for the IBC Vision Plan area for transportation emissions is ~~580,974~~ 683,499 MTons (i.e., 15 percent below ~~current existing conditions~~) and the target ~~for~~ for nontransportation emissions is ~~191,975~~ 225,853 MTons (i.e., 15 percent below existing conditions).

Table 5.15-4
IBC Vision Plan Transportation and Nontransportation GHG Reduction Targets

Source	Existing CO _{2e} Emissions GHG Reduction Target	15 Percent below Existing Conditions GHG Reduction Target
Transportation Sector	683,499 MTons	580,974 MTons
Nontransportation Sectors	225,853 MTons	191,975 MTons

Source: CTG 2009
MTons = metric tons

Page 5.15-14, Section 5.15, Global Climate Change. The City has approved development of a Renewable Energy and Existing Building Retrofit Program. In addition, the City has received federal funding for this program. Therefore, the following PPP has been incorporated into the EIR.

PPP 15-14 Renewable Energy and Existing Buildings Retrofit Program: Pursuant to City Council Resolution 09-52, the City has received federal funding from the U.S. Department of Energy to establish a Renewable Energy and Existing Retrofit Program. Retrofitting is designed to improve a building's energy consumption by using cost-effective measures that do not require extensive remodeling work. The City of Irvine is proposing to use the "whole building approach" meaning that the City will look at the following:

- Thermal envelope (i.e. the shell insulation and air leakage)
- Mechanical systems (i.e. HVAC and domestic hot water)
- Appliances and lighting that may need replacing

The approach will evaluate these areas and their interaction given usage rates, building site, and climate to assess the building's overall energy efficiency and performance and to make targeted recommendations for improvement and ultimately reduce residential demand. The City of Irvine will create a financing district to help property owners finance energy efficiency improvements and renewable energy installations. The City of Irvine is forming a Property Assessed Clean Energy (PACE) District under the Mello-Roos Community Facilities Act of 1982 and its powers as a charter city. Eligible improvements may include energy efficiency, water conservation, and renewable energy improvements to privately owned buildings or property. Potential funding for initial improvements may come from various sources including American Recovery and Reinvestment Act grants, taxable bonded indebtedness, other external financing arrangements, or City funds.



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Page 5.15-15-5.15-16, Section 5.15, Global Climate Change. The text of following project design features are being revised to clarify the role of the proposed zoning in establishing the IBC TMA

PDF 15-7 **Transportation Management Association (TMA):** The City anticipates establishment of a TMA for the IBC by Spring 2010. Based on the ITAM model, establishment of the TMA for the IBC Vision Plan area would result in a reduction of 8 percent of projected VMT. The proposed zoning enables the establishment of a TMA within the IBC. ~~As described in the proposed zoning for the project, future applicants of new commercial, office, and retail development within the Irvine Business Complex area shall provide the following features to reduce project-related mobile-source air pollutant emissions:~~

- ~~• Preferential parking for carpools and vanpools totaling 5 percent of all spaces on site.~~
- ~~• Preferential parking for alternative fuel vehicles (e.g., compressed natural gas or hydrogen) totaling 5 percent of all spaces on site.~~
- ~~• Secure bicycle parking and storage facilities for employees and visitors that can accommodate 15 percent of employees on site.~~
- ~~• Commuter information boards identifying bicycle paths and public transit routes and schedules.~~

PDF 15-9 **Bicycle Improvements:** The IBC would provide linkages to the City regional bicycle trail system. Currently continuous on-street bicycle lanes exist only along Main Street. Bicycle lanes are proposed along parts of Jamboree Road, Red Hill Avenue, Von Karman Avenue, Michelson Avenue, Carlson Avenue, Barranca Parkway, and Alton Parkway. Furthermore, the sidewalk system would be shared between pedestrians and bicycles. As part of the Vision Plan, bicycle connections to the San Marco Park, adjacent to the San Diego Creek, would be improved with a new pedestrian bridge.

Also refer to PDF 13-1 and PDF 15-7, which require allow for the creation of a Transportation Management Association (TMA) for the IBC area.

Page 5.16-15-5.15-17, Section 5.15, Global Climate Change. The following minor technical revisions have been made to change the following requirement from Project Design Features to existing PPP's. and renumber PDF's accordingly.

~~PDF 15-10~~ PPP 15-15 **Safe Route to Schools:** The Safe Routes to School program is a federal and state grant program intended to increase the percentage of students walking or cycling to school. Funding is awarded to cities to construct engineering improvements and to start educational, encouragement, and enforcement programs. The City of Irvine has been successful in obtaining grant funding to implement a citywide program that includes walking school buses—groups of students who meet at a designated location and walk to school together, with a parent at the front and back of the group. This encourages students to walk to school and assuages parents' fears of traffic and crime safety risks that are impediments to walking alone. Based on the ITAM model, a 0.2 percent reduction in VMT is achieved through implementation of this program.

~~PDF 15-11~~ PPP 15-16 **Circulation Phasing Analysis:** The amount of emissions increase exponentially as arterial travel speeds decrease. As is the case with many cities in Southern California, there are often defined congestion locations (such as the major intersections along Jamboree Road) where a majority of congestion and delay occurs. The City currently has a Circulation Phasing Analysis program in place.

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They collect traffic counts at congested locations on a bi-annual basis and monitor locations every three years. The results of the analysis are used to determine future Capital Improvement Projects.

Water Conservation and Efficiency

PDF 15-4210 **Ultra-Low-Flow Fixtures:** Applicants for new developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that toilets, urinals, sinks, showers, and other water fixtures installed on-site are ultra-low-flow water fixtures that exceed the Uniform Plumbing Code. Examples are: 1.28 average gallons per flush high efficiency toilets, 2 gallon per minute (gpm) efficient bathroom faucets, 2.2 gpm efficient kitchen faucets, and 2.2 gpm efficient shower heads.

PDF 15-4311 **Landscaping and Irrigation Systems:** Applicants for new developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that landscaping irrigation systems installed in the project are automated, high-efficient irrigation systems that reduce water use, such as an evapotranspiration “smart” weather-based irrigation controller, dual piping for recycled water, and bubbler irrigation; low-angle, low-flow spray heads; moisture sensors; and use of a California-friendly landscape palette. These features will make the project consistent with the intent of the California Water Conservation in Landscaping Act of 2006 (AB 1881), including provisions to reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of water.

PDF 15-4412 **Use of Reclaimed Water on All Master Landscaped Areas:** If recycled water service is determined by IRWD to be feasible (see PPP 14-1), applicants for new developments in the Irvine Business Complex shall use reclaimed water in all master landscaped areas. This will include master landscaped commercial, multifamily, common, roadways, and park areas. Master landscapes will also incorporate weather-based controllers and efficient irrigation system designs to reduce overwatering, combined with the application of a California-friendly landscape palette.



Solid Waste Measures

PDF 15-4513 **Material Recovery:** To reduce waste generated in the IBC and encourage recycling of solid wastes, the Orange County Integrated Waste Management Department operates material recovery facilities to recycle glass, plastic, cans, junk mail, paper, cardboard, greenwaste (e.g., grass, weeds, leaves, branches, yard trimmings, and scrap wood), and scrap metal. Future employees, residents, and customers would participate in these programs. On-site recycling facilities will be required for all commercial, retail, industrial, and multifamily residential developments.

Building

PDF 15-4614 **GreenPoint Rated Residential Buildings:** Applicants for new residential developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that proposed buildings are designed and constructed to be GreenPoint Rated. GreenPoint Rated developments must achieve a minimum of 50 total points and meet the category-specific point thresholds as specified in the current GreenPoint Rated Builder Handbook. Developments that exceed this minimum are rewarded by a higher grade on their projects. The GreenPoint Rated program is updated every three years to coincide with changes to the California Building Energy Efficiency Standards.

PDF 15-4715 **Designed to Earn the Energy Star Non-Residential Buildings:** Applicants for new non-residential developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that proposed buildings are designed and constructed to achieve the ‘Designed to Earn the Energy Star’ rating. In order achieve the ‘Designed to Earn the

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Energy Star' rating, the architect/design firm must demonstrate that the final estimate of the building's energy use corresponds to a rating of 75 or better using the US EPA's Energy Performance Rating from the Internet-based tool, Target Finder.

Page 5.15-19 through 5.15-20, Section 5.15, Global Climate Change, and Table 5.15-5, Post-2030 Annual GHG BAU Emissions Inventory for the Irvine Business Complex. The following text has been revised based on the net-zero increase from existing threshold for transportation and nontransportation sources. The net-zero significance threshold is based on the newly adopted CEQA Guidelines. In accordance with CEQA Guidelines a net zero increase in GHG emissions would clearly indicate that no significant impacts would occur as Section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance (Natural Resources Agency 2009).

CO_{2e} emissions from construction and operational activities associated with the ~~existing conditions~~, and post-2030 (P2030) Proposed General Plan BAU ~~and P2030 Proposed General Plan with Statewide and Federal PPPs and PDFs~~ are shown in Table 5.15-5...

Table 5.15-5
Post-2030 Annual GHG BAU Emissions Inventory for the Irvine Business Complex

Source	Proposed General Plan BAU (P2030)	Percent of Total Proposed General Plan P2030 BAU Inventory	Proposed General Plan P2030 with Statewide and Federal PPPs and PDFs
Transportation Sector			
Transportation	872,087	68%	512,956 615,694 ¹
Transportation GHG Reductions Needed	291,113 683,499	—	— 67,805 MTons
Nontransportation Sectors			
Residential	122,788	10%	47,359 53,832 ^{2, 3}
Non-Residential	191,254	15%	97,791 113,390 ^{3, 4}
Hotel	7,996	1%	3,988 4,641 ³
Infrastructure	8,314	1%	7,898
Water	5,497	0%	4,394 5,224 ³
Solid Waste	48,953	4%	44,064 48,953 ³
Construction	32,072	2%	32,072
Subtotal	416,874	32%	237,566 266,010
Nontransportation GHG Reductions Needed	224,889 225,853	—	— 40,157 MTons
Total CO_{2e} Inventory	1,288,961	100%	750,522 881,704
TOTAL CITYWIDE REDUCTIONS NEEDED	—	—	40,157 MTons

Source: CTG 2009

MTons = metric tons

¹ Includes 78,494 MTons of reductions associated with the California Low Carbon Fuel Standard (PPP 15-5) and 177,900 MTons associated with the Federal Corporate Average Fuel Economy (CAFE) Standards (PPP 15-6).

² Includes 60,180 MTons of residential reductions associated with the Title 24 Code Cycles: Net Zero Buildings (PPP 15-3).

³ Includes a total of 16,792 MTons of reductions associated with the California Renewable Portfolio Standard (PPP 15-4) for residential, non-residential, hotel, water, and solid waste.

⁴ Includes 73,892 MTons of non-residential reductions associated with the Title 24 Code Cycles: Net Zero Buildings (PPP 15-3).

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Page 5.15-20 through 5.15-21, Section 5.15, Global Climate Change, and Table 5.15-6, GHG Reductions Associated with PPPs and PDFs. The following text has been revised based on the net-zero increase from existing threshold for transportation and nontransportation sources. The net-zero significance threshold is based on the newly adopted CEQA Guidelines. In accordance with CEQA Guidelines a net zero increase in GHG emissions would clearly indicate that no significant impacts would occur as Section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance (Natural Resources Agency 2009).

The City's GHG reduction target is ~~15 percent below existing levels, or no net increase in GHG emissions,~~ for transportation and nontransportation sectors. To achieve this target, Citywide PPP and PDFs would need to achieve a ~~15 percent reduction from existing conditions (see Table 5.15-4). Because the Proposed General Plan BAU (P2030) scenario generates 1,288,960 MTons of GHG emissions, PPPs and PDFs would need to achieve 291,113 MTons of reductions from P2030 for transportation sources and 224,899~~ 40,157 MTons of reductions from P2030 for nontransportation sources. Federal and State strategies would achieve the City's target of a zero net increase for transportation-related GHG emissions. However, additional reductions associated with Federal and Statewide transportation strategies are not applied as offsets toward the non-transportation sources. Therefore, Citywide PPPs and PDFs would need to achieve a total of 40,157 MTons of reductions in order to meet the City's zero net increase in GHG emissions threshold for transportation and non-transportation sources combined. Table 5.15-6 below quantifies reductions associated with Citywide PPPs and PDFs.

As shown in this table, Citywide PPPs and PDFs achieve 131,182 MTons of GHG reductions and therefore would ~~not~~ achieve the GHG emissions reduction target for the IBC Vision Plan area. Consequently, ~~mitigation measures are required to ensure GHG emissions achieve the GHG emissions reduction target for the IBC Vision Plan.~~ The the project's contribution to GHG impacts are considered ~~potentially~~ less than significant.



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Table 5.15-6
GHG Reductions Associated with PPPs and PDFs

PPP/PDF	Action	GHG Emissions Reductions from Proposed General Plan BAU (P2030) in MTons of CO _{2e}
Transportation		
Citywide PPPs and PDFs		
PDF 15-10	Safe Route to Schools	1,747
PPP 15-9	Transit Service to LAX	2,174
PPP 15-11	Additional Fixed-Route Shuttle System to Complement The i Shuttle	8,723
PDF 15-7	Transportation Management Association (TMA) ¹	72,648 ¹
PPP 15-10	Comprehensive Signal Retiming and Coordination Program	8,723
PDF 15-11	Circulation Phasing Analysis	8,723
Subtotal Citywide PPPs and PDFs		102,738 MTons
Statewide and Federal PPPs		
PPP 15-5	California Low Carbon Fuel Standard	78,493
PPP 15-6	Federal Corporate Average Fuel Economy (CAFE) Standards	177,900
Subtotal Statewide and Federal PPPs		256,363 MTons
Transportation Reductions from Post-2030 BAU		359,131 MTons
Transportation Target for Post-2030		291,113 MTons
Achieves Transportation GHG Target?		Yes
Nontransportation		30,618 MTons
Citywide PPPs and PDFs		
PDF 15-16	Residential Buildings: GreenPoint Rated Residential Buildings	7,303
PDF 15-17	Non-Residential Buildings Designed to Earn the Energy Star	16,252 ²
PPP 15-1 and PPP 15-13	Solid Waste: C&D Debris Recycling and Reuse Ordinance and Waste Reduction	4,989
Subtotal Citywide PPPs and PDFs		28,444 MTons
Statewide and Federal PPPs		
PPP 15-4	California Renewable Portfolio Standard	16,792
PPP 15-3	Title 24 Code Cycles: Net-Zero Buildings	
	Residential	60,180
	Non-Residential	73,992
Subtotal Statewide and Federal PPPs		150,864 MTons
Nontransportation Reductions from Post-2030 BAU		179,308 MTons
Nontransportation Target for Post-2030		224,899 MTons
Achieves Nontransportation GHG Target?		Yes

Source: CTG 2009.

Notes:

¹ Includes requirements for bicycle lockers and on-site showers and parking spaces for carpools.²

² Does not include 2,174 MTons of reductions associated with preferred parking for carpools and vanpools.

¹ Approximately 2,174 MTons of GHG emissions reductions from preferential parking for carpools and vanpools (PDF 15-7) was included as part of the non-residential buildings strategy. Also includes 704 MTons from secure bicycle parking and storage facilities for employees and visitors (PDF 15-7).

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*Table 5.15-6
GHG Reductions Associated with Citywide PPPs and PDFs*

<u>Citywide PPP/PDF</u>	<u>Action</u>	<u>GHG Emissions Reductions from in MTons of CO_{2e}</u>
PDF 15-10	Safe Route to Schools	1,747
PPP 15-9	Transit Service to LAX	2,174
PPP 15-11	Additional Fixed Route Shuttle System to Complement The <i>j</i> Shuttle	8,723
PDF 15-7	Transportation Management Association (TMA) ¹	72,648 ¹
PPP 15-10	Comprehensive Signal Retiming and Coordination Program	8,723
PDF 15-11	Circulation Phasing Analysis	8,723
PDF 15-16	Residential Buildings: GreenPoint Rated Residential Buildings	7,303
PDF 15-17	Non-Residential Buildings Designed to Earn the Energy Star	16,252 ²
PPP 15-1 and PPP 15-13	Solid Waste: C&D Debris Recycling and Reuse Ordinance and Waste Reduction	4,889
Total Citywide PPP and PDF Reductions		131,182 MTons
GHG Reduction Target for Post 2030		40,157 MTons
Achieves GHG Reduction Target		Yes

Source: CTG 2009.

Notes:

¹ Includes requirements for bicycle lockers and on-site showers and parking spaces for carpools.²

² Does not include 2,174 MTons of reductions associated with preferred parking for carpools and vanpools.

Page 5.15-22, Section 5.15, Global Climate Change. The following text has been revised based on the net-zero increase from existing threshold for transportation and nontransportation sources. As the Citywide PPPs and PDFs achieve the GHG net-zero target, the project would not cumulatively contribute to a cumulative impact. Mitigation Measure 15-1 is not required and since the City has approved creation of a Renewable Energy and Existing Buildings Retrofit Program, this program has been included as PPP 15-14.

As described under Impact 5.15-1, project-related GHG emissions are not confined to a particular air basin but are dispersed worldwide. Therefore, impacts identified under Impact 5.15-1 are not project-specific impacts to global warming but the project's contribution to this cumulative impact. Because the project's GHG emissions were considered less than significant with incorporation of the PPPs, and PDFs, and Mitigation Measure 15-1, the project's GHG emissions and contribution to global climate change impacts are considered less than cumulatively considerable and therefore also less than significant.

Page 5.15-22, Section 5.15, Global Climate Change. The following text has been revised based on the net-zero increase from existing threshold for transportation and nontransportation sources. As the Citywide PPPs and PDFs achieve the GHG net-zero target, the project would generate a substantial increase in GHG emissions or conflict with a GHG reduction plan. Mitigation Measure 15-1 is not required and since the City has approved creation of a Renewable Energy and Existing Buildings Retrofit Program, this program has been included as PPP 15-14.

Upon implementation of regulatory requirements and standard conditions of approval, the following impacts would be less than significant: 5.2-5 and 5.2-7 5.15-1.

² Approximately 2,174 MTons of GHG emissions reductions from preferential parking for carpools and vanpools (PDF 15-7) was included as part of the non-residential buildings strategy. Also includes 704 MTons from secure bicycle parking and storage facilities for employees and visitors (PDF 15-7).



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Without mitigation, the following impacts would be **potentially significant**:

- ~~Impact 5.15-1 — Project-related greenhouse gas emissions could significantly contribute to global climate change impacts or conflict with the CARB Adopted Scoping Plan.~~

Page 5.15-22 through 5.15-23, Section 5.15, Global Climate Change. The following text has been revised based on the net-zero increase from existing threshold for transportation and nontransportation sources. Citywide PPPs and PDFs achieve the GHG net-zero target. Mitigation Measure 15-1 is not required and since the City has approved creation of a Renewable Energy and Existing Buildings Retrofit Program, this program has been included as PPP 15-14.

5.15.6 Mitigation Measures

No mitigation measures are necessary.

~~MM 15-1 — Prior to the issuance of building permits in the IBC Vision Plan Area, the City shall establish a renewable energy and existing building retrofit program that will establish a framework for funding and implementing renewable energy projects and energy efficiency retrofits of existing buildings within the IBC Vision Plan area or the City as a whole. Applicants for new development projects within the IBC Vision Plan area shall submit evidence to the satisfaction of the Director of Community Development that the retrofits and/or renewable energy (which may include solar thermal, solar photovoltaic, wind, or other sources approved by the City) of existing buildings equates to the reduction of greenhouse gas (GHG) emissions by 32 percent of nontransportation sources. Applicants for new development projects shall first attempt to accomplish renewable energy production or energy efficiency retrofits of existing buildings within the IBC Vision Plan area. If deemed acceptable to the Director of Community Development, applicants for new development projects can implement new renewable energy production or energy efficiency retrofits of existing buildings within the City of Irvine to reduce GHG emissions. However, all renewable energy production or energy efficiency retrofits must be within the City limits.~~

Page 5.15-23 through 5.15-24, Section 5.15, Global Climate Change. The following text has been revised based on the net-zero increase from existing threshold for transportation and nontransportation sources. As the Citywide PPPs and PDFs achieve the GHG net-zero target, the project would generate a substantial increase in GHG emissions or conflict with a GHG reduction plan. Mitigation Measure 15-1 is not required and since the City has approved creation of a Renewable Energy and Existing Buildings Retrofit Program, this program has been included as PPP 15-14.

~~The City has issued a request for proposal for establishing the City's Residential Retrofit Program and Sustainable Facilities Program (commercial and municipal facilities). The Residential Retrofit Program will be designed to overcome financial barriers to making energy efficiency improvements and installing renewable energy systems at individual residents. The Sustainable Facilities Program will address ongoing operations and maintenance of commercial and municipal facilities including energy and water use, waste management, purchasing, transportation, indoor environmental quality, site management, and construction and green cleaning practices. The City is proposing to prepare these programs in 2010 so that the Residential Retrofit Program and Sustainable Facilities Program are in effect by Spring of 2011. Mitigation Measure 15-1 would ensure that applicants for new development within the IBC implement GHG emissions offsets equivalent to 32 percent of the projects nontransportation emissions at buildout. Table 5.15-7 shows GHG emissions reductions associated with the additional GHG reduction strategy.~~

Table 5.15-7

Nontransportation GHG Reductions Associated with PPPs, PDFs, and Mitigation Measure

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PPP/PDF	Action	GHG Emissions Reductions from Proposed General Plan BAU (P2030) in MTons of CO_{2e}
Nontransportation		30,618 MTons
Citywide PPPs and PDFs		
PDF 15-16	Residential Buildings: GreenPoint Rated Residential Buildings	7,303
PDF 15-17	Non-Residential Buildings Designed to Earn the Energy Star	16,252 ¹
PPP 15-1 and PPP 15-13	Solid Waste: C&D-Debris Recycling and Reuse Ordinance and Waste Reduction	4,889
Subtotal Citywide PPPs and PDFs		28,444 MTons
Statewide and Federal PPPs		
PPP 15-4	California Renewable Portfolio Standard	16,792
PPP 15-3	Title 24 Code Cycles: Net-Zero Buildings	
	Residential	60,180
	Non-Residential	73,892
Subtotal Statewide and Federal PPPs		150,864 MTons
Mitigation Measure		
MM 15-1	Renewable Energy and Existing Building Retrofits ²	81,850
Subtotal Mitigation Measure		81,850 MTons
Nontransportation Reductions from Post-2030 BAU		261,158 MTons
Nontransportation Target for Post-2030		224,899 MTons
Achieves Nontransportation GHG Target?		Yes

Source: CTC 2009.

Notes:

¹ Does not include 2,174 MTons of reductions associated with preferred parking for carpools and vanpools.

² The Renewable Energy and Existing Buildings Retrofit programs are an emissions offset program that will be implemented by spring of 2011. Based on the draft Climate Action Plan, there is a potential for 181,889 MTons of reductions within the entire City for residential, commercial, and municipal buildings. Within the IBC Vision Plan area, the amount of reductions from the retrofit programs is 81,850 MTons; however, to achieve the 15 percent reduction from Existing Conditions for this project, only 45,591 MTons is necessary.

As shown in Table 5.15-7, the additional Mitigation Measure would substantially reduce nontransportation GHG emissions to achieve the City's 15 percent GHG reduction target. Nontransportation PPPs, PDFs, and the Mitigation Measure would result in 261,158 MTons of GHG reductions.³ Table 5.15-8 5.15-7 shows the GHG emissions inventory for the IBC Vision Plan for the following scenarios:

- Existing Conditions (2008)
- Proposed General Plan BAU (P2030)
- Proposed General Plan (P2030) with PPPs, and PDFs, and Mitigation Measure

As shown in this Table, GHG emissions inventory at buildout with reduction would be ~~668,672~~ 750,522 MTons with PPPs, and PDFs, and Mitigation Measure 15-1, which is approximately ~~26~~ 17 percent lower than existing conditions. Therefore, ~~with implementation of Mitigation Measure 15-1~~, impacts to global climate change are less than significant.

Table 5.15-8 5.15-7
Comparison of Annual GHG Emissions Inventory for the Irvine Business Complex

Source	Existing Conditions (2008)	Proposed General Plan BAU (P2030)	Proposed General Plan (P2030) with PPPs, PDFs, and MM
Transportation			
Transportation	683,499	872,087	512,956

³ Excludes the 2,174 MTons of reductions associated with preferred parking for carpools and vanpools for strategy PDF 15-17, Non-Residential Buildings Designed to Earn the Energy Star.



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*Table 5.15-8 5.15-7
Comparison of Annual GHG Emissions Inventory for the Irvine Business Complex*

Source	Existing Conditions (2008)	Proposed General Plan BAU (P2030)	Proposed General Plan (P2030) with PPPs, PDFs, and MM
Nontransportation			
Residential	13,957	122,788	47,359
Non-Residential	159,742	191,254	97,791
Hotel	6,410	7,996	3,988
Infrastructure	7,229	8,314	7,898
Water	3,319	5,497	4,394
Solid Waste	35,196	48,953	44,064
Construction	0	32,072	32,072
Existing Building Retrofits ¹	—	—	-81,850
Subtotal Nontransportation	225,853	416,874	155,715 237,566
Total	909,352	1,288,961	668,672 750,522

Source: CTG 2009.

Notes:

PPP: plans, programs, and policies; PDF: project design features; MM: mitigation measures.

¹ The Renewable Energy and Existing Buildings Retrofit programs are an emissions offset program that will be implemented by spring of 2011. Based on the draft Climate Action Plan, there is a potential for 181,889 MTons of reductions within the entire City for residential, commercial, and municipal buildings.

Page 6-2, Section 6, Significant Unavoidable Adverse Impacts. The following text has been revised based on the Airport Land Use Commission action on the project on June 17, 2010

Impact 5.8-2: Project implementation could Potentially be in conflict with an applicable adopted land use plan. [Threshold LU-2]

As described above, the proposed project was reviewed by ALUC and the City and determined to be consistent with AELUP and Caltrans health and safety standards and PDF 6-1 has been incorporated into the project. In addition, the ALUC has determined that the 2851 Alton Parkway and Martin Street Condos projects are consistent with the adopted AELUP. However, the revised project, other pending projects, and potential future projects pursuant to the IBC Vision Plan and Overlay Zoning Code have not yet been before ALUC for a determination of consistency, as ALUC typically does not conduct such reviews until the City of Irvine Planning Commission hearings are scheduled. If ALUC determines that the proposed project as revised, or potential future projects are not found to be consistent with the AELUP, and the Irvine City Council disagrees and overrides this finding by a two-thirds vote, a significant unavoidable adverse impact would result and a Statement of Overriding Considerations would be required.

3. Revisions to the Recirculated Draft EIR

Page 7-18, Chapter 7, Alternatives to the Proposed Project. The following minor technical revision has been in response to comments by the Law Offices of Robert C. Hawkins.

Although this alternative would lessen some environmental impacts, it would not avoid the significant environmental impacts to air quality, noise, or transportation/traffic. It would provide less housing opportunities in close proximity to existing employment centers, retail and entertainment uses, and transportation facilities and would not promote the objectives of the City's long-range goals for the IBC to the same extent as the proposed project. Most of the project objectives would be met, but not to the degree of the project. In addition, this alternative reduces overall allowable development intensity within the IBC below what is currently allowed by the existing General Plan and would impact existing ~~entitlements~~ development intensity values assigned to existing parcels.



4. Final Mitigation Monitoring and Reporting Plan

Page 1-11 through 1-54, Chapter 1, Executive Summary The following text has been revised in the Executive Summary based on responses to comments and changes to the EIR sections detailed above.

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
5.1 Aesthetics			
5.1-1: Future development pursuant to the IBC Vision Plan would not substantially alter the visual character of the IBC area and its surroundings.	Less than significant	No mitigation measures are required. PDF 1-2 Applicants for new development projects in the IBC Vision Plan area that propose buildings 40 feet or higher shall conduct a shade shadow analysis prepared to the satisfaction of the Director of Community Development. The shade shadow analysis shall ensure that building envelope shall not affect more than 50 percent of a sun sensitive area (i.e., residential backyards/patios and recreational areas) for at least 50 percent for the duration of the season (i.e., three hours between 9:00 AM and 3:00 PM during winter daylight hours).	Less than significant.
5.2 AIR QUALITY			
5.2-1: Regional population, housing, and employment growth projections in the Irvine Business Complex were not accounted for in the air quality management plan.	Significant	PDF 2-5 Prior to issuance of building permit for any For all residential projects located within 1,000 feet of an industrial facility that emits substantial odors, including which includes but is not limited to • wastewater treatment plants • composting, greenwaste, or recycling facilities • fiberglass manufacturing facilities • painting/coating operations • coffee roasters • food processing facilities, the Project Applicant shall submit an odor assessment to the Community Development Director prior to approval of any future discretionary action that verifies that the South Coast Air Quality Management District (SCAQMD) has not received three or more verified odor complaints from any facility located within 1,000 feet of the site proposed for residential development. If the Odor Assessment identifies that the facility has received three such complaints, the applicant will be required to identify	Significant and Unavoidable

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
		and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential odors to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units. PDF 2-6 Applicants for new developments in the Irvine Business Complex shall require that the construction contractor utilize off-road construction equipment that conforms to Tier 3 of the United States Environmental Protection Agency, or higher emissions standards for construction equipment over 50 horsepower that are commercially available. The construction contractor shall be made aware of this requirement prior to the start of construction activities. Use of commercially available Tier 3 or higher off-road <u>equipment, or:</u> • <u>of year 2006 or newer construction equipment for engines rated equal to 175 horsepower (hp) and greater;</u> • <u>year 2007 and newer construction equipment for engines rated equal to 100 hp but less than 175 hp; and</u> • <u>2008 and newer construction equipment for engines rated equal to or greater than over 50 hp horsepower.</u> The use of such equipment shall be stated on all grading plans. The construction contractor shall maintain a list of all operating equipment in use on the project site. The construction equipment list shall include the makes, models, and numbers of construction equipment on-site. ...	
5.6 HAZARDS AND HAZARDOUS MATERIALS			
5.6-2: Various hazardous material sites are located within the proposed project area.	Less than significant	... PDF 6-3 As described in the proposed zoning code related to hazardous material standards, individual development sites may have existing facilities, such as <u>underground storage tanks</u>, transformers or clarifiers, that <u>contain hazardous materials would be demolished as part of a proposed development</u>. To mitigate any hazardous-materials-related impacts during the removal of such related to these facilities, <u>the project applicant shall</u>	Less than Significant

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
		submit a Site Assessment prior to the City deeming the development application complete. The Director of Community Development, in conjunction with the Orange County Fire Authority, shall include specific project conditions of approval as part of the discretionary review process for the proposed development. If hazardous materials are identified during the site assessment, the appropriate response/remedial measures will be implemented in accordance with the directives of the Orange County Fire Authority (OCFA), Orange County Health Care Agency (OCHCA) and/or the Regional Water Quality Control Board (RWQCB), as appropriate. If soils are encountered during site development that are suspected of being impacted by hazardous materials, work will be halted and site conditions will be evaluated by a qualified environmental professional. The results of the evaluation will be submitted to OCFA, OCHCA, and/or RWQCB, and the appropriate response/remedial measures will be implemented, as directed by OCFA, OCHCA, RWQCB, or other applicable oversight agencies, until all specified requirements of the oversight agencies are satisfied and a no-further-action status is attained. PDF 6-4 As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data, to the Director of Community Development, 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, heliports/helistops and John Wayne Airport compatibility. Structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1 Notice of Proposed Construction or Alternation with Federal Aviation Administration. Residential land uses shall be prohibited in Safety Zone 3. PDF 6-6 Residential development shall not be permitted within a one-parcel buffer surrounding the property at 17451 Von Karman, based on existing parcelization as of the date of the certification of the Environmental Impact Report. The area within the one parcel buffer is depicted in Figure 1 in the City of Irvine Zoning Code Chapter 5-8.	
5.6-3: The project site is located in the vicinity of John Wayne Airport and within the jurisdiction of an airport	Less than significant	PDF 6-1 As described in the proposed zoning for the project, related to building height limitations, recordation of aviation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be	Less than significant

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
land use plan.		provided per Orange County consistent with the Airport Environs Land Use Plan standards for John Wayne Airport. ...	
5.8 LAND USE AND PLANNING			
5.8-1: The proposed project would not divide an established community.	Less than significant	... PDF 8-2 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. <u>Compatibility with adjacent uses shall be determined through consistency with local, state, and federal regulations including but not limited to the City of Irvine Municipal Code, South Coast Air Quality Management District, Orange County Fire Authority (OCFA), Orange County Health Care Agency (OCHCA) and/or the Regional Water Quality Control Board (RWQCB).</u>	Less than significant
5.11 PUBLIC SAFETY			
5.11.1 Result in a substantial adverse physical impact associated with the provisions of new or physically altered governmental facilities, need for 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 for police protection services.	Less than significant	PPP 11-4 PDF 11-3 A Click2Enter radio frequency access system shall be installed at any vehicle and pedestrian access point controlled by privacy gates within the project area (proposed Zoning Code).	

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
5.13 TRANSPORTATION/TRAFFIC			
I5.13-1: Buildout of the IBC pursuant to the proposed project would generate additional traffic volumes and impact levels of service for the existing area roadway system.	Potentially Significant	... MM 13-1 Prior to the issuance of the first building permit pursuant to the proposed project, the City of Irvine shall prepare a "nexus" study that will serve as the basis for requiring development impact fees under AB 1600 legislation, as codified by California Code Government Section 66000 et seq, for the Irvine Business Complex to support General Plan and Zoning changes under consideration for the Irvine Business Complex Vision Plan. ... Newport Beach ... Intersection #85: MacArthur Boulevard and Birch Street • Improve the eastbound approach to two eastbound left-turn lanes and two southbound eastbound through lanes. ... MM 13-4 Prior to <u>adoption of the AB 1600 nexus study identified in MM 13-1</u>, issuance of a building permit for the 12,000th unit within the IBC, the City and Caltrans shall <u>jointly identify feasible operational and physical improvements and the associated fair-share funding contribution necessary to mitigate project-related impacts to state transportation facilities</u>. The City shall fund said improvements on pro-rata "fair-share" basis in accordance with the terms and conditions of an Agreement to be prepared and agreed to by both agencies. These fair-share contributions for feasible improvements shall be included in the AB 1600 nexus study enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities.	Significant and Unavoidable

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
5.15 GLOBAL CLIMATE CHANGE			
5.15-1: Project-related greenhouse gas emissions could significantly contribute to global climate change impacts or conflict with the California Air Resources Board-adopted scoping plan.	Less than significant	... PPP 15-14 Renewable Energy and Existing Buildings Retrofit Program: Pursuant to City Council Resolution 09-52, the City has received federal funding from the U.S. Department of Energy to establish a Renewable Energy and Existing Retrofit Program. Retrofitting is designed to improve a building's energy consumption by using cost-effective measures that do not require extensive remodeling work. The City of Irvine is proposing to use the "whole building approach" meaning that the City will look at the following: • Thermal envelope (i.e. the shell insulation and air leakage) • Mechanical systems (i.e. HVAC and domestic hot water) • Appliances and lighting that may need replacing The approach will evaluate these areas and their interaction given usage rates, building site, and climate to assess the building's overall energy efficiency and performance and to make targeted recommendations for improvement and ultimately reduce residential demand. The City of Irvine will create a financing district to help property owners finance energy efficiency improvements and renewable energy installations. The City of Irvine is forming a Property Assessed Clean Energy (PACE) District under the Mello-Roos Community Facilities Act of 1982 and its successor as a charter city. Eligible improvements may include energy efficiency, water conservation, and renewable energy improvements to privately owned buildings or property. Potential funding for initial improvements may come from various sources including American Recovery and Reinvestment Act grants, taxable bonded indebtedness, other external financing arrangements, or City funds.	Less than significant

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
		PDF 15-7 Transportation Management Association (TMA): The City anticipates establishment of a TMA for the IBC by Spring 2010. Based on the ITAM model, establishment of the TMA for the IBC Vision Plan area would result in a reduction of 8 percent of projected VMT. The proposed zoning enables the establishment of a TMA within the IBC. As described in the proposed zoning for the project, future applicants of new commercial, office, and retail development within the Irvine Business Complex area shall provide the following features to reduce project-related mobile-source air pollutant emissions: • Preferential parking for carpools and vanpools totaling 5 percent of all spaces on site. • Preferential parking for alternative-fuel vehicles (e.g., compressed natural gas or hydrogen) totaling 5 percent of all spaces on site. • Secure bicycle parking and storage facilities for employees and visitors that can accommodate 15 percent of employees on site. • Commuter information boards identifying bicycle paths and public transit routes and schedules. PDF 15-9 Bicycle Improvements: The IBC would provide linkages to the City regional bicycle trail system. Currently continuous on-street bicycle lanes exist only along Main Street. Bicycle lanes are proposed along parts of Jamboree Road, Red Hill Avenue, Von Karman Avenue, Michelson Avenue, Carlson Avenue, Barranca Parkway, and Alton Parkway. Furthermore, the sidewalk system would be shared between pedestrians and bicycles. As part of the Vision Plan, bicycle connections to the San Marco Park, adjacent to the San Diego Creek, would be improved with a new pedestrian bridge. Also refer to PDF 13-1 and PDF 15-7, which require <u>allow for</u> the creation of a Transportation Management Association (TMA) for the IBC area. PDF 15-10 PPP 15-15 Safe Route to Schools: The Safe Routes to School program is a federal and state grant program intended to increase the percentage of students walking or cycling to school. Funding is awarded to cities to construct engineering improvements and to start educational, encouragement, and enforcement programs. The City of Irvine has been	

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
		successful in obtaining grant funding to implement a citywide program that includes walking school buses—groups of students who meet at a designated location and walk to school together, with a parent at the front and back of the group. This encourages students to walk to school and assuages parents' fears of traffic and crime safety risks that are impediments to walking alone. Based on the ITAM model, a 0.2 percent reduction in VMT is achieved through implementation of this program. PDF 15-11 PPP 15-16 Circulation Phasing Analysis: The amount of emissions increase exponentially as arterial travel speeds decrease. As is the case with many cities in Southern California, there are often defined congestion locations (such as the major intersections along Jamboree Road) where a majority of congestion and delay occurs. The City currently has a Circulation Phasing Analysis program in place. They collect traffic counts at congested locations on a bi-annual basis and monitor locations every three years. The results of the analysis are used to determine future Capital Improvement Projects. Water Conservation and Efficiency PDF 15-12 Ultra-Low-Flow Fixtures: Applicants for new developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that toilets, urinals, sinks, showers, and other water fixtures installed on-site are ultra-low-flow water fixtures that exceed the Uniform Plumbing Code. Examples are: 1.3 gpm high efficiency toilets, 2 gallon per minute (gpm) efficient bathroom faucets, 2.2 gpm efficient kitchen faucets, and 2.2 gpm efficient shower heads. PDF 15-13 Landscaping and Irrigation Systems: Applicants for new developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that landscaping irrigation systems installed in the project are automated, high-efficient irrigation systems that reduce water use, such as an evapotranspiration "smart" weather-based irrigation controller, dual piping for recycled water, and bubbler irrigation; low-angle, low-flow spray heads; moisture sensors; and use of a California-friendly landscape palette. These features will make the project consistent with the intent of the California Water Conservation in Landscaping Act of 2006 (AB 1881), including provisions	

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*Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation*

<i>Environmental Impact</i>	<i>Level of Significance Before Mitigation</i>	<i>Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]</i>	<i>Level of Significance After Mitigation</i>
		to reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of water. PDF 15-14<u>12</u> Use of Reclaimed Water on All Master Landscaped Areas: If recycled water service is determined by IRWD to be feasible (see PPP 14-1), applicants for new developments in the Irvine Business Complex shall use reclaimed water in all master landscaped areas. This will include master landscaped commercial, multifamily, common, roadways, and park areas. Master landscapes will also incorporate weather-based controllers and efficient irrigation system designs to reduce overwatering, combined with the application of a California-friendly landscape palette. Solid Waste Measures PDF 15-15<u>13</u> Material Recovery: To reduce waste generated in the IBC and encourage recycling of solid wastes, the Orange County Integrated Waste Management Department operates material recovery facilities to recycle glass, plastic, cans, junk mail, paper, cardboard, greenwaste (e.g., grass, weeds, leaves, branches, yard trimmings, and scrap wood), and scrap metal. Future employees, residents, and customers would participate in these programs. On-site recycling facilities will be required for all commercial, retail, industrial, and multifamily residential developments. Building PDF 15-16<u>14</u> GreenPoint Rated Residential Buildings: Applicants for new residential developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that proposed buildings are designed and constructed to be GreenPoint Rated. GreenPoint Rated developments must achieve a minimum of 50 total points and meet the category-specific point thresholds as specified in the current GreenPoint Rated Builder Handbook. Developments that exceed this minimum are rewarded by a higher grade on their projects. The GreenPoint Rated program is updated every three years to coincide with changes to the California Building Energy Efficiency Standards. PDF 15-17<u>15</u> Designed to Earn the Energy Star Non-Residential Buildings: Applicants for new non-residential developments in the Irvine Business Complex shall submit evidence to the satisfaction of the Director of Community Development that proposed buildings are designed and constructed to achieve the 'Designed to Earn the Energy Star' rating. In	

3. Revisions to the Recirculated Draft EIR

Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
		order achieve the 'Designed to Earn the Energy Star' rating, the architect/design firm must demonstrate that the final estimate of the building's energy use corresponds to a rating of 75 or better using the US EPA's Energy Performance Rating from the Internet-based tool, Target Finder.	



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Table 1-2
Summary of Environmental Impacts, Mitigation Measures and Levels of Significance After Mitigation

Environmental Impact	Level of Significance Before Mitigation	Plans, Programs, and Policies [PPPs], Project Design Features [PDFs], and Mitigation Measures [MM]	Level of Significance After Mitigation
		... MM 15-1 Prior to the issuance of building permits in the IBC Vision Plan Area, the City shall establish a renewable energy and existing building retrofit program that will establish a framework for funding and implementing renewable energy projects and energy efficiency retrofits of existing buildings within the IBC Vision Plan area or the City as a whole. Applicants for new development projects within the IBC Vision Plan area shall submit evidence to the satisfaction of the Director of Community Development that the retrofits and/or renewable energy (which may include solar thermal, solar photovoltaic, wind, or other sources approved by the City) of existing buildings equates to the reduction of greenhouse gas (GHG) emissions by 32 percent of nontransportation sources. Applicants for new development projects shall first attempt to accomplish renewable energy production or energy efficiency retrofits of existing buildings within the IBC Vision Plan area. If deemed acceptable to the Director of Community Development, applicants for new development projects can implement new renewable energy production or energy efficiency retrofits of existing buildings within the City of Irvine to reduce GHG emissions. However, all renewable energy production or energy efficiency retrofits must be within the City limits.	

3. Revisions to the Recirculated Draft EIR

Page 5.13-171, Section 5.13, Transportation and Traffic, Table 5.13-23, City of Irvine Proposed Intersection Mitigation. The following minor technical change has been made to Table 5.13-23 based on discussions with Caltrans.

Table 5.13-23
City of Irvine Proposed Intersection Mitigation

ID	Intersection	Jurisdiction	2015 Cumulative with Project				2015 Cumulative With Project After Mitigation				Post-2030 Cumulative With Project				Post-2030 Cumulative With Project After Mitigation				Mitigation Strategy	Fair-share
			AM		PM		AM		PM		AM		PM		AM		PM			
			ICU	LOS	ICU	LOS	ICU	LOS	ICU	LOS	ICU	LOS	ICU	LOS	ICU	LOS	ICU	LOS		
232	Culver Drive at I-405 NB Ramps	Irv	0.48	A	0.87	D					0.56	A	0.95	E	<u>0.56</u> <u>0.81</u>	<u>A</u> <u>D</u>	<u>0.73</u> <u>0.76</u>	C	Restripe WB to 1.5, 0, 1.5 1, 0, 2	100.0%



3. Revisions to the Recirculated Draft EIR

Page 5.13-189, Section 5.13, Transportation and Traffic, Table 5.13-29, Freeway Mainline Impacts and Fair-share. The following minor technical change has been made to Table 5.13-29 based on discussions with Caltrans.

Table 5.13-29
Freeway Mainline Project Impacts and Fair-share

SR-55	I-405 to MacArthur Boulevard	NB	4	8,000	8,401	1.05	F	8,327	1.04	F	8,688	1.09	F	8,586	1.07	F	287	260	*	3.3%
		SB	4	8,000	8,697	1.09	F	8,528	1.07	F	9,134	1.14	F	8,732	1.09	F	437	204	*	4.8%
	MacArthur Boulevard to Dyer Road	NB	5	10,000	7,551	0.76	D	9,377	0.94	E	7,858	0.79	D	9,666	0.97	E	307	290	*	3.9% 3.0%
		SB	5	10,000	9,867	0.99	E	7,748	0.77	D	10,284	1.03	F	7,912	0.79	D	417	164	*	4.1%
	Dyer Road to Edinger Avenue	NB	6	12,000	6,771	0.56	C	11,387	0.95	E	7,128	0.59	C	11,696	0.97	E	357	310	*	5.0% 2.7%

3. Revisions to the Recirculated Draft EIR

Page 5.13-193, Section 5.13, Transportation and Traffic, Table 5.13-30, Freeway Ramp Impacts and Fair Share. The following minor technical change has been made to Table 5.13-30 based on discussions with Caltrans.

Table 5.13-30
Freeway Ramp Project Impacts and Fair Share

I-405	Culver Drive	NB Off	1	1,500	1,270	0.85	D	1,250	0.83	D	1,360	0.91	E	1,270	0.85	D	90	20	*	6.6% 1.8%
	Jamboree Road	SB Off	2	500	2,340	1.04	F	2,110	0.94	E	2,730	1.21	F	2,690	1.20	F	390	580	*	21.6%
	MacArthur Boulevard	NB On	1	1,000	440	0.29	A	1,530	1.02	F	490	0.33	B	1,590	1.06	F	50	60	*	10.2% 3.8%
		NB Off	1	500	1,640	1.09	F	890	0.59	C	1,770	1.18	F	920	0.61	C	130	30	*	7.3%
	Bristol Street	SB Loop On	1	1,000	1,090	0.73	D	1,490	0.99	E	1,110	0.74	D	1,610	1.07	F	20	120	*	7.5%
SR-55	Baker Street	SB On	1	1,000	510	0.57	C	1,250	1.39	F	510	0.57	C	1,290	1.43	F	0	40	*	3.1%
	Baker Street	NB Off	1	1,500	1,420	0.95	E	1,300	0.87	D	1,450	0.97	E	1,350	0.90	E	30	50	*	3.7% 1.1%
	MacArthur Boulevard	SB On Loop	1	1,000	170	0.19	A	800	0.89	D	200	0.22	A	870	0.97	E	30	70	*	15.0% 8.0%
	Dyer Road	NB On Direct	1	1,000	330	0.22	A	1,350	0.90	D	390	0.26	A	1,400	0.93	E	60	50	*	15.4% 3.6%
SR-73	Jamboree Road	SB Off	2	500	2,619	1.16	F	2,867	1.27	F	2,727	1.21	F	2,938	1.32	F	109	71	*	4.0%
	Campus Drive	NB On	1	1,000	629	0.42	B	1,983	1.32	F	818	0.55	C	2,111	1.41	F	189	128	*	23.1% 6.1%

3. Revisions to the Recirculated Draft EIR

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