

*Appendix B*

*2008 Initial Study, Notice of Preparation (NOP), and NOP  
Responses*



## *Appendices*

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## Notice of Preparation

DATE: September 18, 2008

TO: Responsible Agencies and Interested Parties

FROM: City of Irvine

SUBJECT: **Notice of Preparation of a Draft Environmental Impact Report**

The City of Irvine will be the Lead Agency and will prepare an environmental impact report for the project identified below. The City released the Initial Study for an extended public review period of 45-days for this process from January 8, 2007 to February 22, 2007. This notice advises interested parties and responsible agencies that the project description has been revised to reduce the allowable number of units from 20,000 to 15,000, as well as up to 1,191 additional density bonus units. The revisions to the proposed project do not result in any changes to the Scope of the upcoming EIR from what was previously identified in the January 8, 2007 Initial Study and Notice of Preparation (NOP).

The project description, location, and the probable environmental effects are contained in the attached materials. A copy of the Initial Study is attached. Additional information regarding the IBC Vision Plan and Mixed Use Overlay Zoning Code, including the full Initial Study may be found on the City of Irvine's IBC website at [http://www.cityofirvine.org/depts/cd/planningactivities/ibc\\_graphics.asp](http://www.cityofirvine.org/depts/cd/planningactivities/ibc_graphics.asp)

We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

We request your comments on the revised project description. If you provided comments previously, and the revised project description does not alter your original comments, there is no need to respond to this notice as you comments are already included in the official record. If you have additional comments, please send your response to the City of Irvine at the address shown below.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but ***not later than Monday, October 20, 2008, at 5:00 p.m. (30-day review period)***

Please send your response to the City of Irvine at the address shown below. We will need the name for a contact person in your **agency**.

**Project Title:** Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36)

**Project Applicant, if any:** City of Irvine

**Send Responses to:** Bill Jacobs, AICP, Principal Planner,  
City of Irvine, P.O. Box 19575, Irvine, CA 92623-9575.  
Email: [bjacobs@ci.irvine.ca.us](mailto:bjacobs@ci.irvine.ca.us).  
Telephone: (949) 724-6521. Fax: (949) 724-6440.

**CITY OF IRVINE  
INITIAL STUDY AND ENVIRONMENTAL EVALUATION**

1. **Project Title:** Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code
2. **Lead Agency Name and Address:** City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575
3. **Project Sponsor's Name and Address:** City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575
4. **Contact Person and Phone Number:** Bill Jacobs, AICP, Principal Planner, (949) 724-6521
5. **Project Location:** The 2,800-acre Irvine Business Complex (IBC) is located within the western portion of the City of Irvine in south/central Orange County. More specifically, the IBC is generally bounded by the former Tustin Marine Corps Air Station (MCAS) to the north, the San Diego Creek channel to the east, John Wayne Airport and Campus Drive to the south, and the Costa Mesa (SR 55) Freeway to the west. (see Figure 1, Regional Location and Figure 2, Project Location).
6. **General Plan Designation:** Urban and Industrial
7. **Zoning:** 5.0 IBC Mixed-Use, 5.1 IBC Multi-Use, 5.2 IBC Industrial, and 5.3 (including 5.3 A-D for specific sites) IBC Residential
8. **Description of Project:** Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. (Attach additional sheets if necessary.)

The proposed project consists of the following components:

1. A General Plan Amendment to:
  - a) Adopt the Irvine Business Complex (IBC) Mixed Use Community Vision Plan, which outlines the City's policies and objectives for addressing residential and mixed use development within the IBC, by adding new policy language to current Land Use Element text and adding the Vision Framework Plan (Figure 3-4 of the NOP) as new Figure A-3 (IBC).
  - b) Establish a cap of 15,000 dwelling units for the IBC area (excluding density bonus units pursuant to state law), with an offsetting reduction of non-residential office equivalency square footage in General Plan Table A-1, for units under the cap that have not yet been approved. The General Plan/Zoning cap for the IBC is 9,401 residential units, therefore, a unit cap of 15,000 units would provide for a potential of 5,599 additional dwelling units (of which 2,522 are currently in process) in the IBC beyond that which is already existing or approved.

The 9,401 units within the General Plan and Zoning Cap are distributed as follows:

- 4,524 existing residential units
- 2,111 units under construction



- 2,766 residential units approved

The 9,401 units currently existing/approved/under construction, plus the 2,522 pending units currently in process, equal a total of 11,923 units, which would therefore yield a potential of 3,077 new units under the proposed 15,000 unit cap. The details (location, timing, density and design) of these 3,077 are unknown because there are no currently pending applications for these units.

The 2,522 pending units include the following proposed projects for which applications are currently on file with the City, and which will be evaluated in the EIR:

- Martin St Condos- 2301 Martin Street: 82 residential condominium units in a four-story building, over two levels of parking, on a 2.02-acre site.
- 2851 Alton- Northwest corner of Alton Parkway and Murphy: 170 residential condominiums units in a four story-building wrapped around a four-level parking garage, on a 3.72-acre site.
- Avalon II- 16901 Jamboree: 144 base units (plus 35 density bonus units) in a four- to five-story building, on a 2.8-acre site.
- Irvine Technology Center- Northwest corner of Jamboree and Campus Drive: 1,000 residential units: 44,000 square feet of office, 30,000 square feet of retail, on an 18.84-acre site.
- 16542 Millikan- Southwest corner of Barranca and Millikan: 151 residential units in a four-story podium building over two levels of parking, on a 3.03-acre site
- 17150 Von Karman: 469 residential units in a five-story podium over three-story parking and four stories wrapped around a four-level parking garage, on a 9.15-acre site.
- 16952 Millikan- Northeast corner of Alton and Millikan: 126 residential units (plus 30 density bonus units) in a four-story building wrapped around a parking garage, on a 2.53-acre site
- Mountain Vista- 2501 Alton- Northwest corner of Alton and Millikan:186 residential condominium units in a four-story podium building over two levels of parking, on a 3.91-acre site
- 2852 Kelvin : 194 residential apartments in a four story-building wrapped around a parking garage, on a 3.2-acre site

The total 5,599 additional new units (either potential or in process) remaining under the 15,000 unit cap will be offset by a reduction of 2,715,062 sq. ft. of non-residential office equivalency square footage.

Construction of the 2,522 units in process is assumed to be completed by 2013, and that the remaining 3,077 units, along with the above-mentioned reallocation of land uses, would be completed by Post-2030 to complete the Vision Plan.

In addition to the 15,000 unit cap, the EIR and Traffic Study will analyze and address the potential for 1,191 additional density bonus units, which are excluded from local intensity limitations by state law, as follows:

- 110 known density bonus units from known pending projects
- A theoretical maximum of 1,081 additional units, assuming the remaining 3,077 units are built with a maximum allowable additional density bonus of 35 percent.

For the areas of the proposed Vision Plan in which residential uses are supported (Urban Neighborhood and Multi-Use districts, and excluding the Business Complex districts on Construction Circle and west of the Armstrong Channel), a total potential of 9,096,017 non-residential square feet and 458 hotel rooms remain to be built based on the existing trip caps for the area. The theoretical conversion of this remaining potential non-residential development to residential units would yield a potential total of 24,535 additional units beyond the 9,401 existing and approved units noted above, assuming a theoretical, but unlikely worst case scenario in which the entire remaining development potential in the IBC would be residential.

- c) Remove density cap of 52 units per acre from Land Use Element Table A-1 and add a minimum 30 units per acre density requirement, so that no maximum density limitation is required for a project, but a minimum is required to ensure benefit higher density housing for a mixed use community.
- d) Add policies regarding pedestrian-oriented streets to Circulation Element
- e) Add IBC trails network to Circulation Element Figure B-4
- f) Add new policies and objectives for noise in mixed use areas.
- g) Add new noise and land use noise compatibility standards to Noise Element Figures F-1 and F-2.
- h) Add policies regarding urban parks to Parks and Recreation Element

2. A Zoning Ordinance Amendment to:

- a) Add new Chapter 5-8 to adopt the IBC Residential Mixed Use Overlay Zone, which defines regulatory zoning districts for properties within the IBC, and outlines a process for analysis of compatibility of residential development with adjacent businesses. (Figure 3-5, Overlay Zone Regulating Plan), and
- b) Update Chapter 9-36 provisions regarding the IBC traffic mitigation fee program.
- c) Revise the statistical analysis in Section 9-36-5 to establish a cap of 15,000 dwelling units for the IBC area (excluding density bonus units pursuant to state law), with an offsetting reduction of non-residential office equivalency square footage, for units under the cap that have not yet been approved, consistent with the proposed General Plan Amendment.

3. A Municipal Code Amendment to revise Division 5, Subdivisions, Chapter 10, Dedications; Reservations, to incorporate new urban park standards into the City's park dedication requirements for the IBC.

4. A program of optimizing land uses in the IBC for remaining unbuilt IBC Zoning Potential and Approvals, within existing IBC vehicle trip allocations by Traffic Analysis Zone (TAZ), including:
  - a) Conversion of office, manufacturing and/or warehouse uses to retail use to accommodate demand from current and planned residential development;
  - b) Buildout of remaining non-residential zoning potential; and
  - c) Reuse of under-utilized land uses to higher intensity uses.

The reallocation of land uses under this program would not change the development intensity assigned to each parcel per the 1992 IBC rezoning program, with the exception of parcels with unutilized zoning potential/approvals. Unutilized zoning potential/approvals for these parcels have been combined within each TAZ to allow a larger amount of zoning potential to accommodate reuse of underutilized land uses to higher intensity uses.

5. A program of Infrastructure Improvements to improve walkability and connectivity within the IBC.
  6. A set of design guidelines, applicable to new residential mixed use projects in the IBC.
  7. Changing the name of the Irvine Business Complex as directed by the City Council (not a part of required CEQA action for project, but included for informational purposes).
  8. The EIR may also evaluate potential options for trip reduction within the mixed-use context of the IBC.
9. **Existing Land Use:** The Irvine Business Complex (IBC), Planning Area 36, is a mixed-use complex covering approximately 2,700 acres and is located within the western portion of the City of Irvine in south/central Orange County. The majority of the project site is zoned multi-use. The prominent land use is office, with substantial amounts of industrial/warehouse uses and several acres of medium density residential use totaling approximately 5,700 units. A 40-acre parcel of the IBC is detached and located to the south of the main body of the IBC project site. This parcel is bounded by the San Joaquin Marsh and is adjacent to the City of Newport Beach. The IBC is bordered by the cities of Newport Beach to the south, Santa Ana and Costa Mesa to the west, and Tustin to the north. The residential village of Westpark is located adjacent to the IBC on the east. Adjacent to the IBC, on the north, is the City of Tustin and the former MCAS Tustin, currently being redeveloped with residential and commercial uses.
10. **Surrounding Land Uses and Setting:** On the east, separated by the San Diego Creek Channel, the IBC abuts the village of Westpark (within Irvine). Although a predominantly residential village, Westpark includes a District Commercial Center and the Irvine Civic Center. The San Joaquin Marsh is located south of the 405 Freeway and abuts most of the eastern edge of the Irvine Business Complex. The San Joaquin Marsh, a preserved natural area, is the uppermost extension of Upper Newport Bay and is the only remaining portion of a once extensive marsh which previously covered a good portion of Irvine flatlands. Southeast of the IBC, adjacent to the marsh, is the University of California, Irvine-North Campus. The City of Newport Beach is also located south of IBC. There is no distinct edge clarifying the boundary between the IBC and the City of Newport Beach, as similar multi-use developments overlap each other forming a cohesive urban form across the City border. The John Wayne Airport is located adjacent to the

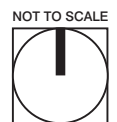
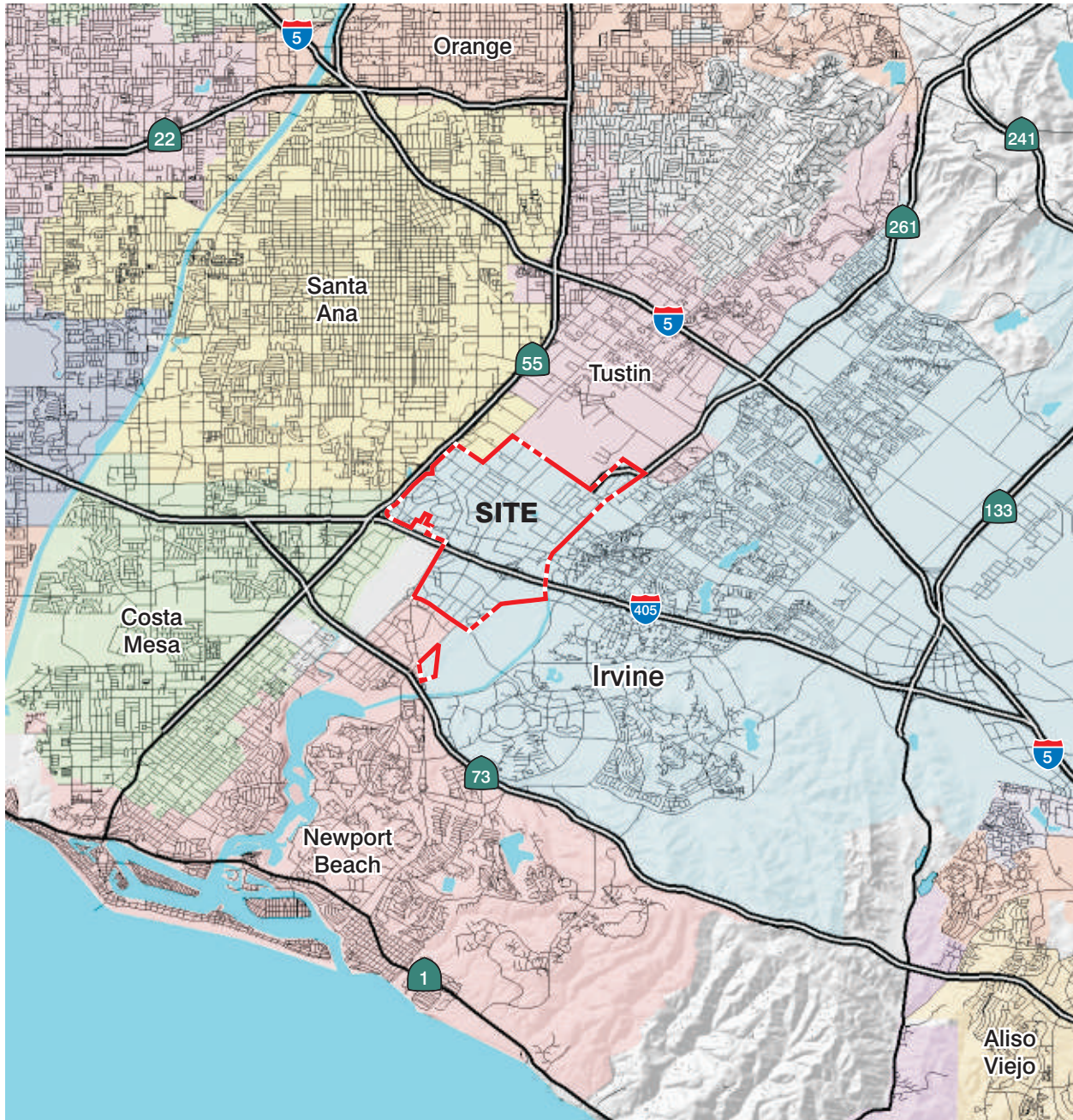
southwest portion of the Irvine Business Complex. The airport is currently served by several hotels and restaurants within the cities of Newport Beach and Irvine. The Newport Freeway (State Route 55) forms the northwest edge of the IBC and separates it from the cities of Costa Mesa and Santa Ana. Although currently strong, this edge will become less pronounced over time as additional freeway over crossings are constructed. Because of the scale and quality of development in the area, projects such as Hutton Center, MacArthur Place, and Pacific Center in Santa Ana and the South Coast Metro areas of Costa Mesa, will help to visually extend the IBC urban form across the freeway. As the Sakioka Farms property is developed (in Costa Mesa), a major office and commercial corridor between the IBC and the South Coast Metro/Performing Arts Center will be established. Adjacent to the IBC, on the north, is the City of Tustin and the former MCAS Tustin, which is currently being redeveloped with residential and commercial uses.

**11. Other public agencies whose approval is required:** *(e.g., permits, financing approval, or participation agreement.)*

1. California Department of Transportation (Caltrans): Encroachment permits may be required if any improvements are proposed within Caltrans right-of-way.
2. Orange County Flood Control Flood Control District (OCFCD): Encroachment permits may be required if any improvements are proposed within OCFCD right-of-way.

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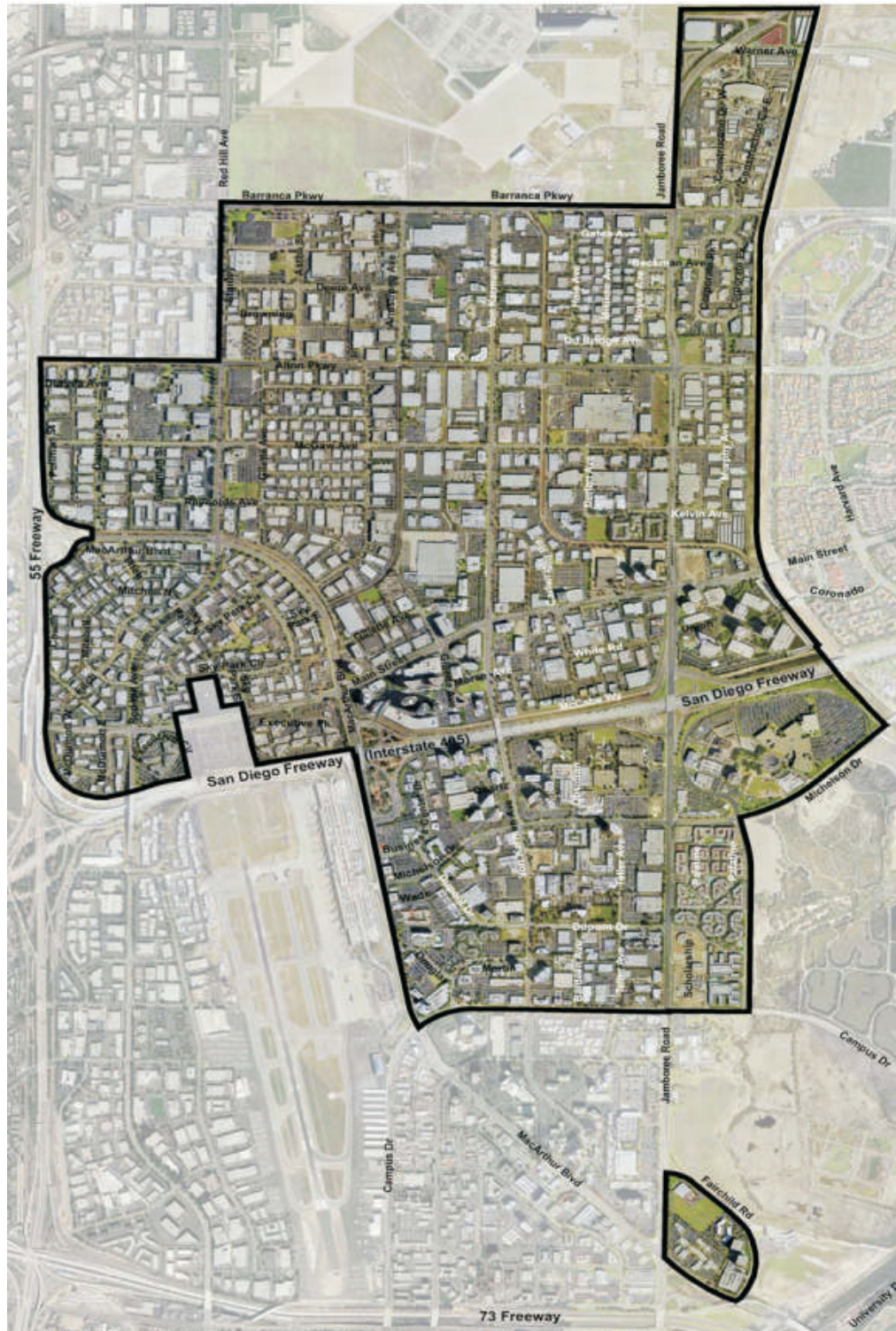
## Regional Location



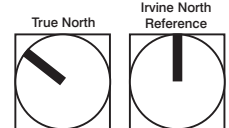
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## Project Location



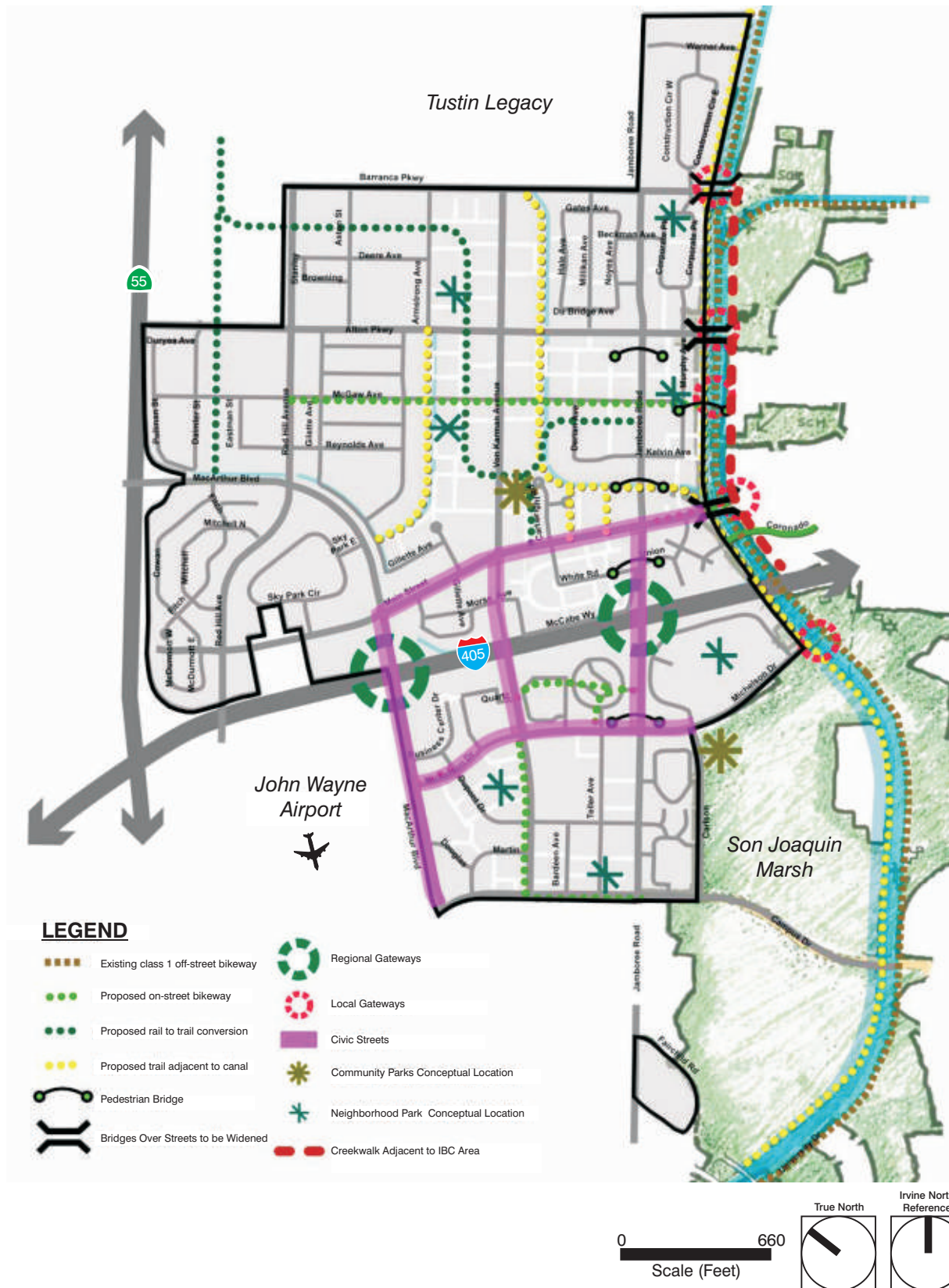
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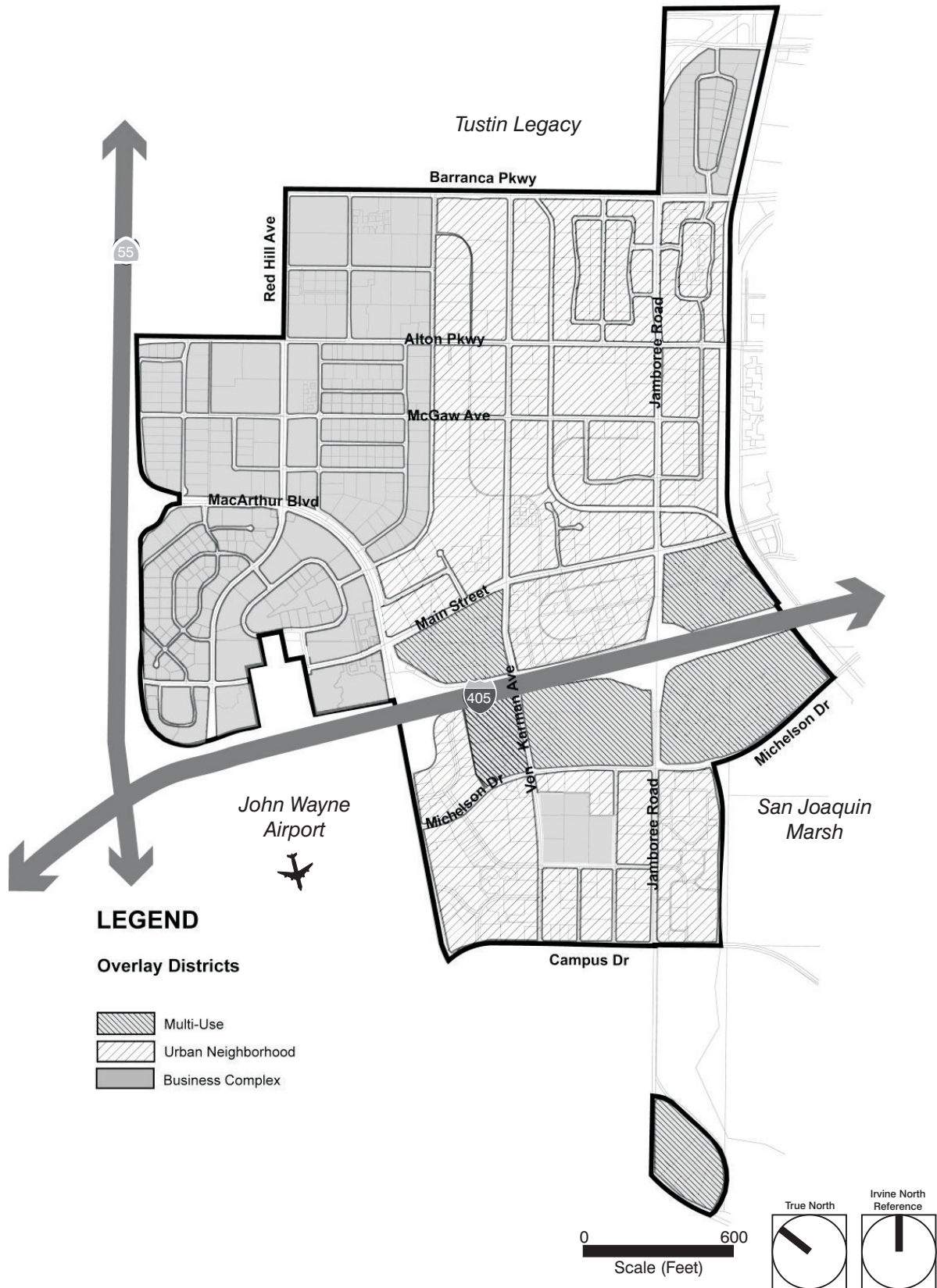
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# IBC Vision Framework Plan



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# Overlay Zone Regulation Plan



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## *Proposed IBC Infrastructure Improvements*

<b><u>NO.</u></b>	<b><u>IMPROVEMENT</u></b>	<b><u>DESCRIPTION</u></b>
1.	<b>IBC SHUTTLE OPERATIONS</b>	Estimated annual operating costs for three shuttle routes (two peak hour routes and one mid-day route) as defined by the 2004 Kimley-Horn study.
2.	<b>JAMBOREE BRIDGES</b>	
	<b>A. Primary Bridges</b>	Two pedestrian bridges; one south of Main Street and the other in the vicinity of Dupont. Both are estimated as being the more stylistically significant suspension and/or steel arch bridge type as they are intended to also serve as IBC entry statements.
	<b>B. Secondary Bridges</b>	Two pedestrian bridges; one north of Main Street (at the Barranca Channel) and the other south of Alton. Both are estimated as concrete structures and would either be precast or cast-in-place.
	<b>C. Michelson Bridge Budget Supplement</b>	The pedestrian bridge north of Michelson is also proposed to be a "Primary Bridge" and serve as an IBC entry statement. This item provides sufficient supplemental funds (relative to those already required through development conditions) to fund the full estimated cost of a stylistically significant bridge.
3.	<b>CREEKWALK</b>	
	<b>A. Landscaping</b>	The estimate provides for full implementation of both the hardscape and landscaping of the Creekwalk area (which consists of the Edison easement area between Barranca and Main Street). Also included is the estimated annual cost for maintenance of this facility and for lease fees to Edison, the owner of the land.
	<b>B. Creek Bridges</b>	
	<b>i. Bridge Expansion</b>	Through this project, an additional increment (approximately twelve feet wide) would be added to existing roadway bridges to provide for separated bike and pedestrian usage. These would be located at the Main Street, Alton and Barranca crossings over the San Diego Creek.
	<b>ii. New Structure</b>	A new freestanding bridge for exclusive bike and pedestrian usage would be installed over the San Diego Creek in the vicinity of the projection of McGaw or at San Marco Park on the east side of the Creek. This structure, at the heart of the Creekwalk area is also estimated as being a stylistically significant structure.
4.	<b>SIDEWALK COMPLETION PROGRAM</b>	This program installs sidewalks to fill the gaps in the IBC sidewalk system as identified in the City's Inventory. The program provides for installation of 5- to 8 foot-wide sidewalks behind 8 feet of landscaped parkway (as defined in the Vision Statement).
5.	<b>BRANCH LIBRARY AND PARKING STRUCTURE</b>	This item provides for the construction of a Branch Library and construction of the related parking necessary to serve the library.
6.	<b>OPTICOM SYSTEM</b>	This improvement consists of installing the equipment necessary at each signal location and in all applicable vehicles to allow for emergency vehicles to "pre-empt" normal operation of the traffic signals within the IBC area in order to speed emergency response.

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## Environmental Factors Potentially Affected:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

X	Aesthetics		Agriculture Resources	X	Air Quality
	Biological Resources	X	Cultural Resources	X	Geology/Soils
X	Hazards & Hazardous Materials	X	Hydrology/Water Quality	X	Land Use/Planning
	Mineral Resources	X	Noise	X	Population/Housing
X	Public Services	X	Recreation	X	Transportation/Traffic
X	Utilities/Service Systems	X	Mandatory Findings of Significance		

## Determination (To be completed by the Lead Agency):

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	
I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.	X
I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION, pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	

 for  
Bill Jacobs, AICP

September 16, 2008  
Date

Principal Planner  
Title

City of Irvine  
For



## Evaluation of Environmental Impacts:

- 1) A brief explanation is required for all answers except “No Impact” answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. “Potentially Significant Impact” is appropriate if there is substantial evidence that an effect may be significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.
- 4) “Negative Declaration: Less Than Significant With Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, “Earlier Analyses,” may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 1 5063( c) (3)(D). In this case, a brief discussion should identify the following:
  - a) Earlier Analysis Used. Identify and state where they are available for review.
  - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
  - c) Mitigation Measures. For effects that are “Less than Significant with Mitigation Measures Incorporated,” describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project’s environmental effects in whatever format is selected.
- 9) The explanation of each issue should identify:
  - a) the significance criteria or threshold, if any, used to evaluate each question; and
  - b) the mitigation measure identified, if any, to reduce the impact to less than significance

Issues:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<b>I. AESTHETICS:</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	X			
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	X			
<b>II. AGRICULTURE RESOURCES:</b> In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to nonagricultural use?				X
<b>III. AIR QUALITY:</b> Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	X			
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	X			
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	X			
d) Expose sensitive receptors to substantial pollutant concentrations?	X			
e) Create objectionable odors affecting a substantial number of people?	X			
<b>IV. BIOLOGICAL RESOURCES:</b> Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			X	

<b>Issues:</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporation</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			X	
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinances?			X	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X
<b>V. CULTURAL RESOURCES:</b> Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	X			
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	X			
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	X			
d) Disturb any human remains, including those interred outside of formal cemeteries?	X			
<b>VI. GEOLOGY AND SOILS:</b> Would the project?				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
ii) Strong seismic ground shaking?	X			
iii) Seismic-related ground failure, including liquefaction?	X			
iv) Landslides?	X			
b) Result in substantial soil erosion or the loss of topsoil?	X			
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	X			
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	X			
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				X

Issues:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<b>VII. HAZARDS AND HAZARDOUS MATERIALS:</b> Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	X			
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	X			
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	X			
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	X			
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	X			
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	X			
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X
<b>VIII. HYDROLOGY AND WATER QUALITY:</b> Would the project:				
a) Violate any water quality standards or waste discharge requirements?	X			
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g. the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	X			
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off- site?	X			
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner in which would result in flooding on- or off-site?	X			
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff and/or generate NPDES compliance issues pursuant to the following list? 1. Potential impact of project construction on storm water runoff; 2. Potential impact of project's post-construction activity on storm water runoff;	X			

<b>Issues:</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporation</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
3. Potential for discharge of storm water pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas, loading docks or other outdoor work areas; 4. Potential for discharge of storm water to affect the beneficial uses of the receiving waters; 5. Potential for significant changes in the flow velocity or volume of storm water runoff to cause environmental harm; and 6. Potential for significant increases in erosion of the project site or surrounding areas.				
f) Otherwise substantially degrade water quality?	X			
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	X			
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	X			
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
j) Inundation by seiche, tsunami, or mudflow?				X
<b>IX. LAND USE AND PLANNING:</b> Would the project				
a) Physically divide an established community	X			
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect	X			
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X
<b>X. MINERAL RESOURCES:</b> Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X
<b>XI. NOISE:</b> Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	X			
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	X			
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	X			
d) A substantial temporary or periodic increase in ambient noise levels	X			

<b>Issues:</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporation</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
in the project vicinity above levels existing without the project?				
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	X			
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X
<b>XII. <u>POPULATION AND HOUSING:</u></b> Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	X			
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X
<b>XIII. <u>PUBLIC SERVICES:</u></b>				
a) Would the project result in substantial adverse physical impacts associated with the provision 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 any of the public services:	X			
Fire Protection?	X			
Police Protection?	X			
Schools?	X			
Parks?	X			
Other Public Facilities?	X			
<b>XIV. <u>RECREATION:</u></b>				
a) Would the project 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?	X			
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	X			
<b>XV. <u>TRANSPORTATION/TRAFFIC:</u></b> Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	X			
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	X			
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in			X	

<b>Issues:</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporation</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
substantial safety risks?				
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?				X
e) Result in inadequate emergency access?	X			
f) Result in inadequate parking capacity?	X			
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	X			
<b>XVI. UTILITIES AND SERVICE SYSTEMS:</b> Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	X			
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects??	X			
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects – and/or would the project include a new or retrofitted storm water treatment control Best Management Practice (BMP), (e.g. water quality treatment basin, constructed treatment wetlands), the operation of which could result in significant environmental effects (e.g. increased vectors and odors)?	X			
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	X			
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	X			
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	X			
g) Comply with federal, state, and local statutes and regulations related to solid waste?	X			
<b>XVII. MANDATORY FINDINGS OF SIGNIFICANCE:</b>				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	X			
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	X			
c) Does the project have environmental effects which will cause	X			

<b>Issues:</b>	<b>Potentially Significant Impact</b>	<b>Less Than Significant With Mitigation Incorporation</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
substantial adverse effects on human beings, either directly or indirectly?				

**SUPPORTING INFORMATION SOURCES**

1. City of Irvine General Plan Comprehensive Update. Prepared by the City of Irvine, March 9, 1999, updated August 2007.
2. City of Irvine Zoning Ordinance, Supplement No. 50, City of Irvine, California. Published for the City of Irvine, July, 1997.
3. Implementation Agreement Regarding the Natural Community Conservation Plan for the Central/Coastal Orange County Subregion of the Coastal Sage Scrub Natural Community Conservation Program. Prepared for the County of Orange, May 1996.
4. Irvine Master Environmental Assessment (MEA). Prepared by Community Planning Services, Inc. for the City of Irvine, April 1986.



## Checklist Discussion

### ***I. AESTHETICS***

#### **a, b. No Impact.**

The Irvine Business Complex (IBC) is located in an urbanized area and is currently developed with office, industrial, commercial and residential uses. The proposed project is not located near a state scenic highway and will not have an adverse effect on a scenic vista. As a result, no impacts are anticipated and these issues will not be addressed in the EIR.

#### **c. Potentially Significant Impact.**

The 2,800-acre IBC project area is located in an urbanized area and is currently developed with office, industrial, commercial and residential uses. However, the proposed project anticipates the redevelopment of existing industrial, small office, and other lower intensity uses for more intense mixed-use development- within existing vehicle trip limitations- including mid- and high-rise office and residential uses. Further evaluation is required to whether the proposed development plan would result in any significant adverse aesthetic impacts. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **d. Potentially Significant Impact.**

The majority of the project area is already developed and currently generates light and glare. However, the proposed project anticipates the redevelopment of existing industrial, small office, and other lower intensity uses for more intense mixed-use development- within existing vehicle trip limitations- including mid- and high-rise office and residential uses. Future residential, mixed-use neighborhoods and non-residential uses would include a variety of outdoor lighting, such as street lights, building-mounted and walkway area security lighting, landscape enhancements and other ornamental lighting, and possibly other light fixtures in parking areas. These new sources of outdoor lighting could substantially change the nighttime character of the project site and could create off-site glare impacts or otherwise adversely affect the aesthetics of this area, as viewed from surrounding areas. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### ***II. AGRICULTURE RESOURCES***

#### **a, c. No Impact.**

No agricultural zoning or operations exist within the vicinity of the project area and the site is not designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. The proposed project would not result in the conversion of Farmland to nonagricultural use. As a result, no impacts are anticipated to the environment and this impact will not be discussed in the IBC EIR.

#### **b. No Impact.**

None of the lands included in the project area are currently under Williamson Act contract. As a result, there is no impact to the environment and this impact will not be discussed in the IBC EIR.

## **II. AIR QUALITY**

Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

### **a. Potentially Significant Impact.**

This project will increase residential intensity in the IBC, within existing vehicle trip limitations. Further evaluation is required to determine whether this project will conflict with the adopted South Coast Air Quality Management Plan (AQMP). Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **b, c. Potentially Significant Impact.**

An air quality analysis is required to determine if the potential mobile and stationary air emissions associated with the project would violate any air quality standard or contribute substantially to an existing or projected air quality violation. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **d. Potentially Significant Impact.**

An air quality analysis is required to determine if the potential mobile and stationary air emissions associated with the project could result in exposure of sensitive receptors to significant concentrations of air pollutants. This evaluation will need to address potential impacts to sensitive receptors in nearby communities and any other sensitive receptor locations that would be exposed on a recurring basis to substantial air emissions associated with this project. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **e. Potentially Significant Impact.**

Future residential development could involve minor odor-generating activities such as barbeque smoke, lawn mower exhaust, application of exterior paints, etc. A reduction in industrial land uses could lead to odor generating activities related to development of other permitted land uses. As a result, further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

## **III. BIOLOGICAL RESOURCES**

### **a, b. Less Than Significant Impact.**

The IBC area is developed with industrial, office, retail, and residential uses and is surrounded by urban uses. The proposed infrastructure improvements for the area include a Creekwalk adjacent to the San Diego Creek. The creek contains habitat that would support sensitive species which may include federal or State threatened or endangered species. However, no development is proposed within the creek channel, and potential indirect impacts of development of the Creekwalk on property adjacent to the creek is anticipated to be less than significant though control of runoff per existing federal, state and local regulations.

## Checklist Discussion

### **c, d No Impact.**

The project site itself is already developed with industrial, office, retail, and residential uses. The IBC does not contain any riparian habitat, riparian vegetation, wetlands or sensitive natural communities identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife. As a result, no impacts to sensitive, special status species or federally protected wetlands are anticipated.

### **e. Less Than Significant Impact.**

The City of Irvine General Plan does not identify any biotic resources in the vicinity of the project site (Source 1, Figure L-4). The project will not affect any protected biological resources. Decorative trees are found throughout the project site, and along the perimeter, however they are not protected specimens. Implementation of the project will comply with the City of Irvine's Urban Forestry Ordinance. Therefore, implementation of the project will not cause any significant impacts related to these issues.

### **f. No Impact.**

The NCCP for the Central/Coastal Subregion does not designate any sites within the project area for preservation or for open space uses (Source 1, Figure L-4). As a result, the proposed project will not conflict with adopted NCCP/HCP or other habitat conservation plan, and no impacts are anticipated.

## **IV. CULTURAL RESOURCES**

### **a, b. Potentially Significant Impact.**

Historical/archaeological sites are known to exist in the project area. (Source: 1). Historical landmarks on the site include: Michelson Vacuum Tube (Speed of Light experiments), located near the intersection of MacArthur and Fitch; and the Martin Airport, the original site of the Orange County Airport located near Main Street and Red Hill Avenue. Although the 2,800-acre project area is developed and previously disturbed, archeological artifacts could potentially include remains of temporary gathering places or long-term settlements for indigenous Native American cultures who once inhabited central/coastal Orange County. Future site development and redevelopment also has the potential to affect Native American cultural values as well. Therefore, pursuant to Objective E-1 of the Irvine General Plan Cultural Resources Element, a cultural resources survey and report, conducted by a professional archaeologist, is required to determine whether there are known or potential areas of archaeological significance that could be threatened by the proposed development of the project area. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **c. Potentially Significant Impact.**

The project area is located within a low, paleontological sensitivity zone as designated by Figure E-2 of the General Plan. Nonetheless, there is the potential that paleontological resources on-site, including those which may be located in sub-surface deposits, could be exposed and impacted during development when grading activities will disturb two feet below the existing ground surface. Therefore, pursuant to Objective E-1 of the Irvine General Plan Cultural Resources Element, a paleontological resources survey and report, conducted by a professional paleontologist, is required to determine the significance of these resources that could be threatened by the proposed development plan. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Source: 1)

## Checklist Discussion

### **d. Potentially Significant Impact.**

No known human burial sites are located on or in the surrounding areas of the proposed project. However, further evaluation in the EIR is required to determine if the project has the potential to disturb human remains, the level of significance, and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

## **V. GEOLOGY AND SOILS**

### **a. i. No Impact.**

The project site is not located within a designated Alquist-Priolo Zone. Therefore, no impacts due to a fault rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area are anticipated. (Source: 1)

### **ii. Potentially Significant Impact.**

The site is located within a seismically active Southern California and is expected to be subject to strong seismic ground shaking. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Source: 1)

### **iii, iv. Potentially Significant Impact.**

The site is located within Seismic Response Areas (SRA) 1, 2, and 5, as designated by the City of Irvine General Plan Seismic Element (Figure D-3). SRA-1 consists of soft soil with high groundwater and is considered to have a greater potential for ground failure in the form of liquefaction. SRA-2 areas consist of denser soils with deeper ground water and localized liquefaction potential is remote. SRA-5 areas are generally less stable geologic formations representing existing mapped landslide areas. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Source: 1)

### **b. Potentially Significant Impact.**

While the IBC is already developed, further evaluation in the EIR is required to determine if the project would result in substantial erosion or loss of topsoil, the level of significance, if any, and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Source: 1).

### **c, d Potentially Significant Impact.**

The site is located within Seismic Response Areas (SRA) 1, 2, and 5, as designated by the City of Irvine General Plan Seismic Element (Figure D-3). As indicated above, some areas within the project site could contain geologically unstable soil. Therefore, further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Source: 1)

### **e. No Impact.**

The project area is currently developed and sewer service is provided by the Irvine Ranch Water District. No septic systems would be required and no impacts are anticipated.

## **VI. HAZARDS AND HAZARDOUS MATERIALS**

### **a. Potentially Significant Impact.**

The routine transport, use or disposal of hazardous materials is primarily associated with industrial land uses. The IBC Residential Mixed Use Overlay Zone proposes establishing districts and development standards for the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office and residential uses. Therefore, further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **b, d. Potentially Significant Impact.**

Further analysis is necessary to characterize the existing conditions within the project area with respect to past and current activities involving the handling, use, storage, transport or emission of hazardous materials. Based on the findings, it can be determined whether the proposed project could involve a risk of release of hazardous materials into the environment. Therefore, further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **c. Potentially Significant Impact.**

No release of hazardous materials within ¼ mile of an existing or proposed school is anticipated, however, further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **e. Potentially Significant Impact.**

The southwest boundary of the project area is adjacent to the John Wayne Airport and is located within the Orange County Airport Environs Land Use Plan (AELUP). The majority of the site is located outside of the accident potential zones as designated in Figure J-4 of the City of Irvine General Plan; however, a small portion is within the clear zone. Therefore, further evaluation in the EIR is necessary to determine if the project would result in a safety hazard for people residing or working in the project area. (Source 1)

### **f. No Impact.**

There are no private airstrips located in the vicinity of the project area. Therefore development in this area would not cause a safety hazard as a result of a private airstrip.

### **g. Potentially Significant Impact.**

The IBCRMU Overlay Zone proposes establishing districts and development standards for the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office and residential uses. Further evaluation in the EIR is required to determine the impact to emergency access, if any, the level of significance, and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **h. No Impact.**

The project area currently consists of flat, graded land. The site is surrounded by urban development and is not adjacent to, or intermixed with, wildlands. The project area is not located within a High Fire Severity Hazard area as designated by the City of Irvine General Plan Safety Element (Figure J-2, Source

## Checklist Discussion

1). Introduction of residential development into this landscape will not increase the potential for such hazards within the development areas. As a result, there is no impact to the environment and this impact will not be discussed in the IBC EIR.

### **VII. HYDROLOGY AND WATER QUALITY**

#### **a. Potentially Significant Impact.**

A hydrological analysis of the existing and post-development hydrology is required to determine whether this project could result in the violation of any water quality standards or waste discharge requirements. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **b. Potentially Significant Impact.**

The IBC is an urbanized, developed area with a high percentage of impervious surfaces. Implementation of the proposed project would not result in the covering of pervious surfaces so as to interfere substantially with groundwater recharge. However, portions of the IBC consist of soft soils with high groundwater and future development could interfere with groundwater levels. As a result, a hydrological analysis of the existing and post-development hydrology is required to determine whether this project would substantial impact groundwater recharge. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **c. Potentially Significant Impact.**

Further analysis of the existing and post-development hydrology is required to determine whether this project could result in significant impacts to erosion or siltation on- or off-site. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **d. Potentially Significant Impact.**

Future development in accordance with the proposed project is not expected to alter current water courses, or affect the course or direction of water movements during storm conditions. However, further analysis of the existing and post-development hydrology is required to determine whether this project could result in significant impacts due to alteration of the course or direction of existing water courses, or flooding. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **e. Potentially Significant Impact.**

The IBC is an urbanized, developed area with existing storm water drainage systems. Future development of project area in accordance with the proposed project is not expected to change absorption rates, drainage patterns and the rate and amount of surface runoff, compared to the current already developed condition. However, analysis of existing and post-development hydrology is required to determine whether such changes would result in significant impacts on or off-site, including downstream storm drainage facilities. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

## Checklist Discussion

### **f. Potentially Significant Impact.**

Further analysis of the existing and post-development hydrology is required to determine whether this project could result in significant impacts to surface water quality. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **g, h. Potentially Significant Impact.**

Portions of the project site are located within a 100-year flood hazard area as designated in Figure J-3 of the City's General Plan. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Source: 1)

### **i. No Impact.**

The project area is not located within a Dam Inundation Area therefore no further assessment of this issue is warranted.

### **j. No Impact.**

The project area is located several miles inland from the Pacific Ocean and is not subject to tsunami hazard. No reservoirs are located in the project area and the site consists of flat topography. As a result, no further assessment of this issue is warranted.

## **VIII. LAND USE AND PLANNING**

### **a. Potentially Significant Impact**

The IBCRMU Overlay Zone proposes establishing districts and development standards to address the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office and residential uses. The proposed project is generally consistent with the existing mixed-use nature of the IBC. However, given the original industrial and commercial nature of the IBC area, the transition of the area with newer residential and mixed use projects could potentially divide the existing non-residential community, thereby creating a potentially significant impact, which would require further analysis in the EIR

### **b. Potentially Significant Impact.**

The General Plan land use designation for the IBC is Urban and Industrial. The zoning designations are 5.0 IBC Mixed Use, 5.1 IBC Multi-Use, 5.2 IBC Industrial, and 5.3 (including 5.3 A-D for specific sites) IBC Residential. The proposed project consists of a number of components designed to facilitate additional residential mixed use development in the IBC, within existing IBC vehicle trip limitations. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible. (Sources: 1,2)

### **c. No Impact.**

The Natural Community Conservation Plan for the Central/Coastal Orange County Subregion of the Coastal Sage Scrub Natural Community Conservation Program (NCCP) does not designate this site for preservation or open space uses. Therefore, no impacts are anticipated. (Source 1, Figures L-2 and L-3)

## Checklist Discussion

### **IX. MINERAL RESOURCES**

#### **a, b. No Impact.**

The project area is urbanized and is developed with office, retail, residential and industrial uses and is surrounded by similar uses. The project area and surrounding areas are not recognized as sources of important mineral resources. (Source: 1) Therefore, this project would have no impact on such resources.

### **X. NOISE**

#### **a, b, c, d, e. Potentially Significant Impact.**

A Noise Study is required to develop models of existing and future traffic-related noise levels along the adjacent roadways and freeways, and to estimate construction-related noise where construction activities would occur near existing sensitive receptors. The noise study will need to determine whether such stationary and mobile noise levels would expose persons to severe noise levels, on or off-site. If significant noise impacts are identified, measures to avoid or reduce such impacts to less than significant will also need to be developed, if possible. The project is also located within 2 miles or less of the John Wayne Airport, a public airport. As a result, further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **f. No Impact.**

The project is not located within the vicinity of a private airstrip and no potential impacts are anticipated.

### **XI. POPULATION AND HOUSING**

#### **a. Potentially Significant Impact.**

The proposed project includes a Vision Plan and Mixed Use Overlay Zoning Code to allow for a total of 15,000 dwelling units (plus 1,191 additional density bonus units exempt by state law from intensity limitations), based on an offsetting reduction of **2,715,062** square feet of office equivalency development (equivalent to 5,599 pending and potential new units), and an optimization of the remaining and underutilized non-residential square footage within the project area. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **b, c. No Impact**

The proposed project includes a Vision Plan and Mixed Use Overlay Zoning Code to allow for a total of 15,000 dwelling units (plus 1,191 additional density bonus units exempt by state law from intensity limitations), based on an offsetting reduction of **2,715,062** square feet of office equivalency development (equivalent to 5,599 pending and potential new units), and an optimization of the remaining and underutilized square footage within the project area. As a result, no impacts are anticipated.

### **XII. PUBLIC SERVICES**

#### **a, b, c, d, e. Potentially Significant Impact.**



## Checklist Discussion

Development of additional residential units in the IBC would increase the demand for public services, including fire protection, police protection/law enforcement and local schools and libraries. Consultation with the Orange County Fire Authority, the Irvine Police Department, and the Irvine Unified School District, Tustin Unified School District and Santa Ana Unified School District is required to estimate the level and type of demand associated with additional residential development, to determine the type and significance of impacts to existing and planned levels of service, and to develop measures to avoid or reduce potentially significant impacts to less than significant, if possible. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### ***XIII. RECREATION***

#### **a, b. Potentially Significant Impact.**

Development of additional residential units in the IBC would increase the demand for parks and recreational facilities, of various types. However, future residential uses will be required to dedicate parkland including a variety of public and private recreation areas that would serve the future on-site population, in accordance with the City of Irvine's standard of five acres of parks for every 1,000 residents. Therefore, it is expected that potential impacts will be mitigated through compliance with the City's parkland dedication ordinance. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce potential impacts to below a level of significance, if possible.

### ***XIV. TRANSPORTATION/TRAFFIC***

#### **a, b. Potentially Significant Impact.**

The IBCRMU Overlay Zone proposes establishing districts and development standards to address the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office, residential and protect existing businesses.. A comprehensive traffic impact study is required to evaluate the traffic generation and distribution associated with this potential level of development to determine where significant congestion is likely to occur. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

#### **c. Less than Significant Impact**

The proposed project will not have a significant impact on air traffic patterns. Regional air traffic demands would be accommodated by Los Angeles International Airport, John Wayne Airport, Ontario Airport, Long Beach Airport, and San Diego International Airport. As a result, less than significant impacts are anticipated and no further assessment of this issue is warranted.

#### **d. No Impact.**

The City has adopted roadway design standards which would preclude the construction of any unsafe design features. Therefore, no impact is anticipated and this impact will not be discussed in the EIR.

#### **e. Potentially Significant Impact.**

Further evaluation is required to determine whether the traffic generated by future development of the IBC, as proposed, could result in inadequate emergency access within the project site, or to nearby land uses. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

## Checklist Discussion

### **f. Potentially Significant Impact.**

Future development will be required to provide adequate parking, on-site, in accordance with the City of Irvine Zoning Ordinance standards. However, the State of California's density bonus law (SB 1818–Government Code Section 65915) allows applicants who provide at least five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, to provide reduced parking rates on site upon request of the applicant. The State's density bonus law supersedes local parking codes by establishing State parking standards. The State parking standards are applicable to the entire project, not just the affordable units. Those State rates equate to one space per one-bedroom unit and two spaces per two-bedroom unit, inclusive of guest and handicapped parking. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

## **XV. UTILITIES AND SERVICE SYSTEMS**

### **a. Potentially Significant Impact.**

The proposed development of additional residential dwelling units would substantially increase the generation of wastewater. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **b. Potentially Significant Impact.**

Future development of the IBC would substantially increase the demand for water and wastewater treatment services. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **c. Potentially Significant Impact.**

A hydrology study will be prepared as part of the EIR to determine whether existing stormdrain facilities will adequately collect and convey developed site runoff without any significant impact to off-site storm drain facilities, or if new facilities would be needed to handle the runoff from the developed site. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **d. Potentially Significant Impact.**

Future development of the IBC would generate a substantial demand for water for domestic and irrigation purposes. The potential volume of this demand needs to be estimated and compared to existing and planned water supplies, to determine whether development of the IBC would result in significant impacts on local or regional water supplies. Communication with the Irvine Ranch Water District is needed to discuss this project's impact on their water supplies and to determine whether provision of adequate water service to the project would necessitate the construction or expansion of any major water treatment or distribution facilities. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **e. Potentially Significant Impact.**

Future development of the IBC would generate a substantial volume of wastewater on a daily basis. The potential volume of wastewater needs to be estimated and compared to existing and planned off-site sewer capacities, to determine whether development of IBC would exceed such capacities.

## Checklist Discussion

Consultation with the Irvine Ranch Water District and the Orange County Sanitation District is also required to determine whether provision of adequate sewer service to the IBC would necessitate the construction or expansion of any major sewage treatment or collection facilities. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

### **f,g. Potentially Significant Impact.**

Future residential development in the IBC would generate a substantial volume of solid waste on a recurring basis. This volume needs to be estimated and an analysis made of the impact of this solid waste stream on the City of Irvine's ability to comply with its obligations to reduce disposal at landfills, pursuant to AB 939. Further evaluation in the EIR is required to determine the level of significance and to identify mitigation measures which reduce impacts to below a level of significance, if possible.

## ***XVI. MANDATORY FINDINGS OF SIGNIFICANCE***

### **a. Potentially Significant Impact.**

Potentially significant biological impacts are unlikely because the project area is located within a developed urban area and there are no rare or endangered plants or animal species within the project area. Based on the preceding responses, however, this project has the potential to degrade the quality of the environment, and may impact important archaeological and historical resources, which requires further analysis within an EIR.

### **b. Potentially Significant Impact.**

Further analysis is needed to estimate the extent and significance of potential cumulative impacts resulting from the combined effects of the proposed project plus other past, present and reasonably foreseeable future projects.

### **c. Potentially Significant Impact.**

Based on the preceding responses, this project would result in environmental effects which could result in substantial adverse impacts to human beings, either directly or indirectly which requires further analysis within an EIR.



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October 20, 2008

Our File Number: 17HC-135547

***VIA E-MAIL AND U.S. MAIL***

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

Re: Comments on the Notice of Preparation of Draft EIR for the IBC Vision Plan and Mixed Use Overlay Zoning Code

Dear Mr. Jacobs:

This office represents the interests of Allergan, Inc. ("Allergan"), which is headquartered in the Irvine Business Complex ("IBC"). Allergan has been located in the IBC for more than 40 years. It is also one of the largest employers in the IBC and in Irvine as a whole. Allergan has been deeply concerned by Irvine's desire to transform the IBC into a residential-mixed use community will drive out major employers like Allergan. Allergan has repeatedly requested Irvine to consider buffer zones and land use compatibility issues more seriously in its planning efforts.

Allergan has reviewed the revised Notice of Preparation ("NOP") for the Draft Environmental Impact Report ("DEIR") for the IBC Vision Plan and Mixed Use Overlay Zoning Code (the "VP/OZO" or the "Project"). Feeling they are still relevant, Allergan incorporates its previous comments regarding the original NOP via its counsel's correspondence dated February 1, 2007, as well as its previous testimony on the issues in the hearings regarding scoping of the EIR before both the Planning Commission and the Council. Allergan further refers to and incorporates by reference the comment letters of the Cities of Newport Beach and Tustin, as well as those of Deft, Inc. Allergan now submits the following comments, questions and concerns on the amended NOP issued on September 18, 2008.

**SUMMARY COMMENTS**

We see programmatic review of Irvine's plans for the IBC as ideal and essential. Irvine's pursuit of the massive change pursued by Irvine of the IBC from an industrial/business/commercial complex into a residential mixed-use community requires comprehensive review of the impacts. All of the impacts from this change need to be addressed,

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 2

those on the existing environment within the IBC and on the existing human uses within the IBC, as well as those on the proposed residential development. To achieve an accurate assessment of the impacts, Irvine must clearly identify the current environment within the IBC and clearly describe the proposed project. All issues of potential impact must be identified, and then analyzed. Finally, Irvine must avoid simply "rubber stamping" its past actions within the IBC, thus simply creating a *post hoc* rationalization of its past, and somewhat outdated, plans.

## **DETAILED DISCUSSION**

Allergan requests Irvine address the following issues when preparing its environmental analysis of the Project.

### **1. Impacts Both on Existing IBC Environment and on the Incoming Residential Units.**

The primary focus of the analysis needs to be on the impacts Irvine's Project will have on the environment of the IBC itself. As such, Irvine must address the physical environment, as more fully addressed below, and the existing human use of the IBC. (See, California Code of Regulations Title 14, § 15126.2.<sup>1</sup>) As such, Allergan requests Irvine analyze the issue of how the infusion of residential units into the industrial/business/commercial complex will affect the existing human uses within the complex. Irvine, however, also needs to analyze the impacts of the existing environment on the proposed residential units and the people who will inhabit them; though this second issue is not, and should not be considered, the primary issue to be addressed environmentally.

Allergan has made no secret of its conclusion that residential uses are not compatible with industrial/manufacturing uses that exist within the IBC. New residential uses must be "buffered" from the existing industrial/manufacturing uses in order to protect the existing uses from this incompatibility. Please, therefore, thoroughly analyze this issue and provide appropriate mitigation measures that will protect the existing industrial/manufacturing uses within the IBC.

### **2. Environmental Setting and Baseline Issues.**

A clear and detailed description of the environmental setting of the IBC is essential for identifying the baseline from which environmental impacts are to be judged. Unfortunately, the environmental setting has not been clearly described in the NOP, either as to existing uses within

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<sup>1</sup> Chapter 3 of Title 14 of the California Code of Regulations is entitled "Guidelines For Implementation of the California Environmental Quality Act" and is known universally as the "CEQA Guidelines." From this point forward we shall refer to the relevant sections as part of the "Guidelines."

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 3

the IBC, or as to the complex problem that has been created by Irvine proceeding with residential development within the IBC without having completed the necessary environmental review.

As least two issues respecting the baseline need to be addressed. First, Irvine needs to analyze all of the existing business uses within the IBC to establish the baseline uses that are being affected by the introduction of residential units. The analysis needs to clearly identify the nature of the businesses and their characteristics so that compatibility with the proposed infusion of residential uses can be analyzed. Proceeding without this information will leave the ultimate environmental review inadequate since the impacts will be not judged against a sufficiently detailed environmental baseline.

Secondly, Irvine must address all residential projects and their impacts that have proceeded in the past without adequate environmental review. As Irvine is aware, the Superior Court has concluded that Irvine's 1992 IBC EIR is inconsistent with the residential development within the IBC above the cap identified in that environmental document.<sup>2</sup> Thus, all residential projects that have been approved within the IBC through either "tiering off" of the 1992 IBC EIR or amending the 1992 IBC EIR through the use of "addenda" have not undergone adequate review. While those projects cannot now be challenged, their impacts must be analyzed in the context of this new, long overdue, programmatic review of the IBC and Irvine's proposed Project. All of these past projects' impacts must be adequately analyzed and addressed to correct the past environmental errors and mitigate all of the adverse impacts of the Project.

Please, therefore, update and correct your depiction of the existing environmental conditions within the IBC to address these issues.

### **3. Project Description.**

The Project description as presented in the NOP is vague and incomplete. Allergan requests it be amplified and clarified as follows:

#### **a. The Actual Project Should be Described.**

While the NOP describes the elements of the Project, i.e. the means for accomplishing it, it leaves the Project itself undefined. The Project appears to be a plan by Irvine to change the

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<sup>2</sup> Statement of Decision, filed May 23, 2008, page 8, lines 21–23 and page 9, lines 23–24, *City of Newport Beach, et. al. v. City of Irvine, et. al.* (2851 Alton), Orange County Superior Court Case No. 07CC01265 consolidated with 07CC01267, and Statement of Decision, filed May 23, 2008, page 7, lines 24 – 27 and page 8, lines 26 – 27, *City of Newport Beach, et. al. v. City of Irvine, et. al.* (Martin Street), Orange County Superior Court Case No. 07CC01264 consolidated with 07CC01268.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 4

IBC from an overwhelmingly industrial/business/commercial complex into a residential mixed-use community through the infusion of thousands of residential units.

**b. The Actual Project Location Should be Clarified.**

The Project Location does not adequately describe the physical boundaries of the IBC. In addition, it describes the IBC as a whole, but the infusion of residential units appears to only be considered in the eastern portion of the IBC. These issues should be clarified.

**c. Further Project Description Issues Should Be Addressed.**

The Project Description is misleading and should be clarified with respect to the following issues:

*(1) Residential Unit Characterization.*

The distinctions made in the Project description between existing, approved, pending and potential units are overly simplified and misleading. While this information is important for evaluating the Project baseline and environmental impacts, it is unclear how it is relevant to the GPA. In the end, all units proposed by the project in excess of the amount of the residential cap studied in the 1992 IBC EIR (3,982 residential units) should be studied for impacts since the review provided to the units above that amount was inadequate. Technically, therefore, the GPA will allow approval of 11,018 "new" units, including both pending and potential units, plus any approved units that must be re-processed.

As to the 2,522 pending residential units the in proposed projects for which applications are currently on file, it is unclear whether the DEIR will function as project-level review for these projects, or whether future project-level review will be tiered from the program-level GPA DEIR. The Project Description should clarify how these individual projects will be addressed in the GPA DEIR, recognizing that the DEIR should reflect the most complete information available to Irvine.

As to the potential 3,077 "new" residential units allowed under the proposed cap, no details about the location, timing, density and design are provided. For the purposes of environmental review, Irvine will need to make assumptions about the characteristics of these proposed projects, which should be clearly stated in the DEIR. Irvine may also elect to consider alternative assumptions about the location and density of these projects through the alternatives analysis in the DEIR.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 5

(2) *No Commercial Projects are Addressed.*

The Project Description does not list any pending commercial projects. If the Project Description lists pending residential projects, it should also describe pending commercial applications that would be allowed under the General Plan Amendment.

(3) *Residential Unit Offset Through Office Space Reduction.*

The Project Description reflects establishment of a 15,000-unit residential cap through a General Plan Amendment ("GPA"), but then "buries" the fact that the GPA also contemplates the reduction of commercial, office and industrial density by more than 2.7 million square-feet. Although the Project Description states that the 15,000 unit cap will be "offset" by a reduction in non-residential office space, this assertion is based solely on vehicle trips, not on a full range of development impacts. While the reduction in non-residential development may correspond to the increase in residential units, at least one reason for environmental review is to determine whether the impacts will actually be offset or mitigated.

In addition to the question of whether this reduction would actually be an "offset," the EIR should describe the technical basis for this calculation and confirm that Irvine's traffic equivalency estimates are currently valid. All of this information should be made available to the public for review in the DEIR.

(4) *Reallocation of Land Uses.*

The Project Description refers to "reallocation of land uses" on page 2 of the NOP. "Reallocation" suggests a change in the location of allowable land uses, but there is no information about proposed residential locations in the Project Description except for the list of specific projects. The Project Description should explain what is meant by "reallocation." Does it mean changing non-residential to residential? Does it mean taking away excess trip allocations from fully developed parcels or parcels that Irvine staff does not believe will redevelop?

(5) *Market Absorption of Units.*

The Project Description assumes market absorption of 2,522 units over the next 5 years, but then assumes that it will require another 17 years to absorb the remaining 3,077 units. The GPA and the DEIR should explain the basis for this assumption.



Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 6

(6) *Development Potential.*

The Project Description describes a "worst case" scenario in which all remaining vehicle trips in the proposed mixed use portion of the IBC would be developed as residential. Would this be possible under the proposed GPA? If the GPA actually imposes a "cap" on residential development, then the "worst case" scenario is not possible. If the "cap" is nothing more than a goal, then the environmental analysis should discuss the possibility of another 24,500 residential units, or 18,000 more units, than the "cap" in the Project Description.

The Project Description also refers to development potential based on "existing trip caps." As Irvine knows, the environmental documentation for the "existing trip caps" is completely outdated. Although the "existing trip caps" can be used in connection with the plan-to-plan analysis in the DEIR, there is no basis for assuming that the trips are actually available given the current level of service on IBC streets. This issue must be fully reevaluated within the context of the current environmental setting.

(7) *Compatibility Analysis.*

Section 8.2 of the Project Description refers to a process for analysis of compatibility of residential development with adjacent businesses. As Irvine knows, Allergan contends that this analysis is inadequate to protect existing businesses and future residents from the effects of land use incompatibility. The DEIR should fully explore the potential environmental impacts of applying the process in the proposed Overlay Zoning Ordinance.

(8) *Infrastructure Improvements.*

The IBC traffic mitigation fee program must be designed to provide adequate funding for the proposed infrastructure contemplated in the GPA and proposed as mitigation in the EIR. Allergan is very concerned that the proposed infrastructure cannot be funded, and that the Project will result in unmitigated significant adverse impacts to its headquarters.

The DEIR must analyze the impacts of all infrastructure described in or likely to result from the development in the Project Description, including the IBC Shuttle program.

(9) *Parks & Recreation.*

Section 8.3 of the Project Description refers to new urban park standards, but does not describe them. The proposed Municipal Code Amendment is not listed on Irvine's IBC webpage. The new standards should be described so that the public knows whether the new standards will increase or decrease recreational opportunities for future IBC residents.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 7

(10) *Development Intensity Issues.*

Section 8.4 of the Project Description is not clear. It refers to a program of "optimizing land uses ... within existing IBC vehicle trip allocations." What does this statement mean? As noted above, the DEIR must evaluate the adequacy of infrastructure to accommodate existing and planned trips, regardless of the trip allocations in the existing General Plan.

Section 8.4 further states that development intensity assigned to each parcel under the 1992 IBC EIR would not change "with the exception of parcels with unutilized zoning potential/approvals." What does this statement mean? The most likely interpretation is that any parcel eligible for more density/intensity under existing zoning (*i.e.* with unused trip allocations) may be down zoned through the Overlay Zoning Ordinance. If this is Irvine's intent, currently underutilized sites could be locked in once their development intensity is reassigned. The Project Description should clearly state the number and location of parcels that could be down zoned through trip reallocations, including the amount of remaining density.

Section 8.4 goes on to state that "unutilized zoning potential/approvals for these parcels have been combined within each Traffic Analysis Zones ("TAZ") to allow a larger amount of zoning potential to accommodate reuse of underutilized land uses to higher intensity uses." What does this statement mean? Again, it appears that Irvine intends to remove development density from certain sites, assign it to others considered "underutilized," and allow transfers of trips between sites in each TAZ. How does Irvine intend to decide which sites are underutilized and will gain and lose development density? Will Irvine provide adequate notice to property owners? This information is essential for an adequate environmental analysis of the impacts of the Project.

Section 8.4 is also incomplete in that it fails to explain the mechanism by which projects will apply for and obtain development density. For instance, assuming that Project A is currently underutilized and, as a result, loses development potential through the reallocation process, must that parcel remain underutilized, or can it re-acquire development potential through an application or TDR process? Has Irvine defined sending and receiving sites for TDRs? Allergan has reviewed the proposed Overlay Zoning Ordinance and the answer to this question is unclear. The environmental consequences of the development density allocation system can vary dramatically depending on the specifics.

Finally, Section 8.4 refers to TAZ but does not explain how they will be applied to existing and proposed land uses, except to state that unutilized zoning potential has been combined within each TAZ.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 8

Please address the above issues and explain how the rest of the TAZ program will be implemented.<sup>3</sup>

**4. The Existing Environmental Context Must Be Clear.**

Section 7, entitled "Zoning," is incomplete and misleading. While it identifies the land use categories, it does not make it clear that residential uses are in fact currently prohibited in virtually all of the IBC. This failure is compounded by the titles used for the zoning designations. The actual description of the allowable uses should be identified.

Section 9.0, entitled "Existing Land Use," is inconsistent with the balance of the NOP and is internally vague. In addition to the issues addressed in "2" above, please address the following:

- It describes the IBC as consisting of "2700" acres, while elsewhere the NOP describes it as consisting of "2800" acres. This inconsistency should be addressed. As noted above, it is also misleading since only the eastern portion of the IBC is being considered for residential development. The actual acreage should be identified.
- It needs to be clarified regarding the statement that the IBC contains approximately 5,700 residential units on "several acres" of land. Section 8.1 of the Project Description reports 4,524 existing residential units. Please resolve this inconsistency and state the existing acreage devoted to residential use.

Section 10, entitled "Surrounding Land Uses and Setting," is unclear for the following reasons:

- It states that there is no distinct edge defining the boundary between the IBC and Newport Beach because similar developments form a cohesive urban form across Irvine border. As Irvine knows, Newport Beach has adopted strict limits on residential development adjacent to the IBC. Project approval could therefore highlight the different approaches to development, creating an edge between the two cities. The compatibility of development patterns in the two jurisdictions must be addressed in the DEIR.
- It states that the edge created by the Newport Freeway will become less pronounced over time "as additional freeway over crossings are constructed." In addition to edge

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<sup>3</sup> We recognize issued a document entitled "Methodology to Develop Land Use Build out (Post 2030) Program Assuming a Cap of 15,000 Non-Density Bonus Residential Units" was published by Irvine on October 13, 2008. We have not been able to fully analyze that document. Further comments and clarifications, therefore, may be forthcoming.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 9

effects, new freeway crossings could have a significant impact on IBC traffic and development patterns. The Project Description indicates that the new over crossings will be constructed during buildout of the GPA, so they should be included in the environmental analysis.

**5. Identification of Responsible Agencies Is Incomplete.**

Section 11 entitled "Other public agencies whose approval is required" is incomplete. It lists only two other public agencies whose approval may be required. Omitted from the lists are the following agencies whose approval may be required: ALUC; Irvine Ranch Water District; SCAG; USFWS; CDFG; School Districts; John Wayne Airport. Approvals from other agencies may also be required during implementation of the Project. Compliance with the recently-enacted SB 375 may also require approval from other agencies.

**6. The Initial Study Must Comprehensively Address Environmental Issues.**

The Initial Study is incomplete and omits important issues that need to be addressed. Allergan requests Irvine reevaluate the issues addressed below.

**a. Air Quality.**

All Air Quality issues need to be fully addressed. Please provide further analysis of the following issues:

- There is no reference to greenhouse gas ("GHG") emissions, climate change and global warming. Although Irvine is not required to evaluate GHG emissions in its air quality section, it must consider the topic area in the DEIR. The analysis being pursued by Irvine as a program-level EIR. GHG emissions are of critical importance to the ongoing protection of California's environment. They must be analyzed in an EIR of this significance.
- The Initial Study acknowledges that the Project will increase residential use, but only within existing vehicle trip limitations. Although compliance with the South Coast Air Quality Management Plan ("AQMP") is regionally relevant, the reallocation of proposed uses within the IBC and related effects on traffic will also affect local hot spots. The Air Quality analysis should compare the Project with both existing emissions and the AQMP, as well as considering the effect of the density bonus strategy.
- The Air Quality analysis in the DEIR will also be required to evaluate the impacts of locating additional residences near industrial and commercial uses, as well as John Wayne Airport. The air quality analysis should also include any proposed airport expansion in the build-out scenario under the GPA.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 10

**b. Biological Resources.**

The Initial Study discussion of Biological Resources fails to address the fact that the Creekwalk will increase the potential for intrusion by humans and domestic animals into a sensitive area of San Diego Creek. Potential indirect impacts of adjacent development are not limited solely to runoff. The Biological Resources discussion also fails to address potential impacts to San Joaquin Marsh. It is requested that both of these deficiencies be rectified.

**c. Hazardous Materials.**

The Initial Study discussion of Hazards and Hazardous Materials does not clearly identify exposure of large numbers of future residents to hazardous materials as a potentially significant impact of the Project. The DEIR will need to evaluate the impact of bringing new residents to an area where hazardous materials are routinely transported, and identify mitigation measures to avoid or mitigate the impact on existing businesses and future residential development.

This issue is of critical importance with respect to this Project. The injection of residential housing into an historically industrial/manufacturing area presents very significant hazardous materials issues. The past and current use of hazardous materials must be comprehensively analyzed and the information be made a part of the environmental setting. The absence of this information makes it impossible to analyze the impacts and their significance with respect to this Project.

**d. Hydrology and Water Quality.**

The Hydrology and Water Quality analysis in the DEIR will be required to evaluate whether the Project will change absorption rates, drainage patterns and surface runoff in comparison to both existing and planned conditions. Significant changes in regulation of storm water runoff must be considered in the DEIR.

**e. Land Use Planning Analysis.**

The Land Use and Planning analysis in the DEIR will be required to evaluate the effect of the GPA on internal consistency of Irvine's General Plan. Both the increase in residential use and the proposed reduction in commercial/office/industrial use will need to be evaluated for consistency. As noted above, the analysis should also address new planning requirements under SB 375, as well as other regional plans. The DEIR should also consider the Project's impact on Irvine's fulfillment of its housing obligations to provide for a range of housing opportunities under RHNA.

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 11

The Land Use and Planning analysis should also discuss the economic impacts, as well as urban decay, that may result from the widespread introduction of residential uses into an area with incompatible industrial uses. The influx of residential may also be a disincentive for businesses, especially industrial, to invest in locating their business in the IBC. Irvine is required to consider its economy and provision of jobs in evaluating consistency with the General Plan.

The Land Use and Planning analysis in the DEIR should also consider the regional effect of removing land near John Wayne Airport from the inventory of available industrial land by allowing residential uses there instead. The proximity of airport and freeway access is frequently an important factor in commercial/office/ industrial location decisions, which cannot be duplicated at alternative locations.

**f. Noise.**

The Initial Study discussion of Noise ignores the proposed exposure of a large number of future residents to operational noise from existing and planned commercial/office/industrial uses. The Noise analysis in the DEIR cannot be limited to traffic and construction noise as suggested in the Initial Study. While the Initial Study acknowledges the proximity of John Wayne Airport ("JWA"), it does not identify the location of additional future residents as a potentially significant impact. The Noise analysis in the DEIR should also consider the possible expansion of John Wayne Airport in evaluating the buildout scenario.

**g. Population and Housing.**

The Initial Study discussion of Population and Housing misstates the potentially significant impact resulting from an increase of more than 5,500 residential units above existing levels and more than 11,000 units above the maximum contemplated in the 1992 IBC EIR. The Initial Study only describes the proposed "offset" and reallocation of uses in the IBC, and fails to describe the increase in population related to the Project. The Initial Study should describe and the DEIR should address, the fact that the Project will more than triple the existing residential population within the IBC.

It is noted that Irvine has been using a rationale of achieving a "jobs/housing balance" to justify the large infusion of residential units into the IBC. While that analysis makes some sense on a regional basis, it is not effective in addressing issues on a micro scale like the IBC. Irvine must recognize it could be creating a "residential community" that drives the jobs from the IBC. It needs to address this possibility when considering the "jobs/housing balance."

Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 12

**h. Recreation.**

The DEIR analysis of Recreation will need to discuss the acreage of parkland required to mitigate Project impacts, the location of potential park sites, the availability of suitable park sites and the definition of park land.

**i. Transportation/Traffic.**

The Initial Study discussion of Transportation/Traffic states the Project will have no significant impact on air traffic patterns. Increasing the number of residential units near JWA may increase pressure to limit airport growth, which could transfer demand to other regional airports. Removal of industrial land from the current land inventory around JWA may increase demand for industrial land near other regional airports, reallocating freight traffic among other airports in the region. Additionally, the height of proposed residential projects can have, and already is having, an impact on JWA operations.

The DEIR analysis of Transportation/Traffic will need to compare the proposed Project to both the existing and planned baselines. Both types of deficiencies must be addressed in the DEIR.

The DEIR needs to also consider the possibility that it will be creating an environment that actually imports "trips" into the IBC. If it creates a vibrant urban community, trips will not be restricted to internal transportation. Imported trips will throw the delicate balance of internal trip planning off. This issue must be evaluated when addressing Transportation/Traffic issues.

**j. Utilities and Service Systems.**

The DEIR analysis of Utilities and Service Systems will be required to discuss the availability of water for the Project and its consistency with the applicable Urban Water Management Plan(s). It needs to use a realistic resident per unit factor to forecast future utilities and service demands.

**7. Rubber Stamp/Post Hoc Analysis.**

Irvine has placed itself at risk of simply making this new Vision Plan EIR nothing more than a "rubber stamp," or as referred to in legal circles, a "post hoc" analysis, simply rationalizing its past decisions. It has pursued a program of redeveloping the IBC into a residential mixed-use community for years. Now, it is proceeding with the necessary planning and environmental review that should have been performed before initiating actual residential development within the IBC. In performing this work, Irvine must take care to bring fresh

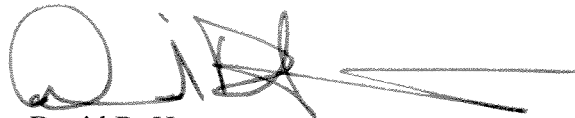
Bill Jacobs, AICP, Principal Planner  
CITY OF IRVINE  
October 20, 2008  
Page 13

analysis to old issues. It must perform its environmental duties without the taint of its past decisions. A clear, complete, and thorough analysis must be performed, one that does not just "rubber stamp" the decisions of the past, one that actually results in mitigation of all the significant impacts of the Project. It is only by performing such an analysis that Irvine can avoid the pitfall of a pro forma, "*post hoc*" analysis. Such an analysis would be a clear violation of CEQA.

### **CONCLUSION**

Allergan appreciates the opportunity to address the ambiguities of the NOP and identify areas in which clarification is needed. The areas needing clarification are extensive. Allergan is especially concerned that the NOP fails to identify the existing environmental conditions adequately, fails to address the impacts of past residential development that was not adequately reviewed, and fails to describe the mechanism by which development density will be reallocated, not only between residential and non-residential uses but within the categories. Without that information, we cannot fully evaluate impacts of the trip allocation process. Additionally, failure to address these issues puts Irvine at risk of producing an inadequate environmental analysis due to its *post hoc* rationalization of prior decisions. We ask that Irvine address these issues and thus avoid the consequences of inadequate environmental review under CEQA.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Hunt", with a long horizontal line extending to the right.

David R. Hunt

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:3JAJ1\401098108.2

cc: Whit Manley  
Robert Hawkins





# AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

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

October 15, 2008

Bill Jacobs, Principal Planner  
City of Irvine  
P.O. Box 19575  
Irvine, CA 92623-5975

Subject: Initial Study for the Irvine Business Complex (IBC) Vision Plan and Mixed-Use Overlay Zoning Code

Dear Mr. Jacobs:

Thank you for the opportunity to review the Initial Study for the proposed IBC Vision Plan Mixed-Use Overlay Zone Code in the context of the Commission's *Airport Environs Land Use Plan for John Wayne Airport (JWA AELUP)*. We wish to offer the following comments and respectfully request consideration of these comments as you proceed with preparation of your Draft Environmental Impact Report (DEIR).

The proposed project is within the Federal Aviation Regulation (FAR) Part 77 Obstruction Imaginary Surfaces for JWA and is also located within the AELUP Notification Area for JWA. The ALUC has adopted Part 77, Objects Affecting Navigable Airspace, of the Federal Aviation Regulations as guidelines to describe the ultimate height of structures under the imaginary surfaces as defined in FAR Part 77. It is suggested that the environmental document address these height restrictions and imaginary surfaces. It is also recommended that building heights not exceed these imaginary surfaces and that the proposed Overlay Zone and DEIR include language and mitigation that states that buildings will not be allowed to penetrate the FAR Part 77 imaginary surfaces.

The Hazards and Hazardous Materials Section of the initial study also states that the Overlay Zone proposes establishing districts and development standards for the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts and that accommodate office, residential and protect existing businesses. We recommend that these development standards specify any height and noise restrictions for projects located within the airport planning area for JWA and that the DEIR include mitigation measures addressing impacts to land uses in this area.

The proposed project area is within JWA noise impact zones. The Noise Section of your environmental document should address impacts related to development within the 65 dB and 60 dB CNEL noise contours. Residential uses should not be permitted within the 65 dB CNEL contour in order to maintain consistency with the *JWA AELUP*. The proposed Vision Plan and DEIR should include sound attenuation policies for all JWA Area residential development (JWA Area refers to the JWA Planning Area as defined in the *JWA AELUP*) in order to minimize the noise impacts on the residences from aircraft, helicopter and other noise sources. The sound attenuation requirements should at a minimum meet all current City interior and exterior noise standards.

In the transportation section of the initial study, the document states that the proposed project will not have a significant impact on air traffic patterns. However, a project's location, in relation to an airport, and building height have the potential to impact air traffic patterns. We suggest that the transportation section of the DEIR discuss the maximum building heights that will be allowed within the IBC Vision Plan and Mixed-Use Overlay Zoning Code using North American Vertical Datum 1988 (NAVD88) or National Geodetic Vertical Datum of 1929 (NGVD29). Based upon previously approved projects within this project area which resulted in an FAA recommended change to the general aviation air traffic pattern, there is the potential for a significant impact in this initial study checklist category.

A referral by the City to the ALUC is required for this project due to the location of the proposal within an AELUP Planning Area and due to the nature of the required City approvals (i.e. General Plan Amendment and Zone Change) under PUC Section 21676(b). In this regard, please note that the Commission wants such referrals to be submitted and agendized by the ALUC staff between the Local Agency's expected Planning Commission and City Council hearings. Since the ALUC meets on the third Thursday afternoon of each month, submittals must be received in the ALUC office by the first of the month to ensure sufficient time for review, analysis, and agendizing.

Thank you for the opportunity to comment on this initial study. Please contact Lea Umnas at (949) 252-5123 or via email at [lumnas@ocair.com](mailto: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  
Larry Serafini  
John Leyerle



# South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178  
(909) 396-2000 • [www.aqmd.gov](http://www.aqmd.gov)

September 26, 2008

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

Dear Mr. Jacobs:

**Notice of Preparation of a Draft Environmental Impact Report (Draft EIR) for the  
Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code  
(Planning Area 36) Project**

The South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to comment on the above-mentioned document. The SCAQMD's comments are recommendations regarding the analysis of potential air quality impacts from the proposed project that should be included in the draft environmental impact report (EIR). Please send the SCAQMD a copy of the Draft EIR upon its completion. **In addition, please send with the draft EIR all appendices or technical documents related to the air quality analysis and electronic versions of all air quality modeling and health risk assessment files. Without all files and supporting air quality documentation, the SCAQMD will be unable to complete its review of the air quality analysis in a timely manner. Any delays in providing all supporting air quality documentation will require additional time for review beyond the end of the comment period.**

**Air Quality Analysis**

The SCAQMD adopted its California Environmental Quality Act (CEQA) Air Quality Handbook in 1993 to assist other public agencies with the preparation of air quality analyses. The SCAQMD recommends that the Lead Agency use this Handbook as guidance when preparing its air quality analysis. Copies of the Handbook are available from the SCAQMD's Subscription Services Department by calling (909) 396-3720. Alternatively, the lead agency may wish to consider using the California Air Resources Board (CARB) approved URBEMIS 2007 Model. This model is available on the SCAQMD Website at: [www.urbemis.com](http://www.urbemis.com).

The Lead Agency should identify any potential adverse air quality impacts that could occur from all phases of the project and all air pollutant sources related to the project. Air quality impacts from both construction (including demolition, if any) and operations should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operation-related air quality impacts may include, but are not limited to, emissions from stationary sources (e.g., boilers), area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, that is, sources that generate or attract vehicular trips should be included in the analysis.

The SCAQMD has developed a methodology for calculating PM<sub>2.5</sub> emissions from construction and operational activities and processes. In connection with developing PM<sub>2.5</sub> calculation methodologies, the SCAQMD has also developed both regional and localized significance thresholds. The SCAQMD requests that the lead agency quantify PM<sub>2.5</sub> emissions and compare the results to the recommended PM<sub>2.5</sub> significance thresholds. Guidance for calculating PM<sub>2.5</sub> emissions and PM<sub>2.5</sub> significance thresholds can be found at the following internet address:  
[http://www.aqmd.gov/ceqa/handbook/PM2\\_5/PM2\\_5.html](http://www.aqmd.gov/ceqa/handbook/PM2_5/PM2_5.html).

*Cleaning the air that we breathe...*

In addition to analyzing regional air quality impacts the SCAQMD recommends calculating localized air quality impacts and comparing the results to localized significance thresholds (LSTs). LST's can be used in addition to the recommended regional significance thresholds as a second indication of air quality impacts when preparing a CEQA document. Therefore, when preparing the air quality analysis for the proposed project, it is recommended that the lead agency perform a localized significance analysis by either using the LSTs developed by the SCAQMD or performing dispersion modeling as necessary. Guidance for performing a localized air quality analysis can be found at <http://www.aqmd.gov/ceqa/handbook/LST/LST.html>.

It is recommended that lead agencies for projects generating or attracting vehicular trips, especially heavy-duty diesel-fueled vehicles, perform a mobile source health risk assessment. Guidance for performing a mobile source health risk assessment ("Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis") can be found on the SCAQMD's CEQA web pages at the following internet address: [http://www.aqmd.gov/ceqa/handbook/mobile\\_toxic/mobile\\_toxic.html](http://www.aqmd.gov/ceqa/handbook/mobile_toxic/mobile_toxic.html). An analysis of all toxic air contaminant impacts due to the decommissioning or use of equipment potentially generating such air pollutants should also be included.

### **Mitigation Measures**

In the event that the project generates significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized during project construction and operation to minimize or eliminate significant adverse air quality impacts. To assist the Lead Agency with identifying possible mitigation measures for the project, please refer to Chapter 11 of the SCAQMD CEQA Air Quality Handbook for sample air quality mitigation measures. Additional mitigation measures can be found on the SCAQMD's CEQA web pages at the following internet address: [www.aqmd.gov/ceqa/handbook/mitigation/MM\\_intro.html](http://www.aqmd.gov/ceqa/handbook/mitigation/MM_intro.html). Additionally, SCAQMD's Rule 403 – Fugitive Dust, and the Implementation Handbook contain numerous measures for controlling construction-related emissions that should be considered for use as CEQA mitigation if not otherwise required. Other measures to reduce air quality impacts from land use projects can be found in the SCAQMD's Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning. This document can be found at the following internet address: <http://www.aqmd.gov/prdas/aqguide/aqguide.html>. In addition, guidance on siting incompatible land uses can be found in the California Air Resources Board's Air Quality and Land Use Handbook: A Community Perspective, which can be found at the following internet address: <http://www.arb.ca.gov/ch/handbook.pdf>. Pursuant to state CEQA Guidelines §15126.4 (a)(1)(D), any impacts resulting from mitigation measures must also be discussed.

### **Data Sources**

SCAQMD rules and relevant air quality reports and data are available by calling the SCAQMD's Public Information Center at (909) 396-2039. Much of the information available through the Public Information Center is also available via the SCAQMD's World Wide Web Homepage (<http://www.aqmd.gov>).

The SCAQMD is willing to work with the Lead Agency to ensure that project-related emissions are accurately identified, categorized, and evaluated. Please call Daniel Garcia, Air Quality Specialist, CEQA Section, at (909) 396-3304 if you have any questions regarding this letter.

Sincerely,



Steve Smith, Ph.D.

Program Supervisor, CEQA Section

Planning, Rule Development and Area Sources

SS:DG:AK

ORC080924-09AK

Control Number



ARNOLD SCHWARZENEGGER  
GOVERNOR

STATE OF CALIFORNIA  
GOVERNOR'S OFFICE of PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT  
DIRECTOR

Notice of Preparation

September 19, 2008

To: Reviewing Agencies

Re: Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36)  
SCH# 2007011024

Attached for your review and comment is the Notice of Preparation (NOP) for the Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36) draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

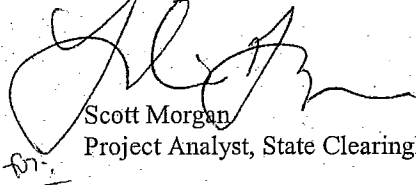
Please direct your comments to:

**Bill Jacobs**  
**City of Irvine**  
**P.O. Box 19575**  
**Irvine, CA 92623-9575**

with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,



Scott Morgan  
Project Analyst, State Clearinghouse

Attachments  
cc: Lead Agency

**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

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**Type** NOP Notice of Preparation

**Description** The proposed project would allow for an increase in total units within the Irvine Business Complex (Planning Area 36) from 9,401 units to 15,000 units. In addition, a total of 1,191 density bonus units would be allowed in accordance with State Law for a total 16,191 units. The current General Plan allows for 53,461,052 square feet of office equivalency in Planning Area 36. The total 5,599 additional new units (either potential or in process) remaining under the 15,000 unit cap would be offset by a reduction of 2,715,062 square feet of non-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 **Fax**  
**email**  
**Address** P.O. Box 19575  
**City** Irvine **State** CA **Zip** 92623-9575

---

**Project Location**

**County** Orange  
**City** Irvine  
**Region**  
**Cross Streets** Planning Area 36 - Irvine Business Complex (IBC)  
**Lat / Long** 33° 41' 42" N / 117° 50' 42" W  
**Parcel No.**  

<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Base</b>
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**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** Aesthetic/Visual; Air Quality; Agricultural Land; Archaeologic-Historic; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Landuse

---

**Reviewing Agencies** Resources Agency; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Department of Fish and Game, Region 5; Native American Heritage Commission; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 12; Air Resources Board, Major Industrial Projects; Integrated Waste Management Board; Department of Toxic Substances Control; Regional Water Quality Control Board, Region 8

---

**Date Received** 09/19/2008 **Start of Review** 09/19/2008 **End of Review** 10/20/2008



<input type="checkbox"/> Resources Agency Nadell Gayou	<input type="checkbox"/> Fish & Game Region 2 Jeff Drongesen	<input type="checkbox"/> Public Utilities Commission Ken Lewis	<input type="checkbox"/> Caltrans, District 8 Dan Kopulsky	<input type="checkbox"/> Regional Water Quality Control Board (RWQCB) RWQCB 1 Cathleen Hudson North Coast Region (1)
<input type="checkbox"/> Resources Agency Nadell Gayou	<input type="checkbox"/> Fish & Game Region 3 Robert Floerke	<input type="checkbox"/> Santa Monica Bay Restoration Guangyu Wang	<input type="checkbox"/> Caltrans, District 9 Gayle Rosander	<input type="checkbox"/> RWQCB 2 Environmental Document Coordinator San Francisco Bay Region (2)
<input type="checkbox"/> Dept. of Boating & Waterways David Johnson	<input type="checkbox"/> Fish & Game Region 4 Julie Vance	<input type="checkbox"/> State Lands Commission Marina Brand	<input type="checkbox"/> Caltrans, District 10 Tom Dumas	<input type="checkbox"/> RWQCB 3 Central Coast Region (3)
<input type="checkbox"/> California Coastal Commission Elizabeth A. Fuchs	<input checked="" type="checkbox"/> Fish & Game Region 5 Don Chadwick Habitat Conservation Program	<input type="checkbox"/> Tahoe Regional Planning Agency (TRPA) Cherry Jacques	<input type="checkbox"/> Caltrans, District 11 Jacob Armstrong	<input type="checkbox"/> RWQCB 4 Teresa Rodgers Los Angeles Region (4)
<input type="checkbox"/> Colorado River Board Gerald R. Zimmerman	<input type="checkbox"/> Fish & Game Region 6 Gabrina Gatchel Habitat Conservation Program	<u>Business, Trans &amp; Housing</u>	<input checked="" type="checkbox"/> Caltrans, District 12 Ryan P. Chamberlain	<input type="checkbox"/> RWQCB 5 Central Valley Region (5)
<input type="checkbox"/> Dept. of Conservation Sharon Howell	<input type="checkbox"/> Fish & Game Region 6 I/M Gabrina Gatchel Habitat Conservation Program	<input type="checkbox"/> Caltrans - Division of Aeronautics Sandy Hesnard	<u>Cal EPA</u>	<input type="checkbox"/> RWQCB 5F Central Valley Region (5) Fresno Branch Office
<input type="checkbox"/> California Energy Commission Dale Edwards	<input type="checkbox"/> Inyo/Mono, Habitat Conservation Program	<input type="checkbox"/> Caltrans - Planning Terri Pencovic	<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> RWQCB 5R Central Valley Region (5) Redding Branch Office
<input type="checkbox"/> Cal Fire Allen Robertson	<input type="checkbox"/> Dept. of Fish & Game M George Isaac Marine Region	<input type="checkbox"/> California Highway Patrol Shirley Kelly Office of Special Projects	<input type="checkbox"/> Airport Projects Jim Lerner	<input type="checkbox"/> RWQCB 6 Lahontan Region (6)
<input checked="" type="checkbox"/> Office of Historic Preservation Wayne Donaldson	<u>Other Departments</u>	<input type="checkbox"/> Housing & Community Development CEQA Coordinator Housing Policy Division	<input type="checkbox"/> Transportation Projects Ravi Ramalingam	<input type="checkbox"/> RWQCB 6V Lahontan Region (6) Victorville Branch Office
<input checked="" type="checkbox"/> Dept. of Parks & Recreation Environmental Stewardship Section	<input type="checkbox"/> Food & Agriculture Steve Shaffer Dept. of Food and Agriculture	<input type="checkbox"/> CEQA Integrated Waste Management Board Sue O'Leary	<input type="checkbox"/> Industrial Projects Mike Tollstrup	<input type="checkbox"/> RWQCB 7 Colorado River Basin Region (7)
<input type="checkbox"/> Central Valley Flood Protection Board Mark Herald	<input type="checkbox"/> Dept. of General Services Public School Construction	<u>Dept. of Transportation</u>	<input type="checkbox"/> California Integrated Waste Management Board Sue O'Leary	<input checked="" type="checkbox"/> RWQCB 8 Santa Ana Region (8)
<input type="checkbox"/> S.F. Bay Conservation & Dev't. Comm. Steve McAdam	<input type="checkbox"/> Dept. of General Services Anna Garbeff Environmental Services Section	<input type="checkbox"/> Caltrans, District 1 Rex Jackman	<input type="checkbox"/> State Water Resources Control Board Regional Programs Unit Division of Financial Assistance	<input type="checkbox"/> RWQCB 9 San Diego Region (9)
<input checked="" type="checkbox"/> Dept. of Water Resources Resources Agency Nadell Gayou	<input type="checkbox"/> Dept. of Public Health Veronica Malloy Dept. of Health/Drinking Water	<input type="checkbox"/> Caltrans, District 2 Marcelino Gonzalez	<input type="checkbox"/> State Water Resources Control Board Student Intern, 401 Water Quality Certification Unit Division of Water Quality	<input type="checkbox"/> Other
<input type="checkbox"/> Conservancy	<u>Independent Commissions, Boards</u>	<input type="checkbox"/> Caltrans, District 3 Bruce de Terra	<input type="checkbox"/> State Water Resources Control Board Steven Herrera Division of Water Rights	
<u>Fish and Game</u>	<input type="checkbox"/> Delta Protection Commission Debby Eddy	<input type="checkbox"/> Caltrans, District 4 Lisa Carboni	<input type="checkbox"/> Dept. of Toxic Substances Control CEQA Tracking Center	
<input type="checkbox"/> Depart. of Fish & Game Scott Flint Environmental Services Division	<input type="checkbox"/> Office of Emergency Services Dennis Castrillo	<input type="checkbox"/> Caltrans, District 5 David Murray	<input type="checkbox"/> Department of Pesticide Regulation CEQA Coordinator	
<input type="checkbox"/> Fish & Game Region 1 Donald Koch	<input type="checkbox"/> Governor's Office of Planning & Research State Clearinghouse	<input type="checkbox"/> Caltrans, District 6 Michael Navarro		
<input type="checkbox"/> Fish & Game Region 1E Laurie Harnsberger	<input checked="" type="checkbox"/> Native American Heritage Comm. Debbie Treadway	<input type="checkbox"/> Caltrans, District 7 Elmer Alvarez		





STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF TRANSPORTATION**

District 12

3337 Michelson Drive, Suite 380

Irvine, CA 92612-8894

Tel: (949) 724-2267

Fax: (949) 724-2592

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Post-It® Fax Note	7871	Date	10/20/08	# of pages	2
To	Bill Jacobs	From	John Xu		
Co./Dept.	CDI	Co.	Caltrans		
Phone #		Phone #	949-724-2338		
Fax #	949-724-6440	Fax #			

**October 20, 2008**

Mr. Bill Jacobs  
City of Irvine  
P.O. Box 19575  
Irvine, California 92623-9575

File: IGR/CEQA  
SCH #: 2007011024  
Log #: 1817A  
I-405, SR-55, SR-73,  
SR-261

**Subject: Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36)**

Dear Mr. Jacobs:

Thank you for the opportunity to review and comment on the **Notice of Preparation (NOP) for the Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code**. The proposed project would allow for an increase in total units within the IBC 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 total 5,599 additional new units remaining under the 15,000 units cap would be offset by a reduction of 2,715,062 square feet of non-residential office equivalency square footage. The project site is located within the City of Irvine, and is generally bounded by the former Tustin Marine Corps Air Station (MCAS) to the north, the San Diego Creek channel to the east, John Wayne Airport and Campus Drive to the south, and the Costa Mesa Freeway to the west.

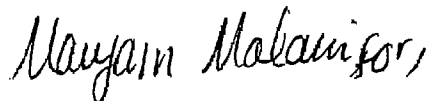
**The California Department of Transportation (Department), District 12 is a responsible agency on this project, and we have the following comments:**

1. Due to major changes in land use and trip generation rate, this project has the potential to significantly impact the State Facilities. A Traffic Impact Study (TIS) should be prepared to analyze the project's impacts on Interstate 405 (I-405), State Route 55 (SR-55), State Route 73 and State Route 261. More specifically, the study should include the following interchanges: I-405 at Culver Drive, I-405 at Jamboree Road, I-405 at MacArthur Boulevard, SR-55 at MacArthur Boulevard, and SR-55 at Dyer Road, and it should analyze both AM and PM peak-hour traffic volumes with and without the project for existing, short-term, and long-term future conditions. The TIS should follow the Department's "Guide for the Preparation of Traffic Impact Study" available at: <http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>.
2. The Department's Traffic Operations Branch requests all applicants to use the method outlined in the latest version of the Highway Capacity Manual (HCM) when analyzing traffic impacts on State Transportation Facilities. The use of HCM is preferred by the

Department because it is an operational analysis as opposed to the Intersection Capacity Utilization (ICU) method, which is a planning analysis. In the case of projects that have direct impacts on the State Facilities, the Department recommends that the traffic impact analysis be based on HCM method. Should the project require an encroachment permit, the Department's Traffic Operations Branch may find the TIS based on ICU methodology inadequate, resulting in possible delay or denial of a permit by the Department. All input sheets, assumptions, and volumes on the State Facilities including ramps and intersection analysis should be submitted to the Department for review and approval. The EIR should include appropriate mitigation measures to offset any potential impacts.

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, please do not hesitate to call Zhongping (John) Xu at (949) 724-2338.

Sincerely,



RYAN CHAMBERLAIN

Branch Chief, Local Development/Intergovernmental Review

cc: Terry Roberts, Office of Planning and Research

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-4959

FAX (916) 653-9531

TTY 711

*Flex your power!  
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October 14, 2008

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

Dear Mr. Jacobs:

City of Irvine's Notice of Preparation of a Draft Environmental Impact Report for the Draft Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36);  
SCH# 2007011024

The California Department of Transportation (Caltrans), Division of Aeronautics (Division), reviewed the above-referenced document with respect to airport-related noise and safety impacts and regional aviation land use planning issues pursuant to the California Environmental Quality Act (CEQA). The Division has technical expertise in the areas of airport operations safety, noise and airport land use compatibility. We are a funding agency for airport projects and we have permit authority for public-use and special-use airports and heliports.

The proposal involves the 2,800-acre Irvine Business Complex (IBC) and will include an increase of approximately 5,599 dwelling units. The project site surrounds John Wayne Airport to the north and east. With approximately 600 based aircraft and over 334,000 annual operations, John Wayne is an active airport. Due to its proximity to the airport, the project site will be subject to aircraft overflights and subsequent aircraft-related noise and safety impacts. Airport-related noise, safety and land use concerns should be thoroughly addressed in the Draft Environmental Impact Report (DEIR).

According to the Notice of Preparation (NOP), the "southwest boundary of the project area is adjacent to the John Wayne Airport and is located within the Orange County Airport Environs Land Use Plan (AELUP). The majority of the site is located outside of the accident potential zones as designated in Figure J-4 of the City of Irvine General Plan; however, a small portion is within the clear zone. Therefore, further evaluation in the EIR is necessary to determine if the project would result in a safety hazard for people residing or working in the project area."

Protecting people and property on the ground from the potential consequences of near-airport aircraft accidents is a fundamental land use compatibility-planning objective. While the chance of an aircraft injuring someone on the ground is historically quite low, an aircraft accident is a high consequence event. To protect people and property on the ground from the risks of near-airport aircraft accidents, some form of restrictions on land use are essential. The two principal methods for reducing the risk of injury and property damage on the ground are to limit the number of persons in an area and to limit the area covered by occupied structures. The potential severity of an off-airport aircraft accident is highly dependent upon the nature of the land use at the accident site.

The California Airport Land Use Planning Handbook (Handbook) identifies six airport safety zones based on risk levels. The project site appears to be within Safety Zones 1, 2, 3, and 4 as defined in the Handbook. Safety Zone 1 or Runway Protection Zone (RPZ) was formerly referred to as the "clear zone." The RPZ (clear zone) is the most critical of the airport safety zones, considered to be at "very high risk" due to its proximity to the end of the runway. Just beyond the RPZ is Safety Zone 2, or Inner Approach and Departure Zone, which is considered to be at "substantial risk". The RPZ together with the inner safety zones encompass 30 to 50 percent of the near-airport aircraft accident sites. Safety Zone 4, Outer Approach and Departure Zone is situated along the extended runway centerline with approaching aircraft usually at less than traffic pattern altitude. CEQA, Public Resources Code Section 21096, requires the Handbook be used as a resource in the preparation of environmental documents for projects within airport land use compatibility plan boundaries or if such a plan has not been adopted, within two miles of an airport. The Handbook is available on-line at <http://www.dot.ca.gov/hq/planning/aeronaut/documents/ALUPHComplete-7-02rev.pdf>,

The Federal Aviation Administration (FAA) Airport Design Guide, Advisory Circular (AC) 150/5300-13, contains guidance pertaining to land uses within the RPZ. The RPZ is further broken down into three sub areas: The Runway Object Free Area, Object Free Area Extension, and Controlled Activity Area. The project appears to have buildings within the Object Free Area and some parking within the Object Free Area Extension. As part of FAA grant assurances, if an airport sponsor receives federal funds for an airport, it is required that use of land adjacent to or in the immediate vicinity of the airport be restricted to activities and purposes compatible with normal airport operations. The proposal should be coordinated with John Wayne Airport staff to ensure that the proposal will be compatible with future as well as existing airport operations.

Pursuant to the Airport Noise Standards (California Code of Regulations, Title 21, Chapter 6, Section 5000 et seq.), the County of Orange declared the John Wayne Airport to have a "noise problem". The regulations require a noise problem airport to reduce the size of its "noise impact area" (NIA), which is the area within the airport's 65 decibel (dB) Community Noise Equivalent Level (CNEL) contour that is composed of incompatible land uses. Allowing new residential within the airport's 65 dB CNEL contour could result in an increase, rather than the required decrease, in the size of the airport's NIA. Consistent with the Airport Noise Standards, new residential development is not an appropriate land use within the airport's 65 dB CNEL contour. If allowed within the airport's 65 dB CNEL contour, all residential units should be constructed to ensure an interior CNEL due to aircraft noise of 45 dB or less in all habitable rooms. Additionally, to prevent this project from increasing the airport's NIA, each residential unit should grant to the airport proprietor an aviation easement for aircraft noise. A thorough airport-related noise analysis must be included in the DEIR.

California Public Utilities Code (PUC) Section 21659 prohibits structural hazards near airports. In accordance with Federal Aviation Regulation, Part 77 "Objects Affecting Navigable Airspace" a Notice of Proposed Construction or Alteration (Form 7460-1) may be required by the Federal Aviation Administration (FAA) for certain future proposals. Form 7460-1 is available on-line at <https://oeaaa.faa.gov/oeaaa/external/portal.jsp> and should be submitted electronically to the FAA.

Education Code Section 17215 requires a school site investigation by the Division prior to acquisition of land for a proposed school site located within two miles of an airport runway. Our recommendations are submitted to the State Department of Education for use in determining acceptability of the site. This should be a consideration prior to designating residential uses in the vicinity of an airport.

Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353 address buyer notification requirements for lands around airports and are available on-line at <http://www.leginfo.ca.gov/calaw.html>. Any person who intends to offer subdivided lands, common interest developments and residential properties for sale or lease within an airport influence area is required to disclose that fact to the person buying the property.

According to PUC Section 21676 *et seq.*, prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the ALUC, the local agency shall first refer the proposed action to the airport land use commission (ALUC). The proposal must be submitted to the Orange County ALUC for a consistency determination.

If the ALUC determines that the proposed action is inconsistent with the airport land use compatibility plan, the referring agency shall be notified. The local agency may, after a public hearing, propose to overrule the ALUC by a two-thirds vote of its governing body after it makes specific findings. At least 45 days prior to the decision to overrule the ALUC, the local agency's governing body shall provide to the ALUC and Caltrans a copy of the proposed decision and findings. Caltrans reviews and comments on the specific findings a local government intends to use when proposing to overrule an ALUC. Caltrans specifically looks at the proposed findings to gauge their relationship to the overrule. Also, pursuant to the PUC 21670 *et seq.*, findings should show evidence that the local agency is minimizing "...the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."

Aviation plays a significant role in California's transportation system. This role includes the movement of people and goods within and beyond our State's network of over 250 airports. Aviation contributes nearly 9 percent of both total State employment (1.7 million jobs) and total State output (\$110.7 billion) annually. These benefits were identified in a study entitled, "Aviation in California: Benefits to Our Economy and Way of Life," and available on-line at <http://www.dot.ca.gov/hq/planning/aeronaut/econstudy2003.html>. Aviation improves mobility, generates tax revenue, saves lives through emergency response, medical and fire fighting services, annually transports air cargo valued at over \$170 billion and generates over \$14 billion in tourist dollars, which in turn improves our economy and quality of life.

The protection of airports from incompatible land use encroachment is vital to California's economic future. John Wayne Airport is an economic asset that should be protected through effective airport land use compatibility planning and awareness. Although the need for compatible and safe land uses near airports in California is both a local and a State issue, airport staff, airport land use commissions and airport land use compatibility plans are key to protecting an airport and the people residing and working

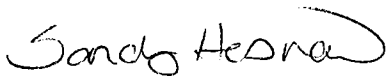
Mr. Bill Jacobs  
October 14, 2008  
Page 4

in the vicinity of an airport. Consideration given to the issue of compatible land uses in the vicinity of an airport should help to relieve future conflicts between airports and their neighbors.

These comments reflect the areas of concern to the Division with respect to airport-related noise and safety impacts and regional airport land use planning issues. We advise you to contact our Caltrans District 12 office concerning surface transportation issues.

Thank you for the opportunity to review and comment on this proposal. If you have any questions, please call me at (916) 654-5314.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandy Hesnard". The signature is fluid and cursive, with a large loop at the end.

SANDY HESNARD  
Aviation Environmental Specialist

c: State Clearinghouse, Orange County ALUC, John Wayne Airport





## 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

October 20, 2008

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

**Subject: Notice of Preparation for Draft EIR – IBC**

Dear Mr. Jacobs,

Thank you for the opportunity to provide comments on the Notice of Preparation of the Draft Environmental Impact Report related to IBC Vision Plan. The City of Costa Mesa has no comments at this point.

We look forward to participating in any additional reviews before completion of the final draft EIR and thank you for including the City in the review process.

Sincerely,

Mino Ashabi, AIA  
Senior Planner

cc: Raja Sethuraman





Linda S. Adams  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Maureen F. Gorsen, Director  
5796 Corporate Avenue  
Cypress, California 90630



Arnold Schwarzenegger  
Governor

October 21, 2008

Mr. Bill Jacobs  
City of Irvine, Planning Department  
P.O. Box 19575  
Irvine, California 92623-9575

### NOTICE OF PREPARATION (NOP) FOR DRAFT IRVINE BUSINESS COMPLEX (IBC) VISION PLAN AND MIXED USE CODE (PLANNING AREA 36) (SCH# 2007011024)

Dear Mr. Jacobs:

The Department of Toxic Substances Control (DTSC) has received your submitted Notice of Preparation of the Environmental Impact Report for the above-mentioned project. The following project description is stated in your document: "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 dwelling units for the IBC area, with an offsetting reduction of non-residential office equivalency square footage in General Plan A-1, for units under the cap that have not yet been approved."

DTSC has sent you comments on February 6, 2007. DTSC has additional comments as follows:

- 1) Any environmental investigations, sampling and/or remediation for a site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be clearly summarized in a table. All closure, certification or remediation approval reports by regulatory agencies should be included in the EIR.
- 2) If buildings, other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should also be conducted for the presence of other hazardous chemicals, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints (LPB) or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

Mr. Bill Jacobs  
October 21, 2008  
Page 2 of 2

- 3) Future project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.
- 4) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.
- 5) In future CEQA documents please provide the contact person's title and e-mail address.

If you have any questions regarding this letter, please contact me at ashami@dtsc.ca.gov or by phone at (714) 484-5472.

Sincerely,



Al Shami  
Project Manager  
Brownfields and Environmental Restoration Program - Cypress Office

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

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

CEQA#2315

# LAW OFFICES OF ROBERT C. HAWKINS

October 20, 2008

**Via e-mail ([bjacobs@ci.irvine.ca.us](mailto:bjacobs@ci.irvine.ca.us)) and Messenger**

Bill Jacobs, AICP, Principal Planner  
Community Development Department  
Irvine City Hall  
One Civic Center Plaza  
Irvine, California 92623-9575

Re: **The City of Irvine's (the "City" or "Irvine") Notice of Preparation ("NOP") of Draft Environmental Impact Report ("DEIR") and Initial Study ("IS") for 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, the Notice of Preparation ("NOP"), the Initial Study ("IS"), and the scope of the Draft Environmental Impact Report ("DEIR") for the Draft IBC Vision Plan and Mixed Use General Plan and Zoning Code Amendments, and Infrastructure Improvements (the "Project"). Please include these comments as well as our earlier comments in the administrative record for the 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, hazards materials including cancer causing agents hexavalent chromium (Cr+6) and barium chromate.

In addition, this firm represents Parker Hannifin located at 16666 Von Karman Ave. and 16702 Von Karman Ave. in the City of Irvine. This site is the home of Parker Hannifin's Air & Fuel Division. The Air & Fuel Division performs testing of pneumatic components for aircraft, and the testing is performed 24 hours/day, often 7 days per week. This testing is done around the clock to support customer requirements. The testing uses compressed air at high flows and pressures to mimic the air generated from jet engines. The noise levels, similar to that from a jet engine, are a result of the

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compressed air at high flows and high pressures. The Air & Fuel Division also tests fuel components for aircraft and this requires the use and storage of hazardous materials and fuels (combustible and flammable liquids) including Category 2 hazardous materials.

This letter supplements our earlier comments on the Draft Negative Declaration for the Project, our June 27, 2006 and July 24, 2006 comment letters on the Project and the FSEIR/DSEIR for the 2323 Main St. Project. Further, we incorporate herein the comments from others on the Project and the NOP.

Finally, please find attached several documents: Attachment A is a copy of the April 24, 2008 Minute Order in Allergan v. City of Irvine (Martin St. Case), Orange County Superior Court Case No. 07CC01264 (hereafter the "Martin St. Minute Order"); Attachment B is a copy of the April 24, 2008 Minute Order in Allergan v. City of Irvine (Alton St. Case), Orange County Superior Court Case No. 07CC1268 (hereafter, the "Alton St. Minute Order"); Attachment C is a copy of the May 23, 2008 Statement of Decision in the Martin St. Case; and Attachment D is a copy of the May 23, 2008 Statement of Decision in the Alton St. Case.

In compliance with the requirements of the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and on behalf of Deft and Parker Hannifin, we offer the following comments on the NOP and for the scope of the DEIR for the Project.

## I. Introduction.

### A. Judge Sundvold's Rulings Require a Complete Overhaul of the Project and the DEIR.

Judge Sundvold ruled that the City must perform a complete environmental review and analysis of the residential transformation of the IBC. This analysis must include a programmatic evaluation of the entire residential project including built, approved, pending and future residential projects in the IBC and all project related impacts.

**"Since the adoption of the IBC EIR, the IBC has been transformed and continues to be transformed into a mixed residential area which did not exist and was not addressed by the IBC EIR. That transformation had and has potentially far reaching environmental impacts. These impacts were not anticipated nor analyzed in the IBC EIR, nor were they addressed in the City's review of the previous individual residential projects in the IBC, in the form of addenda, performed since 1992. Nor, finally, were these impacts addressed in the Project SEIR.**

**"The City contends that the Project EIR analyzed the environmental impacts of the transition of the IBC from commercial/residential to residential. The City has not cited any evidence in the Record to support that position. The result is that the City has approved individual projects: including this Project, in a piece-meal**

**fashion, that has transformed the IBC into a mixed-use residential area, without ever having performed the required comprehensive analysis of the potential environmental impacts of such a transformation.”**

Martin St. Minute Order, page 4 (Emphasis added.) The DEIR must do the job Judge Sundvold has outlined. The DEIR must analyze the entire IBC residential transformation including all past project approvals. The DEIR must perform a comprehensive analysis of the potential environmental impacts of this residential transformation. To accomplish this task, the DEIR must analyze the Project impacts from the conditions on the ground that existed prior to the Project. The DEIR must use as a baseline the conditions that existed in the IBC immediately after the approval of the 1992 IBC Program EIR. The baseline would include the 3,896 dwelling units allowed by the 1992 IBC Program EIR. However, it would not include the 9,401 approved and existing residential units. All of these units which are part of the residential transformation of the IBC must be analyzed in the DEIR.

**B. Judge Sundvold’s Rulings Require a New Traffic Analysis and a Full Explanation and Revision of the Trip Allocations for IBC Parcels.**

Importantly, Judge Sundvold held that the City’s system of accounting for traffic trips in the IBC and transferring those trips to other sites, the so-called or transfer of development rights (“TDR”) program, was improper and that a new traffic analysis must be worked out. Specifically, he held that:

“The Project EIR failed to adequately analyze and disclose the environmental effects that could be caused by **transferring development rights from one area of the IBC to another**. Furthermore, because the Project EIR relied upon the development caps managed through the TDR program, and because the IBC EIR conducted the only comprehensive review of the TDR program, **the Project EIR improperly failed to acknowledge the unmitigated traffic impacts identified in the IBC EIR.**”

Martin St. Minute Order, Page 4 (Emphasis added). The Project must include an overall revision of the TDR program, and the DEIR must include a entirely new traffic analysis for the Project including an analysis which considers and analyzes the previously approved residential projects as well as the Project. Such an overall analysis is necessary to comply with Judge Sundvold’s rulings.

**II. The NOP’s Project Description Requires Correction. The Scope of the DEIR Must Be Revised to Analyze the Full Project: the Residential Transformation of the IBC.**

The NOP describes the Project as a General Plan Amendment, Zoning Code amendments, new park standards, traffic infrastructure improvements and other changes to current requirements. The General Plan Amendment is sweeping:

1. The Vision Plan with additional policy additions to the General Plan, Land Use Element;

2. Establish a 15,000 dwelling unit cap for the IBC including 4,524 existing units, 2,111 units under construction, 2,766 units approved, 2,522 pending units, 3,077 new units, and potentially 1,191 bonus density units.
3. Remove the current density cap of 52 dwelling units per acre and establish a minimum density requirement.
4. Other changes including new park requirements.

However, even with the Project's General Plan Amendment, the Project conflicts with the General Plan. Land Use Element, Objective A-2 entitled "Economic Development" states that it is designed to "promote viable commercial centers, successful manufacturing areas, and dynamic employment centers." Policy (a) provides that the City will "[r]etain and attract manufacturing and industrial uses within designated business centers."

The Project conflicts with Objective A-2 and its policies. The Project does nothing to retain and attract manufacturing and industrial uses such as Deft or Parker Hannifin. The Project's residential transformation includes no protections for existing industrial users. The Project should include a separation requirement between new residential and existing industrial users. This requirement should prohibit residential uses within one thousand (1,000') feet of existing industrial users such as Deft and Parker Hannifin.

Further, Land Use Element, Objective A-4 entitled "Balanced Land Uses." This section states that the City should "[m]anage growth to ensure balanced residential and nonresidential development throughout the City." Further, Policy(g) states that the City should

"Maintain accurate statistical information and intensity ceilings in the General Plan through the following efforts:

"Evaluating land use intensities in conjunction with the review of any zone change to permit development or modify intensity."

The Project conflicts with Objective A-4, because it fails to achieve balanced land uses. Indeed, because the Project would allow residential uses near existing industrial uses, it adversely affects both the residential users as well as the industrial businesses. The Project must include a substantial separation of at least one thousand (1,000') feet between existing industrial uses and any residential uses.

Further, because the Project removes the density cap in the IBC, it fails to evaluate or limit land use intensities. Rather, the Project will maximize residential intensities without limit for any particular parcel. The potential for extreme residential densities in the IBC is not managed and balanced growth. It is growth without balance and limits. Further, the potential for extreme residential densities near existing industrial business highlights the problem: any residential within one thousand (1,000') feet

of existing industrial businesses is problematic; residential densities without limit only exacerbate this problem.

Correlatively, the IBC Vision Plan Framework, Figure 3, includes parks with "conceptual locations" adjacent to IBC industrial businesses including Deft and Parker Hannifin. For similar reasons that new residential uses cannot locate within one thousand (1,000') feet of existing IBC industrial uses, parks, schools, trails and other areas where children, elderly or other sensitive receptors may congregate should also be separated from existing industrial users by a one thousand (1,000') foot buffer.

In addition, the City must first perform as part of the DEIR analysis, a needs assessment for such park and trail amenities and determine where such amenities should be to compliment the new 15,000 residential units. This assessment must include all residential units, existing, planned, and future, to determine where the IBC residential users will enjoy such parks and trails. Many of these amenities likely will be located south of the I-405 freeway.

### **III. The NOP's Checklist and the Scope of the DEIR Require Revision.**

The NOP's Checklist indicates the scope of environmental analysis in the DEIR. As discussed below, it is inadequate.

#### **A. The NOP's Analysis of and the DEIR's Scope for Aesthetic Impacts Must be Revised.**

Section I of the NOP addresses aesthetic impacts. Subsection c answers whether the Project "substantially degrade the existing visual character or quality of the site and its surroundings." The Checklist indicates that the Project may result in a potentially significant impact.

The discussion indicates that:

"[T]he proposed project anticipates the redevelopment of existing industrial, small office, and other lower intensity uses for more intense mixed-use development- **within existing vehicle trip limitations**- including mid- and high-rise office and residential uses. Further evaluation is required to whether the proposed development plan would result in any significant adverse aesthetic impacts."

NOP at page 27. However, as indicated above, the existing vehicle trip limitations is improper. Judge Sundvold held that the "existing vehicle trip limitations" requires explanation and revision to accommodate the residential transformation Project. The DEIR must address the full extent of the Project's traffic impacts and explain the existing vehicle trip limitations.

Further, given that the Project includes no maximum density cap, the height of any residential dwelling unit must be addressed including its aesthetic impacts together with shade impacts. The DEIR must address these aesthetic impacts.

Subsection d) addresses the Project's potentially significant light and glare impacts. The NOP states:

"Future residential, mixed-use neighborhoods and non-residential uses would include a variety of outdoor lighting, such as street lights, building-mounted and walkway area security lighting, landscape enhancements and other ornamental lighting, and possibly other light fixtures in parking areas. These new sources of outdoor lighting could substantially change the nighttime character of the project site and could create off-site glare impacts or otherwise adversely affect the aesthetics of this area, as viewed from surrounding areas."

NOP at page 27. However, the Project will expose its residents to potentially significant light and glare impacts by bringing Project residents near light emitted by existing IBC industrial users which may emit light twenty four (24) hours a day such as Parker Hannifin. The DEIR must address the Project impacts of bringing sensitive receptors such as the Project residents near the existing IBC industrial users.

**B. The NOP's Analysis of and the DEIR's Scope for Air Quality Is Inadequate and Fails to Consider the Air Quality Issues in the IBC.**

Section II, Air Quality, continues to rely on "existing trip limitations." As indicated above, the City cannot rely on its existing trip limitations. Rather the DEIR must develop a new traffic analysis with new trip limitations after considering the full extent of the full Project with its past, pending, and future residential dwelling units.

Further, the NOP overlooks a crucial air quality problem that the Project creates. Subsection III d) asks whether the Project will expose sensitive receptors to substantial pollutant concentrations. The Discussion talks about Project related emissions but ignores potential emissions from the existing industrial businesses in the IBC.

The Project brings residents, i.e. sensitive receptors, into close proximity of industrial businesses which use hazardous materials. As indicated above, Deft uses hexavalent chromium which is a Category 1 hazardous material and known to cause cancer. Parker uses various hazardous materials which are Category 2 materials. These materials may be released through operational emissions, accidents, or other incidents.

In order to protect Project residents, the Project must provide for an adequate buffer so that residents are not exposed to hazardous materials and so that existing industrial businesses may continue their operations and flourish. As indicated above, the Project should include a requirement that residential units are not allowed within one thousand (1,000') feet of existing industrial users.



**C. The NOP's Analysis of and the DEIR's Scope for Geology and Soils Impacts Must be Revised: The IBC has High Groundwater.**

Subsection V a. iii addresses the potential for the Project to have significant geologic and soils impacts due to seismic related ground failure including liquefaction. The Discussion recognizes that Figure D-3 of the City's Seismic Element recognizes that most of the IBC is in the SRA-1 Zone with "soft soils/high groundwater. Groundwater elevations in the vicinity of Deft are at four (4') feet below surface grade; groundwater elevations in the vicinity of Parker Hannifin are at seven (7') feet below surface grade. These shallow groundwater levels may adversely affect residential units and increase the probability of ground failure due to liquefaction.

In addition, such high groundwater will affect the design of the residential units. The high groundwater will prevent the construction of any structures below surface grade including subterranean parking structures.

**D. The NOP's Analysis of and the DEIR's Scope for Hazards and Hazardous Materials Is Inadequate and Must be Revised.**

Section IV discusses the scope of the DEIR regarding hazards and hazardous materials. It notes that:

"The IBC Residential Mixed Use Overlay Zone proposes establishing districts and development standards for the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office and residential uses."

NOP at 30. This is inaccurate and reflects the earlier NOP for the earlier Project. The Project does not propose to establish districts and development standards for transition of the IBC to residential uses; the Project as proposed in the NOP actually proposes to introduce 15,000 residential dwelling units in the IBC. That is, the Project will allow new dwelling units in the General Plan. Either the NOP must be corrected, or the DEIR must recognize this issue and state the correction.

More importantly, the NOP throughout Section IV recognizes that the Project may create significant impacts relating to hazards and hazardous materials due to the introduction of residential dwelling units adjacent to existing industrial users such as Deft or Parker Hannifin. In order to lessen or mitigate this impact, the Project should include a requirement that new residential units cannot locate within one thousand (1,000') feet of existing industrial businesses.

The City already requires separation between existing residential uses and hazardous waste facilities. Deft is a hazardous waste generator, treats hazardous waste, recycles hazardous waste and stores hazardous waste. Parker Hannifin only generates hazardous waste. Nonetheless, the City's own separation requirement for hazardous waste facilities should apply here. The Zoning Code Section 2-13-7 requires that hazardous waste facilities be separated from sensitive populations, e.g. residential

populations by more than **two thousand (2,000') feet**, upon application to site such a facility within the City.

Surely, the reverse should be true for consistency: new residential uses should be separated from existing industrial businesses by a substantial separation. Deft and Parker Hannifin are proposing that such separation be at least one thousand (1,000') feet. Of course, perfect consistency would require that the separation be the same as that for new hazardous waste facilities from residential uses: two thousand (2,000') feet.

**E. The NOP's Analysis of and the DEIR's Scope for Hydrology and Water Quality Must be Revised to Consider and Analyze the Project's Impacts on Water.**

Section VII considers the Project's impacts on hydrology and water quality. In the Discussion section, the NOP notes that the Project may have impacts on water quality, groundwater, runoff and other such water related impacts. Subsection VII a. notes that:

"A hydrological analysis of the existing and post-development hydrology is required to determine whether this project could result in the violation of any water quality standards or waste discharge requirements."

NOP at 31. As indicated above, the baseline for the hydrological analysis is not the existing conditions, because existing conditions includes Project related existing residential units. The correct baseline is the conditions at the post 1992 IBC Program EIR.

In addition, Subsection VII recognizes that the Project may adversely affect water quality in the IBC. Among other things, the DEIR should consider all feasible mitigation measures or project features which would mitigate or lessen water quality impacts including measures which would limit storm water runoff, keep storm water runoff on a parcel Project site, and other runoff lessening measures.

Further, although the Discussion recognizes that the Project area is subject to high groundwater, it fails to recognize that the Project may adversely affect such groundwater. Projects listed as pending which are part of the Project contain subterranean features which will adversely affect the high groundwater levels. The DEIR should describe project features and mitigation measures including eliminating all subterranean project features.

**F. The NOP's Analysis of and the DEIR's Scope for Land Use Impacts Must Include a 1,000' Buffer between New Residential Uses and Existing Industrial Businesses.**

Section IX attempts to outline the scope of the DEIR regarding the Project's potential adverse impacts on land use. However, Section IX incorrectly describes the Project:

**"The IBCRMU (IBC Residential Mixed Use) Overlay Zone proposes establishing districts and development standards to address the transition of certain portions**

**of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office and residential uses.** The proposed project is generally consistent with the existing mixed-use nature of the IBC. However, given the original industrial and commercial nature of the IBC area, the transition of the area with newer residential and mixed use projects could potentially divide the existing non-residential community, thereby creating a potentially significant impact, which would require further analysis in the EIR (sic)"

NOP at 32. As indicated above, the NOP describes the former Project which included the Overlay Zone Project which would establish districts and standards. However, the Project described in the NOP goes far beyond the earlier limited Project: it proposes to approve a General Plan Amendment which would allow 15,000 dwelling units including 2,522 pending units and 3,077 new units. This proposed Amendment proposes to allow these 5,599 units. As indicated above, the NOP fails to analyze the correct Project. It should be revised and recirculated. In the alternative, the DEIR must clearly describe and analyze the new Project including the General Plan Amendment.

The NOP recognizes that the Project may create significant land use impacts including potentially dividing the existing industrial community and conflict with existing land use plans. As to the former, the Project must include specific locations for these new units and/or cluster units in core areas, corridors, or town centers so that the Project will not divide the IBC existing industrial businesses. Several pending projects threaten such divisions and must be removed from the Project: the Barranca/Millikan Project; and the Lofts Project at 17150 Von Karman. These projects do not fit within the corridors of existing development along the Jamboree Corridor. The Project should be limited to projects along Jamboree.

Indeed, the City's own IBC consultants, EDAW, recognized in their February 27, 2007 presentation of Town Center Alternative One to the City Council that, although the current ad hoc placement of residential units in the IBC will 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"

EDAW did not recommend this chaotic unfocused development pattern for the IBC. EDAW recommended more focused and concentrated development in town centers or corridors such as the Jamboree corridor.

The Project suffers from these problems. Without town centers or centers for residential development, the Project will create "unfocused development patterns," will cause "trip-capture/intensification opportunities [to] go unexploited," will reduce "'clustering' of residential and

therefore [lead] to more extended/adverse edge condition with remaining industrial uses,” and will have “less chance for effective transit.” These are all land use impacts of the Project which must be analyzed in the DEIR and, if necessary, mitigated. The DEIR must address the unfocused development patterns of the Project, identify centers for residential development, analyze and explain all associated land use impacts, and propose adequate mitigation measures.

Correlatively, to limit the Project’s conflicts with existing land uses, the Project must include a substantial separation between existing industrial businesses and new residential uses: the Project should include a requirement that new residential projects authorize under the Project be farther than one thousand (1,000') from existing industrial businesses. This buffer will lessen or eliminate most of the Project’s land use impacts.

**G. The NOP’s Analysis of and the DEIR’s Scope for Noise Impacts Must Include a 1,000' Buffer between New Residential Uses and Existing Industrial Businesses.**

Section X discusses the scope of the DEIR’s noise analysis. It states:

“A Noise Study is required to develop models of existing and future **traffic-related noise levels** along the adjacent roadways and freeways, and to estimate **construction-related noise** where construction activities would occur near existing sensitive receptors. The noise study will need to determine whether such stationary and mobile noise levels would expose persons to severe noise levels, on or off-site. If significant noise impacts are identified, measures to avoid or reduce such impacts to less than significant will also need to be developed, if possible.

NOP at 33. However, this ignores a potential noise source in the IBC which could expose Project residents to significant noise impacts: existing industrial businesses generate substantial amounts of noise which could adversely affect Project residents.

The City’s Noise Ordinance illustrates the problem of introducing noise sensitive uses in an industrial area. The City’s Noise Ordinance limits exterior noise levels for residential uses at night as follows: 50 dBA for 30 minutes; 55 dBA for 15 minutes; 60 dBA for 5 minutes; 65 dBA for 1 minute; and 70 dBA maximum. However, Code allows industrial uses to emit noise at the following levels 24 hours a day: 70 dBA for 30 minutes; 75 dBA for 15 minutes; 80 dBA for 5 minutes; 85 dBA for 1 minute; and 90 dBA maximum. However, this 20 dBA increase for industrial uses is significant when residential uses are located in the vicinity.

The Project must include a requirement that new residential uses cannot locate within one thousand (1,000') feet to any existing industrial uses. Such a feature will ensure that the Project will not expose its residents to excessive noise levels emitted from existing industrial businesses.

**H. The NOP's Analysis of and the DEIR's Scope for Recreational Impacts of the Project Requires Analysis of Impacts on Existing Industrial Businesses.**

As indicated above, the DEIR must describe and analyze the Project's parks, trails and other recreational amenities. The IBC Vision Plan Framework, Figure 3, includes parks with "conceptual locations" and trails adjacent to IBC industrial businesses including Deft and Parker Hannifin. Although the City has not located these recreational amenities, the DEIR must analyze the potential impacts on users of such amenities near existing industrial businesses such as Deft and Parker. As with new residential uses near existing industrial businesses, the potential impacts to sensitive receptors such as children, the elderly and others may be significant. The DEIR should include a mitigation measure or project feature which requires that parks, schools and other areas where children, elderly or other sensitive receptors may congregate be separated from existing industrial users by a one thousand (1,000') foot buffer.

**I. The NOP's Analysis of and the DEIR's Scope for Traffic Impacts Requires a New Traffic Study and TDR Program.**

As indicated throughout our comments, the Project has changed from the earlier project described in the January 8, 2007 Notice of Preparation. Yet, the current NOP in its discussion of the scope of the DEIR for the new Project description appears to carry over the old Project. As before, the NOP states:

"The IBCRMU Overlay Zone proposes establishing districts and development standards to address the transition of certain portions of the IBC from exclusively industrial and/or office uses into mixed-use districts that accommodate office, residential and protect existing businesses.. A comprehensive traffic impact study is required to evaluate the traffic generation and distribution associated with this potential level of development to determine where significant congestion is likely to occur.

NOP at p. 34. This is the exact same language used in the January 8, 2007 NOP. Yet the new Project has changed substantially, and includes a General Plan Amendment and Zone Code change which would allow 5,599 new dwelling units. The DEIR must clearly describe this new Project and analyze the traffic impacts of this new Project.

As indicated throughout, the DEIR must use the appropriate environmental baseline. Judge Sundvold held that the City should conduct a thorough environmental review of the Project, the residential transformation of the IBC, and conduct a full review of traffic impacts for this full Project beginning with any residential units allowed in excess of those allowed under the 1992 IBC Program EIR. Hence, the DEIR and the Traffic Study cannot begin with existing units but must consider and analyze the entire Project, the residential transformation of the IBC. The DEIR must then propose adequate mitigation measures to mitigate the traffic impacts of the full Project.

**I. The NOP's Analysis of and the DEIR's Scope for Mandatory Findings Must Address and Mitigate the Full Project.**

Section XVI of the NOP addresses the Mandatory Findings of Significance. Importantly, the NOP notes that the cumulative impacts analysis must result in a finding that the cumulative impacts are significant. As indicated throughout these comments, the DEIR must use the appropriate baseline established by Judge Sundvold. The DEIR must not use the existing conditions of the IBC but rather the conditions as they existed after the certification of the 1992 IBC EIR. By using this baseline, the DEIR will be able to analyze and mitigate fully the impacts related to the residential transformation of the IBC. This will include the growth inducing impacts of the Project.

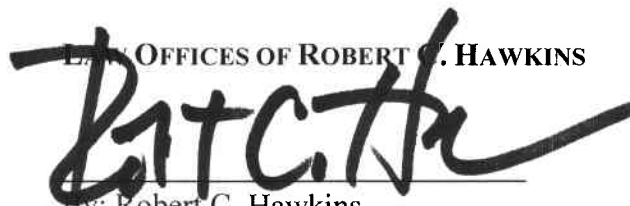
**V. Conclusion: The DEIR Must Fully Analyze the Project and Must Recognize and Protect the Existing Industrial Users.**

As discussed throughout, the DEIR must fully analyze all impacts and propose necessary and adequate mitigation. In particular, it must fully describe the Project, include a discussion of the current chaotic market based development and propose development along the Jamboree corridor. Further, the DEIR must provide additional Project features to protect existing industrial users, and propose adequate mitigation measures including true residential buffers which will protect existing industrial users—a buffer of one thousand (1,000') between new residential projects and existing industrial users and a full and vibrant Business Complex District which would include all Key Businesses.

Thank you for the opportunity to provide these general comments. As indicated above, we will offer further comments throughout the hearing process on the DEIR and the Project. Please provide this office with the DEIR and related documents, all notices of documents released for public review and notices of hearings, staff reports, and other information regarding the DEIR and the Project.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

LEAD OFFICES OF ROBERT C. HAWKINS  
  
By: Robert C. Hawkins

RCH/kw

Attachments as indicated above

## **ATTACHMENT “A”**

Minute Order in Allergan v. City of Irvine (Martin St.)

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
COMPLEX LITIGATION CENTER  
MINUTE ORDER

Date: 04/24/2008

Time: 09:58:17 AM

Dept: CX105

Judicial Officer Presiding: Judge Stephen J. Sundvold

Clerk: Angela M Knox

Bailiff/Court Attendant: Chris Sanchez

Reporter: None

Case Init. Date: 04/26/2007

Case No: 07CC01264

Case Title: CITY OF NEWPORT BEACH VS CITY OF IRVINE

Case Category: Civil - Unlimited

Case Type: Judicial Review - Other

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Event Type: Chambers Work

Causal Document & Date Filed: Amended Complaint; Answer to Complaint; Banner Conversion; Declaration - Other; Document - Other; Ex Parte Application - Other; Meet and Confer Statement;

**Appearances:**

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There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 2/6/08, now makes the following ruling:

07CC01264 (as consolidated with  
07CC01268)

(All references to the "City" are references to Respondent the City of Irvine )

**Motions to Augment**

If Petitioners are correct that the City is piece-mealing the addition of residential units into the IBC without performing proper environmental analysis; if Petitioners are correct that there has been no proper environmental analysis of the transition in the IBC from commercial/industrial to residential and there needs to be; if Petitioners are correct that the real "project" is the Vision Plan and Ordinance Overlay or the residential transition; if Petitioners are correct that any environmental analysis and review with regard to any present residential project in the IBC must necessarily require a review of the cumulative impacts of the overall transition in the IBC from commercial/ industrial to residential; and, if any one of several other of the Petitioners' arguments are correct, the documents which the Petitioners seek to add to the Record are properly added.

The City would have the City determine what information is relevant to the City's environmental determination and then only allow the Record to reflect that. But what if the City was wrong in that determination? How would anyone challenge that without a record of what was not considered? The City's argument just does not protect these Petitioners or anyone else. To allow the City's position to prevail would be an injustice to the Petitioners and a detriment to the sentiments of why the CEQA process was created in the first instance. Petitioners must be given their day in Court with the

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Date: 04/24/2008

MINUTE ORDER

Page: 1

Dept: CX105

Calendar No.:



information that they need to present their position.

Allergan has submitted evidence that the documents at issue were included in the DVDs submitted to the City. The City has provided no contrary evidence. In any event, even if they were omitted by mistake, it was intended that they be included. The City cannot sincerely argue that it was going to consider the documents, in any event, with regard to these Projects. The City's position is clear; the City believes that the Vision Plan and Ordinance are irrelevant to their determinations as to these Projects.

The Requests for Judicial Notice are granted.

#### Overall View of Environmental Analysis

In its oral arguments the City stated that its goal was to try to clear up some of the apparent confusion in this Case. That was an admirable goal. However, it would not just require an herculean effort, but it is a goal which is completely unattainable. The City created the confusion in the first place and the confusion cannot be argued away. The Martin Street EIR and the briefing by the City both contain ambiguous, contradictory and inconsistent statements and arguments. Those are not the things of which a proper environmental analysis are made.

In calling the Martin Street EIR a subsequent EIR, in the City Council passing a resolution approving a subsequent EIR, and in the Planning Commission approving a subsequent EIR, the City misrepresented both the nature of the document to the public and the nature of the environmental analysis it was undertaking. That violates the spirit and letter of CEQA. The City argues that this is form over substance. If that were the only obfuscation which existed with regard to this environmental document, the City may have prevailed on that argument. But the wholesale confusion and the conflicting arguments and evidence create a substantive violation.

#### Standard of Review

This Court is not limited to a substantial evidence test standard of review for all issues raised by the Petitioners, as argued by the City and Real Party in Interest. That argument does not make sense. If the issue is one in which the City made a factual determination, then the substantial evidence standard applies. However, when the issue is not one in which the City made a factual determination, the de novo standard applies (Vineyard Area Citizens).

Therefore, on issues in which it is argued that the City did not proceed in a manner prescribed by law, the standard of review is, for the most part, de novo. Such issues as whether the Project EIR tiered improperly or incorporated by reference improperly or whether the cumulative impact analysis included all of the required projects are issues subject to a de novo review. There are no issues of factual dispute there. For example, the Project EIR is what it is and if its contents show that it improperly tiered, that is a proper decision for the Court to deduce from the face of the Project EIR. The contents of the Project EIR are not in dispute, nor do they create a factual issue.

#### Reference to record

Petitioners have adequately cited to the Record as to both their positions and the positions of the Respondent and Real Party in Interest. Petitioner Allergan's Opening Brief sets forth the evidence which it believed the City relied upon in making its determination regarding the Project and then attempted to demonstrate its inadequacy. Nothing more was needed. It probably is a fact, also, that nothing more could have been presented to this Court, given the inconsistency in the environmental documents and the positions taken by the City and Real Party in Interest. It is difficult to cite to a Record which is confusing, self-contradictory and ambiguous. The City itself argues that the entirety of the Record, and particularly the entirety of the Project EIR, must be reviewed to determine the adequacy of the Project

EIR.

### Standing

Petitioner Allergan has sufficient standing to proceed on its Petition. While Petitioner may or may not have an economic interest, it certainly has not been established by the Record that Petitioner's only, or even primary, interest in this Project is economic. As noted by Petitioner Allergan, Petitioner is challenging a municipal entity's violation of CEQA; it has a geographical nexus with the site of the Project; it has been in the area for forty years; and, it has the well-being of its employees to protect. These factors more than meet the requirements for standing.

### Specific Issues

With regard to the specific issues raised, the Court finds that the Project EIR and environmental analysis is flawed and in violation of CEQA as follows:

1. Tiering- The City violated CEQA by improperly tiering from the IBC EIR. The City could not tier off the IBC EIR as the Project is inconsistent with the IBC EIR, as admitted by the City. A second EIR cannot tier off an inadequate environmental study, of which the IBC EIR was in relation to this Project. Additionally, the Project is neither a change in a previously approved project nor a project contemplated by the IBC EIR; thus making tiering improper.

2. Incorporation by Reference- The City violated CEQA by improperly incorporating by reference from the IBC EIR.

3. Updating the IBC EIR- The IBC EIR is stale as to this Project; the passage of time and a dramatic change in conditions have made the IBC EIR irrelevant to this Project and therefore the IBC EIR cannot be relied upon in the analysis for this Project's potentially significant environmental effects. The City's argument that the IBC EIR was updated by the series of addenda concerning the previous residential projects is misplaced. Those individual projects were inconsistent with the IBC EIR, just as the current Project is inconsistent with the IBC EIR. Further, the addenda only addressed the issue of increasing the residential cap in the limited amount sufficient to allow for the specific proposed residential development. They did not address the cumulative effect of the transformation of the IBC, nor of the use of the trip transfer program in the context of residential use.

The City contends that the IBC EIR contemplated further residential development in the IBC beyond the approximately 3,800 units that were identified in the IBC EIR. It did not. In fact, the IBC EIR specifically limited the amount of residential to approximately 3,800 units and the Project IBC states that to be a fact. The City is arguing against itself and the documents it created.

4. Consideration of the Environmental Impacts of the IBC Transformation- Since the adoption of the IBC EIR, the IBC has been transformed and continues to be transformed into a mixed residential area which did not exist and was not addressed by the IBC EIR. That transformation had and has potentially far reaching environmental impacts. These impacts were not anticipated nor analyzed in the IBC EIR, nor were they addressed in the City's review of the previous individual residential projects in the IBC, in the form of addenda, performed since 1992. Nor, finally, were these impacts addressed in the Project SEIR.

The City contends that the Project EIR analyzed the environmental impacts of the transition of the IBC from commercial/residential to residential. The City has not cited any evidence in the Record to support that position. The result is that the City has approved individual projects, including this Project, in a piece-meal fashion, that has transformed the IBC into a mixed-use residential area, without ever having performed the required comprehensive analysis of the potential environmental impacts of such a transformation.

5. Consistency with the IBC EIR- As admitted by the City, the Project is inconsistent with the IBC EIR.
6. Unavoidable significant impacts- The SEIR ignores unavoidable significant impacts identified in the IBC EIR.
7. Stand-Alone EIR- The Project EIR is not a "stand alone EIR", as that term is defined by the City.
8. TDR Program- The Project EIR failed to adequately analyze and disclose the environmental effects that could be caused by transferring development rights from one area of the IBC to another. Furthermore, because the Project EIR relied upon the development caps managed through the TDR program, and because the IBC EIR conducted the only comprehensive review of the TDR program, the Project EIR improperly failed to acknowledge the unmitigated traffic impacts identified in the IBC EIR.
9. Cumulative impacts- The City failed to analyze the cumulative impacts of pending and probable future residential projects. Contrary to the argument of Real Party in Interest, Guideline Section 15125 is not the best and only guidance on the issue of cumulative impacts. In fact, it has nothing to do with cumulative impacts. Petitioners correctly argue to the contrary. As the City used an arbitrary cutoff date for its cumulative impact analysis, and failed to consider the additional residential units approved or pending during the SEIR process, the analysis was flawed.

Additionally, the consideration of current and further projects was incomplete since it wholly ignored the pending Vision Plan and Overlay Ordinance project and probable future projects contemplated within that project. The argument by Real Party in Interest that Petitioner's only evidence of the fact that the City was contemplating raising the residential cap in relation to the Vision Plan was the comment of Petitioner Allergan itself is an argument that seeks to obfuscate the facts as they actually exist. Such argument is contrary to the spirit and letter of proper CEQA analysis. The evidence contradicts that argument.

Whether it wants to admit it or not, the City 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. That is what the evidence shows; that is apparently what the Real Party in Interest and the City are trying to hide, or at least do not want to address.

11. The City's use of thresholds of significance- Instead of considering the totality of traffic impacts caused by existing and reasonably foreseeable projects, the City looked at the Martin Street Project in a vacuum. It applied the Project's individual traffic impacts to its thresholds of significance and then found that the impacts were not significant. By only considering the individual Project's impacts, the City improperly ignored the cumulative impacts on traffic of the ongoing transformation of the IBC from commercial/industrial to residential.

12. Traffic study analysis and assumptions regarding future construction of unidentified roadway improvements- The Project EIR failed to adequately disclose assumed roadway improvements. The references to assumed roadway and intersection improvements do not provide the detailed information specifically required by the City's TIA Guidelines.

13. The application of the TDR program- The City failed to provide an intelligible description in the Project EIR of the TDR Program as it applied to this Project. The Project EIR does not describe the IBC EIR's analysis of the TDR program and does not acknowledge the Statement of Overriding Considerations that the City adopted in 1992 as result of the fact that the City found that the intensity of development planned for the IBC would have unavoidable significant impacts.

#### All Other Issues

On all other issues, the City and the Real Party in Interest are correct in their arguments. As to those issues, the Program EIR and the environmental analysis complies with CEQA, the City proceeded in a manner required by law and there is substantial evidence to support the positions of the City and the Real Party in Interest.

#### The Written Responses to the Court's Questions

In making this Ruling, the Court has not considered nor relied upon the written responses to the Court's questions filed by either side. Any objections to those documents are thus moot.

#### RULING:

All requests to take judicial notice are granted. All objections to the Requests for Judicial Notice are overruled. The Motions to Augment are granted. The Petitions are granted. Petitioner Allergan shall provide the Court with a proposed Statement of Decision within 15 days, with any supplements or comments by Petitioner City of Newport Beach to be filed in 20 days, with any objections to that proposed Statement of Decision and supplements to be filed in 25 days.

Clerk to give notice to Plaintiff/petitioner and Plaintiff/petitioner to give notice to all other parties.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Complex Litigation Center  
751 W. Santa Ana Blvd  
Santa Ana, CA 92701

**SHORT TITLE:** CITY OF NEWPORT BEACH VS CITY OF IRVINE

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**

**07CC01264**

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Santa Ana, California, on 04/25/2008.

Clerk of the Court, by: Angela Knox, Deputy

WOODRUFF, SPRADLIN & SMART  
555 Anton Boulevard # 1200  
Costa Mesa, CA 92626-7670

RUTAN & TUCKER  
611 ANTON BLVD, 14TH FLOOR  
COSTA MESA, CA 92626

☐ Additional names and address attached.

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

Page: 1

## **ATTACHMENT “B”**

Statement of Decision in Allergan v. City of Irvine (Martin St.)

ELECTRONICALLY  
RECEIVED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP May 09 2008

A Limited Liability Partnership

2 Including Professional Corporations

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Telephone: 714-513-5100

7 Facsimile: 714-513-5130

8 Attorneys for Plaintiff and Petitioner  
9 ALLERGAN, INC.

ALAN SLATER, Clerk of the Court

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

MAY 23 2008

ALAN SLATER, Clerk of the Court

*A. Knox*  
BY A. KNOX

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ORANGE, COMPLEX LITIGATION CENTER

12 CITY OF NEWPORT BEACH and CITY  
13 OF TUSTIN,

14 Plaintiffs and Petitioners,

15 v.

16 CITY OF IRVINE, CITY COUNCIL OF  
17 THE CITY OF IRVINE; and DOES I-X,

18 Defendants and Respondents,

19 STARPOINT VENTURES, WEST  
20 MILLENIUM HOMES, and DOES XI-L,  
inclusive,

21 Real Parties in Interest.

22 ALLERGAN, INC., a Delaware  
corporation,

23 Plaintiff and Petitioner,

24 v.

25 CITY OF IRVINE, a municipal  
26 corporation; CITY COUNCIL OF THE  
27 CITY OF IRVINE; and DOES 1 through  
100, inclusive,

28 Defendants and Respondents,

Case No. 07CC01264

Consolidated with Case No. 07CC01268

Assigned for all purposed to:  
The Hon. Stephen J. Sundvold  
Dept. CX-105

~~PROPOSED~~ STATEMENT OF  
DECISION

Complaint Filed: April 27, 2007

1 STARPOINT VENTURES, WEST  
2 MILLENIUM HOMES, and DOES XI-L,  
3 inclusive,

4 Real Parties in Interest.

5 The above entitled cases were consolidated together and came on regularly for trial  
6 on February 5, 2008, in Department CX-105 of the above entitled court, the Honorable  
7 Stephen J. Sundvold, Judge, presiding without a jury. The matters were tried on that date  
8 and on February 6, 2008, and submitted effective February 6, 2008. Plaintiffs and  
9 Petitioners City of Newport Beach and City of Tustin ("Newport/Tustin") appeared by and  
10 through their counsel. Plaintiff and Petitioner Allergan, Inc. ("Allergan") appeared by and  
11 through its counsel.<sup>1</sup> Respondents City of Irvine and City Council of the City of Irvine  
12 (collectively "City") appeared by and through their counsel. Real Party In Interest West  
13 Millennium Homes, Inc. ("Real Party") appeared by and through its counsel. No  
14 appearances made by Real Party In Interest Starpointe Ventures.

15 The matter was before the court for consideration of Petitioners' request for the  
16 issuance of a Writ of Mandamus and thus was heard on the Record of Proceedings  
17 submitted in the case. Additionally, Allergan filed a Motion to Augment the  
18 Administrative Record Certified by Respondent City and submitted a Request for Judicial  
19 Notice. Further, Newport/Tustin filed two Motions to Augment the Record and sought  
20 Judicial Notice of further documents in the case. All of these matters came on for hearing  
21 at the same date and time.

22 The Court, having taken the matters under submission on February 6, 2008, issued  
23 its tentative decision via Minute Order dated April 24, 2008. The parties having requested  
24 a Statement of Decision, this document has been prepared to meet the requirements of the  
25 Statement of Decision pursuant to California Code of Civil Procedure section 632 and  
26 California Rule of Court 3.1590. Through this Statement of Decision the Court explains

27 <sup>1</sup> Newport/Tustin and Allergan are collectively referred to herein as "Petitioners."  
28



1 the factual and legal basis for its decision as to each of the principal controverted issues in  
2 the matters.

### 3 **I. Introduction**

4 The City's business core, the Irvine Business Complex ("IBC"), is a business and  
5 industrial complex covering approximately 2,800 acres located within the western portion  
6 of the City of Irvine. The IBC is the largest business complex in Orange County. The IBC  
7 is bordered on the north by the City of Tustin and to the south by the John Wayne Airport  
8 and Campus Drive, as well as the City of Newport Beach. The San Diego Creek channel  
9 borders the IBC to the east, and the Costa Mesa Freeway (State Route 55), the City of  
10 Costa Mesa, and the City of Santa Ana border the IBC to the west.

11 The IBC was established as an industrial complex in the 1960s and 1970s.  
12 However, substantial residential development in the IBC in the 1980s resulted in the City  
13 preparing a program Environmental Impact Report in 1992 (the "1992 IBC EIR"). The  
14 1992 IBC EIR studied the environmental impact only of the then-existing 3,896 residential  
15 units in the IBC, some of which had been constructed, some of which had been approved  
16 but not constructed, and some of which were in the application process. Ultimately, when  
17 certified, the 1992 IBC EIR and the General Plan and Zoning Code amendments it  
18 supported capped residential units within the IBC at the 3,896 units actually studied.

19 Following the certification of the 1992 IBC EIR, the City continued to approve  
20 additional residential developments in the IBC through ~~spot~~ General Plan and Zoning Code **LB**  
21 amendments. The City initially approved such projects by adopting a series of addenda to  
22 the 1992 IBC EIR. However, the addenda only addressed the issue of increasing the  
23 residential cap in the 1992 IBC EIR to allow for the specific proposed development. The  
24 addenda did not address the cumulative effect of the transformation of the IBC.

25 The City also commenced an overall planning process in 2004 that led to  
26 development of a Vision Plan and Overlay Ordinance which would govern the  
27 redevelopment of the IBC from a commercial/industrial complex into a mixed-use  
28 residential community. Drafts of the Vision Plan and Overlay Ordinance were prepared

1 and released in late 2005. A proposed Negative Declaration intended to support adoption  
2 of the draft Vision Plan and Overlay Ordinance was circulated early in 2006. According to  
3 the draft Negative Declaration and related documents, the Vision Plan and associated  
4 rezoning could add 10,000 to 30,000 new residential units to the IBC. The Negative  
5 Declaration was abandoned by the City when it received comments criticizing it, and the  
6 City decided to proceed with preparing a programmatic EIR prior to adoption of the Vision  
7 Plan and Overlay Ordinance. That program EIR is currently in process. The City has  
8 continued, however, to process residential development applications in its ongoing  
9 redevelopment of the IBC.

10 As part of this redevelopment, the City approved a General Plan Amendment and  
11 zone change for the Martin Street residential development (the "Project"). The 3.65-acre  
12 Project site is currently occupied by a four-story office building, consisting of 65,858  
13 square feet of office use and 3,300 feet of commercial use. The Project would retain the  
14 existing office building but replace the existing parking lot with a 82-unit four-story  
15 residential development and parking garage. The City prepared a Subsequent  
16 Environmental Impact Report ("SEIR") in support of the General Plan Amendment and  
17 zone change for the Project.

18 Petitioners challenged the Project in the administrative proceedings and ultimately  
19 filed these actions. Petitioners sought the issuance of a Writ of Mandamus to overturn the  
20 City's certification of the SEIR and its approval of the Project. Petitioners alleged that the  
21 City failed to conduct proper environmental review in approving the Project in violation of  
22 the California Environmental Quality Act ("CEQA").

## 23 **II. Motions to Augment and Request for Judicial Notice**

24 The motions of Allergan and Newport/Tustin to augment the certified record in this  
25 matter are granted. Further, Petitioners' Requests for Judicial Notice are granted.

26 The documents Petitioners seek to augment into the administrative record and of  
27 which Petitioners seek judicial notice are properly part of the administrative record  
28 pursuant to Public Resources Code section 21167.6 and are necessary to the resolution of

1 the controversy in this matter. Petitioners have alleged that the City is piecemealing the  
2 addition of residential units into the IBC without performing proper environmental  
3 analysis; that the City has not conducted proper environmental analysis of the transition of  
4 the IBC from a commercial/industrial complex to a residential mixed-use community and  
5 that there needs to be further environmental review on this issue; that the real "project"  
6 being pursued by the City is its Vision Plan and Overlay Ordinance or the transition of the  
7 IBC to a residential mixed-use community; that environmental analysis and review with  
8 regard to any present residential project in the IBC must necessarily require review of the  
9 cumulative impacts of the overall transition of the IBC from a commercial/industrial  
10 complex to a residential mixed-use community; and multiple other allegations by  
11 Petitioners with respect to the above issues.

12 The City would have the City determine what information is relevant to the City's  
13 environmental determination and then would only allow the Record to reflect that  
14 determination. This position by the City, however, will prevent Petitioners from raising  
15 arguments related to CEQA compliance. The City's argument does not protect Petitioners,  
16 or anyone else. To allow the City's position to prevail would be an injustice to Petitioners  
17 and a detriment to the policies underlying CEQA and the process that was created under  
18 CEQA in the first instance. Petitioners must be given their day in court with the  
19 information that they need to present their position.

20 Additionally, Allergan has presented evidence that the documents at issue in its  
21 Motion to Augment the Record were included on DVDs it submitted to the City during the  
22 administrative proceedings in this matter. The City has provided no contrary evidence to  
23 Allergan's assertion. In any event, even if the documents were omitted by a mistake, it was  
24 intended that they be included. Further, the City cannot sincerely argue that it was going  
25 to consider the documents with respect to this Project. The City's position is clear; it  
26 believes that the Vision Plan and Overlay Ordinance, and the proceedings leading up to  
27 their drafting, are irrelevant to its determination regarding the Project.

28

1 Contrary to the City's position, however, the documents sought to be augmented  
2 into the record and for which Petitioners seek judicial notice are relevant to the specific  
3 issues raised in this matter. They have been adequately authenticated and shown to be  
4 consistent with the dictates of Public Resources Code section 21167.6. Therefore,  
5 Petitioners' motions to augment are granted and Petitioners' requests for judicial notice are  
6 also granted.

### 7 **III. Overall View of Environmental Analysis**

8 In its oral arguments the City stated that its goal was to try to clear up some of the  
9 apparent confusion in this case. That was an admirable goal. However, achieving that goal  
10 would not just require a Herculean effort, but it is a goal which is completely unattainable.  
11 The City created the confusion in the first place and the confusion cannot be argued away.  
12 The Project SEIR and the briefing submitted by the City both contain ambiguous,  
13 contradictory, and inconsistent statements and arguments. Those are not the things of  
14 which proper environmental analyses are made.

15 By calling the Project SEIR a subsequent EIR, by passing a resolution approving a  
16 subsequent EIR, and by approving a subsequent EIR, the City misrepresented both the  
17 nature of the document to the public and the nature of the environmental analysis it was  
18 undertaking. That misrepresentation violated the spirit and the letter of CEQA. The City  
19 argues that this misrepresentation is form over substance. If that were the only obfuscation  
20 which existed with regard to this environmental document, the City may have prevailed on  
21 that argument. In juxtaposition to that argument, however, the City's conflicting  
22 arguments and evidence create wholesale confusion and, as a result, a substantive violation  
23 of CEQA.

### 24 **IV. Standard of Review**

25 This Court is not limited to a substantial evidence test standard of review for all  
26 issues raised by Petitioners. The City's and Real Party's arguments to the contrary do not  
27 make sense. The substantial evidence standard only applies to issues in which the City has  
28 made a factual determination. On the other hand, the *de novo* standard of review applies to

1 all issues where the City has not made a factual determination. (*Vineyard Area Citizens*  
2 *for Responsible Growth, et al. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412.)

3 Therefore, with respect to the issues on which it is argued that the City did not  
4 proceed in a manner prescribed by law, the standard of review is, for the most part, *de*  
5 *novο*. The issues of whether the Project SEIR tiered improperly or incorporated by  
6 reference improperly, or whether the cumulative impact analysis included all of the  
7 required projects, are issues that are subject to *de novo* review. There are no factual  
8 disputes with respect to those issues. For example, the Project SEIR is what it is, and if its  
9 contents show that it improperly tiers, it is proper for the Court to deduce that fact from the  
10 face of the Project SEIR. The contents of the Project SEIR are not in dispute, nor do they  
11 create a factual issue.

## 12 **V. References to the Record**

13 Petitioners have adequately cited to the Record as to both their positions and the  
14 positions of the City and Real Party. Allergan's opening brief sets forth the evidence  
15 which it believed the City relied upon in making its determination regarding the Project,  
16 and then attempted to demonstrate its inadequacy. Nothing more was needed. In addition,  
17 based upon this Court's review of the Record, it is probable that nothing more could have  
18 been presented to this Court, given the inconsistency in the environmental documents and  
19 the positions taken by the City and Real Party. It is difficult to cite to a Record which is  
20 confusing, self contradictory, and ambiguous. The City itself argues that the entirety of the  
21 Record, and particularly the entirety of the Project SEIR, must be reviewed to determine  
22 the adequacy of the Project SEIR. Yet a full review of the Record reveals confusion,  
23 conflicting arguments and ambiguity so as to create substantive confusion in violation of  
24 CEQA.

## 25 **VI. Standing**

26 Allergan has sufficient standing to proceed on this Petition. While Allergan may or  
27 may not have an economic interest, it certainly has not been established by the Record that  
28 Allergan's only, or even primary, interest in this Project is economic. As noted by

1 Allergan, it is challenging a municipal entity's violation of CEQA; it has a geographical  
2 nexus with the site of the Project; it has been in the IBC for forty years; and it has the  
3 wellbeing of its employees to protect. These factors more than meet the requirements for  
4 standing.

## 5 **VII. Specific Issues**

6 With regard to the specific issues raised, the Court finds and holds that the Project  
7 SEIR and the environmental analysis performed by the City is flawed and in violation of  
8 CEQA as follows:

9 1. Tiering: The City has violated CEQA by improperly tiering from the 1992  
10 IBC EIR. The City could not tier off the 1992 IBC EIR as the Project is inconsistent with  
11 the 1992 IBC EIR as admitted by the City. Additionally, a later EIR cannot tier off of an  
12 inadequate environmental study, of which the 1992 IBC EIR was in relation to this Project.  
13 Additionally, the Project is neither a change in a previously approved project nor a project  
14 contemplated by the 1992 IBC EIR; thus making tiering improper as a matter of law. As  
15 such the City has failed to proceed in a manner required by law.

16 2. Incorporation by Reference: The City violated CEQA as a matter of law by  
17 improperly incorporating by reference from the 1992 IBC EIR.

18 3. Updating the IBC EIR: Substantial evidence does not support the conclusion  
19 that the 1992 IBC EIR is relevant to this Project, and in fact the evidence supports the  
20 conclusion that the 1992 IBC EIR is stale as to this Project as a matter of law. The passage  
21 of time and the dramatic change in the conditions in the IBC have made the 1992 IBC EIR  
22 irrelevant to this Project and, therefore, the 1992 IBC EIR cannot be relied upon in the  
23 analysis of this Project's potentially significant environmental effects.

24 The City's argument that the 1992 IBC EIR was updated by the series of addenda  
25 concerning the previous residential projects is misplaced. First, those individual projects  
26 were inconsistent the 1992 IBC EIR, just as the current Project is inconsistent with the  
27 1992 IBC EIR. Second, the addenda only addressed the issue of increasing the residential  
28 cap within the IBC in a limited amount sufficient only to allow for the specific proposed

1 residential development. Third, those addenda did not address the cumulative effect of the  
2 transformation of the IBC, nor the use of the trip transfer program in the context of  
3 residential use.

4 The City contends that the 1992 IBC EIR contemplated further residential  
5 development in the IBC beyond the cap of 3,896 units that was identified in the 1992 IBC  
6 EIR. It did not. In fact, the 1992 IBC EIR specifically limited the amount of residential  
7 units to 3,896 units and the 1992 IBC EIR states that to be a fact. As such, the City is  
8 arguing against itself and the documents that it created.

9 For the above reasons, this court concludes that the 1992 IBC EIR is stale as to this  
10 Project and it cannot be utilized as a basis for environmental review of this Project.

11 4. Consideration of the Environmental Impacts of the IBC Transformation:

12 Since the adoption of the 1992 IBC EIR, the IBC has been transformed, and continues to  
13 be transformed, into a mixed-use residential community which did not exist at the time of,  
14 and was not addressed by, the 1992 IBC EIR. That transformation had, and has,  
15 potentially far-reaching environmental impacts. These impacts were not anticipated nor  
16 analyzed in the 1992 IBC EIR. Nor were these impacts addressed in the City's review of  
17 the previous individual residential projects in the IBC in the form of addenda performed  
18 since 1992. Nor, finally, were these impacts addressed in the Project SEIR.

19 The City contends that the Project SEIR analyzed the environmental impacts of the  
20 transition of the IBC from commercial/industrial uses to a mixed-use residential  
21 community. The City has not, however, cited any evidence in the Record to support that  
22 position. The result is that the City has approved individual projects, including this  
23 Project, in a piecemeal fashion that has transformed the IBC into a mixed-use residential  
24 community without ever having performed the required comprehensive analysis of the  
25 potential environmental impacts of such a transformation.

26 5. Consistency with the 1992 IBC EIR: As admitted by the City, the Project is  
27 inconsistent with the 1992 IBC EIR.

28

1           6.     Unavoidable Significant Impacts: The Project SEIR ignores unavoidable  
2 significant environmental impacts identified in the 1992 IBC EIR.

3           7.     "Stand Alone EIR": The Project SEIR is not a "stand alone EIR," as the  
4 term is defined by the City.

5           8.     TDR Program: The Project SEIR failed to adequately analyze and disclose  
6 the environmental effects that could be caused by transferring development rights from one  
7 area of the IBC to another. Furthermore, because the Project SEIR relied upon the  
8 development caps managed through the TDR Program, and because the 1992 IBC EIR  
9 conducted the only comprehensive review of the TDR Program, the Project SEIR  
10 improperly failed to acknowledge the unmitigated traffic impacts identified in the 1992  
11 IBC EIR.

12          9.     Cumulative Impacts: The City failed to analyze the cumulative impacts of  
13 pending and probable future residential projects within the IBC. Contrary to the argument  
14 of Real Party, CEQA Guidelines section 15125 is not the best and only guidance on the  
15 issue of cumulative impacts. In fact, it has nothing to do with cumulative impacts.  
16 Petitioners correctly argue to the contrary. The City's cumulative impact analysis is flawed  
17 since it used an arbitrary cut-off date for its analysis and failed to consider the additional  
18 residential units approved or pending during the SEIR process.

19           Additionally, the consideration of current and future projects was incomplete since  
20 it wholly ignored the pending Vision Plan and Overlay Ordinance project, and probable  
21 future projects contemplated within that project. Real Party's argument that Allergan's  
22 only evidence of the fact that the City was contemplating raising the residential cap in  
23 relation to the Vision Plan was the comment of Allergan itself is an argument that seeks to  
24 obfuscate the facts as they actually exist. Such argument is contrary to the spirit and letter  
25 of proper CEQA analysis. The evidence contradicts that argument.

26           Whether it wants to admit it or not, the City is transforming the IBC into a mixed-  
27 use residential community. It is contemplating raising the residential cap through the  
28 Vision Plan, while at the same time approving individual residential projects without



1 conducting a proper environmental analysis of that transformation. That is what the  
2 evidence shows; that is apparently what the Real Party and the City are trying to hide, or at  
3 least do not want to address.

4 10. The City's Use of Thresholds of Significance: Instead of considering the  
5 totality of traffic impacts caused by pending and reasonably foreseeable future projects, the  
6 City looked at the Project in a vacuum. It applied the Project's individual traffic impacts to  
7 its thresholds of significance and the found that the impacts were not significant. By only  
8 considering the individual Project's impacts, the City improperly ignored the cumulative  
9 impacts on traffic of the ongoing transformation of the IBC from a commercial/industrial  
10 complex to a residential mixed-use community.

11 11. Traffic Study Analysis and Assumptions Regarding Future Construction of  
12 Unidentified Roadway Improvements: The Project SEIR failed to adequately disclose  
13 assumed roadway improvements. The references to assumed roadway and intersection  
14 improvements do not provide the detailed information specifically required by the City's  
15 TIA Guidelines.

16 12. The Application of the TDR Program: The City failed to provide an  
17 intelligible description in the Project SEIR of the TDR Program as it applied to this  
18 Project. The Project SEIR does not describe the 1992 IBC EIR's analysis of the TDR  
19 Program and does not acknowledge the Statement of Overriding considerations that the  
20 City adopted in 1992 as a result of the fact the City found that the intensity of development  
21 planned for the IBC would have unavoidable significant impacts.

## 22 **VIII. All Other Issues**

23 On all other issues, the City and the Real Party are correct in their arguments. As to  
24 those issues, the 1992 IBC EIR and the environmental analysis complies with CEQA. The  
25 City proceeded in a manner required by law, and there is substantial evidence to support  
26 the positions of the City and the Real Party.

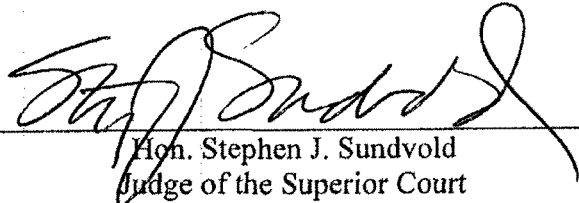
1 **IX. Written Responses to Court's Questions**

2 In making this Ruling, the Court has not considered nor relied upon the written  
3 responses to the Court's questions filed by either side. Any objections to those documents  
4 are, therefore, moot.

5 **X. Summary of Ruling**

6 The Court grants all requests to take judicial notice and overrules all objections to  
7 the requests for judicial notice. The Petitioners' motions to augment the record are  
8 granted. The Petitions are granted. Judgment shall be entered in Petitioners' favor against  
9 Respondents and Real Parties in Interest and a writ shall issue from this Court consistent  
10 with this decision.

11 DATED: MAY 23 2008

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Hon. Stephen J. Sundvold  
Judge of the Superior Court

17 Submitted by Petitioner ALLERGAN, INC.  
18 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange; I am over the age of eighteen years and not a party to the within entitled action; my business address is 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626-1993.

On May 9, 2008, I served the following document(s) described as **[PROPOSED] STATEMENT OF DECISION** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

**See Attached Service List**

- ☒ **BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- ☒ **BY ELECTRONIC MAIL:** I caused the above document(s) to be transmitted by electronic mail.
- ☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2008, at Costa Mesa, California.

  
Ami Donoghue

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## **ATTACHMENT “C”**

Minute Order in Allergan v. City of Irvine (Alton St.)

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
COMPLEX LITIGATION CENTER  
MINUTE ORDER

Date: 04/24/2008                      Time: 09:10:26 AM                      Dept: CX105  
Judicial Officer Presiding: Judge Stephen J. Sundvold  
Clerk: Angela M Knox

Bailiff/Court Attendant: Chris Sanchez

Reporter: None

Case Init. Date: 04/26/2007

Case No: 07CC01265

Case Title: CITY OF NEWPORT BEACH VS CITY OF  
IRVINE

Case Category: Civil - Unlimited

Case Type: Judicial Review - Other

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Event Type: Chambers Work

Causal Document & Date Filed: Answer to Amended Complaint - No Fee; Answer to Complaint;  
Association of Attorney; Banner Conversion; Declaration - Other; Demurrer - Other; Document - Other;

**Appearances:**

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There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 2/6/08, now makes the following ruling:

Case Number: 07CC01265 (as consolidated with  
07CC01267)

(All references to the "City" are references to Respondent the City of Irvine )

**Motions to Augment**

If Petitioners are correct that the City is piece-mealing the addition of residential units into the IBC without performing proper environmental analysis; if Petitioners are correct that there has been no proper environmental analysis of the transition in the IBC from commercial/industrial to residential and there needs to be; if Petitioners are correct that the real "project" is the Vision Plan and Ordinance Overlay or the residential transition; if Petitioners are correct that any environmental analysis and review with regard to any present residential project in the IBC must necessarily require a review of the cumulative impacts of the overall transition in the IBC from commercial/ industrial to residential; and, if any one of several other of the Petitioners' arguments are correct, the documents which the Petitioners seek to add to the Record are properly added.

The City would have the City determine what information is relevant to the City's environmental analysis and then only allow the Record to reflect that. But what if the City was wrong in that determination? How would anyone challenge that without a record of what was not considered? The City's argument does not protect these Petitioners or anyone else. To allow the City's position to prevail would be an injustice

to the Petitioners and a detriment to the sentiments of why the CEQA process was created in the first instance. Petitioners must be given their day in Court, with the information that they need to present their position.

Allergan has submitted evidence that the documents at issue were included in the DVDs submitted to the City. The City has provided no contrary evidence. In any event, even if they were omitted by mistake, it was intended that they be included. The City cannot sincerely argue that it was going to consider the documents, in any event, with regard to the Project. The City's position is clear; the City believes that the Vision Plan and Ordinance are irrelevant to their determinations as to the Project.

The Requests for Judicial Notice are granted.

#### Overall View of Environmental Analysis

If it is rightfully difficult for the Petitioners and their learned counsel to understand just what the City intends by its environmental documents and arguments before the Court; if it is equally difficult for the Court to ascertain those intentions; if the City argues, to support its position, that certain portions of the environmental documents are not true, and if the City's own oral and written arguments are as contradictory as are the statements in the environmental documents, then how are the public and the parties particularly interested in the Project able to properly assess the propriety of the environmental documents and the potential environmental impacts of the Project? The answer is they can't.

Petitioners are correct in arguing that the City itself cannot make up its mind as to just how to handle this Project. In the environmental documents, in the City's briefing and in the City's oral arguments, the EIR is called a supplemental EIR, a stand-alone EIR, (and at the same time the City admits that there is no such thing as a "stand-alone EIR" in the context of CEQA) and a subsequent EIR.

The EIR specifically tiers off the IBC EIR, specifically incorporates by reference from the IBC EIR (while the City argues that it doesn't, but that if it does it does so properly). The City argues that the Project is not consistent with the IBC EIR. Yet, the City also argues that the addenda to the IBC EIR, which dealt with projects equally inconsistent with the IBC EIR (as they were residential projects much the same as the Alton Project), updated the IBC EIR, so that the IBC EIR was not stale.

When questioned about a certain portion of the EIR, counsel for the City argues that the cited portion "is not true." First of all, the arguments of counsel as to whether a certain portion of the EIR is true or not cannot be considered. In any event, if that portion of the EIR is not true, then what other portions of the EIR may not be true and how are the Petitioners, the public, other interested parties or the Court going to determine what portions are or are not true?

The City was repeatedly asked, in different contexts, whether the Project EIR analyzed the environmental impacts of the transition of the IBC from commercial/industrial to residential, or whether the City had ever considered the environmental impacts of that transition. The City argues that the Project EIR does make that analysis, but the City has cited the Court to absolutely no evidence that the Project EIR made that analysis or that the analysis has ever been performed by the City. That analysis is essential.

If all of this confusion caused by the City weren't enough, the Real Party in Interest castigates the Petitioner for arguing that the City contemplates that an additional 20,000 or more residential units will be added to the IBC in the future (the Real Party in Interest arguing that the Petitioner pulled the number out of the air). As it turns out, similar figures came directly from City officials who were quite clearly thinking and speaking in terms of the total increase in residential units in the IBC; something that the City has repeatedly tried to deny. The City contends that the Vision Plan and the Ordinance Overlay have nothing whatsoever to do with the IBC transition to residential or a residential cap and the evidence is contrary to that contention.

While a CEQA analysis is not an exact science, the public, interested parties and this Court must be able to determine, with some degree of certainty, that the City has met its burden of conducting a proper environmental analysis. The City fails in this instance.

#### Standard of Review

This Court is not limited to a substantial evidence test standard of review for all issues raised by the Petitioners, as argued by the City and Real Party in Interest. That argument does not make sense. If the issue is one in which the City made a factual determination, then the substantial evidence standard applies. However, when the issue is not one in which the City made a factual determination, the de novo standard applies (Vineyard Area Citizens).

Therefore, on issues in which it is argued that the City did not proceed in a manner prescribed by law, the standard of review is, for the most part, de novo. Such issues as whether the Project EIR tiered improperly or incorporated by reference improperly or whether the cumulative impact analysis included all of the required projects are issues subject to a de novo review. There are no issues of factual dispute there. For example, the Project EIR is what it is and if its contents show that it improperly tiered, that is a proper decision for the Court to deduce from the face of the Project EIR. The contents of the Project EIR are not in dispute, nor do they create a factual issue.

#### Reference to record

Petitioners have adequately cited to the Record as to both their positions and the positions of the Respondent and Real Party in Interest. Petitioner Allergan's Opening Brief sets forth the evidence which it believed the City relied upon in making its determination regarding the Project and then attempted to demonstrate its inadequacy. Nothing more was needed. It probably is a fact, also, that nothing more could be have been presented to this Court, given the inconsistency in the environmental documents and the positions taken by the City and Real Party in Interest. It is difficult to cite to a Record which is confusing, self-contradictory and ambiguous. The City itself argues that the entirety of the Record, and particularly the entirety of the Project EIR, must be reviewed to determine the adequacy of the Project EIR.

#### Standing

Petitioner Allergan has sufficient standing to proceed on its Petition. While Petitioner may or may not have an economic interest, it certainly has not been established by the Record that Petitioner's only, or even primary, interest in this Project is economic. As noted by Petitioner Allergan, Petitioner is challenging a municipal entity's violation of CEQA; it has a geographical nexus with the site of the Project; it has been in the area for forty years; and, it has the well-being of its employees to protect. These factors more than meet the requirements for standing.

#### Specific Issues

With regard to the specific issues raised, the Court finds that the Project EIR and environmental analysis is flawed and in violation of CEQA as follows:

1. Tiering- The City violated CEQA by improperly tiering from the IBC EIR. The City could not tier off the IBC EIR as the Project is inconsistent with the IBC EIR, as admitted by the City. A second EIR cannot tier off an inadequate environmental study, of which the IBC EIR was in relation to this Project.



Additionally, the Project is neither a change in a previously approved project nor a project contemplated by the IBC EIR; thus making tiering improper.

2. Incorporation by Reference- The City violated CEQA by improperly incorporating by reference from the IBC EIR.

3. Updating the IBC EIR- The IBC EIR is stale as to this Project; the passage of time and a dramatic change in conditions have made the IBC EIR irrelevant to this Project and therefore the IBC EIR cannot be relied upon in the analysis for this Project's potentially significant environmental effects. The City's argument that the IBC EIR was updated by the series of addenda concerning the previous residential projects is misplaced. Those individual projects were inconsistent with the IBC EIR, just as the current Project is inconsistent with the IBC EIR. Further, the addenda only addressed the issue of increasing the residential cap in the limited amount sufficient to allow for the specific proposed residential development. They did not address the cumulative effect of the transformation of the IBC, nor of the use of the trip transfer program in the context of residential use.

The City contends that the IBC EIR contemplated further residential development in the IBC beyond the approximately 3,800 units that were identified in the IBC EIR. It did not. In fact, the IBC EIR specifically limited the amount of residential to approximately 3,800 units and the Project IBC states that to be a fact. The City is arguing against itself and the documents it created.

4. Consideration of the Environmental Impacts of the IBC Transformation- Since the adoption of the IBC EIR, the IBC has been transformed and continues to be transformed into a mixed residential area which did not exist and was not addressed by the IBC EIR. That transformation had and has potentially far reaching environmental impacts. These impacts were not anticipated nor analyzed in the IBC EIR, nor were they addressed in the City's review of the previous individual residential projects in the IBC, in the form of addenda, performed since 1992. Nor, finally, were these impacts addressed in the Project SEIR.

The City contends that the Project EIR analyzed the environmental impacts of the transition of the IBC from commercial/residential to residential. The City has not cited any evidence in the Record to support that position. The result is that the City has approved individual projects, including this Project, in a piece-meal fashion, that has transformed the IBC into a mixed-use residential area, without ever having performed the required comprehensive analysis of the potential environmental impacts of such a transformation.

5. Consistency with the IBC EIR- As admitted by the City, the Project is inconsistent with the IBC EIR.

6. Unavoidable significant impacts- The SEIR ignores unavoidable significant impacts identified in the IBC EIR.

7. Stand Alone EIR- The Project EIR is not a "stand alone EIR", as that term is defined by the City.

8. TDR Program-The Project EIR failed to adequately analyze and disclose the environmental effects that could be caused by transferring development rights from one area of the IBC to another. Furthermore, because the Project EIR relied upon the development caps managed through the TDR program, and because the IBC EIR conducted the only comprehensive review of the TDR program, the Project EIR improperly failed to acknowledge the unmitigated traffic impacts identified in the IBC EIR.

9. Cumulative impacts- The City failed to analyze the cumulative impacts of pending and probable future residential projects. Contrary to the argument of Real Party in Interest, Guideline Section 15125 is not the best and only guidance on the issue of cumulative impacts. In fact, it has nothing to do with cumulative impacts. Petitioners correctly argue to the contrary. As the City used an arbitrary cutoff date for its cumulative impact analysis, and failed to consider the additional residential units approved or pending during the SEIR process, the analysis was flawed.

Additionally, the consideration of current and further projects was incomplete since it wholly ignored the pending Vision Plan and Overlay Ordinance project and probable future projects contemplated within that project.

Whether it wants to admit it or not, the City 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. That is what the evidence shows; that is apparently what the Real Party in Interest and the City are trying to hide, or at least do not want to address.

11. The City's use of thresholds of significance- Instead of considering the totality of traffic impacts caused by existing and reasonably foreseeable projects, the City looked at the Alton Project in a vacuum. It applied the Project's individual traffic impacts to its thresholds of significance and then found that the impacts were not significant. By only considering the individual Project's impacts, the City improperly ignored the cumulative impacts on traffic of the ongoing transformation of the IBC from commercial/ industrial to residential.

12. Traffic study analysis and assumptions regarding future construction of unidentified roadways improvements- The Project EIR failed to adequately disclose assumed roadway improvements. The references to assumed roadway and intersection improvements do not provide the detailed information specifically required by the City's TIA Guidelines.

13. The application of the TDR program- The City failed to provide an intelligible description in the Project EIR of the TDR Program as it applied to this Project. The Project EIR does not describe the IBC EIR's analysis of the TDR program and does not acknowledge the Statement of Overriding Considerations that the City adopted in 1992 as result of the fact that the City found that the intensity of development planned for the IBC would have unavoidable significant impacts.

#### All Other Issues

On all other issues, the City and the Real Party in Interest are correct in their arguments. As to those issues, the Program EIR and the environmental analysis complies with CEQA, the City proceeded in a manner required by law, and there is substantial evidence to support the positions of the City and the Real Party in Interest.

#### The Written Responses to the Court's Questions

In making this Ruling, the Court has not considered nor relied upon the written responses to the Court's questions filed by either side. Any objections to those documents are thus moot.

#### RULING:

The Court grants all requests to take judicial notice and overrules all objections to the Requests for Judicial Notice. The motions to augment are granted. The Petitions are granted. Petitioner Allergan shall provide the Court with a proposed Statement of Decision within 15 days, with any supplements or comments by Petitioner City of Newport Beach to be filed in 20 days, with any objections to that proposed Statement of Decision and supplements to be filed in 25 days.

Clerk to give notice to plaintiff/petitioner and plaintiff/petitioner to give notice to all other parties.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

Complex Litigation Center  
751 W. Santa Ana Blvd  
Santa Ana, CA 92701

**SHORT TITLE: CITY OF NEWPORT BEACH VS CITY OF IRVINE**

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**

**07CC01265**

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Santa Ana, California, on 04/25/2008.

Clerk of the Court, by: Angela Knox, Deputy

WOODRUFF, SPRADLIN & SMART  
701 S PARKER ST STE 8000  
ORANGE, CA 92868

RUTAN & TUCKER  
611 ANTON BLVD, 14TH FLOOR  
COSTA MESA, CA 92626

☐ Additional names and address attached.

## **ATTACHMENT “D”**

Statement of Decision in Allergan v. City of Irvine (Alton St.)

ELECTRONICALLY  
RECEIVED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP May 09 2008

2 A Limited Liability Partnership  
3 Including Professional Corporations  
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12 Telephone: 714-513-5100

13 Facsimile: 714-513-5130

14 Attorneys for Plaintiff and Petitioner  
15 ALLERGAN, INC.

ALAN SLATER, Clerk of the Court

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

MAY 23 2008

ALAN SLATER, Clerk of the Court

*A. Knox*  
BY A. KNOX

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ORANGE, COMPLEX LITIGATION CENTER

12 CITY OF NEWPORT BEACH and CITY  
13 OF TUSTIN,

14 Plaintiffs and Petitioners,

15 v.

16 CITY OF IRVINE, CITY COUNCIL OF  
17 THE CITY OF IRVINE; and DOES I-X,

18 Defendants and Respondents,

19 STARPOINTE VENTURES,  
20 AVALONBAY COMMUNITIES, INC.,  
21 ALTON ASSOCIATES and DOES XI-L,  
22 inclusive,

23 Real Parties in Interest.

24 ALLERGAN, INC., a Delaware  
25 corporation,

26 Plaintiff and Petitioner,

27 v.

28 CITY OF IRVINE, a municipal  
corporation; CITY COUNCIL OF THE  
CITY OF IRVINE; and DOES 1 through  
100, inclusive,

Defendants and Respondents,

Case No. 07CC01265

Consolidated with Case No. 07CC01267

Assigned for all purposed to:  
The Hon. Stephen J. Sundvold  
Dept. CX-105

~~PROPOSED~~ STATEMENT OF  
DECISION

Complaint Filed: April 27, 2007

1 STARPOINTE VENTURES, a California  
2 corporation; ALTON ASSOCIATES, a  
3 California general partnership; and DOES  
4 1 through 100, inclusive,

Real Parties in Interest.

5 The above entitled cases were consolidated together and came on regularly for trial  
6 on February 6, 2008, in Department CX-105 of the above entitled court, the Honorable  
7 Stephen J. Sundvold, Judge, presiding without a jury. The matters were tried on that date  
8 and submitted effective February 6, 2008. Plaintiffs and Petitioners City of Newport  
9 Beach and City of Tustin ("Newport/Tustin") appeared by and through their counsel.  
10 Plaintiff and Petitioner Allergan, Inc. ("Allergan") appeared by and through its counsel.<sup>1</sup>  
11 Respondents City of Irvine and City Council of the City of Irvine (collectively "City")  
12 appeared by and through their counsel. Real Party In Interest Alton Associates ("Real  
13 Party") appeared by and through its counsel. No appearances made by Real Party In  
14 Interest Starpointe Ventures.

15 The matter was before the court for consideration of Petitioners' request for the  
16 issuance of a Writ of Mandamus and thus was heard on the Record of Proceedings  
17 submitted in the case. Additionally, Allergan filed a Motion to Augment the  
18 Administrative Record Certified by Respondent City and submitted a Request for Judicial  
19 Notice. Further, Newport/Tustin filed two Motions to Augment the Record and sought  
20 Judicial Notice of further documents in the case. All of these matters came on for hearing  
21 at the same date and time.

22 The Court, having taken the matters under submission on February 6, 2008, issued  
23 its tentative decision via Minute Order dated April 24, 2008. The parties having requested  
24 a Statement of Decision, this document has been prepared to meet the requirements of the  
25 Statement of Decision pursuant to California Code of Civil Procedure Section 632 and  
26 California Rule of Court 3.1590. Through this Statement of Decision the Court explains

27 <sup>1</sup> Newport/Tustin and Allergan are collectively referred to herein as "Petitioners."  
28

1 the factual and legal basis for its decision as to each of the principal controverted issues in  
2 the matters.

### 3 I. Introduction

4 The City's business core, the Irvine Business Complex ("IBC"), is a business and  
5 industrial complex covering approximately 2,800 acres located within the western portion  
6 of the City of Irvine. The IBC is the largest business complex in Orange County. The IBC  
7 is bordered on the north by the City of Tustin and to the south by the John Wayne Airport  
8 and Campus Drive, as well as the City of Newport Beach. The San Diego Creek channel  
9 borders the IBC to the east, and the Costa Mesa Freeway (State Route 55), the City of  
10 Costa Mesa, and the City of Santa Ana border the IBC to the west.

11 The IBC was established as an industrial complex in the 1960s and 1970s.  
12 However, substantial residential development in the IBC in the 1980s resulted in the City  
13 preparing a program Environmental Impact Report in 1992 (the "1992 IBC EIR"). The  
14 1992 IBC EIR studied the environmental impact only of the then-existing 3,896 residential  
15 units in the IBC, some of which had been constructed, some of which had been approved  
16 but not constructed, and some of which were in the application process. Ultimately, when  
17 certified, the 1992 IBC EIR and the General Plan and Zoning Code amendments it  
18 supported capped residential units within the IBC at the 3,896 units actually studied.

19 Following the certification of the 1992 IBC EIR, the City continued to approve  
20 additional residential developments in the IBC through ~~spot~~ General Plan and Zoning Code LB  
21 amendments. The City initially approved such projects by adopting a series of addenda to  
22 the 1992 IBC EIR. However, the addenda only addressed the issue of increasing the  
23 residential cap in the 1992 IBC EIR to allow for the specific proposed development. The  
24 addenda did not address the cumulative effect of the transformation of the IBC.

25 The City also commenced an overall planning process in 2004 that led to  
26 development of a Vision Plan and Overlay Ordinance which would govern the  
27 redevelopment of the IBC from a commercial/industrial complex into a mixed-use  
28 residential community. Drafts of the Vision Plan and Overlay Ordinance were prepared

1 and released in late 2005. A proposed Negative Declaration intended to support adoption  
2 of the draft Vision Plan and Overlay Ordinance was circulated early in 2006. According to  
3 the draft Negative Declaration and related documents, the Vision Plan and associated  
4 rezoning could add 10,000 to 30,000 new residential units to the IBC. The Negative  
5 Declaration was abandoned by the City when it received comments criticizing it, and the  
6 City decided to proceed with preparing a programmatic EIR prior to adoption of the Vision  
7 Plan and Overlay Ordinance. That program EIR is currently in process. The City has  
8 continued, however, to process residential development applications in its ongoing  
9 redevelopment of the IBC.

10 As part of this redevelopment, the City approved a General Plan Amendment and  
11 zone change for the 2851 Alton residential development (the "Project"). The 3.62-acre  
12 Project site is currently developed with a single story building containing office/light  
13 industrial uses. The Project would construct 170 residential units on the property. The  
14 City prepared a Subsequent Environmental Impact Report ("SEIR") in support of the  
15 General Plan Amendment and zone change for the Project.

16 Petitioners challenged the Project in the administrative proceedings and ultimately  
17 filed these actions. Petitioners sought the issuance of a Writ of Mandamus to overturn the  
18 City's certification of the SEIR and its approval of the Project. Petitioners alleged that the  
19 City failed to conduct proper environmental review in approving the Project in violation of  
20 the California Environmental Quality Act ("CEQA").

## 21 **II. Motions to Augment and Request for Judicial Notice**

22 The motions of Allergan and Newport/Tustin to augment the certified record in this  
23 matter are granted. Further, Petitioners' Requests for Judicial Notice are granted.

24 The documents Petitioners seek to augment into the administrative record and of  
25 which Petitioners seek judicial notice are properly part of the administrative record  
26 pursuant to Public Resources Code Section 21167.6 and are necessary to the resolution of  
27 the controversy in this matter. Petitioners have alleged that the City is piecemealing the  
28 addition of residential units into the IBC without performing proper environmental



1 analysis; that the City has not conducted proper environmental analysis of the transition of  
2 the IBC from a commercial/industrial complex to a residential mixed-use community and  
3 that there needs to be further environmental review on this issue; that the real "project"  
4 being pursued by the City is its Vision Plan and Overlay Ordinance or the transition of the  
5 IBC to a residential mixed-use community; that environmental analysis and review with  
6 regard to any present residential project in the IBC must necessarily require review of the  
7 cumulative impacts of the overall transition of the IBC from a commercial/industrial  
8 complex to a residential mixed-use community; and multiple other allegations by  
9 Petitioners with respect to the above issues.

10       The City would have the City determine what information is relevant to the City's  
11 environmental determination and then would only allow the Record to reflect that  
12 determination. This position by the City, however, will prevent Petitioners from raising  
13 arguments related to CEQA compliance. The City's argument does not protect Petitioners,  
14 or anyone else. To allow the City's position to prevail would be an injustice to Petitioners  
15 and a detriment to the policies underlying CEQA and the process that was created under  
16 CEQA in the first instance. Petitioners must be given their day in court with the  
17 information that they need to present their position.

18       Additionally, Allergan has presented evidence that the documents at issue in its  
19 Motion to Augment the Record were included on DVDs it submitted to the City during the  
20 administrative proceedings in this matter. The City has provided no contrary evidence to  
21 Allergan's assertion. In any event, even if the documents were omitted by a mistake, it was  
22 intended that they be included. Further, the City cannot sincerely argue that it was going  
23 to consider the documents with respect to this Project. The City's position is clear; it  
24 believes that the Vision Plan and Overlay Ordinance, and the proceedings leading up to  
25 their drafting, are irrelevant to its determination regarding the Project.

26       Contrary to the City's position, however, the documents sought to be augmented  
27 into the record and for which Petitioners seek judicial notice are relevant to the specific  
28 issues raised in this matter. They have been adequately authenticated and shown to be

1 consistent with the dictates of Public Resources Code Section 21167.6. Therefore,  
2 Petitioners' motions to augment are granted and Petitioners' requests for judicial notice are  
3 also granted.

### 4 **III. Overall View of Environmental Analysis**

5 It is rightfully difficult for Petitioners to understand what the City intends by its  
6 environmental documents and arguments before this Court, and it is equally difficult for  
7 the Court to ascertain those intentions. If the City argues, as it has, that certain portions of  
8 the SEIR are not true, and if the City's own oral and written arguments are as contradictory  
9 as the statements in the SEIR, then the public and Petitioners are unable to properly assess  
10 the propriety of the SEIR and the potential impacts of the Project.

11 Petitioners are correct in arguing that the City itself cannot make up its mind as to  
12 how to handle the Project. The SEIR, the City's briefing, and the City's oral arguments call  
13 the SEIR a supplemental EIR, a stand-alone EIR (while at the same time the City admits  
14 that there is no such thing as a "stand-alone EIR" in the context of CEQA), and a  
15 subsequent EIR.

16 The SEIR specifically tiers off of the 1992 IBC EIR, specifically incorporates by  
17 reference from the 1992 IBC EIR (while the City argues that it does not incorporate by  
18 reference, but that if it does, it does so properly). The City argues that the Project is not  
19 consistent with the 1992 IBC EIR, yet also argues that the addenda to the 1992 IBC EIR,  
20 which dealt with projects equally inconsistent with the 1992 IBC EIR (as they were  
21 residential projects much the same as the Project), updated the 1992 IBC EIR, so that the  
22 1992 IBC EIR was not stale.

23 When questioned about a certain portion of the SEIR, counsel for the City argued  
24 that the cited portion "is not true." First, the arguments of counsel as to whether a certain  
25 portion of the SEIR is true or not cannot be considered. In any event, if that portion of the  
26 SEIR is not true, it raises the question as to what other portions of the SEIR may not be  
27 true. Moreover, it raises the problem of how can Petitioners, the public, or other interested  
28 parties, or the Court determine what portions of the SEIR are true or not.

1       The City was repeatedly asked, in different contexts, whether the SEIR analyzed the  
2 environmental impacts of the transition of the IBC from commercial/industrial to  
3 residential, or whether the City ever had considered the environmental impacts of that  
4 transition. The City argues that the SEIR does make that analysis, but the City has cited  
5 the Court to absolutely no evidence that the SEIR made that analysis, or that the analysis  
6 ever has been performed by the City. That analysis is essential.

7       If all of the confusion created by the City were not enough, Real Party castigates  
8 Allergan for arguing that the City contemplates that an additional 20,000 or more  
9 residential units will be added to the IBC in the future (Real Party argues that Allergan  
10 pulled the number out of the air). As it turns out, similar figures came directly from City  
11 officials who were quite clearly thinking and speaking in terms of the total increase in  
12 residential units in the IBC; something that the City has repeatedly tried to deny. The City  
13 contends that the Vision Plan and Overlay Ordinance have nothing whatsoever to do with  
14 the IBC's transition to residential or a residential cap, but the evidence is contrary to that  
15 contention.

16       While CEQA analysis is not an exact science, the public, interested parties, and this  
17 Court must be able to determine, with some degree of certainty, that the City has met its  
18 burden of conducting a proper environmental analysis. The City fails in this instance.

#### 19   **IV. Standard of Review**

20       This Court is not limited to a substantial evidence test standard of review for all  
21 issues raised by Petitioners. The City's and Real Party's arguments to the contrary do not  
22 make sense. The substantial evidence standard only applies to issues in which the City has  
23 made a factual determination. On the other hand, the *de novo* standard of review applies to  
24 all issues where the City has not made a factual determination. (*Vineyard Area Citizens*  
25 *for Responsible Growth, et al. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412.)

26       Therefore, with respect to the issues on which it is argued that the City did not  
27 proceed in a manner prescribed by law, the standard of review is, for the most part, *de*  
28 *novo*. The issues of whether the SEIR tiered improperly or incorporated by reference

1 improperly, or whether the cumulative impact analysis included all of the required  
2 projects, are issues that are subject to *de novo* review. There are no factual disputes with  
3 respect to those issues. For example, the SEIR is what it is, and if its contents show that it  
4 improperly tiers, it is proper for the Court to deduce that fact from the face of the SEIR.  
5 The contents of the SEIR are not in dispute, nor do they create a factual issue.

6 **V. References to the Record**

7 Petitioners have adequately cited to the Record as to both their positions and the  
8 positions of the City and Real Party. Allergan's opening brief sets forth the evidence  
9 which it believed the City relied upon in making its determination regarding the Project,  
10 and then attempted to demonstrate its inadequacy. Nothing more was needed. In addition,  
11 based upon this Court's review of the Record, it is probable that nothing more could have  
12 been presented to this Court, given the inconsistency in the environmental documents and  
13 the positions taken by the City and Real Party. It is difficult to cite to a Record which is  
14 confusing, self contradictory, and ambiguous. The City itself argues that the entirety of the  
15 Record, and particularly the entirety of the Project SEIR, must be reviewed to determine  
16 the adequacy of the Project SEIR. Yet a full review of the Record reveals confusion,  
17 conflicting arguments and ambiguity so as to create substantive confusion in violation of  
18 CEQA.

19 **VI. Standing**

20 Allergan has sufficient standing to proceed on this Petition. While Allergan may or  
21 may not have an economic interest, it certainly has not been established by the Record that  
22 Allergan's only, or even primary, interest in this Project is economic. As noted by  
23 Allergan, it is challenging a municipal entity's violation of CEQA; it has a geographical  
24 nexus with the site of the Project; it has been in the IBC for forty years; and it has the  
25 wellbeing of its employees to protect. These factors more than meet the requirements for  
26 standing.

27  
28

1 **VII. Specific Issues**

2 With regard to the specific issues raised, the Court finds and holds that the Project  
3 SEIR and the environmental analysis performed by the City is flawed and in violation of  
4 CEQA as follows:

5 1. Tiering: The City has violated CEQA by improperly tiering from the 1992  
6 IBC EIR. The City could not tier off the 1992 IBC EIR as the Project is inconsistent with  
7 the 1992 IBC EIR as admitted by the City. Additionally, a later EIR cannot tier off of an  
8 inadequate environmental study, of which the 1992 IBC EIR was in relation to this Project.  
9 Additionally, the Project is neither a change in a previously approved project nor a project  
10 contemplated by the 1992 IBC EIR; thus making tiering improper as a matter of law. As  
11 such the City has failed to proceed in a manner required by law.

12 2. Incorporation by Reference: The City violated CEQA as a matter of law by  
13 improperly incorporating by reference from the 1992 IBC EIR.

14 3. Updating the IBC EIR: Substantial evidence does not support the conclusion  
15 that the 1992 IBC EIR is relevant to this Project, and in fact the evidence supports the  
16 conclusion that the 1992 IBC EIR is stale as to this Project as a matter of law. The passage  
17 of time and the dramatic change in the conditions in the IBC have made the 1992 IBC EIR  
18 irrelevant to this Project and, therefore, the 1992 IBC EIR cannot be relied upon in the  
19 analysis of this Project's potentially significant environmental effects.

20 The City's argument that the 1992 IBC EIR was updated by the series of addenda  
21 concerning the previous residential projects is misplaced. First, those individual projects  
22 were inconsistent the 1992 IBC EIR, just as the current Project is inconsistent with the  
23 1992 IBC EIR. Second, the addenda only addressed the issue of increasing the residential  
24 cap within the IBC in a limited amount sufficient only to allow for the specific proposed  
25 residential development. Third, those addenda did not address the cumulative effect of the  
26 transformation of the IBC, nor the use of the trip transfer program in the context of  
27 residential use.

28

1 The City contends that the 1992 IBC EIR contemplated further residential  
2 development in the IBC beyond the cap of 3,896 units that was identified in the 1992 IBC  
3 EIR. It did not. In fact, the 1992 IBC EIR specifically limited the amount of residential  
4 units to 3,896 units and the 1992 IBC EIR states that to be a fact. As such, the City is  
5 arguing against itself and the documents that it created.

6 For the above reasons, this court concludes that the 1992 IBC EIR is stale as to this  
7 Project and it cannot be utilized as a basis for environmental review of this Project.

8 4. Consideration of the Environmental Impacts of the IBC Transformation:

9 Since the adoption of the 1992 IBC EIR, the IBC has been transformed, and continues to  
10 be transformed, into a mixed-use residential community which did not exist at the time of,  
11 and was not addressed by, the 1992 IBC EIR. That transformation had, and has,  
12 potentially far-reaching environmental impacts. These impacts were not anticipated nor  
13 analyzed in the 1992 IBC EIR. Nor were these impacts addressed in the City's review of  
14 the previous individual residential projects in the IBC in the form of addenda performed  
15 since 1992. Nor, finally, were these impacts addressed in the Project SEIR.

16 The City contends that the Project SEIR analyzed the environmental impacts of the  
17 transition of the IBC from commercial/industrial uses to a mixed-use residential  
18 community. The City has not, however, cited any evidence in the Record to support that  
19 position. The result is that the City has approved individual projects, including this  
20 Project, in a piecemeal fashion that has transformed the IBC into a mixed-use residential  
21 community without ever having performed the required comprehensive analysis of the  
22 potential environmental impacts of such a transformation.

23 5. Consistency with the 1992 IBC EIR: As admitted by the City, the Project is  
24 inconsistent with the 1992 IBC EIR.

25 6. Unavoidable Significant Impacts: The Project SEIR ignores unavoidable  
26 significant environmental impacts identified in the 1992 IBC EIR.

27 7. "Stand Alone EIR": The Project SEIR is not a "stand alone EIR," as the  
28 term is defined by the City.

1           8.     TDR Program: The Project SEIR failed to adequately analyze and disclose  
2 the environmental effects that could be caused by transferring development rights from one  
3 area of the IBC to another. Furthermore, because the Project SEIR relied upon the  
4 development caps managed through the TDR Program, and because the 1992 IBC EIR  
5 conducted the only comprehensive review of the TDR Program, the Project SEIR  
6 improperly failed to acknowledge the unmitigated traffic impacts identified in the 1992  
7 IBC EIR.

8           9.     Cumulative Impacts: The City failed to analyze the cumulative impacts of  
9 pending and probable future residential projects within the IBC. Contrary to the argument  
10 of Real Party, CEQA Guidelines section 15125 is not the best and only guidance on the  
11 issue of cumulative impacts. In fact, it has nothing to do with cumulative impacts.  
12 Petitioners correctly argue to the contrary. The City's cumulative impact analysis is flawed  
13 since it used an arbitrary cut-off date for its analysis and failed to consider the additional  
14 residential units approved or pending during the SEIR process.

15           Additionally, the consideration of current and future projects was incomplete since  
16 it wholly ignored the pending Vision Plan and Overlay Ordinance project, and probable  
17 future projects contemplated within that project.

18           Whether it wants to admit it or not, the City is transforming the IBC into a mixed-  
19 use residential community. It is contemplating raising the residential cap through the  
20 Vision Plan, while at the same time approving individual residential projects without  
21 conducting a proper environmental analysis of that transformation. That is what the  
22 evidence shows; that is apparently what the Real Party and the City are trying to hide, or at  
23 least do not want to address.

24           10.    The City's Use of Thresholds of Significance: Instead of considering the  
25 totality of traffic impacts caused by pending and reasonably foreseeable future projects, the  
26 City looked at the Project in a vacuum. It applied the Project's individual traffic impacts to  
27 its thresholds of significance and the found that the impacts were not significant. By only  
28 considering the individual Project's impacts, the City improperly ignored the cumulative

1 impacts on traffic of the ongoing transformation of the IBC from a commercial/industrial  
2 complex to a residential mixed-use community.

3 11. Traffic Study Analysis and Assumptions Regarding Future Construction of  
4 Unidentified Roadway Improvements: The Project SEIR failed to adequately disclose  
5 assumed roadway improvements. The references to assumed roadway and intersection  
6 improvements do not provide the detailed information specifically required by the City's  
7 TIA Guidelines.

8 12. The Application of the TDR Program: The City failed to provide an  
9 intelligible description in the Project SEIR of the TDR Program as it applied to this  
10 Project. The Project SEIR does not describe the 1992 IBC EIR's analysis of the TDR  
11 Program and does not acknowledge the Statement of Overriding considerations that the  
12 City adopted in 1992 as a result of the fact the City found that the intensity of development  
13 planned for the IBC would have unavoidable significant impacts.

#### 14 **VIII. All Other Issues**

15 On all other issues, the City and the Real Party are correct in their arguments. As to  
16 those issues, the 1992 IBC EIR and the environmental analysis complies with CEQA. The  
17 City proceeded in a manner required by law, and there is substantial evidence to support  
18 the positions of the City and the Real Party.

#### 19 **IX. Written Responses to Court's Questions**

20 In making this Ruling, the Court has not considered nor relied upon the written  
21 responses to the Court's questions filed by either side. Any objections to those documents  
22 are, therefore, moot.

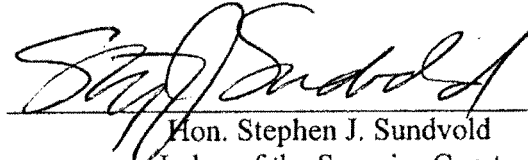
#### 23 **X. Summary of Ruling**

24 The Court grants all requests to take judicial notice and overrules all objections to  
25 the requests for judicial notice. The Petitioners' motions to augment the record are  
26 granted. The Petitions are granted. Judgment shall be entered in Petitioners' favor against  
27  
28




1 Respondents and Real Parties in Interest and a writ shall issue from this Court consistent  
2 with this decision.

3 DATED: MAY 23 2008

4  
5  
6   
7 Hon. Stephen J. Sundvold  
8 Judge of the Superior Court

9 Submitted by Petitioner ALLERGAN, INC.  
10 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

11   
12 DAVID R. HUNT  
13 Attorneys for Petitioner ALLERGAN, INC.  
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange; I am over the age of eighteen years and not a party to the within entitled action; my business address is 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626-1993.

On May 9, 2008, I served the following document(s) described as **[PROPOSED] STATEMENT OF DECISION** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

**See Attached Service List**

- ☒ **BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- ☒ **BY ELECTRONIC MAIL:** I caused the above document(s) to be transmitted by electronic mail.
- ☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2008, at Costa Mesa, California.

  
Ami Donoghue

## SERVICE LIST

Philip D. Kohn, Esq.  
Jeffrey T. Melching, Esq.  
Rutan & Tucker  
611 Anton Boulevard, Suite 1400  
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## IRVINE RANCH WATER DISTRICT

15600 Sand Canyon Avenue • P.O. Box 57000 • Irvine, California 92619-7000 • (949) 453-5300 • [www.irwd.com](http://www.irwd.com)

October 20, 2008

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

***SUBJECT: REVISED INITIAL STUDY AND NOTICE OF PREPARATION  
DRAFT IBC VISION PLAN & MIXED USE OVERLAY ZONE***

Dear Mr. Jacobs:

The Irvine Ranch Water District (IRWD) has completed a review of the Revised Initial Study and Notice of Preparation (IS/NOP) for the Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code. We have also re-examined the Draft Irvine Business Complex Mixed Use Community Vision Plan (6/16/06). Pursuant to the Notice of Preparation, the City will prepare a Draft Environmental Impact Report for the project. In general, we believe the Initial Study provides a reasonable introduction to the proposed project and description of the topics that will be discussed in the Draft Environmental Impact Report (DEIR).

**San Joaquin Marsh Property – Conceptual Community Park Site**

While we understand that the IBC does not include IRWD's San Joaquin Marsh property (Planning Area 23), the IS/NOP and the Vision Plan both provide cursory descriptions of the proximity and relationships of the two areas. Moreover, the IS/NOP depicts the IRWD property as being a conceptual location of a new community park which is intended to support the IBC. Due to the proximity of the IRWD property to the IBC and potential direct and indirect impacts to the IRWD property we respectfully request that the DEIR address the following issues and observations:

- The DEIR should describe the physical and jurisdictional characteristics of the IRWD property. For example, we note that the IS/NOP describes the property as “*a preserved natural area*”. The DEIR should discuss the ownership of the property, physical/environmental characteristics, the treatment plant, existing and planned community features, and the General Plan land use category, which designates the northwest corner of the property as High Density Residential (40 DU/AC).

- Although we don't currently have any specific concerns that the IBC project would adversely impact the biological resources associated with the San Joaquin Marsh, we suggest that the DEIR discuss, in more detail, the rationale for determining that the project would have no direct or indirect impacts to sensitive/native plants and animals found on the IRWD site.
- We note that Figure 3 (IBC Vision Framework Plan) of the Revised IS/NOP continues to depict the northwest corner of the IRWD property as a "conceptual location" for a Community Park. It is also depicted as a community park in the Draft Vision Plan. If the community park is proposed as part of the Vision Plan it must be fully described and evaluated in the DEIR, even though it is not part of the IBC planning area. Any discussion of a park on this property should define the programmatic characteristics (size, activities, access locations, etc.), environmental impacts (biological, traffic, etc.), and implications of acquiring a 25-acre area designated as High Density Residential (HDR) on the General Plan Land Use Map.
- To date, City and IRWD staff have had one meeting (April 2008) to discuss the City's potential interest in the northwest corner of the IRWD property as a possible Community Park site. Independent of the EIR process, the City needs to engage in more detailed discussions with IRWD regarding the intended use of the property.
- The previous IS/NOP ("*Proposed IBC Infrastructure Improvements*") identified that a branch library and parking structure was proposed for the Civic Center Park. We note that the Revised IS/NOP deletes the reference to the library being constructed at the Civic Center Park. Is the library proposed for an area within the IBC or perhaps on the IRWD site? The DEIR should describe the proposed library location and potential impacts associated with construction of a major public facility, regardless of the location.
- The General Plan Parks and Recreation Element (Figure K-1) does not call for a community park in Planning Area 23 (San Joaquin Marsh). Please discuss the discrepancy between the General Plan and the Vision Plan. Will the proposed General Plan Amendment, which will implement the IBC Vision Plan, include a change to the Parks and Recreation Element and Land Use Element to reflect a community park in PA 23?
- We acknowledge and agree with the conclusion in the Revised IS/NOP, Section VI-h (Hazards, page 30) that the project would not be subject to wildland fires, but the discussion in the DEIR should recognize that the IBC is directly adjacent to a major open space area complete with large trees, shrubs and grasses.
- Discuss the impact of hydrology and water quality on the San Joaquin Marsh.
- Please acknowledge in the Land Use and Planning section of the DEIR that the NCCP designates the San Joaquin Marsh (PA 23) as Non-Reserve Open Space and development area.
- The IS/NOP acknowledges that the proposed project could adversely affect the ability of roads and infrastructure to accommodate future IBC development. A thorough analysis of traffic and infrastructure impacts must be conducted to ensure that surrounding neighborhoods and uses are not impacted. We are particularly

concerned that the DEIR analyses consider General Plan buildout potential for future development in surrounding planning areas such as PA 23, as well as IBC.

- The discussion on page 32, Section VIII-b (Land Use and Planning) of the IS/NOP states that the “*proposed project consists of a number of components designed to facilitate additional residential mixed use development in IBC, within existing IBC vehicle trip limitations*”. We want to insure that the proposed changes to the IBC will not adversely impact the ability of IRWD to entitle or implement development of the HDR area.

### **Water and Sewer Service**

On April 28, 2008, Irvine Ranch Water District 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 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.

IRWD completed a Sub Area Master Plan (SAMP) in February 2008 which fully analyzed demands for new and revised land use changes envisioned by the Irvine Business Complex up to 20,000 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.

Thank you for the opportunity to comment on the Revised IS/NOP and Vision Plan.

Respectfully,



Paul Cook  
Assistant General Manager

CC: Rob Jacobson, IRWD  
Greg Heiertz, IRWD  
Mike Hoolihan, IRWD  
Eric Akiyoshi, IRWD



JOHN WAYNE  
AIRPORT  
Orange County, California

Alan L. Murphy  
Airport Director

October 16, 2008

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

**Subject: Comments on the NOP of a DEIR for Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning**

Dear Mr. Jacobs:

Thank you for the opportunity to review the initial study for the Draft IBC Vision Plan and Mixed Use Overlay Zoning. We offer the following comments:

Section 5-8-4C of the Mixed Use Overlay Zone states that building height limitations, recordation of avigation easements, obstruction lighting and marking, and airport proximity disclosures and signage shall be provided as required by the Orange County Airport Environs Land Use Plan for John Wayne Airport. We recommend that more specific language with respect to height restrictions be added to the zoning document and included in the DEIR. The southwest boundary of the IBC is adjacent to John Wayne Airport (JWA) and is located within the boundaries of the airport planning area as shown in the *Airport Environs Land Use Plan (AELUP) for JWA*. Buildings located in the IBC area and built to a height of 206 feet above mean sea level (AMSL) and higher will penetrate the Federal Aviation Administration (FAA) Federal Aviation Regulation (FAR) Part 77 horizontal surface for JWA. The airport believes that any buildings which penetrate the FAA FAR Part 77 imaginary surface of 206 feet [using North American Vertical Datum 1988 (NAVD88)] should be considered a potentially significant impact and development above this imaginary surface is discouraged.

The IBC Residential and Mixed-Use Overlay District is also located within JWA noise impact zones. To demonstrate the possibility of noise impacts to future develops within the IBC, we recommend that the Overlay District Zoning Code and DEIR include an exhibit showing the JWA Master Plan 60 and 65 dB CNEL noise contours in relation to the Overlay District. The airport does not support residential uses within the 65 dB CNEL noise contour.

We appreciate the inclusion of Section 5-8-4C Airport Restrictions within the City's Zoning Code for the Overlay District. In addition we suggest that the DEIR include a mitigation measure requiring the referral of the proposed project to the Orange County Airport Land Use Commission for a consistency determination with the

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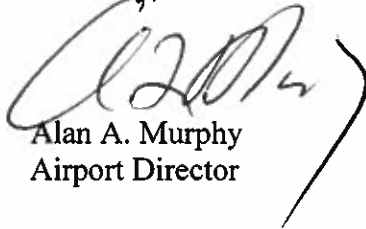
949.252.5178 fax

www.ocair.com



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

Sincerely,

A handwritten signature in black ink, appearing to read "Alan A. Murphy", is written over the printed name and title.

Alan A. Murphy  
Airport Director

cc: ALUC for Orange County  
Larry Serafini





**Bryan Speagle, Director**  
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Santa Ana, CA

P.O. Box 4048  
Santa Ana, CA 92702-4048

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October 20, 2008

NCL 08-071

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

**SUBJECT: Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay  
Zoning Code (Planning Area 35)**

Dear Mr. Jacobs:

The above mentioned item is a Draft Environmental Impact Report (DEIR) for Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 35) located in the City of Irvine.

The County of Orange has reviewed the DEIR and offers the following comments regarding water quality, off-road trails and bikeways, as well as transportation/traffic concerns:

**Water Quality**

- 1) The water quality impacts of the project should be evaluated in accordance with the provisions outlined in Exhibit 7-I of the 2003 Countywide Drainage Area Management Plan (DAMP). At a minimum, the following information should be provided:
  - a) A description of project characteristics with respect to water quality issues, such as project site location in a given watershed, site acreage, change in percent impervious surface area, and BMPs to be incorporated into the project design.
  - b) A review of DAMP Exhibit 7.1 Table 7-I.1, Priority Projects Categories. This project may be considered a Priority Project and may require the development of a Water Quality Management Plan.
  - c) Identification of receiving waters. The DEIR should identify all receiving waters that may receive runoff from the project site.
  - d) A description of the sensitivity of the receiving waters. In particular the DEIR should identify Areas of Special Biological Significance, water bodies with Total Maximum Daily Loads (TMDLs), 303(d) listed impaired water bodies.

Mr. Bill Jacobs

NCL 08-071

Page 2

- e) A characterization of the potential water quality impacts from the proposed project and identification of the anticipated pollutants to be generated by the project.
  - f) An identification of hydrologic conditions of concern, such as runoff volume and velocity; reduced infiltration, and increased flow, frequency, duration, and peak of storm runoff.
  - g) An assessment of project impact significance to water quality.
  - h) An evaluation of thresholds of significance.
  - i) If a proposed project has the potential to create a major new stormwater discharge<sup>1</sup> to a water body with an established TMDL, the EIR should consider quantitative analysis of the anticipated pollutant loads in the stormwater discharges to the receiving waters.
  - j) A reasonable analysis of the cumulative impacts of the proposed project together with past, present and reasonably anticipated future projects (related projects) that could produce cumulative impacts with the proposed project.
- 2) Implementation of post-construction Best Management Practices (BMPs) consistent with the Water Quality Management Plan (WQMP) program in Section 7 and Exhibit 7-II of the 2003 Countywide DAMP. This includes describing commitments to installation and maintenance of site design, source control and treatment control BMPs consistent with the DAMP New Development and Significant Redevelopment Program. Under the new Municipal Stormwater NPDES permit and the 2003 DAMP, this project may be considered a priority project and may require appropriately sized treatment control BMPs to be included in the WQMP which should be targeted to address the pollutants of concern and to achieve the highest level of treatment either singly or in combination (see Table 7.2-6).
- 3) Mitigation for the construction phase of the project should include compliance with the State General Construction Permit and the inclusion of the following as general or specific notes on project plan sheets:
- a) Sediment from areas disturbed by construction shall be retained on site using structural controls to the maximum extent practicable.
  - b) Stockpiles of soil shall be properly contained to eliminate or reduce sediment transport from the site to the streets, drainage of facilities or adjacent properties via runoff, vehicle tracking, or wind.
  - c) Appropriate BMPs for construction-related materials, wastes, spills or residues shall be implemented to minimize transport from the site to streets, drainage facilities, or adjoining properties by wind or runoff.

<sup>1</sup> Major land development project that has the potential to convert large amounts of pervious land surface to impervious surface area.

Mr. Bill Jacobs  
NCL 08-071  
Page 3

- d) Runoff from equipment and vehicle washing shall be contained at construction sites unless treated to reduce or remove sediment and other pollutants.
- e) All construction contractor and subcontractor personnel are to be made aware of the required best management practices and good housekeeping measures for the project site and any associated construction staging areas.
- f) At the end of each day of construction activity all construction debris and waste materials shall be collected and properly disposed in trash or recycle bins.
- g) Construction sites shall be maintained in such a condition that a storm does not carry wastes or pollutants off the site. Dischargers other than stormwater (non-stormwater discharges) are authorized under California's General Permit for Storm Water Discharges Associated with Construction Activity only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Non-stormwater discharges must be eliminated or reduced to the extent feasible.

Potential pollutants include but are not limited to: solid or liquid chemical spills; wastes from paints, stains, sealants, solvents, detergents, glues, lime, pesticides, herbicides, fertilizers, wood preservatives, and asbestos fibers, paint flakes or stucco fragments; fuels, oils, lubricants and hydraulic, radiator or battery fluids; concrete and related cutting or curing residues; floatable wastes, wastes from any engine/equipment steam cleaning or chemical degreasing; wastes from street cleaning; and superchlorinated potable water line flushing and testing.

During construction, disposal of such materials should occur in a specified and controlled temporary area on-site physically separated from potential stormwater runoff, with ultimate disposal in accordance with local, state and federal requirements.

- h) Discharging contaminated groundwater produced by dewatering groundwater that has infiltrated into construction site is prohibited. Discharging of contaminated soils via surface erosion is also prohibited. Discharging of non-contaminated groundwater produced by dewatering activities requires a National Pollutant Discharge Elimination System (NPDES) permit from the Santa Ana Regional Water Quality Control Board.

### **Off-road Trails and Bikeways**

The City of Irvine is to be especially commended for the extensive trail and bikeway network---including many bicycle/pedestrian bridges and landscaping---that is envisioned for the redevelopment of the Irvine Business Complex. We offer the following additional suggestions:

Mr. Bill Jacobs  
NCL 08-071  
Page 4

- 1) Figure 3, Barranca Bikeway: Show the proposed Barranca Bikeway, a regional, Class I (paved off-road) bikeway along the north side of Barranca Parkway. OCTA's Commuter Bikeways Strategic Plan depicts this bikeway linking the Peters Canyon Bikeway to the Class II (on-road, striped lanes) bikeway along Red Hill Avenue. It currently exists within the City of Tustin between Jamboree Road and Tustin Ranch Road. The bikeway would enable future residents of the IBC to travel off-road along the San Diego Creek/Peters Canyon Bikeway and the Barranca Bikeway to reach Tustin Legacy activity centers (to the north) and Irvine activity centers (to the south and east). It may be necessary to widen the existing sidewalk along Barranca Parkway to accommodate this Class I bikeway. (If extended westward past Red Hill, this bikeway could also connect to the westerly leg of the "rail-to-trail conversion".)
- 2) Figure 3, regional trail crossings: Show the grade-separated crossings that must be constructed to accommodate the proposed Peters Canyon Regional Riding and Hiking Trail (depicted on the County's Master Plan of Regional Riding and Hiking Trails). These include undercrossings of Main Street, Coronado, and I-405, and a bridge over Lane Channel. Once these undercrossings (and one bridge) are complete, the Peters Canyon Regional Riding and Hiking Trail will be complete from Irvine Regional Park to Upper Newport Bay Nature Preserve---a distance of about 13 miles.
- 3) Consider requiring developers to construct these few remaining trail undercrossings and bridge as a condition for development approval. The City and County have successfully applied similar development conditions that resulted in the construction of Peters Canyon Trail and Bikeway undercrossings at Irvine Boulevard, Bryan Avenue, El Camino Real, Warner Avenue, Barranca Parkway, and soon at Moffett Drive and Edinger Avenue.
- 4) Figure 3, rail-trail connection to regional trail and bikeway: Show the southeasterly leg of the "rail-to-trail conversion" connecting to the Peters Canyon Regional Trail (west side of creek) and the San Diego Creek Regional Bikeway (east side of creek--via the proposed bike/ped bridge over San Diego Creek). It may be necessary to widen existing sidewalks to accommodate this Class I bikeway connection.
- 5) Because the IBC project proposes to use Orange County Flood Control District right-of-way, we encourage the City to meet with the District to discuss its plan.
- 6) Figure 3, rail-trail connection to canal trail: If feasible, show the westerly leg of the "rail-to-trail conversion" continuing along Lane Channel as a "canal trail" and connecting to the proposed "canal trail" north of Gillette Avenue. Also, provide an off-road connection between this "canal trail" and the easterly leg of the "rail-to-trail conversion".

Mr. Bill Jacobs  
NCL 08-071  
Page 5

- 7) Figure 3, Dupont bridge: Show the proposed Dupont "pedestrian" bridge described in Figure 5, No. 2 (A).
- 8) Figure 5, pedestrian bridges: Describe "pedestrian" bridges as "bike/ped" bridges (or similar wording).
- 9) Figure 5, No. 3 (A): Note that an easement for recreational purposes may be needed for the future Peters Canyon Regional Riding and Hiking Trail.
- 10) Figure 5, No. 4: Ensure that sidewalks and parkways will comply with the Complete Streets Act (see below).

### **Transportation/Traffic**

- 1) Address issue "g", which reads, "Conflict with adopted policies supporting alternative transportation (e.g., bus turnouts, bicycle racks)?" This issue should be addressed in the EIR, including a discussion of:
  - a) Existing and proposed Class I and Class II bikeways.
  - b) Safe ingress and egress for bicyclists and pedestrians.
  - c) Bicycling amenities such as bike racks and lockers.
  - d) The Complete Streets Act, which was signed into law September 30, 2008. This legislation requires cities and counties to ensure that local roads and streets adequately accommodate the needs of bicyclists, pedestrians, and transit riders, as well as motorists.
  - e) Linking schools, places of employment, shopping centers, and local parks to the Class I bikeways network.
- 2) As fossil fuels become less available and more expensive, it is becoming increasingly important to encourage alternative modes of transportation such as bicycling and walking---especially in a mixed-use environment where residential areas will be located near shops, parks, and places of employment. Providing improved bicycle and pedestrian circulation is a mitigation measure to help reduce air pollution, traffic congestion, parking congestion, and noise.
- 3) Class I bikeways in particular, because they are off-road and suitable for bicyclists and pedestrians with a wide range of ages and abilities, serve to encourage bicycling and walking as alternative modes of transportation. Class I bikeways (as well as riding and hiking trails) also serve as off-road routes for recreational bicycling and walking.

Mr. Bill Jacobs  
NCL 08-071  
Page 6

If you have any questions, please contact Mary Ann Jones at (714) 834-5387.

Sincerely,

*F. Chris Upmire*  
Ronald L. Tippetts, Chief  
Current and Environmental Planning



## ORANGE COUNTY FIRE AUTHORITY

P.O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Rd., Irvine, CA 92602

Chip Prather, Fire Chief

(714) 573-6000

October 17, 2008

City of Irvine  
One Civic Center Plaza  
Irvine, CA 92623-9575  
Attn: Bill Jacobs

SUBJECT: **IBC NOP**

Dear Mr. Jacobs:

Thank you for the opportunity to review the subject document. The Orange County Fire Authority (OCFA) provides fire protection and emergency medical services response to the project area. Services include: structural fire protection, emergency medical and rescue services, hazardous inspections and response, and public education activities. OCFA also participates in disaster planning as it relates to emergency operations, which includes high occupant areas and schools sites and may participate in community disaster drills planned by others.

Resources are deployed based upon a regional service delivery system, assigning personnel and equipment to emergency incidents without regard to jurisdictional boundaries. The equipment used by the department has the versatility to respond to both urban and wildland emergency conditions. OCFA requests that the following mitigations be placed on each independent project in the IBC Overlay.

- **Mitigation:** Prior to approval of any subdivision or comprehensive plan approval for the project, the designated site developer shall enter into a Secured Fire Protection Agreement with the Orange County Fire Authority
- All new or upgraded traffic signals on public access ways should include the installation of optical preemption devices.
- All electrically operated gates within the Project shall install emergency opening devices as approved by the Orange County Fire Authority and Irvine Police Department.

Please contact me at 714-573-6199 if you need further information on this matter. Thank you.

Sincerely,

Michele Hernandez

Management Analyst, Strategic Services

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**RESIDENTIAL SPRINKLERS AND SMOKE DETECTORS SAVE LIVES**

**REMY, THOMAS, MOOSE and MANLEY, LLP**  
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**TELECOPY TRANSMISSION**

TO: City of Irvine, Community Development Department

ATTENTION: **BILL JACOBS, Principal Planner**

FAX NUMBER: (949) 724-6440

FROM: Jason Holder

DATE TRANSMITTED: October 20, 2008

WE ARE SENDING: PAGES, INCLUDING COVER SHEET.

CASE NO. 239 CASE NAME: Newport Beach

MATERIAL SENT: Letter Re: Comments Regarding the NOP/IS for the Draft Program EIR for the Vision Plan and Residential Mixed Use Overlay Zoning Code

**COMMENTS**

Please see attached

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YES

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October 20, 2008

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

**Re: Comments Regarding the NOP/IS for the Draft Program EIR for the Vision  
Plan and Residential Mixed Use Overlay Zoning Code**

Dear Mr. Jacobs:

On behalf of the Cities of Newport Beach and Tustin (collectively referred to herein as the "Cities"), we have reviewed the Notice of Preparation ("NOP") of a Draft Environmental Impact Report ("DEIR") for the Vision Plan and Mixed Use Overlay Zone for the Irvine Business Complex (the "Project"). The Cities appreciate the City of Irvine's consideration of the following comments concerning the NOP, which the Cities offer in the spirit of collaboration and out of concern for the interests of the residents and businesses within each respective city and the entire region. The City of Tustin has prepared additional comments concerning this NOP, these comments are attached hereto as Attachment A.

The City of Irvine ("Irvine") has circulated the NOP for the DEIR pursuant to the California Environmental Quality Act, Public Resources Code § 21000, et seq. ("CEQA") and the CEQA Guidelines, California Code of Regulations, title 14, § 15000, et seq. ("CEQA Guidelines"). This is the second NOP prepared for the Vision Plan DEIR. In February 2007, the Cities submitted comments on the previous NOP prepared for the Project. As we noted in that comment letter, the DEIR analyses must adequately analyze the various significant direct and cumulative impacts caused by the rapid

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 2

transformation of the IBC. We have reviewed numerous addenda and EIRs prepared for individual residential projects within the Irvine Business Complex ("IBC"): each of these environmental review documents included analyses that focused on the individual impacts of the respective project — these documents did not, however, adequately consider the impacts caused by the overall transformation to increased residential uses within the IBC. The Vision Plan DEIR offers a key opportunity to carefully evaluate all of the individual and cumulative impacts caused by the overall residential conversion program that has been ongoing within the IBC. The information regarding these impacts is not only necessary to reduce or eliminate the identified impacts through mitigation, but is also essential for responsible planning in Irvine and in the respective neighboring Cities.

## **I. Specific Comments**

### **A. The Vision Plan DEIR must accurately describe the whole of the Vision Plan project.**

In describing the proposed General Plan amendment, the NOP does not indicate whether Irvine intends to change the General Plan land use designations for parcels within the IBC. (See NOP, p. 1.) If the Vision Plan includes a change in land use designations, the DEIR must describe the proposed changes with specificity.

In addition, the NOP describes a proposed 15,000 residential unit cap<sup>1</sup> for the IBC, but does not indicate that the cap is intended to be treated as absolute or permanent. (*Id.* at p. 3.) The Cities are concerned that this cap may be subject to future General Plan amendments that would increase the residential cap. The Cities' concerns are based on their long-standing observations concerning IBC residential development: when approving additional residential development in the IBC, Irvine has repeatedly increased the 3,896-unit residential development cap originally established in 1992. While the current members of the Irvine City Council may not tie the hands of future council members, the DEIR for the Vision Plan must analyze the whole of the Vision Plan project, including any reasonably foreseeable increases to the proposed 15,000-unit cap. (See *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 579 [observing "an act of one legislature is not binding upon, and does not tie the hands of future legislatures"].) It is well-established that "an EIR must include an analysis of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or other action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights*

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<sup>1</sup> / Specifically, the NOP indicates that the Vision Plan will cap residential uses in the IBC at 15,000 units, but will allow a potential 1,191 additional density bonus units.

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 3

*Improvement Assn. of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 396 (*Laurel Heights I*) (emphasis added).) If the 15,000-unit cap is not to be treated as absolute, the DEIR should, at a minimum, discuss mitigation or policies ensuring that any future increase in the cap is subject to comprehensive cumulative impact analysis. Such mitigation measures and/or policies will help avoid repeating past practices.

The NOP mentions that the Vision Plan project will include a Municipal Code Amendment to "incorporate new urban park standards." (NOP, p. 3.) The NOP, however, does not describe the proposed changes to the Municipal Code. Do the proposed changes involve the 5 acres per 1,000 person dedication requirement or the requirements concerning public versus private parks? Do the changes implicate park development standards? The DEIR must describe in detail these proposed changes and must analyze the associated impacts to recreation.

**B. The Vision Plan DEIR must analyze the impacts caused by the ongoing transformation of the IBC.**

Nineteen months have elapsed since the Cities' last comment letter concerning the pending Vision Plan DEIR. Since that time, successful litigation concerning two IBC projects has vindicated the Cities' long-standing positions concerning adequate environmental review. Orange County Superior Court Judge Stephen Sundvold's recent rulings in the two cases concerning the 2851 Alton and Martin Street projects confirm, among other things, that Irvine must undertake comprehensive planning necessary in order to achieve an orderly transformation of the IBC. (See Statements of Decision in each case, adopted on May 23, 2008, incorporated herein by reference.) This comprehensive planning is required before Irvine considers approving any additional residential projects within the IBC. According to the Court:

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.

(See Statement of Decision for 2851 Alton case ("Statement of Decision"), p. 9, ¶ 9.)

The Vision Plan has the potential to offer the necessary comprehensive planning that the Cities have urged for years now. As a critical step in this planning effort, the DEIR for

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 4

the Vision Plan must analyze and mitigate the impacts of a continuing transformation that has already been under way for several years.

As the Cities have repeatedly said, the prior Subsequent EIRs and Addenda prepared for individual projects have not adequately examined the cumulative impacts caused by this overall conversion program. The baseline for environmental review will normally be the physical conditions on the ground as they exist at the time the NOP is published. (CEQA Guidelines, § 15125; see also *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 352, 355 [“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area. The legislation . . . has clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate”]; see also *Communities for a Better Environment v. South Coast Air Quality Management District* (2007) 158 Cal.App.4th 1336, 1361, cert. granted 182 P.3d 512; 76 Cal. Rptr. 3d 172 [“project's baseline is normally comprised of the existing environmental setting—not what is hypothetically allowed pursuant to existing zoning or permitted plans. Where prior environmental review has occurred, though, the existing environmental setting *may* include what has been approved following CEQA review”].)

Here, the proper baseline would include the 4,524 existing residential units, the 2,111 units that are under construction, but would not include the 2,766 approved units and the 2,522 pending units because these are not part of “existing physical conditions in the affected area” and the prior environmental review for these approved but unbuilt projects did not include the required comprehensive analysis of the impacts that will result from the overall transformation of the IBC. Thus, the DEIR must consider the direct and cumulative impact of adding all of the approved and pending units to the IBC, as well as the additional potential units under the 15,000-unit cap.

The DEIR's cumulative impact analyses must also consider the “transformation” impacts caused by past projects. (CEQA Guidelines, § 15355, subd. (b); see also *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 624-625.) This analysis must include a section that addresses the cumulative impacts caused by adding thousands of residential units to an area that has historically been dominated by office and industrial uses. The cumulative impact analysis must consider the impacts of past projects. (*Environmental Protection & Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 523 [“the statutory injunction to assess ‘the incremental effects of an individual project . . . in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects’ (Pub. Resources Code, § 21083, subd. (b)(2), italics

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 5

added) signifies an obligation to consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts”].)

**C. DEIR must address cumulative impacts of the Project in the context of other residential development projects in the surrounding area.**

The Cities request that Irvine ensure that the DEIR evaluates the cumulative effects of the Project in light of the various “closely related past, present, and reasonably foreseeable future projects to ensure that all cumulatively significant environmental effects resulting from the Project are adequately identified and mitigated. (CEQA Guidelines § 15355, subd. (b); *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024-25.) The DEIR must take into account the Project’s cumulatively considerable environmental impacts in the context of these other projects when it conducts its environmental review.

“Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” (CEQA Guidelines, § 15130, subd. (b)(3).) The reference in this command to “the cumulative effect” in the singular, rather than plural, form demonstrates the obvious fact that different environmental effect categories often have different relevant geographic areas of effect. Thus, for example, the physical area relevant to cumulative air quality or traffic effects might be much larger than the area relevant to impacts on fire services. In light of this common-sense fact, the Cities specifically urge Irvine to include, where appropriate, any and all extra-jurisdictional territory that may be affected by the Vision Plan.

In general, DEIRs prepared for previous IBC residential projects have inexplicably found that those projects would not result in any significant direct, indirect or cumulative impacts to traffic. The DEIR for this Project, and its supporting traffic study, must take an honest look at the Project’s inevitable traffic impacts and must propose feasible and enforceable mitigation measures to minimize these impacts.<sup>2</sup> The Cities maintain that, in order to accurately identify and mitigate the cumulative impacts of the widespread land use conversion occurring within the IBC, Irvine should first conduct the program-level environmental review for the IBC Vision Plan, which includes a comprehensive

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<sup>2</sup> / Irvine has previously required project proponents to contribute an IBC Fee for future IBC roadway improvements. Irvine has not demonstrated, however, that the amounts of imposed fees were adequate to actually mitigate the projects’ impacts or that the roadway improvements would be carried out in a timely manner as required.

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 6

evaluation of the current setting within the IBC, before it conducts any more project-level environmental reviews, including the DEIR for this Project.

**D. To the extent Irvine continues to rely on previously established "trip caps" for the IBC, the Vision Plan DEIR must consider and address the significant and unavoidable impacts identified in 1992.**

The pending Draft EIR for the Project must not repeat the mistake of failing to disclose or resolve the significant and unavoidable impacts that were identified in the program EIR prepared for the rezone of the IBC (the "1992 IBC EIR"). (See Statement of Decision, p. 9, ¶ 6.) The previously identified significant and unavoidable traffic impacts implicate Irvine's Transfer of Development Rights ("TDR") program, which Irvine continues to apply to individual projects and will apparently rely on following approval of the Vision Plan. (NOP, pp. 3, [referring to "existing trip caps"]) The fact that Irvine previously acknowledged these impacts but more recently has swept them under the rug raises serious doubts about the methodology employed for impact analyses and the accuracy of any conclusion that a project's impacts will be less-than-significant.

**E. The Vision Plan DEIR must analyze the impacts caused by the TDR Program.**

The Cities urge Irvine to conduct a thorough analysis of the TDR program, including a fresh analysis of the impacts that would be caused if the IBC is built out to the potential maximum contemplated in the IBC Database. When analyzing individual projects that utilize TDRs, Irvine can no longer assume (as it has routinely in the past), that project impacts will be less-than-significant so long as overall development within the IBC remains below limits managed through the TDR program.

The DEIR must acknowledge the overall cap for residential uses in the IBC (3,896 units), established in 1992. The DEIR must also analyze the impacts caused by transferring development rights from one area of the IBC to another. (See Statement of Decision, p. 10, ¶ 8.) These issues have not been comprehensively analyzed.

The DEIR must also provide an intelligible description of the TDR program. (See Statement of Decision, p. 11, ¶ 12.) Until now, the environmental review documents prepared by Irvine's consultants have included a stock summary of the TDR program that fails to reveal a number of important details, including but not limited to:

- How many development rights have been allocated to individual parcels within the IBC;
- What percentage or proportion of development rights remain unutilized;

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 7

- Whether the significant and unavoidable impacts associated with build out of the IBC (identified in 1992) have been mitigated; and
- Whether it is appropriate to subtract unused development rights that are transferred to a proposed project site when conducting analyses, such as traffic impact analyses.

If Irvine intends to continue to utilize the TDR program, it is essential that it accurately reveal the details of the program and analyze the various effects caused by transferring development rights from one type of use to another and from one area of the IBC to another. For example, to the extent that multiple TDRs can be reasonably expected to result in concentrating development into particular areas of the IBC, the DEIR must analyze the associated effects.

CEQA Guidelines section 15358, subdivision (a), defines "effects" to include direct effects and "[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." (Emphasis added.) Direct and indirect significant effects of a project must be "clearly identified and described, giving due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2, subd. (a).) CEQA Guidelines section 15064, subdivision (d)(3), states that "[a]n indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. . . ." "Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems." (CEQA Guidelines, § 15358, subd. (a)(2).)

The fact that Irvine might have to undertake original analysis, at some expense, to satisfy the requests of outside agencies does not alter its obligation to perform such analysis. As is clear from case law, CEQA contemplates that lead agencies must sometimes do a lot of work to provide sufficient information to assess the full panoply of environmental effects that might be caused by major projects. (See, e.g., *Berkeley Keep Jets over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1370 [where correspondence to a lead agency raises "substantial questions" about the environmental effects of a project, the agency must make a "reasonably conscientious effort . . . to collect additional data or to make further inquiries"]; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 432 [court requires lead agency to conduct additional research and analysis of cumulative effects].) Thus, the DEIR must include analyses for each significant impact that may be caused by continued reliance on the TDR program and the trip caps assigned to IBC parcels in 1992.

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 8

**F. The DEIR must carefully address the Vision Plan's traffic impacts.**

**1. The traffic impact analysis must be transparent.**

"An environmental impact report is an informational document," the purpose of which "is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment. . . ." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106, quoting Pub. Resources Code, § 21061.) "The 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. . . .'" (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239).)

The Cities are concerned about the traffic impacts that the Vision Plan may cause, both indirectly and cumulatively. Traffic impact analyses in past EIRs have been very complex and not sufficiently transparent. For example, these analyses typically failed to adequately explain methodologies employed for traffic impact analysis. The traffic impact analysis for the Vision Plan must satisfy CEQA's informational requirements by clearly describing methodologies and assumptions.

**2. The DEIR must analyze extra-jurisdictional traffic impacts.**

The Project, if approved, would lead to more traffic in the IBC and the surrounding region. Numerous IBC intersections are already so congested that they do not meet the lax LOS E standard established for the IBC.<sup>3</sup> The Cities have consulted with Irvine concerning the intersections and roadways within the Cities' respective jurisdictions that should be studied in the traffic impact analysis. Irvine is required to adopt feasible mitigation measures that will reduce or eliminate Project impacts that occur outside of Irvine's boundaries, and such measures must be described in the DEIR. (See, e.g., *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. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 104.)

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<sup>3</sup> / Irvine's 2005 Traffic Monitoring Report for the IBC Sliding Interim Year Analysis ("Report") indicates that some intersections and road segments already operate at deficient levels of service, and that the conditions at these road segments and intersections is expected to further deteriorate. (See Report at pp. 22, 26, 31, and 34.)



City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 9

3. The DEIR must identify assumed roadway improvements.

The DEIR must also identify the roadway improvements assumed to exist and must also provide sufficient information regarding how those improvements will be funded, as required by Irvine's Traffic Impact Analysis Guidelines. (See Statement of Decision, p. 11, ¶ 11.) Insufficient information regarding the significant assumptions underlying the traffic impact analyses would violate the letter and spirit of CEQA. The Court's recent rulings confirm that Irvine must squarely address this issue.

**G. The DEIR must carefully address the Vision Plan's impacts to parks and recreation facilities.**

The DEIR must disclose the current lack of public parks in the IBC. Irvine's exaction of in-lieu fees for parks has not led to development of IBC parks. The DEIR should explain how the anticipated community, neighborhood, and urban parks will be funded and developed.

The Cities have previously commented that the factor of 1.3 residents per unit underestimates the actual number of residents that can reasonably be expected to occupy residential units within the IBC. The Cities base this observation in part upon the results of a study that Irvine itself commissioned, the IBC Resident Survey dated October 11, 2005. The IBC Resident Survey found, according to a survey of IBC residents, that there was an average of 1.86 residents per dwelling unit. If Irvine continues to use the lower factor of 1.3, it must provide an explanation that supports this assumption.

**H. The Vision Plan DEIR must analyze the potential impacts to biological resources in the San Diego Creek channel.**

The NOP states that the Vision Plan project will include plans for a "Creekwalk" along San Diego Creek. The DEIR must analyze the potentially significant impacts that may be caused by the proposed infrastructure improvements associated with the Creekwalk. CEQA Guidelines section 15124, subdivision (d)(1)(C), requires that an EIR include "[a] list of related environmental review and consultation requirements required by *federal, state, or local laws, regulations, or policies.*" (Emphasis added.) The provision goes on to add, moreover, that "[t]o the fullest extent possible, the lead agency should *integrate CEQA review* with these related environmental review and consultation requirements." (Emphasis added.)

It does not appear to the Cities that, with respect to possible impacts on wetlands and biological resources associated with the Vision Plan, Irvine will comply with the mandate to integrate its CEQA review process with the permitting process required under Section 404 of the Clean Water Act. (33 U.S.C. § 1344.) Nor does it appear that Irvine

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 10

will do so with respect to the separate but related process needed to achieve compliance with the federal Endangered Species Act. (16 USC § 1531 et seq.) Instead, Irvine dismisses impacts to biological resources as less than significant based on unspecified federal and state agency permitting requirements.

**I. The Vision Plan DEIR must analyze the potential impacts related to locating residents in an area with known hazardous materials.**

The Vision Plan includes the proposed increase of residential uses in the IBC. The DEIR must analyze the potentially significant impacts to sensitive groups, caused by locating residential uses in close proximity to industrial businesses. Until now, Irvine has relied predominantly on its "Industrial Adjacency Analysis" process to resolve land use compatibility issues, but CEQA requires a thorough analysis of these issues. A health risk assessment that analyzes the potential risk of locating so many residences near ongoing industrial uses may be appropriate.

**J. The Vision Plan DEIR must address the growth-inducing impacts of the Project.**

The DEIR must analyze the growth inducing impacts that may be caused by the Vision Plan. As the Court of Appeal noted in *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 157, in requiring an EIR for a growth-inducing resort project, "[t]he current agricultural zoning of the surrounding acreage is also not determinative. Zoning is subject to change and amendment of a general plan is not a rare occurrence." In other words, changing economics often overwhelms the good intentions embodied in planning documents adopted under different economic circumstances.

Here, because a new IBC-wide program for residential mixed-use development can unleash economic forces affecting Irvine's housing market, the DEIR must therefore better address the secondary effects of the increased demand for housing and the physical impacts that building new housing would cause, such as the impacts on municipal infrastructure, traffic, air quality, biological resources, and land use policies, to name just a few categories. An EIR must discuss "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." (CEQA Guidelines, § 15126.2, subd. (d).)

The CEQA Guidelines recognize that an analysis of increased population and housing is critical because "increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects." (CEQA Guidelines, § 15126.2, subd. (d).) Here, not only Irvine

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 11

but neighboring jurisdictions will surely suffer many of the environmental burdens of an increased IBC population.

The Cities acknowledge that, by itself, a mere increase in the allowable number of residential units within the IBC is not a *per se* a significant environmental impact under CEQA, but the Cities hasten to add that CEQA most surely is concerned with the increases in traffic congestion, air pollution, service demands, and other indirect environmental impacts associated with such increased housing development. These reasonably foreseeable indirect effects should be addressed in an EIR. (See, e.g., *Napa Citizens, supra*, 91 Cal.App.4th at pp. 368-369.)

**K. The DEIR must include a reasonably range of alternatives to the proposed Vision Plan.**

The alternatives analysis must fulfill CEQA's mandate to examine a "reasonable range" of alternatives aimed at avoiding or reducing the significant impacts of the proposed project. (See CEQA Guidelines, § 15126.6.) Irvine may not improperly constrain the range of alternatives by eliminating options that would provide substantial reductions in the impacts of the Vision Plan. Instead, the DEIR must at least include an alternative that does not take for granted the need to substantially increase the residential unit cap for the IBC. One clear environmental benefit from a true low growth alternative would be reduced strains on the IBC's already-burdened transportation infrastructure.

**II. Conclusion**

The Cities remain available for consultation with Irvine. If you wish to receive additional comments, beyond what is set forth below, regarding the DEIR please feel free to contact me at the number listed above or any of the following individuals:

**Newport Beach:**

Sharon Wood, Assistant City Manager  
(949) 644-3131 or [SWood@city.newport-beach.ca.us](mailto:SWood@city.newport-beach.ca.us).

**Tustin:**

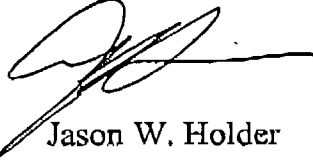
Elizabeth Binsack, Tustin Community Development Director  
(714) 573-3031 or [EBinsack@tustinca.org](mailto:EBinsack@tustinca.org).

The Cities of Newport Beach and Tustin look forward to consulting with the City of Irvine so that the region-wide impacts caused by further development activities within the IBC are analyzed accurately and are avoided or mitigated to the maximum extent feasible.

City of Irvine  
Bill Jacobs, Principal Planner  
October 20, 2008  
Page 12

Thank you for considering these comments concerning environmental review required for the Vision Plan. Please feel free to contact me directly if you have any questions regarding these comments.

Very truly yours,



Jason W. Holder

Attachment

cc: (via e-mail w/ attachment):  
Mayor Webb and Members of the Newport Beach City Council  
Robin Clauson, Newport Beach City Attorney  
Aaron Harp, Newport Beach Assistant City Attorney  
Sharon Wood, Newport Beach Assistant City Manager  
Douglas Holland, Tustin City Attorney  
Elizabeth Binsack, Tustin Community Development Director

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# **ATTACHMENT A**



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DATE: OCTOBER 14, 2008

Inter-Com

TO: DOUG HOLLAND, CITY ATTORNEY

FROM: ELIZABETH A. BINSACK, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: REVIEW OF REVISED NOP FOR THE IRVINE IBC VISION PLAN AND MIXED  
USE OVERLAY ZONING CODE DRAFT EIR

---

The Community Development Department has reviewed the revised Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for a City of Irvine-initiated project that consists of a General Plan Amendment to establish a cap of 15,000 dwelling units (plus 1,191 density bonus units) for the Irvine Business Complex (IBC) area, an IBC Mixed Use Community Vision Plan, IBC Residential Mixed Use Overlay Zone, a program of various infrastructure improvements, new urban park standards, design guidelines, and other discretionary actions. The following comments focus on impacts to Tustin's recreational facilities and the identification of alternatives in the EIR that could reduce potential impacts to Tustin.

We continue to be concerned about the potential impacts of development in the IBC area on existing and proposed recreational facilities in Tustin. The City of Tustin is concerned that the Tustin Sports Park and future planned parks at Tustin Legacy will be negatively impacted by the high level of demand generated by the existing and future residents of the IBC area. The future planned parks at Tustin Legacy that are of concern include two future neighborhood parks, two future community parks, and the future Linear Park. The EIR should include a mitigation measure that requires the development of full service public parks in the IBC, including a sports park, by a certain date and should specify the minimum acreage to accommodate the demand generated in the IBC. Further, any proposed private parks in the IBC should not be allowed to substitute for public park facilities.

The EIR should also identify viable alternatives to the proposed project that might avoid or lessen the potential environmental impacts on Tustin. Such alternatives may include a reduced intensity plan (with fewer residential units), a transit-oriented plan that emphasizes connectivity to transit, or an alternative land use distribution plan.

The comment period for the NOP ends on October 20, 2008. Thank you for your assistance in transmitting our concerns to the City of Irvine.

cc: William A. Huston  
Jason Retterer  
Tim Serlet  
Scott Reekstin

SR:environmental etclIrvine IBC Vision Plan and Overlay Zone NOP Memo to CA 2008.doc

ATTACHMENT A



Joe O'Neil







MAYOR  
Miguel A. Pulido  
MAYOR PRO TEM  
Claudia C. Alvarez  
COUNCIL MEMBERS  
P. David Benavides  
Carlos Bustamante  
Michele Martinez  
Vincent F. Samiento  
Sal Tinajero



CITY MANAGER  
David N. Ream  
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Joseph W. Fletcher  
CLERK OF THE COUNCIL  
Patricia E. Healy

## CITY OF SANTA ANA

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October 16, 2008

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

*Via Facsimile (949) 724-6440*

RE: NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT  
FOR THE IRVINE BUSINESS COMPLEX VISION PLAN AND MIXED USE  
OVERLAY ZONING CODE (PLANNING AREA 36)

Dear Mr. Jacobs:

Thank you for the opportunity to review and provide comments on the Notice of Preparation for the IBC Vision Plan / Overlay Zoning for Planning Area No. 36. The City of Santa Ana offers the following comments pertaining to the proposed project:

### **Water Resources**

One of the issues identified in the check list (page 24) addresses the topic of "having sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed". The checklist shows a potentially significant impact. We would agree with this. The report makes reference to additional information available on their website associated to this project. Even though the website information makes reference to a water assessment, however, this could not be found. California has many different processes through which to plan for development or maintenance of water supplies on a regional level. Urban Water Management Plan (UWMP), Groundwater Management Plan (GMP), Integrated Regional Water Management Plan (IRWMP) and water resources components of General Plans all integrate some degree of regional planning of water supply and demands. To complement these types of large scale planning processes, the California State Senate passed Senate Bill 610 and SB 221 in 2002, which emphasize the incorporation of water supply and demand analysis at the earliest possible stage in the planning process for the project. Even though reference is made to a water assessment, the information was not available and it is not clear, if this project complies with these bills.

Bill Jacobs  
NOP for IBC Vision Plan  
October 16, 2008  
Page 2 of 2

We appreciate the opportunity to give input for this project. If you have any questions pertaining to water resources, please contact Thom Coughran, P.E., Water Resources Manager at (714) 647-3318.

**Traffic:**

Thank you for the opportunity to review and provide comments on the Notice of Preparation / Draft EIR for the proposed IBC Vision Plan Mixed Overlay Zone in the City of Irvine. It is our understanding that the City of Irvine is the Lead Agency and will prepare the final Environmental Documentation for the project.

The purpose of this study is to determine the future traffic impacts resulting from the project. The document states that the City released the Initial Study for extended Public review in 2007. My records don't show review and comments for the subject project. The current NOP describe a considerably different project. Based on said project location and density, significant impact is expected on Santa Ana streets and intersections. Sections XV of the Environmental list also indicate potentially significant Impacts.

Please keep us informed of the progress of this project and any future projects that could affect the City of Santa Ana. We would appreciate an opportunity to review and comment on the future report when it becomes available. If you have any questions about these comments as they relate to traffic issues, please contact Shahir Gobran, Senior Transportation Analyst at (714) 647-5615.

Sincerely,



Bill Apple  
Associate Planner

BA:tr

BA\environmental 2008\Response to other Cities CEQA documents\Irvine\IBC Vision Plan Mixed Use overlay zone

c: Shahir Gobran, Senior Transportation Analyst



October 20, 2008

Mr. Bill Jacobs, AICP  
City of Irvine  
Community Development Department  
P.O. Box 19575  
Irvine, Ca 92623-9575

**Subject:** Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code  
(Planning Area 36)

Dear Bill,

Thank you for the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the IBC Vision Plan and Mixed Use Overlay Zoning Code. We respectfully submit the following comments and questions:

**Project Description:**

1. The project description needs to clarify what development projects are subject to the IBC Mixed Use Community Vision Plan's policies and objectives that are identified in the Overlay Regulation Plan, Figure 4 of the NOP. The project description seems to imply that non-residential (commercial or industrial) development proposals in the 5.1 IBC Multi-Use and 5.2 IBC Industrial zones are subject to the IBC Mixed Use Community Vision Plan. It is our understanding that only residential development in the IBC that require a zone change to IBC 5.3 A-D or Mixed-use development in the 5.0 IBC Mixed Use are subject to the IBC Mixed Use Community Vision Plan. Please list what approved or potential residential units are subject to the IBC Mixed Use Community Vision Plan and what non-residential development is subject to the IBC Mixed Use Community Vision Plan.
2. If our understanding is correct, the EIR needs to address the impact of different street and intersection setbacks and other development standards within the IBC Mixed Use Community Vision Plan for residential projects compared to non-residential (commercial/industrial) projects that maybe on the same streets and/or adjacent to each other.

3. The project description for the general plan amendment states the establishment of a 15,000 dwelling unit cap in the IBC with an offsetting “reduction” of non-residential office equivalency square footage. Please identify which Transportation Analysis Zones (TAZ) and what properties within those TAZ that are being reduced and which TAZ are being increased. Will this result in a reduction in Zoning Potential to properties within the reduced TAZ? How will the reduction of Zoning Potential in one TAZ be transferred to the other TAZ? Will property owners “losing” entitlement (Zoning Potential square footage) be compensated for the loss of Zoning Potential?
4. The Project Description identifies that there are 9,401 units within the General Plan and Zoning Cap that are distributed as 4,524 existing residential units, 2,111 units under construction and 2,766 residential units approved. Given these numbers, please identify in what category(ies) the 3,090 (excluding 360 Residential Density Bonus Units) are identified within the Irvine General Plan for the Park Place project pursuant to Ordinance 02-12. In addition, the EIR needs to clarify which residential and mixed use projects that are not subject to IBC Mixed Use Community Vision Plan because of development agreements and vested rights under existing approvals.
5. The EIR needs to state why the “theoretical conversion” of Zoning Potential square footage into residential units is a reasonable worst-case scenario as stated on Page 3 of the Draft NOP document.
6. The EIR needs to clarify that the added policies regarding pedestrian-oriented streets in the Circulation Element will not apply to non-residential development in the IBC, existing approvals and projects with active development agreements. The EIR needs to identify the implementation of various policies for sidewalk location on streets with various zoning categories.
7. The EIR needs to identify any exactions for implementation of Proposed IBC Infrastructure Improvements identified in Figure 5 of the NOP, the costs and that non-residential, existing approvals and projects with active development agreements will not be required to pay for any new infrastructure. Please also identify who will maintain the facilities and how will maintenance be paid for?
  - a. Bridges: The EIR needs to identify the cost to construct and maintain bridges proposed as part of the IBC Mixed Use Community Vision Plan. What will be the cost per remaining residential unit to pay for the bridges? How will this impact the affordability of housing?
  - b. Creekwalk: The EIR needs to identify the conflict between Southern California Edison’s policies regarding use of transmission corridors for other than transmission of electricity and the proposed Creekwalk identified as part of the IBC Mixed Use Community Vision Plan.

8. The EIR needs to identify existing non-residential development applications under consideration by the city of Irvine that are requesting approval of transfer of development rights from other properties within the IBC. The EIR needs to clarify if the IBC Mixed Use Community Vision Plan will impact these development applications and their ability to transfer Zoning Potential from other sites in the IBC.
9. The EIR needs to provide clear understanding of all revisions (reductions/increases) to the statistical analysis to Zoning Code Section 9-36-5. The EIR needs to discuss the differences between the Statistical analysis in Section 9-36-5 and the IBC Data Base and the traffic study TAZ assumptions and how these differences impact individual properties within the IBC.
10. The EIR needs to accurately describe the fact that the Zoning Code has a square footage cap identified in Section 9-36-5, not just a 15,000 unit cap as identified on Page 3 of the draft NOP document.
11. The EIR needs to clarify that the new City park dedication requirements for the IBC do not apply to non-residential projects, nor to projects with existing approvals and active development agreements. The EIR needs to clearly identify the change in Park Standards and how these new standards are to be implemented.
12. The EIR needs to clarify what is intended by a "program of optimizing land uses in the IBC for remaining un-built IBC Zoning Potential and Approvals". The EIR needs to identify on a per parcel basis what manipulation of the Zoning Potential and Approvals for each TAZ is being suggested by this "program" and how it changes the IBC Data Base and Statistical Analysis in Section 9-36-5. What is meant by un-built Approvals?
13. The city needs to explain how it will track the "unutilized potential/approvals" that will be combined in some manner (also needing detailed explanation) within specific TAZ zones, as identified on page 4, item 4.c. How will individual property owners be compensated for the loss of entitlement when the Zoning Potential and/or "approvals" are transferred from their property to another private land owner? Is it the city's intent to allow Transfers of Development Rights only within and established TAZ, and not between two TAZ?
14. The NOP identifies that 24,535 residential units is the "worst case". Given that mixed-use development has been identified by the state Attorney General's Office as a mitigation measure for Global Warming is this really the "worst case"? Would not it also be an environmental benefit to also add retail services in the IBC to serve the residential population? Is not the "worst case" actually only office and industrial uses in the IBC which could be seen as further exacerbating the current job/housing imbalance and not helping reduce vehicle miles traveled?
15. The EIR needs to clarify that the "set of design guidelines" are not applicable to non-residential and/or existing approvals and development agreements.

16. The EIR needs to explain how “additional freeway overcrossings” (although only one is known by us – Alton Parkway) identified on Page 5 of the draft NOP will lead to the 55 Freeway edge of IBC becoming “less pronounced.”
17. The EIR needs to analyze that inclusion of residential development; infill development and higher density development will reduce vehicle trips and therefore reduce Global Warming. The IBC and proposed vision plan is consistent with the Global Warming Mitigation Measures from the Office of the California Attorney General that states for Land Use Measures to reduce Global Warming are:
  - a. Encourage mixed-use, infill, and higher density development to reduce vehicle trips, promote alternative to individual vehicle travel and promote efficient delivery of services and goods. Infill development generates few vehicle miles traveled (VMT) per capita and reduced emissions of greenhouse gases, and denser development is associated with increased public transit use. For example, a city should promote “smart” development by reducing developer fees or granting property tax credits for qualifying projects.
  - b. Incorporated public transit into project design and access to public facilities and parks via public transit, walking or by bicycle.

The EIR needs to identify how the proposed project is consistent with AB 375. What benefits will the City receive by being consistent with AB 375 as well as other smart growth measures? How are VMT reduced by proximity to rail services, shuttles and proximity to the airport.

**IBC Land Use Distribution Projections:**

18. We would also like to thank staff for providing documentation as to the “IBC Land Use Distribution Projections” methodology sent via e-mail on October 13, 2008. In reviewing this document, specifically Appendix 3, additional explanation is needed in order for us to understand several significant changes that staff has made to the IBC Database. In reviewing and comparing the projects in the document provided on October 13, 2008 (with the IBC Database dated February 26, 2008) to a previous IBC Database dated August 22, 2007 there are numerous significant differences in square footage and/or Trip Budget allocations for several projects. For example, Project Number 2 shows a reduction of 735 PM Trips to its trip budget, while Project Number 341 shows an increase of 594 PM Trips (over double the amount shown previously), and Project Number 422, demonstrates an increase of 167,320 square feet of development potential without any corresponding increase in Trip Budgets. There are a number of other examples whereby changes to either square footages no explanation for these changes in the documentation. Please provide a detailed description of each change, with a concise reasoning for the change.



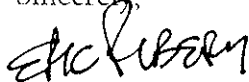
City of Irvine  
NOP Draft EIR IBC Mixed Use Community Vision Plan  
October 20, 2008  
Page 5

Thank you again for the opportunity to provide comments on the NOP for the IBC Mixed Use Community Vision Plan. Please do not hesitate to contact me if you have any questions, or would like to discuss these issues further. I can be reached via e-mail at: [erubery@sapettogroup.com](mailto:erubery@sapettogroup.com) or (949) 252-0841 x 26 and facsimile (949) 252-0842.

We request a notification of any meetings, public hearings, project materials and a copy of the draft EIR for our review and comment.

Thank you,

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Rubery".

Eric J. Rubery  
Vice President  
Sapetto Group, Inc.



October 20, 2008

Via E-mail: [bjacobs@ci.irvine.ca.us](mailto:bjacobs@ci.irvine.ca.us)

City of Irvine  
Attention: Mr. Bill Jacobs, AICP  
City of Irvine  
P.O. Box 19575  
Irvine, Ca 92623-9575

**RE: CITY OF IRVINE, CA. COMMENTS TO NOTICE OF PREPARATION (NOP) OF A DRAFT ENVIRONMENTAL IMPACT REPORT RELATED TO PENDING APPLICATION FOR 17150 VON KARMAN: 469 RESIDENTIAL UNITS (INCLUDING APPROXIMATELY 40 INCLUSIONARY UNITS).**

Thank you for the opportunity to comment on the Notice of Preparation dated September 18, 2008 for the Draft Environmental Impact Report of the IBC Mixed Use Community Vision Plan ("Vision Plan") and Mixed Use Overlay Zoning Code. The following is a summary of our comments:

1. It is our understanding the current General Plan cap for the IBC is 9,401 residential units and that approval of the proposed General Plan Amendment ("GPA") and accompanying Vision Plan would increase this cap to 15,000 dwelling units.
2. It is also our understanding that the GPA will simplify future changes to land use for residential or mixed-use development by including new policies and terms in the land use element of the General Plan providing for Overlay Districts authorizing residential development. In particular we understand that the proposed Urban Neighborhood Overlay District will include the Kilroy project, located at 17150 Von Karman, and its proposed 469 dwelling units. Please confirm.
3. It is our understanding that the GPA increase in the cap from 9,401 dwelling units to 15,000 dwelling units will include an offsetting reduction of non-residential office equivalency square footage for the additional 5,599 dwelling units. Please confirm.
4. It is our understanding that the TAZ analysis will consider the 2,552 pending/ currently in process dwelling units, including Kilroy's 17150 Von Karman project, as "fixed land uses". Therefore, please confirm that the zoning potential will be vested for the 469 unit Kilroy project.

5. In addition, we request the EIR clearly identify the change in Park Standards and how these new standards are implemented.
6. The EIR also needs to identify the cost to construct and maintain the bridges proposed as a part of the Vision Plan. What will be the cost per remaining residential unit to pay for the bridges? How will these costs impact the affordability of housing in the IBC?
7. The EIR should also address the conflict between Southern California Edison's policies regarding use of transmission corridors for other than transmission of electricity as the proposed Creekwalk identified as part of the Vision Plan.
8. The IBC and proposed Vision Plan is consistent with the Global Warming Mitigation Measures from the Office of the California Attorney General. We hope the EIR will help justify that inclusion of residential development; infill development and higher density development will reduce vehicle trips and therefore reduce Global Warming. Land Use Measures to reduce Global Warming are:
  - Encourage mixed-use, infill, and higher density development to reduce vehicle trips, promote alternative to individual vehicle travel and promote efficient delivery of services and goods. Infill development generates few vehicle miles traveled (VMT) per capita and reduced emissions of greenhouse gases, and denser development is associated with increased public transit use. For example, a city should promote "smart" development by reducing developer fees or granting property tax credits for qualifying projects.
  - Incorporated public transit into project design and access to public facilities and parks via public transit, walking or by bicycle.
9. The EIR should identify how the proposed project is consistent with the goals of SB 375. What benefits will the City receive by being consistent with the goals of SB 375 as well as other smart growth measures? How are VMT reduced by proximity to rail services, shuttles and proximity to the airport?
10. Finally, we anticipate that consistent with the NOP, the EIR will identify the Kilroy 17150 Von Karman project as well as other projects on file with the City that will be included in its analysis as "fixed land-uses".

Thank you again for the opportunity to provide comments on the NOP for the Vision Plan, our designated contact person is Eric Rubery, Vice President. His contact information is: [erubery@sapettogroup.com](mailto:erubery@sapettogroup.com) or (949) 252-0841 x 26 and facsimile (949) 252-0842.

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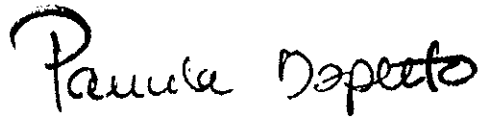
Mr. Bill Jacobs, AICP  
City of Irvine  
NOP Draft EIR IBC Mixed Use Community Vision Plan  
October 20, 2008  
Page 3

We request a notification of any meetings, public hearings, project materials and a copy of the draft EIR for our review and comment.

Thank you.

Sincerely,

SAPETTO GROUP, INC.

A handwritten signature in black ink that reads "Pamela Sapetto". The signature is written in a cursive, flowing style.

Pamela Sapetto  
Principal

PS:arg



October 21, 2008

Via E-mail: [bjacobs@ci.irvine.ca.us](mailto:bjacobs@ci.irvine.ca.us)

Mr. Bill Jacobs  
City of Irvine  
Community Development Department  
P.O. Box 19575  
Irvine, California 92623-9575

RE: ADDENDUM TO CITY OF IRVINE, CALIFORNIA COMMENTS TO NOTICE OF PREPARATION (NOP)  
FOR A DRAFT ENVIRONMENTAL IMPACT REPORT, RELATED TO PENDING APPLICATION FOR 17150  
VON KARMAN: 469 RESIDENTIAL UNITS (INCLUDING APPROXIMATELY 40 INCLUSIONARY  
AFFORDABLE UNITS).

Dear Bill:

As an addendum to the Comment letter submitted to the City on October 20<sup>th</sup>, 2008, we are providing the following additional comment in regard to the Draft Environmental Impact Report of the IBC Vision Plan and Mixed Use Overlay Zoning Code:

1. As noted in the NOP and as in previous discussions with City Staff, the Kilroy project at 17150 Von Karman with 469 residential units, is to be addressed as a part of the DEIR for the IBC Vision Plan and Mixed Use Zoning Overlay. It is our understanding that while this is a Program level environmental document, given the extent of data available to the City for the projects that are currently in process at the City, and particularly the Kilroy project, that this environmental document will also be sufficiently specific as to address any environmental impacts of the individual projects.

The above comment is our understanding and we would appreciate confirmation, that upon certification of the IBC Vision Plan and Mixed Use Overlay Zoning Code EIR, the certification will also include the Kilroy project and no further environmental documentation will be required for the Kilroy project.

Thank you again for the opportunity to provide comments on the NOP. Please feel free to contact me or Andrea Maloney regarding this issue.

Sincerely,

SAPETTO GROUP, INC.

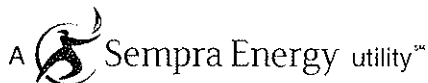
A handwritten signature in black ink that reads "Pamela Sapetto". The signature is written in a cursive, flowing style.

Pamela Sapetto  
Principal

PS:arg



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



September 24, 2008

City of Irvine  
P.O. Box 19575  
Irvine, CA 92623-9575

Attention: Bill Jacobs

**Subject: EIR for Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36).**

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,

A handwritten signature in black ink, appearing to read "Paul Simonoff".

Paul Simonoff  
Technical Services Supervisor  
Pacific Coast Region - Anaheim



SMITH ENGINEERING & MANAGEMENT

October 22, 2008

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 Project Draft Environmental Impact Report: Scope of Work for Traffic Study

Dear Mr. Jacobs:

On behalf of the Cities of Newport Beach and Tustin (hereinafter 'the Cities'), we have reviewed the revised Notice of Preparation for the IBC Vision Plan and Mixed Use Overlay Zoning Code (hereinafter 'the Project'). As you may know, the detailed scope of work for the traffic analysis of the Project has been provided to the Cities and there have been direct meetings and exchanges of correspondence between staffs of the Cities and staff of the City of Irvine about concerns involving the traffic analysis work scope. Our comments on the Revised Notice of Preparation herein are specifically focused on the revised scope of work for the traffic analysis of the Project that was forwarded via e-mail to the Cities on August 14, 2008.

**Future Dates For Cumulative Analyses Are Inconsistent With Project Absorption Rate**

The proposed traffic analysis scope of work assumes that approved and pending IBC residential developments would be completed by 2013 and that the remainder of the residential developments under the 15,000 unit cap would not be completed until the post-Year 2030 time frame. Consequently, the traffic analysis work scope schedules plans to analyze the Vision Plan Project's cumulative impacts at the Year 2013 and post-Year 2030 development stages.

The Cities have expressed concern that at the absorption rates assumed between now and 2013, the entire 15,000 unit cap (plus the additional total for density bonuses) would be fully absorbed by Year 2015. Irvine has acknowledged the substance of this concern in a July 8 letter from Senior

Transportation Analyst Lisa Thai to Tustin Assistant Public Works Director Douglas Stack. However, nothing has been done in the traffic analysis work scope to address the issue. The problem is that, if the entire 15,000 dwelling unit cap (and the associated density bonus units) are completed by 2015, but are only analyzed as if completed by post-2030 year, mitigation measures that would actually be needed 7 years from now (2015) would only appear in a vague and distant scenario more than 22 years away (post-2030). Since it appears likely that the full dwelling unit cap would be built out by 2015 or thereabouts, the traffic work scope should include analysis scenarios for that year going forward.

### **Validity of the Traffic Impact Analysis Will Be Undermined By Passing Project Traffic Through ITAM Model Post-processors**

In comments on several recent EIRs for developments within the IBC, the Cities have conclusively demonstrated that Irvine's practice of passing project traffic through the ITAM traffic model post-processors inappropriately factors down the project's discrete traffic contributions on road segments and at intersections and inappropriately disperses the project's discrete contributions to turning movements at intersections. These considerations may result in understating project traffic impacts.

In a meeting that took place on June 26, 2008 between the staffs of Newport Beach, Tustin and Irvine to discuss the traffic work scope for the study that is now the subject of this Revised NOP, representatives of Newport Beach and Tustin raised the concern regarding the procedure of passing project traffic through the ITAM post-processors.. In response, at the June 26 meeting, Irvine's traffic consultant, Mr. Timor Rafiq, made a statement to the effect that 'the factoring could go both ways, upward or downward, and tended to balance out.' The concern was also raised in a letter in follow-up to the meeting from Tustin Assistant Public Works Director Douglas Stack to Irvine's Senior Transportation Analyst Lisa Thai. In response to the ITAM post-processor issue as raised in Mr. Stack's letter of June 26, Ms. Thai responded in a letter dated July 8, 2008, implying that it is impossible to run the ITAM model without passing everything through the post-processor, stating, "The post-processor is an integral part of the ITAM modeling procedures. The IBC Vision Plan Traffic Study will use the same methods that the City uses for all projects." Neither Mr Rafiq's nor Ms. Thai's response is factually correct.

The ITAM post-processor procedure is described on page 16 of the City of Irvine's *2005 Traffic Monitoring Report For Irvine Business Complex Sliding Interim Year Analysis*. Under the procedure described, the ITAM model output on certain road segments is factored downward. On the remaining road segments, traffic changes predicted by the ITAM model are accepted *unadulterated*. Significantly, there is no factoring *upward*. Contrary to Mr. Rafiq's explanation at the June 26 meeting, there is no 'balancing out' or



'factoring both ways'. The Cities have examined the actual road segment by segment results of the ITAM post-processing for several recent IBC environmental documents. Project traffic contributions were factored down on a majority of the road segments, typically 55 to 65 percent of all road segments considered in the EIR traffic analyses. On the remaining 35 to 45 percent of road segments, traffic increments were left unadulterated. Traffic increments were never factored upward. In a typical instance, of those road segments where project traffic was factored downward, 60 percent of the segments had traffic factored downward by more than 20 percent, 43 percent of the segments had traffic factored downward by more than 30 percent and 25 percent of the segments had traffic factored downward by more than 50 percent. These are significant reductions in the amount of traffic predicted by the model, which tend to produce an unrealistic result favorable to the project when it comes to predicting significant traffic impacts.

The July 8, 2008 Thai letter response on the post-processor issue implies that Irvine cannot avoid passing project traffic through the ITAM post-processors because the post-processors are "an integral part of the ITAM modeling procedures" also misrepresents the situation.

Although the post-processing procedures are programmed to link directly to ITAM's basic traffic forecasting module to run in an automated way, this matter is not comparable to the case of a commercial software program application (like Microsoft Word, for instance) where the end user buys an executable copy of the program but has no access to the *source code* to modify the way program operates. In the ITAM case, the source code for the post-processor procedures in question were written as a customized response to Irvine's desires and needs; just as this source code was a customized creation, it can be modified. Thus, Irvine cannot claim that the post-processor is an immutable component integral with the ITAM model. Such a claim is clearly false. Indeed, Irvine can easily set up an automated process by which 'raw' (unadulterated) project traffic increments can be added to already post-processed baseline (no-project) traffic scenarios for future years and thereby avoid subjecting project traffic to the inappropriate factoring down and dispersionary effects of the ITAM post-processors.

The Cities have extensively documented their concern that the downward factoring of discrete project traffic increments in ITAM's post-processing procedures results in failure to disclose significant project traffic impacts. The Cities are convinced that if Irvine does not modify its ITAM post-processors in substantial conformance with their previous request, the validity of the results of this study will be severely compromised and will result in a failure to properly disclose traffic impacts. Because this failure is completely avoidable, we strongly suggest that Irvine reconsider its position on this issue.

### **The Cities Remain Concerned That the Study Will Include “Blanket” Assumptions of Mitigation Through ITS, ATMS and Transit Improvements**

At the meeting on June 26, 2006 between the staffs of the three cities and again in Tustin Assistant Public Works Director Douglas Stack's June 27 follow-up letter to Irvine's Senior Transportation Analyst Lisa Thai, the Cities objected to use of unsupported blanket assumptions of mitigation effectiveness through ITS, ATMS and Transit Improvements. The Cities insist that any claim of mitigation through these types of measures must be supported by formal traffic operations studies and transit mode choice studies. Ms. Thai's July 8 letter response was to quote Irvine's policy on mitigation via ATMS, a policy that includes exactly the type of unsupported blanket assumption of mitigation effectiveness that the Cities object to. The traffic work scope remains unchanged in regard to this matter and the Cities continue to object.

### **The Traffic Study Continues to Fail to Properly Address Issues Related to Impacts of Transfer of Development Rights**

The proposed traffic analysis methodology is flawed with respect to the matter of transfer of development rights in the following respects:

- Original entitlements from the 1992 IBC planning and zoning are based on assumption of traffic mitigation measures defined in the EIR on the 1992 plan and zoning program. Some of those mitigation measures Irvine, in recent EIRs for developments in IBC, now concedes are uncertain. This uncertainty of mitigation undermines the theory that increased development on one site can be offset by swapping future theoretical entitlements on another site since the mitigations that supported the original entitlements on the “sending site” may not be constructed.
- In the recent litigation regarding the Alton and Martin matters, the Court held that the EIR analyses did not adequately assess the traffic impacts of transferring development rights between physically separated “sending” and “receiving” sites. However, the analysis methodology proposed for the current Vision Plan EIR traffic study is the exact same methodology that the Court found lacking in the Alton and Martin matters.
- The analysis methodology cannot be reconciled with the fact many of the sites that are regarded as having unutilized development potential and that are being used as “sending sites” in transfers of development rights are, in practical terms, fully developed in their present state for the entire duration of the planning horizon. That is to say, they are fully occupied by modern buildings that take up full site coverage and that are unlikely to be reconstructed for the entire term of the Vision Plan. As a consequence of this, the remaining theoretical development potential can only be realized elsewhere through the vehicle of transfer of development rights. Hence, the development that occurs is entirely a creation of the development that

occurs at the "receiving site." Future entitlements that are unlikely to be utilized on sites that are fully developed with modern buildings should not be included in future baseline trip scenarios or deducted in future "with project" scenarios for.

The traffic analysis procedure should be modified to reflect these considerations.

### **Vision Plan EIR Traffic Study Should Be Performed In the Context of 2008**

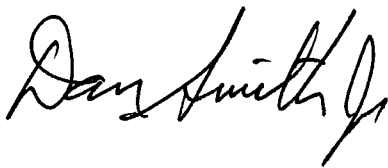
The section of the traffic study work scope entitled 'analysis/performance criteria' mentions the 0.02 change in ICU from Irvine's Traffic Impact Analysis Guidelines but is silent on the 0.01 criterion that applies under the Guidelines when an intersection is already identified as deficient in the most recent *Citywide Circulation and Phasing* and the *IBC Sliding Interim Year Analysis Traffic Study* reports. New versions of these reports are due to be prepared for Year 2008. The Cities have previously requested that the Vision Plan EIR traffic analysis be performed in the context of the most current Circulation and Phasing and the Sliding Year reports rather than the 2005 results. The NOP fails to clarify this aspect of the traffic study methodology. Using the findings of the old reports is inappropriate, since the database and analysis of Vision Plan traffic and that for the *Circulation and Phasing* and the *Sliding Year* reports are essentially one and the same. The Cities request clarification on this issue.

### **Conclusion**

This completes my current comments on the Vision Plan NOP. The Cities request that the scope of work for the traffic analysis portion of the EIR be revised in light of these comments and caution that the validity of the results may be undermined if this is not done.

Sincerely,

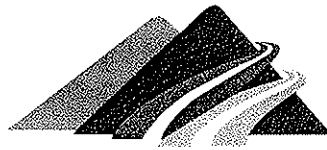
Smith Engineering & Management  
A California Corporation



Daniel T. Smith Jr., P.E.  
President

San Joaquin Hills  
Corridor Agency

Chairman:  
Joel Lautenschleger



**TRANSPORTATION CORRIDOR AGENCIES**

Foothill/Eastern  
Corridor Agency

Chairman:  
Jerry Amonte

October 16, 2008

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

**Subject: NOP of a Draft Environmental Impact Report**  
**Project Title: Draft IBC Vision Plan and Mixed Use Overlay Zoning Code**  
**(Planning Area 36)**

Dear Mr. Jacobs:

The Transportation Corridor Agencies (TCA) wishes to thank you for the opportunity to review and comment on the above-mentioned notification. The TCA has no comments at this time; however, we would request a copy of the Draft Environmental Impact Report (DEIR).

Should you have any questions or concerns regarding this information, please feel free to contact me at (949) 754-3475.

Sincerely,

Valarie McFall  
Deputy Director  
Environmental Planning

Thomas E. Margro, Chief Executive Officer

125 PACIFICA, SUITE 100, IRVINE CA 92618-3304 • P.O. BOX 53770, IRVINE CA 92619-3770 • 949/754-3400 • FAX 949/754-3467

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Campus & Environmental Planning

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October 21, 2008

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

Dear Mr. Jacobs:

Thank you for providing the University of California, Irvine an opportunity to review the revised Initial Study and Notice of Preparation of a Draft Environmental Impact Report for the City of Irvine's proposed Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code.

As the document notes, the proposed IBC is adjacent to UC Irvine's North Campus and the University of California's San Joaquin Marsh Natural Reserve. Existing North Campus land uses include administrative and academic facilities, an arboretum, and the UC Irvine Child Development Center. UC Irvine's Long Range Development Plan, which provides future land use direction for the North Campus was adopted by The Regents of the University of California in November 2007.

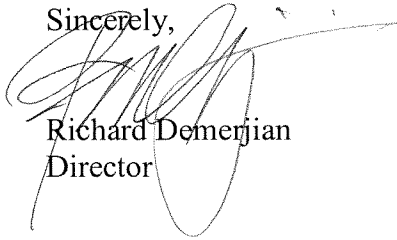
The LRDP's planning concept for the North Campus focuses on mixed-use development consisting of commercial and residential components. Analysis of the environmental impacts resulting from implementation of the IBC and OZC should consider existing and future North Campus development as described in UC Irvine's LRDP and LRDP EIR; particularly, vehicular trip assumptions for North Campus mixed use development and existing and future vehicular, transit, and bicycle and pedestrian access to the site as well as other areas of the UC Irvine campus.

UC Irvine is the property owner of the land which contains the Orange County Flood Control District easement for the portion of the proposed Creekwalk area adjacent the Marsh Natural Reserve and Closed Landfill. Consequently, the DEIR should provide further information regarding the design and location of the proposed Creekwalk and subsequent environmental effects.

UC Irvine looks forward to continuing to work cooperatively with the City to ensure that future

North Campus planning and development is coordinated with IBC development. Please do not hesitate to contact me at (949) 824-6316 if you require additional information regarding UC Irvine planning materials for the North Campus or other University property.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Demerjian', is written over the typed name and title.

Richard Demerjian  
Director

cc: Wendell Brase  
Richard Orr  
Peter Bowler



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road, Suite 101  
Carlsbad, California 92011



In Reply Refer To:  
FWS-OR-08B0787-08TA1012

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

**RECEIVED**

**OCT 14 2008**

**OCT 16 2008**

**COMMUNITY DEVELOPMENT  
CITY OF IRVINE**

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36), City of Irvine, Orange County, California

Dear Mr. Jacobs:

We have reviewed the above referenced Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) for the Draft Irvine Business Complex (IBC) Vision Plan and Mixed Use Overlay Zoning Code (Planning Area 36) in the City of Irvine, County of Orange, California. This NOP was received on September 22, 2008. The proposed project involves the adoption of the IBC Mixed Use Community Vision Plan, which outlines the residential and mixed use development within the IBC. The IBC site falls within the bounds of the Orange County Central/Coastal Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

We offer the following comments and recommendations regarding project-associated biological impacts based on our review of the NOP and our knowledge of declining habitat types and species within Orange County. We provide these comments in keeping with our agency's mission to work "with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." Specifically, we administer the Endangered Species Act (Act) of 1973, as amended. We also provide comments on public notices issued for a Federal permit or license affecting the Nation's waters pursuant to the Clean Water Act.

To facilitate the evaluation of the proposed project from the standpoint of fish and wildlife protection, we request that the DEIR contain the following specific information:

1. A description of the environment in the vicinity of the project from both a local and regional perspective, including an aerial photograph of the area with the project site outlined.



2. A complete discussion of the purpose and need for the project and each of its alternatives.
3. A complete description of the proposed project, including the limits of development, grading, and fuel modification zones.
4. Quantitative and qualitative assessments of the biological resources and habitat types that will be impacted by the proposed project and its alternatives. An assessment of direct, indirect, and cumulative project impacts to fish and wildlife associated habitats, including growth-accommodating effects of the project (e.g., increased population, increased development, increased traffic). All facets of the project (e.g., construction, implementation, operation, and maintenance) should be included in this assessment. Proposed developments in the surrounding area should be addressed in the analysis of cumulative impacts.

This assessment should include a list of Federal candidate, proposed, or listed species; State-listed species; and locally sensitive species that are on or near the project site, including a detailed discussion of these species and information pertaining to their local status and distribution. We are particularly interested in any and all information and data pertaining to potential impacts to populations of federally listed species.

The analysis of impacts to biological resources and habitat types should include detailed maps and tables summarizing specific acreages and locations of all habitat types, as well as the number and distribution of all Federal candidate, proposed, or listed species; State-listed species; and locally sensitive species, on or near the project site that may be affected by the proposed project or project alternatives.

5. A detailed discussion of measures to be taken to avoid, minimize, and offset impacts to biological resources.
6. A detailed analysis of impacts of the proposed project on the movement of wildlife and measures proposed to avoid, minimize, and offset impacts to wildlife movement.
7. An assessment of potential impacts to wetlands and jurisdictional waters of the United States. Section 404 of the Clean Water Act prohibits the unauthorized discharge of dredged or fill material into such waters, including wetlands. This section also provides that the U.S. Army Corps of Engineers (Corps) may issue permits for discharges of dredged or fill material into jurisdictional waters and wetlands. Potential areas of Corps jurisdiction should be evaluated and wetlands should be delineated using the methodology set forth in the Corps' Wetland Delineation Manual (Environmental Laboratory 1987). The DEIR should disclose all impacts to jurisdictional waters and wetlands, and proposed measures to be taken to avoid and minimize impacts, and mitigate unavoidable impacts.



8. A discussion of the consistency of any proposed biological resource impacts with the provisions of the NCCP/HCP for covered habitats and species, as well as conditionally covered species. The DEIR should also evaluate the impact of the proposed project on the NCCP/HCP reserve system, special linkage areas, non-reserve open space, and existing use areas. In particular, the DEIR should determine whether the proposed project boundaries are consistent with the boundaries of these areas established by the NCCP/HCP.

In addition to the above requests regarding the contents of the Draft EIR, we offer the following comment. The proposed IBC vision framework plan includes the San Joaquin Marsh and the San Diego Creek where the federally endangered least bell's vireo (*Vireo bellii pusillus*), light-foot clapper rail (*Rallus longirostris levipes*), and the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*) have been documented in the vicinity. Therefore, the following issues specific to the proposed project should be addressed: 1) potential direct and indirect impacts to the adjacent San Joaquin Marsh and the creek associated with the proposed Creekwalk and trail development along the creek and the bridges over streets and the creek to be widened or created, and 2) a detailed description of the development and operation/management of the proposed community parks conceptual location in the San Joaquin Marsh.

We appreciate the opportunity to comment on the referenced NOP. Should you have any questions regarding this letter, please contact Fish and Wildlife Biologist Jennifer Wise of my staff at (760) 431-9440, extension 276.

Sincerely,



*for* Karen A. Goebel  
Assistant Field Supervisor

October 20, 2008

NOP Comments – IBC EIR & Vision Plan

SENT VIA FACSIMILE & EMAIL

Bill Jacobs, AICP, Principal Planner,  
City of Irvine, P.O. Box 19575, Irvine, CA 92623-9575.  
Email: [bjacobs@ci.irvine.ca.us](mailto:bjacobs@ci.irvine.ca.us).  
Telephone: (949) 724-6521. Fax: (949) 724-6440

Dear Mr. Jacobs:

Please incorporate responses to the following questions/issues in the forthcoming EIR.

Sincerely, William Treseau  
[willytreseau@gmail.com](mailto:willytreseau@gmail.com)

1. The notice states that the revisions to the Proposed project do not result in any changes to the Scope of the EIR. This Statement may represent a flaw in the Notice inasmuch as it could act to dissuade the public from participation in the public process because the City has already determined that the Scope of the EIR will not be affected, and the public's comments will not have any tangible affect on the scope.

The purpose of an Initial Study is to identify issues which could, precisely, affect the scope of the environmental document. This is a statement that the City does not intend to take the public's comments seriously and has made a predetermination concerning the scope, the level of review, the analysis and perhaps the conclusions in the forthcoming EIR. Even though the City conducted an initial study in 2007 the clock has been reset and the analysis must begin in earnest, anew. The City in its roll as lead agency must also recognize that environmental conditions may have changed in the last year and that new information may have come to light, or that new concerns might affect the Scope of the EIR. Please reissue the NOP and correct the Notice by deleting the aforementioned statement.

2. Please discuss whether it the City's intent by virtue of policy or implementation guidelines to preclude the approval of dwelling units in excess of 15,000 du's ? Or, will the City be open to processing new residential applications through GPA's and Environmental addendums as it has done in the past?
3. Please discuss whether the Approval of the 2,522 DU's (Pending Applications) be considered before this EIR is completed
4. Please analyze all 15,000 DU's in terms of the impact and requirement for social and community services such as parks, schools, emergency services etc. Develop an impact fee program which funds these services.

5. Please analyze and discuss whether the pending applications (2,522 du's), if approved prior to the certification of the EIR would be asked to participate in a comprehensive fee program. Discuss and analyze how will the City fully fund a mitigation programs addressing all of the associated impacts arising from all IBC residential (15,000 du's) if the remaining applicants (pending + future GPA allowance du's can only be asked to pay for their fair share? Please provide an economic/fiscal analysis of the IBC residential buildout and provide reference to and analysis of a program(s) which will fully pay for the impact.
6. Should any of the Pending Applications become ready for deliberation by the City Council and Planning Commission prior to the Certification of this EIR, please discuss whether the City will place the application(s) on hold pending the Certification of the EIR?
7. Please explain how the proposed 3,077 GPA can be properly analyzed if the City is not aware, of or planning for their, "location timing, density & design" Please provide a detailed description within the EIR of the 3,077 units so that they an be properly analyzed with respect to each of the EIR's component sections. Analysis should include but not be limited to Traffic, zoning, hazardous materials, soil & groundwater contamination, services, public amenities, schools, etc.
8. With regard to the statement in section 8.2.b of this Notice, please describe the proposed "update" and its goals so that we can provide appropriate comments.
9. Clarify the statement in section 8.4, and discuss whether this program will strip properties of their Zoning Potential and or their Approvals so as to aggregate those trips into their associated TAZ Zone and allow access to those Trips by other land owners for new priority projects for the IBC.
10. In the section heading under 8.4, it is indicated that this Program would rely on, "remaining unbuilt IBC Zoning Potential and Approvals". However, under section 8.4.a. it is indicated that the Program will incentivize the conversion of existing , office manufacturing and/or warehouse uses to retail use. Please clarify.
11. Please provide an analysis and comparison of all retail approvals (discretionary and non-discretionary) at the time of the approval of the 1992 IBC EIR. Please also provide a current status of those original Approvals in terms of whether they were built out as retail or converted to other uses through subsequent approvals.
12. Please discuss whether onsite or off-site retail amenities were a criteria for existing built and approved residential projects in the past, or whether it will be a criteria for the approval of new residential projects.
13. Please analyze develop a development impact fee and funding program for the proposed infrastructure improvements. Identify whether any of these improvements are already a requirement of existing or approved projects. If already a requirement, identify how the project(s) are, or will be implemented. Please discuss whether any of these infrastructure improvements are already included under existing or planned residential development agreements.

14. Please discuss whether new residential approvals should be delayed until a proper Impact Fee can be established and a comprehensive impact analysis can be conducted.
15. Please update the IBC Roadway Mitigation Plan developed for the 1992 Ordinance to take into account changes to local, area-wide and regional growth and land use patterns in over the past 16 years.
16. Please develop and a Matrix which compares, on a parcel by parcel basis, any existing and approved changes to land uses which were analyzed in the 1992 EIR. Specifically call-out any changes to the IBC Roadway Mitigation Plan which have resulted from changes to IBC land uses. Please also identify any regional impacts such as the Tustin Base approvals which might impact the IBC Roadway Mitigation Plan or its assumptions or methodologies.
17. Please identify any funding shortfalls in the IBC Fee & Funding Program. Please restate any assumptions and milestones for funding the IBC Roadway plan from the 1992 EIR and determine which of these milestones have been met. If necessary, develop a new fee & funding program which pays for any shortfalls and does not leave any unfunded mandates.
18. Please identify all IBC roadway revenues, on a parcel by parcel basis, which are assumed from zoning potential, zoned, and approved projects. Identify any other revenues for the IBC Roadway Mitigation Plan which are assumed from the implementation of the Vision Plan.
19. The last update to the IBC Fee and Funding Program increased roadway fees to bring obligations current with the Construction Cost Index. However, because of the City's had previously failed to update the Fee on a regular basis, as required by its own ordinance, all un-built projects now have a larger burden and are required to pay a disproportionately higher rate and fee. Conversely, all projects built under the fee program prior to the update received an effective discount. Please address this inequity in a reformulated Fee & Funding Program so that unbuilt projects pay a Fair Share of their obligation as intended in the 1992 EIR, and a proper Nexus is reestablished.
20. Please identify all soil and groundwater contamination in the IBC and study the ramifications for future development both on and off site. Identify the location of the contamination by address on a map and identify a plan for proper remedial action prior to any new construction.
21. Please identify any Hazardous Material users in the IBC by address on a Map and the distance to any existing or proposed residential use.
22. Identify any assumptions from the 1992 EIR concerning proximity to Hazardous Materials which might have been used to cap the number of residential units at 1992 levels. To the extent that the City is still relying on these assumptions, analyze how they may affect newly approved projects and those proposed in the new Vision Plan.