

## 2. Response to Comments

LETTER O1 – The Colton Company (2 pages)



**THE COLTON COMPANY**

February 3, 2010

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

Mr. Bill Jacobs  
CITY OF IRVINE  
Community Development  
One Civic Center  
Irvine, California 92614

**Subject: Comments on Recirculated Draft Irvine Business Complex Vision Plan and Mixed Use Overlay Zoning Code Environmental Impact Report**

Dear Mr. Jacobs:

As owner of property within the Irvine Business Complex, we have specific questions on implementation of certain aspects of the Vision Plan and Mixed Use Overlay Zoning EIR, recirculated December 23, 2009. For the record, The Colton Company and its affiliates own the properties corresponding to the following addresses:

2171 Campus	18952 MacArthur	2192 Martin
2301 Campus	18872 MacArthur	2222 Martin
2361 Campus	18912 MacArthur	2302 Martin

- |                                                                                                                                                                                                                                                                                                                                                             |      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1. How is the City of Irvine handling Transfers of Development Rights (TDRs) between Traffic Analysis Zones (TAZs)? Will the TDR procedures outlined in the current IBC Zoning (Zoning Code Section 9-36-17) remain as it is today, or is the City changing the procedures? Please explain.                                                                 | O1-1 |
| 2. Please explain who has ownership and/or control over the “Potential Residential” units in a given TAZ. For example, TAZ 534 includes an allocation of 211 Residential Units under the Optimization program. Since 2302 Martin Street has the existing development rights, please confirm the allocation of 211 Residential Units belongs to 2302 Martin. | O1-2 |
| 3. Please confirm that all development rights granted and allocated in the current IBC Data Base and Zoning remain with the property, and that the IBC Vision Plan has no direct affect on reducing any development rights.                                                                                                                                 | O1-3 |

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## 2. Response to Comments

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Mr. Bill Jacobs  
CITY OF IRVINE  
February 3, 2010  
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We appreciate the opportunity to provide comments on the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR and will be available to discuss the comments with you at your convenience.

Sincerely,

THE COLTON COMPANY



David A. Colton  
President

cc: Pamela Sapetto, Sapetto Group, Inc.  
Eric Rubery, Sapetto Group, Inc.

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## 2. Response to Comments

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**O1. Response to Comments from David A. Colton, President, The Colton Company, dated February 3, 2010.**

- O1-1 The Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone as the receiving site will not be required to process a Conditional Use Permit for the TDR.
- O1-2 No ownership/or control is assumed for the potential units allocated to a certain TAZ. These units were added considered for land use modeling assumptions and may or may not ultimately used within the TAZ in which they were identified in the traffic model. All IBC properties maintain their current entitlements in the IBC database, and the remaining potential units are available as alternative development potential on a first come-first serve basis.
- O1-3 No changes are proposed to existing entitlements in the IBC database, and no development rights are reduced. The IBC Vision Plan model only assumes changes to the database for projects and TDRs currently in process.



## *2. Response to Comments*

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## 2. Response to Comments

LETTER O2 – Connor, Fletcher & Williams LLP (7 pages)

EDMOND M. CONNOR  
MATTHEW J. FLETCHER  
MICHAEL R. WILLIAMS  
DOUGLAS A. HEDENKAMP  
SHIRY TANNENBAUM

**C | F | W**  
**CONNOR, FLETCHER & WILLIAMS LLP**  
ATTORNEYS AT LAW

February 4, 2010

VIA E-MAIL AND OVERNITE EXPRESS

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

Re: *DEIR for IBC Vision Plan and Overlay Zoning Code*

Dear Mr. Jacobs:

We are the attorneys for LBA Realty, LLC; LBA IV-PP-Land, LLC; LBA IV-PPI-A, LLC; and LBA IV-PP-PS5, LLC (collectively, "LBA"). LBA owns the land that remains to be developed at Park Place, the residential/mixed use development located at Jamboree and Michelson in the City of Irvine (the "City"). LBA currently holds all of the rights, benefits, and entitlements arising under (1) that certain "Park Place Development Agreement," dated October 24, 2002 (the "Development Agreement") and (2) that certain "Settlement Agreement (Park Place Development Agreement)," dated as of December 12, 2007.

LBA has asked our firm to provide you with LBA's comments on the re-circulated Draft Environmental Impact Report for the IBC Vision Plan and Overlay Zoning Code (the "Vision Plan EIR"). We have also been asked to submit comments on certain aspects of the General Plan Amendment, Zoning and Municipal Code Amendments, and Design Criteria (collectively, the "Project") addressed in the Vision Plan EIR.

As a threshold matter, let me commend the City on successfully completing the herculean task of preparing and revising the Vision Plan EIR. The City has obviously worked very hard to provide the public with a thorough and informative analysis of the environmental effects and feasible mitigation measures associated with the Project. This was certainly a costly and time-consuming undertaking for the City, but the end-product appears to have been well worth the effort.

LBA's comments on the Vision Plan EIR and the Project generally fall into two categories: (1) comments regarding how certain plans, programs, and policies ("PPPs"), project design features ("PDFs") mitigation measures ("MMs"), General Plan policies and Zoning Code requirements that are being proposed as part of the Project would be inconsistent and in conflict with the terms of the Development Agreement and thus would not be applicable to Park Place; and (2) comments regarding how the Development Agreement would prevent the

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O2-1

O2-2

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City from requiring LBA to dedicate the land or right-of-way needed to construct certain public improvements at Park Place that are shown in the Vision Plan EIR.

O2-2  
cont'd.

### I. COMMENTS RE INAPPLICABLE POLICIES, ETC.

Under section 4.1 of the Development Agreement, the City is not allowed to apply any new rules, regulations, or policies to Park Place which would be inconsistent or in conflict with the Applicable Land Use Regulations, the Existing Approvals, the Additional Development Rules, or the intent or purpose of any of the terms, standards, or conditions of the Development Agreement. Specifically, under section 4.2.17 of the Development Agreement, the City is prohibited from (1) reducing the net IBC development points allocated to the Park Place project, (2) modifying the permitted uses for Park Place or reducing the density or intensity of all or part of Park Place, (3) requiring any reduction in the square footage or total number of proposed improvements allowed for Park Place under the Applicable Land Use Regulations and the Existing Approvals or (4) attempting to regulate the timing, rate, or phase of development to be undertaken in connection with Park Place. In short, the City is prohibited from undertaking any actions that would "conflict" with the terms of the Development Agreement, the Applicable Land Use Regulations, the Existing Approvals, or the Additional Development Rules.

In addition to the protections described above, sections 1.10 and 4.2.11 of the Development Agreement allow LBA, in response to market conditions, to adjust or reallocate the development points assigned to various land uses authorized for development at Park Place as long as the overall net development points allocated under the Master CUP are not exceeded. As such, as noted in my earlier letters to you of September 3 and 15, 2009, and my letter to Assistant City Attorney Jeff Melching, dated October 7, 2009, future market conditions may require LBA to revise its current plans for the buildout of Park Place, and LBA expressly reserves the right to do so under the terms of the Development Agreement by applying for modifications to the Master CUP to, for example, convert office use into retail use in accordance with the "Point System" formulas set forth in the 1989 Zoning Code attached as Exhibit E to the Development Agreement.

O2-3

The fact that the Development Agreement allows LBA to adjust or reallocate development points at Park Place in connection with modifying the size, shape, design, use, and location of various land uses and other improvements to be developed at Park Place has been acknowledged in the Vision Plan EIR in a footnote to the Project Description for Park Place. In like manner, in the proposed amendments to the Zoning Code for the Vision Plan, there is an acknowledgement that the proposed 2010 IBC Infrastructure Improvement Fee Program would not apply to development projects that have approved development agreements. What is missing from the Vision Plan EIR, however, is a similar acknowledgement that many of the new PPPs, PDFs, and MMs that are proposed in the Vision Plan EIR would not apply to projects, such as Park Place, that are covered by development agreements.

In Exhibit "A" attached to this letter, LBA's consultants have attempted to list the various PPPs, PDFs, MMs, General Plan policies, and Zoning Code requirements set forth in the Vision Plan EIR or the related Project documents that would be inconsistent and in conflict with the terms of the Development Agreement and thus would not apply to Park Place. The attached

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list is not meant to be exhaustive, but merely illustrative, of the various features and requirements of the IBC Vision Plan from which Park Place would be exempt under the Development Agreement. To avoid any confusion in connection with the processing of any future land use approvals at Park Place, LBA would respectfully request that a general statement be added to the Vision Plan EIR and all other documents relating to the Project, acknowledging that IBC projects that have approved development agreements would be exempt from any new PPPs, PDFs, MMs, General Plan policies and Zoning Code requirements that would be inconsistent or in conflict with such development agreements.

O2-3  
cont'd.

### II. SITE-SPECIFIC COMMENTS

In reviewing the Vision Plan EIR, LBA's planning consultants noted five examples of what appeared to be impermissible exactions or approval rescissions being imposed on Park Place without LBA's consent:

#### A. Figure N-2 IBC Vision Framework Plan

A proposed trail adjacent to the San Diego Creek is shown being developed along the east side of the Park Place property. Likewise, a pedestrian bridge, crossing Jamboree Road at Michelson Drive, is shown being built on Park Place property. However, the Development Agreement would not allow the City to require LBA to dedicate the land or right-of-way needed to accommodate these public improvements because that would constitute the type of "Exaction" that is prohibited under sections 1.5 and 4.2.4 of the Development Agreement.

O2-4



#### B. Figure N-6 Conceptual Landscape Plan for Major Roadways

This Conceptual Landscape Plan requires a "Palm and Deciduous Mix" to be planted on Park Place property along the east side of Jamboree north of Michelson Drive. This would be in direct conflict with, and would effectively nullify, one of the Existing Approvals under the Development Agreement, specifically, the Park Place Walls and Streetscape Plan, approved January 19, 1991. The 1991 Streetscape Plan is now vested under the Development Agreement and cannot be nullified.

O2-5

#### C. Figure N-5 IBC Trail System

Figure N-5 indicates a proposed on-street bikeway through Park Place and crossing at mid-block on Jamboree Road to the Central Park access road. As with the creek trail and pedestrian bridge discussed above, the Development Agreement would not allow the City to require LBA to dedicate the land or right-of-way needed to accommodate this bikeway because that would constitute the type of "Exaction" that is prohibited under sections 1.5 and 4.2.4 of the Development Agreement.

O2-6

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D. Street Sections (for city Standard Plans) Michelson Drive – Jamboree Road to Carlson Avenue – Primary Highway

This proposed street section is not consistent with one of the Existing Approvals under the Development Agreement, specifically, the approved Michelson Drive Striping Plan, approved July 2, 2002. The 2002 Striping Plan for Michelson Drive does not include a raised median and provides for an eight (8) lane section. The proposed street section of four (4) lanes is not adequate for the required turning movements for Park Place. All street improvements for Michelson Drive have already been constructed pursuant to the 2002 Striping Plan. Under the Development Agreement, the City cannot impose an Exaction to require the dedication of right-of-way to accommodate this proposed street section, nor can the City nullify the 2002 Striping Plan because it is one of the Existing Approvals and thus is vested under the Development Agreement.

O2-7

LBA respectfully requests that, in responding to the above comments, the City acknowledge that the Development Agreement would prevent the City from imposing conditions of approval to require LBA to dedicate the necessary land or right-of-way to implement the creek trail, pedestrian bridge, bikeway, and street section discussed above. LBA would also request that the City acknowledge in its response to LBA's comments that the 1991 Streetscape Plan and the 2002 Striping Plan are vested under the Development Agreement and cannot be nullified by the City.

E. Traffic-Related Impacts

The list of significant and unavoidable impacts in the Vision Plan EIR should include the traffic impacts associated with the Jamboree/Michelson Drive intersection. Also, on page 20 of the revised Traffic Study (Table 2.9) in the Vision Plan EIR indicates the roadway network of ITAM 8.4, only includes IBC improvements, as well as improvements in the general vicinity, that are listed as fully funded or complete in the Funding Status of 1992 IBC Roadway Improvements. Significant roadway network revisions from ITAM 7.1 to ITAM 8.4 results in the elimination of the Interstate 405 (I-405) high-occupancy vehicle (HOV) ramps at Von Karman Avenue (post 2030). Although a constrained roadway network with fully funded improvements has been assumed in the IBC, it should be noted that the circulation system outside of the IBC assumes all funded and nonfunded improvements. The Von Karman HOV ramps should be included because it should significantly improve the Jamboree Road/Michelson Drive intersection operation. LBA would be opposed to any amendment of the MPAH that would eliminate the Von Karman HOV ramps.

O2-8

## 2. Response to Comments

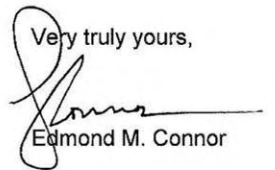
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Bill Jacobs, AICP  
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Thank you for your consideration of LBA's comments and we look forward to receiving the City's response to these comments.

Very truly yours,



Edmond M. Connor



## 2. Response to Comments

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### Exhibit "A"

The following list includes, but is not intended to be exhaustive of, the various plans, programs, and policies (PPPs), project design features ("PDFs"), mitigation measures ("MMs"), General Plan policies, and Zoning Code requirements, relating to the IBC Residential/Mixed Use Vision Plan and the Draft Environmental Impact Report for the IBC Vision Plan and Overlay Zoning Code, that would be inconsistent and in conflict with the Park Place Development Agreement and thus would not apply to Park Place:

PDF 2-2	Requires MERV 14 filter systems for residential development within 500 feet of I-405
PDF 2-3	Prohibits all outdoor active-use public recreation areas within 500 feet of I-405
PPP 3-1	Requires Section 401/404 permits and compliance with Section 16-2 prior to storm drain connections that discharge into the San Joaquin Marsh
PDF 3-4	Prohibits certain ornamental plantings within 100 feet of the San Diego Creek or San Joaquin Marsh
PPP 3-2	Requires 1:1 replacement of any tree removed
PPP 6-3	Requires Fire Master Plan prior to approval of a conditional use permit
PDF 6-4	Requires submittal of data on land use compatibility
PDF 8-1	Requires compliance with Residential Mixed-use Design Criteria
PDF 11-3	Requires payment of Library Impact Fee
PPP 12-2	Requires dedication of public trails
PDF 13-1	Requires Transportation Management Association
MM 13-4	Requires Caltrans agreement for 12,000 <sup>th</sup> residential unit
PPP 15-1	Requires Construction and Demolition Debris Recycling and Reuse
PDF 15-7	Requires Transportation Management Association
PDF 15-8	Requires pedestrian improvements
PDF 15-9	Requires bicycle improvements
PDF 15-16	Requires Green Point Rated Residential Buildings
PDF 15-17	Requires Energy Star Non-Residential Buildings
MM 15-1	Requires Renewable Energy and Existing Building Retrofit Program

#### General Plan Policies:

Building height limited to twenty (20) stories  
Private Neighborhood Park minimum size criteria

#### Zoning Code Revisions:

Section 5-8-4	Special Development Requirements
A 1. a-b	Development Adjacent to San Diego Creek or San Joaquin Marsh
A 2. a-f	Compatibility with Surrounding Uses
A 3.	Residential Disclosure

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A 4. a-f	Air Quality Standards
A 5. a-b	Noise Quality Standards
A 6.	Hazardous Material Standards
A. 7.	GreenPoint Rated Buildings
B 1. a-b	Public Safety Standards
B 2. a-f	Public Safety Standards
C 1.-2.	Airport Restrictions
D	Libraries
Section 5-8-5	Urban Neighborhood (UN) Standards
A	Maximum Building Height
B	Creekwalk
Section 5-8-7(A-I)	IBC Infrastructure Improvement Fee Program
Section 9-38-8	IBC land use development intensity value database
Section 9-36-11	High-traffic generating commercial uses
Section 9-36-16	Required participation in mitigation measures
Section 9-36-19 (1-8)	Environmental Standards
Section 9-36-20 (1-2)	Transportation Management Association
Section 1-2-1	General Definitions
Chapter 3-2	Setback Standards
Public Park Dedication A	
Private Park Dedication B	
Street Sections (for city Standard Plans) 1. a-e	
Michelson Drive – Jamboree Road to Carlson Avenue – Primary Highway	



## *2. Response to Comments*

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## 2. Response to Comments

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### **O2. Response to Comments from Edmond M. Connor, Connor, Fletcher & Williams LLP, dated February 4, 2010.**

- O2-1 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O2-2 Organization and formatting of the comments contained within the letter are noted.
- O2-3 The commenter makes a number of assertions concerning the legal effect of its development agreement with the City, and couples those assertions together with a generalized assertion that unspecified changes in future market conditions may cause the commenter to change its development plans. The RDEIR contains a set of reasonable assumptions concerning the development of the commenter's property. Those assumptions were necessary in order to develop reasonable forecast of environmental impacts.
- The commenter also notes that potential flexibility in implementation of its rights under the development agreement has been acknowledged in the RDEIR, but asks for further confirmation that the City will not impose any of the PPPs, PDFs, and/or mitigation measure set forth in the RDEIR to the commenter's property. The assurance requested by the commenter is not an environmental issue and, further, is overbroad. The City maintains the ability to impose requirements so long as they are consistent with the vested land use regulations imposed on the applicant. The City also maintains the ability to impose requirements that are necessary to protect the public health, safety, and welfare. Until a specific proposal is made, and until specific requirements and/or conditions are deemed necessary and appropriate for imposition in connection with such a proposal, one cannot definitively say whether a PPP, PDF, and/or mitigation measure is or is not consistent with the requirements of the development agreement. The City nevertheless reiterates that it intends to comply with the requirements of the development agreement.
- O2-4 The City of Irvine acknowledges the applicant's rights under the development agreement.
- O2-5 The Conceptual Landscape Plan is conceptual in nature, and may be revised based on site-specific conditions and previous approvals. The City is in the process of updating the city-wide Master Streetscape Plan, and is accounting for the applicant's approved landscape plan as part of this effort.
- O2-6 The City of Irvine acknowledges the applicant's rights under the development agreement.
- O2-7 The City of Irvine acknowledges the applicant's rights under the development agreement. The proposed street section will be redrawn based on the updated traffic study, and will consider the constraints on the Park Place property.
- O2-8 The comment suggests that if the Von Karman/Interstate 405 (I-405) high occupancy vehicle (HOV) ramps were assumed in the analysis that identifies impacts and mitigations, the operation at Jamboree/Michelson would improve significantly. Section 5.13.3.7 of the RDEIR and Chapter 7 of the Traffic Study (Appendix N) evaluated an alternative scenario for the Post-2030 With Project Master Plan of Arterial Highways (MPAH) Network, which assumed this HOV ramp improvement in the network. However, as discussed in these sections, Jamboree/Michelson would continue to be deficient and would require similar mitigation that was determined to be infeasible in the traffic analysis conducted for the proposed project.



## *2. Response to Comments*

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## 2. Response to Comments

LETTER O3 – Industrial Environmental Association (2 pages)



January 29, 2010

Mr. Bill Jacobs, Principal Planner  
City of Irvine  
1 Civic Center Plaza  
Irvine, CA 92623  
bjacobs@ci.irvine.ca.us

**Re: Irvine Business Complex**

Dear Mr. Jacobs

The Industrial Environmental Association (IEA) continues to closely follow the progress related to the Irvine Business Complex Plan. IEA is an organization representing manufacturing, high technology, biotechnology, and research and development companies. We have closely followed and been actively engaged in the development of land use general plans and community-based plans in many cities throughout Southern California.

During the course of the Irvine Business Complex planning process, the City did take an important step forward to appropriately recognize the critical necessity of mandating separation between industrial users and sensitive receptors by establishing a buffer zone in one portion of the planning area.

However, we are extremely disappointed that the city is treating one industrial business, in one part of the Irvine Business Complex planning area, differently than in other areas by not absolutely defining similar buffer zones throughout the entire Irvine Business Complex industrial area.

O3-1

110 West C Street, Suite 900 San Diego, CA 92101



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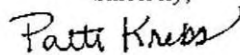
The City has set a precedent. This precedent for creating a buffer area between sensitive receptors has its roots in state planning guidelines that spell out how incompatible land uses can create adverse impacts on sensitive receptors and should be avoided. Furthermore, the need to include distance separations in municipal land use plans has been demonstrated by countless neighborhood/industrial conflicts that result due to traffic, visual, noise, design and environmental effects that may result from residential or other sensitive land uses that are allowed in close proximity to each other.

In addition, industrial facilities are at this very time and will continue to be mandated to comply with an evolving regulatory system that places even more rules and operating conditions on facilities that could have an off-site impact on their neighbors.

For these reasons, we respectfully request that the City of Irvine provide 1,000 foot buffer areas between **all industrial users** including Deft Incorporated and new residential uses (or other sensitive receptors users such as schools and churches) in the Irvine Business Complex plan.

Thank you for your consideration of our comments.

Sincerely,



Patti Krebs  
Executive Director

O3-1  
cont'd.

110 West C Street, Suite 900 San Diego, CA 92101

## 2. Response to Comments

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**O3. Response to Comments from Patti Krebs, Executive Director, Industrial Environmental Association, dated January 29, 2010.**

- O3-1 See response to Comment O5-26. The RDEIR includes a revised discussion of impacts associated with site compatibility. Project Design Features (PDF) were incorporated into the RDEIR to ensure that site compatibility for new residential developments with regard to air quality, hazards, and noise are evaluated. PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2, were incorporated so that additional requirements are in place to ensure compatibility between existing industrial users in the IBC Vision Plan are and potential residential development. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Prohibiting residential within 1,000 feet of any industrial business is not warranted.



## *2. Response to Comments*

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## 2. Response to Comments

LETTER O4 – Kilroy Realty Corporation (11 pages)



*Sent Via E-mail and U.S. Mail*

February 5, 2010

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

RE: Comments on the Re-circulated Draft Environmental Impact Report (EIR) for the IBC Vision Plan and Mixed-Use Overlay Zone.

Dear Mr. Jacobs,

Please find enclosed comments provided in regards to the re-circulated Draft IBC Vision Plan Program EIR ("IBC EIR") which was circulated December 23, 2009. The comments herein represent topics specific to the pending Kilroy residential project located at 17150 Von Karman Ave as identified in the IBC EIR.

O4-1

We are assuming that the IBC EIR will also serve as the EIR for the Kilroy project. Please confirm. Assuming this is true; please describe in detail the process to obtain all pending project approvals following certification of the IBC EIR.

O4-2

We appreciate the opportunity to provide comments to the above referenced documents and will be available to discuss the comments with you at your convenience.

Sincerely,

KILROY REALTY, L.P.,  
A Delaware Limited Partnership

By: KILROY REALTY CORPORATION,  
A Maryland Corporation,  
General Partner

A handwritten signature in blue ink, appearing to read "RL", written over a faint circular stamp.

Robert C. Little  
Vice President of Development  
[rlittle@kilroyrealty.com](mailto:rlittle@kilroyrealty.com)  
Office 858.523.2208  
Mobile 562.533.3979

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## 2. Response to Comments

LSA

LSA ASSOCIATES, INC.  
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ROCKLIN  
SAN LUIS OBISPO  
SOUTH SAN FRANCISCO

### MEMORANDUM

DATE: February 5, 2010

TO: Robert Little, Kilroy Realty Corporation

FROM: *W* Ken Wilhelm, LSA Associates, Inc.

SUBJECT: Irvine Business Complex (IBC) Vision Plan and Mixed-Use Overlay Zoning Code Draft Environmental Impact Report Traffic Study Review and Comments

LSA Associates, Inc. (LSA) has prepared the following comments on the IBC Vision Plan and Mixed-Used Overlay Zoning Code Draft Environmental Impact Report (DEIR) Traffic Study (Parsons Brinckerhoff [PB], December 2009). More specifically, LSA has focused on the Kilroy project (Irvine Lofts) located at 17150 Von Karman Avenue to confirm accurate representation under IBC Vision Plan conditions.

It should be noted that the Sapetto Group (on behalf of Kilroy Realty Corporation) submitted comments on the IBC Vision Plan to the City of Irvine (City) on May 14, 2009. City staff provided responses to these comments (Appendix Q of the DEIR). LSA reviewed the City's responses and has provided additional comments where appropriate. The responses follow the numbering of the Sapetto Group's comments and the City's response letters (attached).

### PROJECT DESCRIPTION COMMENTS

1. The current Irvine Lofts project includes construction of 469 units (347 base units and 122 density bonus units), which requires a transfer of development rights (TDR) of 875 average daily trips (ADT), 49 a.m. peak-hour trips, and 53 p.m. peak-hour trips. The sending site identified to complete the TDR for the project is MetLife (2555 Main Street). For traffic study and impact analysis purposes, the TDR is based on the transfer of office equivalency associated with the most restrictive peak-hour time period, which in this case is the p.m. peak hour. The 53 p.m. peak-hour trips equates to 38,406 square feet (sf) of office equivalency (the 49 a.m. peak-hour trips equates to only 37,692 sf of office equivalency). As such, the Irvine Lofts project requires a TDR of 38,406 sf of office equivalency from the MetLife sending site.

In order to determine whether the Irvine Lofts project is accounted for in the IBC Vision Plan Traffic Study, LSA reviewed the land use data sets (Appendix J of the Traffic Study) by traffic analysis zone (TAZ) for the current General Plan build-out and the Vision Plan build-out scenarios. After review of the 17150 Von Karman Avenue project site (TAZs 445 and 455) and the MetLife sending site (TAZ 490) land uses, it appears that 469 condominium units are included in the project site (235 units on TAZ 445 and 234 units on TAZ 455) under Vision Plan build out, while a reduction of 37,692 sf of office occurs on TAZ 490. Based on this, it appears that the current Irvine Lofts project is correctly represented on the project site; however, the number of trips transferred from the sending site (MetLife) is not correct. The correct TDR for the Irvine Lofts project is 38,406 sf of office equivalency for the 469 units (347 base and 122 density bonus units).

O4-3

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PLANNING | ENVIRONMENTAL | DESIGN



## 2. Response to Comments

LSA ASSOCIATES, INC.

The City should provide an explanation as to why 37,692 sf of office equivalency was reduced from the MetLife sending site when the Irvine Lofts project specifically requires a TDR of 38,406 sf of office equivalency. The ITAM modeling for the Vision Plan may need to be revised based on this change.

O4-3  
cont'd.

2. While the number of dwelling units for the Irvine Lofts project is correct in the revised DEIR (i.e., 469 units including 122 density bonus units), the TDR is not. Page 3-44 of the Project Description incorrectly states that the TDR required for the project is 110 a.m. peak hour intensity values, 117 p.m. peak hour intensity values and 1,646 ADT values. These numbers are equivalent to 469 units without density bonus units, not 347 units. Trips (intensity values) do not need to be transferred for density bonus units. Furthermore, the office equivalency reduced at the sending site in the Vision Plan is not consistent with 469 units. The City should correct any text discrepancies related to the Irvine Lofts project.

O4-4

### SAPETTO GROUP COMMENTS

#### Traffic

2. The comment requests confirmation that future project TDRs will be calculated based on peak-hour office equivalency and not ADT, consistent with the City's Zoning Code. The City's response is that ADT waivers are assumed.

The City should clarify its response. Will future TDRs be based on peak-hour office equivalency? Will future projects not be required to conduct ADT analyses since waivers have already been assumed?

O4-5

3. The comment requests clarification on whether or not the IBC Database will be updated as a result of the land use changes proposed in the Vision Plan. The City's response is that revisions have been made to the Traffic Study and the DEIR.

Page 4 of the revised Traffic Study states that "the current IBC trip budget database will not change as a result of the IBC Vision Plan." MM 13-3 on page 5.13-197 of the DEIR states that "prior to issuance of the first building permit to the proposed project, the City shall update the Irvine Business Complex Land Use and Trip Monitoring Database (IBC Database) to reflect the land use changes associated with the proposed project." The City should clarify these conflicting statements.

O4-6

4. The comment asks how future TDR applications will be tracked and where office equivalency reductions must come from to be consistent with the DEIR. The City's response is that "the TDR must originate in the same traffic analysis zone (TAZ)."

The City's response is still unclear. The City should explain the type and/or level of analysis (both traffic and environmental) required to be consistent with the Vision Plan for projects where the sending sites are located in a different TAZ.

O4-7

6. The comment says that the Sapetto Group's understanding is that payment of the IBC fees would adequately address all of the project impacts for the Irvine Lofts project. The City's response is that IBC fees address areawide traffic impacts associated with future development projects within the IBC, while other environmental impacts are not addressed by the IBC fee program.

O4-8



## 2. Response to Comments

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LSA ASSOCIATES, INC.

The City should explain whether pending residential projects (i.e., Irvine Lofts) are subject to fees associated with improvements to the freeway system. MM 13-4 of the revised DEIR states that “prior to issuance of a building permit for the 12,000th unit within the IBC, the City shall enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities.” Clarification should be provided for how this affects proposed projects below the 12,000<sup>th</sup> unit (i.e., Irvine Lofts).

O4-8  
cont'd.

If you have any questions, please call me at (949) 553-0666.

Attachments: Sapetto Group Comments and City Responses

## 2. Response to Comments

### 2. Response to Comments

LETTER O8 – Sapetto Group, Inc. (3 pages)



May 14, 2009

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

Mr. Bill Jacobs  
CITY OF IRVINE  
Community Development  
One Civic Center  
Irvine, California 92614

RE: COMMENTS ON IBC VISION PLAN AND MIXED USE OVERLAY ZONING CODE  
DRAFT ENVIRONMENTAL IMPACT REPORT

Dear Bill:

The following comments are provided on behalf of our client, Kilroy Realty, in regards to the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR which was circulated March 31, 2009.

#### Traffic

1. To accommodate the additional 5,599 dwelling units in the Irvine Business Complex (IBC), a reduction of 2,715,062 square feet of office equivalency has been made in the IBC. However, there is no documentation in the DEIR or Traffic Study that identifies how this square footage was calculated or what TAZs the office equivalency reductions for the added dwelling units came from. Please provide the details of this analysis.
2. For residential projects currently approved/under construction in the IBC, the transfer of development rights (TDR) has been based on the conversion of a.m. or p.m. peak hour trips to office equivalency (whichever is higher). It appears that the office equivalency for the Vision Plan has been calculated based on average daily traffic (ADT). Many of the pending projects, including Irvine Lofts, already have had traffic study scopes of work and approved traffic studies prepared (prior to the Vision Plan DEIR). The TDR for all of these projects were based on peak hour trips and not ADT. The City's Zoning Code (9-36-10) and the revised version Appendix D: Draft Amendments to the Zoning and Municipal Codes and Park Standards Manual allows for exceeding the ADT trip budget. Please confirm that future projects requiring a TDR will be based on peak hour office equivalency and not ADT.

O8-1

O8-2

Sapetto Group, Inc. 2 Park Plaza • Suite 735 • Irvine, California 92614-8825 • (949) 262-0841 • Fax (949) 262-0842 • [www.sapettogroup.com](http://www.sapettogroup.com)

## 2. Response to Comments

### 2. Response to Comments

Mr. Bill Jacobs  
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- |                                                                                                                                                                                                                                                                                                                                                                                                               |      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 3. Mitigation 13-3 requires that the IBC Database be updated prior to the issuance of the first building permit pursuant to the proposed project. It is unclear whether the proposed project is the Vision Plan or subsequent residential projects. Page 4 of the Vision Plan traffic analysis states that no change to the IBC Database will be made as a result of the Vision Plan project. Please clarify. | O8-3 |
| 4. It has not been clearly explained how the City is going to track future TDR applications that propose to utilize the future Vision Plan residential units (3,077 total new units) and where the reduction in office equivalency (TDR) must come from to be consistent with the DEIR. Please explain.                                                                                                       | O8-4 |
| 5. If a pending project, proposes to add density bonus units that were not analyzed in the DEIR would the City require a supplemental traffic study. For example, the Irvine Lofts project (a pending project) is 469 DU. If this project adds 35% density bonus units (an additional 164 DU), is this covered in the Vision Plan traffic analysis for the DEIR or would the City require further analysis?   | O8-5 |
| 6. It is our understanding that payment into the IBC fee program would adequately address all of the project impacts for the Irvine Lofts project. Please confirm.                                                                                                                                                                                                                                            | O8-6 |
| 7. It is our understanding that the traffic analysis in the DEIR includes the possible transfer of trips from anywhere within the IBC Vision plan area to a proposed residential project, such as Irvine Lofts, and, as a result, no further traffic analysis will be required when project specific entitlements are processed with the City. Please confirm or clarify.                                     | O8-7 |

#### Project Description

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1. Table 3-2 on page 3-20 does not include the 122 density bonus units provided in the Irvine Lofts project and should be included. Please correct the Table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |      |
| 2. In the description provided for Kilroy Irvine Lofts in the Project Description it is recognized that a Conditional Use Permit and Park Plan will be required for the project following certification of the IBC Vision Plan EIR. With this Vision Plan there will be no requirement for a General Plan Amendment or Zone Change in conjunction with the Irvine Lofts project. Our assumption is, that unless the project is modified in a way that creates the potential for new environmental impacts, the DEIR may be used as the Irvine Lofts project CEQA compliance document without the need for additional environmental documentation. Please confirm your understanding. | O8-8 |

## 2. Response to Comments


### 2. Response to Comments

Mr. Bill Jacobs  
CITY OF IRVINE  
May 14, 2009  
Page 3

We appreciate the opportunity to provide comments on the IBC Vision Plan and Mixed Use Overlay Zoning Code DEIR and will be available to discuss the comments with you at your convenience.

Sincerely,

SAPEITO GROUP, INC.



Pamela Sapetto  
Principal

PS:arg

cc: Robert Little, Kilroy Realty

# Wilroy Irvine Letter to Bill Jacobs 03 14 09 Comments on IBC Vision Plan.doc

## 2. Response to Comments

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### *2. Response to Comments*

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**O8. Responses from Pamela Sapetto, Principal, Sapetto Group, Inc., dated May 14, 2009.**

- O8-1 Please refer to Chapter 3, *Project Description* of the Recirculated DEIR.
- O8-2 The traffic study assumes ADT waivers for these projects.
- O8-3 Revisions have been made to Section 5.13, *Transportation and Traffic*, as shown in the Recirculated DEIR. The proposed project's traffic study has also been updated accordingly (see Appendix N).
- O8-4 In order to be consistent with the assumptions in the Recirculated DEIR, the TDR must originate in the same traffic analysis zone (TAZ).
- O8-5 Consistent with Section 15162 of the CEQA Guidelines, future projects that are not consistent with the assumptions in the Recirculated DEIR would require additional environmental review.
- O8-6 Payment of IBC fees would adequately address areawide traffic impacts associated with future development projects within the IBC. While IBC fees address many of the infrastructure requirements of the IBC, other environmental impacts are not addressed by the IBC fee program.
- O8-7 Any TDRs associated with the seven pending projects identified in Table 3-4 of the Recirculated DEIR, including Irvine Lofts, have been assumed in the traffic study prepared for the proposed Vision Plan project. However, additional site specific analysis would be required for future TDR requests.
- O8-8 Revisions have been made to Chapter 3, *Project Description*, as shown in the Recirculated DEIR. The locations of these projects are shown on Figure 3-8, IBC Residential Pending Projects. It is anticipated that following the certification of this DEIR, the City will proceed with the processing of the discretionary applications associated with each of these projects, without further need for a General Plan Amendment, Zone Change, or EIR so long as the project substantially conforms to the description in this DEIR. The following detailed project descriptions are provided based on previous environmental documentation prepared for each project. While the program-level impacts of each of these projects will be analyzed in this DEIR, particularly with respect to traffic, air, noise and global climate change impacts, additional site-specific analysis is provided to the extent possible. Consistent with Section 15162 of the CEQA Guidelines, additional environmental review may be necessary as part of the discretionary review process.



## 2. Response to Comments

### Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
1900 Main Street, 5<sup>th</sup> Floor | Irvine, CA 92614-7321  
Telephone: 949.553.1313 | Facsimile: 949.553.8354  
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William R. Devine  
E-mail: wdevine@allenmatkins.com  
Direct Dial: 949.851.5412 File Number: 216326-00002/OC893114.01

February 1, 2010

Mr. William D. Jacobs, AICP  
City of Irvine  
Principal Planner, Community Development  
One Civic Center Plaza  
P. O. Box 19575  
Irvine, CA 92623-9575

Dear Mr. Jacobs:

We have reviewed the draft EIR for the IBC Vision Plan and have the following comments regarding the project description for the Kilroy project. Our concern is that with changing economic conditions there may be some need for minor changes to the proposed project while staying within the framework contained within our application materials. We would like the EIR to appropriately reflect the flexibility in a project that is still being refined. Towards that end we request that changes be made in the language contained in Section 3.3.3.5. A redline version of the proposed changes is provided below.

#### 3.3.3.5 Kilroy

The Kilroy project site consists of a 9/15-acre parcel on Von Karman between Alton Parkway and McGaw Avenue at 17150 Von Karman Avenue. The Kilroy project consists of a Conditional Use Permit (00415086-PCPU), Tentative Tract Map (00419204-PTT), and Park Plan (00415090-PPP) to allow for the development of 469 condominium units.

Access to the Kilroy project site is currently planned to~~will~~ be provided from Von Karman Avenue, by way of a private street that bisect the property north to south. Approximately 350 feet into the site, the private street terminates in a T-intersection and runs east to west. A fire lane would be along each side of the project site at the furthest east and west boundaries for emergency vehicle access.

The Kilroy project consists of up to four residential structures which will likely consist of one or both of the following~~developed with two different~~ building types. The two buildings fronting Von Karman Avenue are currently proposed to be~~would consist of~~ five-story podia over three levels of parking ~~garage (two levels are subterranean). These two podium style~~ buildings would comprise a combination of flats and two-story townhomes that front along



O4-9



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Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

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Von Karman Avenue and the internal streets. The remaining two structures located toward the rear boundaries of the project will likely consist of three-level parking garages wrapped around four-story residential units made up entirely of flats. The conceptual site plan is shown on Figure 3-13.

In addition, the Kilroy project includes the demolition of a 161,421-square-foot office/industrial building (60,008 square feet of office use and 101,413 square feet of industrial use) previously occupied by Delphi Connection Systems. The uses include a chemical storage building, plant maintenance system, water recycling area, service yard, and associated parking and landscaping.

### Project Components

The following applications have been submitted to the City of Irvine for approval:

#### Conditional Use Permit

A Conditional Use Permit (00415086-PCPU) (CUP) is requested in conjunction with implementation of the proposed Kilroy project in order to ensure proper implementation of the City's development standards, including the Zoning and Building Codes, Subdivision Ordinance, Design Manual and engineering standards among others. The CUP would provide the approval against which all future site plans of the site are evaluated. The applicant is requesting approval of an Administrative Relief to reduce the minimum landscaped setback along Von Karman Avenue from 30 to 24 feet.

The CUP will allow for the development of up to 469 dwelling units, including up to 122 density bonus units, and approve a TDR in order to maintain the overall development intensity cap within the IBC. At maximum buildout, the TDR ~~is~~ required to increase allowable development intensity on the site ~~is measured as~~ an additional 110 AM peak-hour intensity values, 117 PM peak-hour intensity values, and 1,646 ADT values.

#### Tentative Tract Map

The Kilroy project applicant is requesting approval of Tentative Tract Map (00419204-PTT) to allow for the subdivision of up to 469 condominium residential units.

#### Park Plan

A Park Plan (004150900-PPP) application is being processed concurrently to establish the park dedication requirements of the proposed Kilroy residential use. It is anticipated that the project would meet neighborhood park requirements by incorporating on-site recreational

O4-9  
cont'd.

O4-10

O4-11

O4-12



## 2. Response to Comments

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

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Page 3

uses, including a pool spa, tot lot, fitness room, and multipurpose room. It is also anticipated that the community park requirements would be met through the payment of in-lieu fees.

### *Parking and Circulation*

Access to the Kilroy site ~~is currently planned to~~ would be provided from Von Karman Avenue, by way of a private street that bisects the property north to south. Approximately 350 feet into the site, the private street terminates into a T-intersection and runs east to west. A fire lane will be located along each side of the project site at the furthest east and westerly boundaries for emergency vehicle access purposes. At maximum buildout (469 units) t ~~The Kilroy project is anticipated to~~ will provide ~~a minimum of~~ 1,038 parking spaces to serve the proposed number of units, which are located within parking garages or surface on-street parking.

O4-12  
cont'd.

### *Phasing*


The Kilroy project is planned for development in one or more phases, depending on the market and the economy ~~a single phase~~, including site preparation, grading, installation and connection of utilities, construction of access and parking, perimeter landscaping, and construction of the residential buildings. Traffic circulation, stormwater drainage, water, electrical, gas, and sewer system improvements will be integrated with the existing City- and utility-owned infrastructure as necessary."

O4-13



If you have any questions regarding these proposed changes in Section 3.3.3.5 of the EIR please feel free to contact us for further discussions.

Very truly yours,

  
William R. Devine

WRD:pmc

## *2. Response to Comments*

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## 2. Response to Comments

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### **O4. Response to Comments from Robert C. Little, Vice President of Development, Kilroy Realty Corporation, dated February 5, 2010.**

O4-1 Comment noted. Responses to the attached letters are provided below.

O4-2 After the EIR is certified, future environmental analysis of the projects contained in the Vision Plan will build upon the information and conclusions of the IBC EIR. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, including the Kilroy project Conditional Use Permit (CUP), so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the CUP is processed. In addition, we would note that while pending residential development projects were identified in the EIR, certain site-specific project analyses were not completed as part of the EIR, primarily with respect to site-level noise, circulation, access and land use compatibility issues. Therefore, once the CUP is ready to proceed, staff will conduct a new initial environmental evaluation to determine the scope of any changes to the project and/or the surrounding environment, and will make a determination at that time regarding any additional environmental review necessary for the CUP.

O4-3 The Transfer of Development Rights (TDR) described in the Appendix J of the Vision Plan for Irvine Lofts (Kilroy), a pending project in the IBC Vision Plan, is incorrect. For traffic study and impact analysis purposes, a TDR is based on the transfer of office equivalency associated with the most restrictive peak-hour time period, which has always been the City's policy. At the time, the City believed the most restrictive peak hour was the AM peak hour of 49 AM peak hour trips, equating to 37,692 square feet of office equivalency. However, it is now clear that the most restrictive peak hour for the Irvine Lofts was the PM peak hour of 53 PM peak hour trips, which equates to 38,406 square feet of office equivalency. The difference between the office equivalency stated in the Vision Plan and the corrected amount of office equivalency for Irvine Lofts is 714 square feet.

Furthermore, staff doubled checked the other pending projects identified in the RDEIR to ensure this oversight was not repeated. Staff discovered that there were other pending projects (Martin Street Condos, 2851 Alton, ITC, and 2852 Kelvin) that did not identify the most restrictive peak-hour time period for office equivalency for their respective TDR. The total amount of office equivalency under reported for these four projects was approximately 4,500 square feet. However, on another pending project, the Element Hotel, staff over reported the development intensity by approximately 7,200 square feet of office equivalency. Therefore, the end result is that the RDEIR over reported the development intensity for the combination of all these pending projects by approximately 2,000 square feet of office equivalency. Figure 3-7a and Figure 3-7b of the RDEIR has been updated to reflect the most restrictive peak-hour time period for each of the pending projects mentioned above (see Chapter 4 of this FEIR).

An analysis was conducted to identify if the TDR discrepancy would affect the results of the traffic study. The total increase in AM volumes is approximately 50 trips which is less than 1/4 of 1 percent of the total overall AM trips, while the PM peak period was unaffected. Although three locations (Red Hill & Warner, Culver & Bryan, and Flower & Segerstrom) were close to becoming deficient if all 50 AM trips were added to each intersection, there is no realistic likelihood of this occurring. In the professional judgment of the City of Irvine's transportation staff and traffic consultant, all 50 of the additional trips would not pass through the above locations. Rather, those trips would likely be distributed evenly throughout the



## 2. Response to Comments

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study area. Based on this analysis, no changes to the impact locations, mitigations or conclusions will result.

Therefore, the discrepancy in office equivalency for the Irvine Lofts and the above mentioned pending projects will be updated and are deemed to be de minimis with respect to impacts identified in the RDEIR.

O4-4      The project description for Kilroy under Section 3.3.3.5 of the RDEIR and Figure 3-7a and 3-7b have been updated in the FEIR to include the corrected TDR required for the project (i.e. 347 base units and 122 density bonus units). See response to Comment O4-3. Based on correspondence with Parson Brinkerhoff, no additional impacts resulted and all of the conclusions and mitigation measures as identified in the RDEIR and traffic study remain unchanged.

O4-5      The traffic model assumed waivers of Average Daily Trips (ADT), however, such waivers must still be requested by the applicant as part of the CUP process.

O4-6      The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights will not be changed. The earlier City response about changing the database was meant to reflect changes necessary to accommodate the additional planned residential, and these will be reflected as a separate accounting in the IBC database, so as not to affect existing trip budgets.

Chapter 5.13 has been revised in the FEIR to reflect that the current IBC trip budget will not change as a result of the IBC Vision Plan (see Chapter 4 of this FEIR).

O4-7      To clarify the City's earlier response, the Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone (TAZ) as the receiving site will not be required to process a Conditional Use Permit for the TDR. For a project to be consistent with the DEIR, it should be consistent with the current trip budgets for the property, or if TDR's are proposed, the TDR sending site should be located in the same TAZ as the receiving site. Any additional TDR's will require a separate traffic study pursuant to the City's current Traffic Study Guidelines.

O4-8      All pending projects included as part of the project description are subject to fees associated with improvements to address freeway impacts and other traffic-related improvements identified in the traffic study and RDEIR. The feasible improvement strategies that address the impacts on freeway facilities will be determined and approved as part of the IBC Vision Fee Program Nexus Study. Mitigation Measure 13-4 merely addresses the timing by which a mitigation agreement between the City and Caltrans must be prepared.

O4-9      The City will make the text changes proposed by the applicant, however, the nature of the commenter's changes suggests more flexibility in the project development, in which case response to comment O4-2 is especially applicable if the project design substantially changes.

The project description for the Kilroy project has been updated in the FEIR:

## 2. Response to Comments

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Access to the Kilroy project site is currently planned to ~~will~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south...

The Kilroy project consists of up to four residential structures which will likely consist of one or both of the following ~~developed with two different~~ building types. The two buildings fronting Von Karman Avenue are currently proposed to be ~~would consist of~~ five-story podia over three levels of parking garage ~~(two levels are subterranean)~~. These two podium-style buildings would comprise a combination of flats and two-story townhomes that front along Von Karman Avenue and the internal streets. The remaining two structures located toward the rear boundaries of the project will likely consist of three-level parking garages wrapped around four-story residential units made up entirely of flats.

- O4-10 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

The CUP will allow for the development of up to 469 dwelling units, including up to 122 density bonus units, and approve a TDR in order to maintain the overall development intensity cap within the IBC. The At maximum buildout, the TDR is required to increase allowable development intensity on the site, measured as is an additional 440 50 AM peak-hour intensity values, 447 53 PM peak-hour intensity values, and 1,646 529 ADT values. The total intensity allocation to the site will be 170 AM peak-hour intensity values, 185 PM peak-hour intensity values, and 1,840 ADT values

- O4-11 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

The Kilroy project applicant is requesting approval of Tentative Tract Map (00419204-PTT) to allow for the subdivision of up to 469 condominium residential units.

- O4-12 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

Access to the Kilroy site is currently planned to ~~would~~ be provided from Von Karman Avenue, by way of a private street that bisects the property north to south. Approximately 350 feet into the site, the private street terminates into a T-intersection and runs east to west. A fire lane will be located along each side of the project site at the furthest east and westerly boundaries for emergency vehicle access purposes. At maximum buildout The the Kilroy project is anticipated to will provide a ~~minimum of~~ 1,038 parking spaces to serve the proposed number of units, which are located within parking garages or surface on-street parking.

- O4-13 See response to O4-9. The project description for the Kilroy project has been updated in the FEIR.

The Kilroy project is planned for development in one or more phases, depending on the market and economy ~~a single phase~~, including site preparation, grading, installation and connection of utilities, construction of access and parking,



## *2. Response to Comments*

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perimeter landscaping, and construction of the residential buildings. Traffic circulation, stormwater drainage, water, electrical, gas, and sewer system improvements will be integrated with the existing City- and utility-owned infrastructure as necessary.

## 2. Response to Comments

LETTER O5 – Law Offices of Robert C. Hawkins (99 pages)

### LAW OFFICES OF ROBERT C. HAWKINS

February 5, 2010

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

Bill Jacobs, AICP, Principal Planner  
Community Development Department  
Irvine City Hall  
One Civic Center Plaza  
Post Office Box 19575  
Irvine, California 92623-9575

Re: **The City of Irvine's (the "City" or "Irvine") Recirculated Draft Environmental Impact Report ("DEIR") for the Draft Irvine Business Complex ("IBC") Vision Plan and Mixed Use General Plan and Zoning Code Amendments, and Infrastructure Improvements (the "Project")**

Greetings:

Thank you for the opportunity to provide further comments on the Project and the **Recirculated** Draft Environmental Impact Report ("RDEIR") for the Draft IBC Vision Plan and Mixed Use General Plan and Zoning Code Amendments, and Infrastructure Improvements (the "Project"). Please include these comments as well as all of our earlier comments in the administrative record for the environmental documents including the DEIR for the Project as well as in the administrative record for any other Environmental Impact Reports for any other residential project within the IBC.

As we have indicated before, this firm represents Deft Incorporated located at 17451 Von Karman Ave. in the City of Irvine. Deft produces and manufactures wood finishes for the consumer market and specialized industrial coatings for aerospace and military customers. In its manufacturing of such coatings, Deft uses many hazardous materials including flammable liquids including nitrocellulose, hazardous materials including cancer causing agents hexavalent chromium (Cr<sup>+6</sup>) and barium chromate, and other dangerous materials.

This letter supplements and incorporates our earlier comments on the Draft Negative Declaration for the Project, our June 27, 2006 and July 24, 2006 comment letters on the Project, our

110 Newport Center Drive, Suite 200  
Newport Beach, California 92660  
(949) 650-5550  
Fax: (949) 650-1181



O5-1

## 2. Response to Comments

Bill Jacobs

- 2 -

February 5, 2010

February 21, 2007 comment letter on the Notice of Preparation and on the Project, our May 14, 2009 Comments on the DEIR and our comments on other projects in the IBC. Further, we incorporate herein the comments from others on the Project and the environmental documents including the DEIR.

Finally, this letter incorporates the January 19, 2010 letter from Global Environmental Consulting Company, Inc. to this office, which is attached hereto as Exhibit "1." We also incorporate herein Global Environmental Consulting Company, Inc.'s May 11, 2009 letter to this office, which is attached as Exhibit "2" as well as its May 16, 2006 Land Use Compatibility White Paper, which is attached hereto as Exhibit "3." Both of these were attached to and incorporated in our May 14, 2009 Comment Letter on the DEIR as Attachments "A" and "B" respectively. Unfortunately, the Responses to our May 14, 2009 Comment Letter did not respond to these specific comments from Global Environmental Consulting Company, Inc. in the Attachments "A" or "B" to our May 14, 2009 letter. We submit these letters again and incorporate them herein with the goal of obtaining to these comments as well as responses to this Comment Letter including to the January 19, 2010 Global Environmental Consulting Company, Inc. letter (Exhibit "1") to this office.

O5-1  
cont'd.

In compliance with the requirements of the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and on behalf of Deft, we offer the following comments on the RDEIR. Of course, we reserve the right to make further comments on the Project and the RDEIR based upon further review of the RDEIR, various staff reports, and other documents and oral comments.

### I. Summary of Concerns.

1. Even after revision, the RDEIR still fails to comply with Judge Sundvold's orders; it must be revised to do so.
2. The RDEIR's Introduction remains inadequate and fails to accomplish its purpose; it should be revised and recirculated.
3. The RDEIR's Project Description is still inaccurate and must be revised.
4. The RDEIR's discussion of the Environmental Setting fails to use the appropriate Project baseline condition; the RDEIR should be revised again and recirculated with a true pre-Project baseline.
5. The RDEIR's discussion of air quality impacts is incomplete and requires revision by either expanding the Business Complex District north of Interstate 405 and easterly from Armstrong and MacArthur to Jamboree Road or providing for a 1,000 foot buffer between existing industrial uses and new residential uses.

O5-2

O5-3

O5-4

O5-5

O5-6

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## 2. Response to Comments

Bill Jacobs

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February 5, 2010

- |     |                                                                                                                                                                                                                |       |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 6.  | The RDEIR's analysis of Project impacts on soils and geology still fails to analyze fully Program and project level impacts.                                                                                   | O5-7  |
| 7.  | The RDEIR's analysis of Project impacts on hazards and hazardous materials remains flawed and incomplete, and fails to provide adequate protections between existing industrial uses and new residential uses. | O5-8  |
| 8.  | The RDEIR also fails to analyze adequately the Programmatic and Project level impacts on hydrology and water quality.                                                                                          | O5-9  |
| 9.  | The RDEIR still fails to analyze completely and to propose adequate mitigation for the Project's land use impacts.                                                                                             | O5-10 |
| 10. | The RDEIR's analysis of the Project's noise impacts remains incomplete and its proposed mitigation is impermissibly deferred.                                                                                  | O5-11 |
| 11. | The RDEIR fails to analyze adequately the Project's transportation and traffic impacts and defers mitigation of those impacts.                                                                                 | O5-12 |
| 12. | The RDEIR's analysis of recreational impacts is incomplete and must be revised.                                                                                                                                | O5-13 |
| 13. | The RDEIR's discussion of significant and irreversible impacts fails and requires revision.                                                                                                                    | O5-14 |
| 14. | The RDEIR's analysis of the Project's growth inducing impacts is incomplete and inadequate; it must be revise and recirculated.                                                                                | O5-15 |

### **II. Introduction: EIR Standards.**

An EIR constitutes the heart of CEQA, Public Resources Code sections 21000 et seq. CEQA Guidelines section 15149(b) states:

"... serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects."

O5-16

See California Public Resources Code section 21003(b) (requiring that the document must disclose impacts and mitigation so that the document will be meaningful and useful to the public and decision-makers.)

Further, CEQA Guidelines section 15151 sets forth the adequacy standards for an EIR:

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“An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which takes account of the environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith attempt at full disclosure.”

Further, “the EIR must contain **facts and analysis**, not just the agency's bare conclusions or opinions.” Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association. (1986) 42 Cal. 3d 929, 935. (Emphasis supplied.)

An agency's determination in connection with an EIR must be supported by substantial evidence. Public Resources Code sections 21168 and 21168.5. “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” Public Resources Code section 21080(e)(1). However, “[r]elevant personal observations such as [personal observations about noise] can constitute substantial evidence.” Oro Fino Gold Mining Corp. v. County of Del Oro (1990) 225 Cal. App. 3d 872, 882.

In addition, an EIR must specifically address the environmental effects and mitigation of the Project. But “[t]he degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” CEQA Guidelines section 15146. The analysis in an EIR must be specific enough to ensure that the public and decisionmakers will understand the Project and its impacts, and make informed decisions about the project, the EIR and project mitigation. The EIR must produce sufficient information and analysis to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned. See Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal. 3d 376.

Also, to the extent that an EIR proposes mitigation measures, it must provide specific measures. It cannot defer such measures until some future date or event. “By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.” Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 308. See Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 282 (holding that “the principle that the environmental impact should be assessed as early as possible in government planning.”); Mount Sutro Defense Committee v. Regents of University of California (1978) 77 Cal. App. 3d 20, 34 (noting that environmental problems should be considered at a point in the planning process “where genuine flexibility remains”). CEQA requires more than a promise of mitigation of significant impacts: mitigation measures must really minimize an identified impact.

O5-16  
cont'd.

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“Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. (Citation omitted.) On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. (Citation omitted.)” Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276.

O5-16  
cont'd.

### **III. Introduction to our Comments.**

As indicated in our May 14, 2009 Comments, the DEIR failed to comply with Judge Sundvold Orders that the City must perform a complete environmental review and analysis of the residential transformation of the IBC. As we indicated, this analysis must include a programmatic evaluation of the entire Project– the residential transformation of the IBC– including projects which have been built, approved, pending and future residential projects in the IBC and all project related impacts.

The RDEIR fails to address or cure this inadequacy of the March 2009 DEIR (“DEIR”). It offers nothing in the way of a “comprehensive analysis of the potential impacts of such a transformation.” Martin St. Minute Order, page 4.

To do this, as we indicated in our May 14, 2009 comment letter, the City must analyze the impacts of the entire residential transformation. This means that, as discussed below, the RDEIR must use the appropriate baseline conditions: the appropriate baseline conditions are those that existed in the IBC immediately after the approval of the 1992 IBC Program EIR (“1992 EIR”). The baseline would include the 3,896 dwelling units allowed by the 1992 EIR. However, it would not include the rest of the approved and existing residential units which were approved by the City in recent years.

O5-17



In addition, our May 14, 2009 comment letter discussed the RDEIR’s failure to include a new traffic analysis and explain the trip budget and trip transfers as required by Judge Sundvold. The RDEIR fails to discuss these items as well.

### **IV. Section 1, the Executive Summary, Fails to Discuss Fully the Nature of the RDEIR.**

The DEIR stated that it was only a “Program DEIR” prepared under CEQA Guidelines section 15168. However, the RDEIR notes that it is also a “Project EIR” for the seven pending sub-projects. As discussed below, the RDEIR contains little project level analysis.

O5-18

However, the RDEIR is a recirculated DEIR under CEQA Guidelines section 15088.5 which requires recirculation of a DEIR when:

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“[S]ignificant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification.”

CEQA Guidelines section 15088.5(a). Unfortunately, section 1 fails to discuss this recirculation and fails to identify any significant new information which requires the recirculation in order for the decisionmakers and the public to understand the revisions and changes in the RDEIR. Please identify and discuss all changes to the RDEIR and all new information which requires this recirculation.

O5-18  
cont'd.

Section 1.3 addresses the Project location. It states:

“The most prominent land use in the IBC is office, with substantial amounts of industrial/warehouse uses and 4,524 medium- and high-density residential units and 45 density bonus units for a total of 4,569 existing dwelling units.”

RDEIR at 1-5. This characterization is problematic for several reasons. First, Table 1-1 on the following page indicates that 5,011 residential dwelling units currently exist, **not 4,569** dwelling units, with 1,892 units under construction and another 2,552 already approved. The RDEIR must be revised to provide a correct number of existing residential dwelling units and an explanation of this error.

O5-19

Second, as indicated above and in our May 14, 2009 comments, the baseline condition includes only the 3,896 residential dwelling units approved under the 1992 EIR. The remaining 673 residential dwelling units (for the 4,569 existing units) or the 1,115 dwelling units (for the 5,011 existing units) are part of the Project and need analysis as part of the Project.

Response to Comment No. O3-17 responds that CEQA Guidelines section 15125 requires that the baseline conditions are the conditions as they exist at the time the notice of preparation is published, or if no such notice, then the baseline conditions are the conditions as they exist at the time the environmental analysis is commenced. However, this Response also notes:

O5-20

“This environmental setting will **normally** constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”

RDEIR, Appendix Q, page 2-411-412. As indicated above, the RDEIR's analysis is not the normal analysis: Judge Sundvold has ordered that the City analyze the impacts of the full residential conversion Project for the Irvine Business Complex.

Third, it conflicts with the description of the area in Section 5.7, Hydrology. Section 5.7 recognizes the true character of the Irvine Business Complex:

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“The IBC is a **business-concentrated area** located within the City of Irvine and is generally bounded on the west by the Costa Mesa Freeway (SR-55), on the south by Campus Drive, and on the east by the San Diego Creek Channel (Reach 1). The existing condition of the IBC consists primarily of commercial and office buildings, warehouses and **a few residential high rise condominiums**.

O5-21  
cont'd.

RDEIR, page 5.7-1 (Emphasis supplied). The RDEIR must be revised to reflect correctly the nature of the Irvine Business Complex so that the RDEIR may correctly evaluate the nature of the Project and the character of the impacts of the Project on the “business-concentrated area.”

Section 1.7 discusses areas of controversy. It states:

“The areas of known controversy concerning the proposed project are: residential development within the IBC, parks and recreation, and transportation/traffic.”

RDEIR, 1-9.

However, this is an overly simplistic characterization of the controversial issues: the issue regarding residential development within the IBC is really at least three issues: First, whether or not residential development should be sited adjacent to industrial uses. Second, whether or not residential uses should be sited adjacent to industrial uses which store and use hazardous materials. Third, whether or not residential uses should be site adjacent to industrial uses which emit light, noise, odors, and other potentially significant impacts between existing industrial uses and new residential uses.

As discussed more fully below, the resolution to all three of these issues is that residential uses should not be sited adjacent to such uses, indeed, new residential uses should not be located within 1,000' of existing industrial uses. This separation ensures that incompatible uses such as new residential uses and existing industrial uses do not generate significant adverse impacts including land use impacts, and hazards and hazardous materials impacts.

Section 1.7 also discusses prior notices of preparation and scoping meetings. However, it fails to discuss the DEIR or its precursor, the Mitigated Negative Declaration. Section 1.7 should be revised to discuss these and other documents, and hearings and other activities that took place prior to the RDEIR.

The Responses to Comments notes that the Negative Declaration was never adopted by the City and that, because of this, it is inappropriate to incorporate this document. However, the Negative Declaration is part of the administrative record for the Project and the RDEIR must reflect this fact.



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Table 1-2 is a summary of the impacts analysis, mitigation measures and significance after mitigation. As appropriate, our comments on the various subject matter on the table apply to Table 1-2 as well.

O5-22  
cont'd.

### **V. Section 2, the "Introduction," Remains Inadequate and Requires New Information.**

Section 2, the Introduction, discusses the scope and extent of the RDEIR. Among other things, Section 2 discusses the notices of preparation of the previous environmental documents and the comments on those documents. See Table 2-1. However, as indicated above, the Introduction fails to discuss all of those environmental documents including the early Mitigated Negative Declaration, comments on the environmental documents, and the City's responses to such comments. The RDEIR contains both the comments and responses to the DEIR in its Appendix Q. However, Section 2 fails to reference Appendix Q which includes Responses to Comments on the DEIR. Those responses and the RDEIR fail to address the earlier comments on the DEIR. The RDEIR must be revised to address all of those comments.

Moreover, the RDEIR is supposed to be an independent, unbiased, and informative document. The DEIR failed to meet this standard, and distorted and argued with the comments. The RDEIR fails to cure this flaw. The RDEIR must be an objective document which simply states the facts. See Public Resources Code section 21061; CEQA Guidelines section 15003. The DEIR should be revised to comply with these CEQA requirements.

O5-23

Further, as we commented in May 2009, Section 2 fails to incorporate by reference properly and clearly earlier documents including EIRs for the IBC. In particular, the DEIR failed to reference properly the 1992 EIR which established the current development caps and limits. The 1992 EIR is important for other reasons including establishing the Project background. The RDEIR must be revised to consider and reference properly and completely the 1992 EIR.

In Response to this Comment No. O3-22, Appendix Q states that the DEIR and the RDEIR do not rely on the 1992 EIR and therefore it is not appropriate to reference the 1992 EIR. However, this ignores the facts and the record. As Ray Catalano explained in his "Past and Present Land Use Control Issues in the Irvine Business Complex" dated October 5, 2007, which is attached hereto as Exhibit "4," the 1992 Project and its EIR brought reforms: first, given the burgeoning residential pressures in the Irvine Business Complex, the 1992 EIR capped the residential units allowed in the Irvine Business Complex; and second, given that the transportation system seemed "obsolete," the City in the 1992 EIR established trip budgets for the Irvine Business Complex and the City commissioned a new transportation study. Indeed, the RDEIR recognizes the importance of the 1992 rezoning program which established "the development intensity assigned to each parcel [in the Irvine Business Complex]." See RDEIR, page 3-26.

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In short, the 1992 EIR is part of the Project: the 1992 EIR established the current use caps; and the 1992 EIR established the trip budget for the Irvine Business Complex. The RDEIR and the DEIR cannot ignore the 1992 EIR. Please explain why the RDEIR fails to reference and incorporate the 1992 EIR even though the RDEIR recognizes that the 1992 EIR established the trip budgets for all Irvine Business Complex parcels and established the transfer program.

O5-23  
cont'd.

### **VI. Section 3, the "Project Description" Is Inadequate and Must be Revised.**

Section 3 attempts to describe the Project. Section 3.2 discusses the Project's objectives. As indicated in our May 14, 2009 comments, the RDEIR still fails to explain how the Project will advance its goals of protecting existing job base and developing mixed use cores. Indeed, as indicated below, the Project does not develop mixed use cores. As discussed below, it develops two separate cores. As for the residential component, as indicated below, this should be developed into core areas, e.g. along Jamboree Road. The Project fails to achieve this objective because it merely lumps all residential in the Urban Neighborhood District which encompasses much of the Irvine Business Complex.

Section 3 indicates that the Project has at least nine (9) components:

1. A General Plan Amendment to adopt the Vision Plan for the Irvine Business Complex and its objectives/policies, increase the residential dwelling unit cap for the area from 9,015 dwelling units to 15,000 dwelling units together with a maximum of 1,383 density bonus units with a corresponding reduction of 4,337,727 square feet of non-residential uses, and the elimination of maximum density limits and the establishment of a minimum density of 30 dwelling units per acre with no maximum limit.
2. A Zoning Code Amendment to implement the General Plan Amendment and which would include the establishment of two regulatory overlay districts, the Business Complex District and the Urban Neighborhood District with residential uses allowed only in the latter district, an update of the traffic mitigation fee for the area, and other minor amendments.
3. A Municipal Code Amendment to add further park standards and amend Section 5-5-1004(D)(1) to remove the 50 dwelling unit per acre density cap for determining persons per household.
4. An amendment to the City's Park Standard Manual.
5. A program or policy to limit development intensity within the Irvine Business Complex based upon the trip budgets established in the 1992 EIR and Project.

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6. An Amendment to the City's Local Coastal Plan to comply with the General Plan Amendment in the area of the Irvine Business Complex within the Coastal zone.
7. The establishment of design criteria for the residential projects allowed under the Vision Plan and the overlay districts.
8. The establishment of an Irvine Business Complex infrastructure plan which would include improvements to narrow streets, erect bridges and make the area more pedestrian friendly.
9. A proposal to change the name of the Irvine Business Complex to more closely reflect the Vision Plan changes.

O5-24  
cont'd.

Please confirm that each of these are part of the Project and that this is a complete list of Project components.

As we have indicated before, the Project contemplates increasing the number of residential dwelling units substantially over those approved under the 1992 EIR. As indicated above, the 1992 EIR allowed 3,896 residential dwelling units. See 1992 EIR Table 1. Please note that the RDEIR continuously refers to the 1988 EIR which approved 3,571 residential dwelling units. However, the 1992 EIR approved an additional 325 residential dwelling units for a total approved in 1992 of 3,896 dwelling units. The Project proposes to increase that number to 15,000 plus 2,038 density bonus units for a total of 17,038, a fourfold increase over 1992 levels.

In our May 14, 2009 comments, we noted this error. The Response to this Comment O3-29 states that:

O5-25

"The table is not a comparison of how many units were allowed under the 1992 IBC EIR and how many are proposed under the project. The table provides an existing versus proposed development summary."

RDEIR, Appendix Q, page 2-413. The Response also states that it is inappropriate to reference the 1992 EIR. However, Table 3-1 is inaccurate and fails to comply with Judge Sundvold's orders precisely because it fails to take into account the limits and/or use caps established in the 1992 EIR and its approvals. Indeed, although the RDEIR acknowledges the importance of the 1992 EIR and its "rezoning program," which established "... the development intensity assigned to each parcel [in the Irvine Business Complex,] see RDEIR, page 3-26, the RDEIR fails to discuss this program or the 1992 EIR. The RDEIR must do more than ignore the issue: it must fully describe the Project— the residential transformation of the Irvine Business Complex— in its entirety and then analyze the impacts of the full Project. The RDEIR must be revised and

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recirculated to discuss and explain fully and completely the importance and the role of the 1992 EIR and Project in connection with this Project.

Of course, the RDEIR notes that many units of this proposed 17,038 already exist and many more have already been approved. See Table 3-1. However, as we have indicated above, any and all units over and above the 3,896 approved in 1992 are part and parcel of the Project, and must be analyzed as such.

O5-25  
cont'd.

In addition, as we noted above, the RDEIR uses different totals for existing residential units. Compare RDEIR at 1-5 which refers to "4,569 existing dwelling units" to Table 3-1 which states that there are 5,011 existing units. This must be corrected and/or explained.

Section 3.3.2.2 discusses the districts proposed under the Project for the IBC. The DEIR included a multi-use district which is now gone. Instead, the Project is limited to two districts: Urban Neighborhood; and the Business Complex. Figure 3-6 shows the limits of the two districts. Although residential is allowed in the Urban Neighborhood District, it is not allowed in the Business Complex District.

However, the nature and extent of the Business District has changed substantially from the DEIR. In the earlier DEIR, the Business District was located north of Interstate 405 and west of MacArthur Blvd and Armstrong Ave. The RDEIR expands this boundary to include in addition to the area north of Interstate 405 and west of MacArthur and Armstrong, the area south of Interstate 405 and west of Jamboree Rd. Compare Figure 3-6 from the DEIR attached hereto to Figure 3-6 from the RDEIR. The RDEIR fails to explain this expansion. In order to constitute an informative document, the RDEIR must explain this significant change.

Deft understands that this changed configuration may be the result of a settlement agreement between the City and Allergan, Inc. located at 2525 Dupont Dr. in the heart of the expanded Business District. Attached hereto as Exhibit "5" is a copy of the Allergan/City of Irvine settlement agreement. As indicated in that settlement agreement, Allergan has brought many actions against the City and challenged the compatibility of residential uses adjacent to industrial uses.

O5-26

For instance, Table 2-1 is replete with Allergan's concerns about the adverse impacts of the new incompatible residential land uses with existing industrial uses. In addition, Appendix Q contains many comments by Allergan's attorneys, Sheppard Mullin, that with no restriction or separation requirements for new residential developments near existing industrial developments, the Project will have significant and adverse impacts on land use, hazardous materials and other issues. See, e.g., Comment O-7 and Responses thereto.

In effect, the RDEIR and the revised Project recognizes this significant impact for Allergan and crafts the boundaries of the Business Complex District to address Allergan's concerns about industrial adjacency with the new residential uses. The expansion of the Business District recognizes and mitigates the incompatibility of the new Project related residential uses with existing

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industrial uses but only for areas south of Interstate 405. However, under the proposed Project, those impacts recognized by the RDEIR nevertheless remain for industrial uses north of Interstate 405. Although the RDEIR proposes this expansion of the Business District, it fails to explain why it does not extend the Business Complex District to areas north of Interstate and west of Jamboree Road. More importantly, although the RDEIR recognizes that this separation from existing industrial uses is the appropriate mitigation for the impacts of new residential uses on existing industrial uses, the RDEIR fails to explain why this mitigation is not extended to other existing industrial uses in the Irvine Business Complex which are located north of Interstate 405 such as Deft. The RDEIR should be revised and recirculated to explain and address these issues and explain why other key businesses in the Irvine Business Complex which are north of Interstate 405 are not provided the same protections as businesses south of Interstate 405.

In the DEIR, Appendix D also recognized this incompatibility. Section 5-8-4A4.e of this Appendix D provides:

“Residential structures shall be located outside of the distances to the following stationary air pollutant sources:

- 1,000 feet from an existing chrome plating operation.”

Appendix D, page 12. As we indicated in our May 14, 2009 Comments, Deft is similar to chrome plating facilities. See Land Use Compatibility White Paper: Hazardous Materials Assessment by Global Environmental Consulting Company, Inc., attached to our May 14, 2009 Comments as Attachment A and attached hereto as Exhibit “2”; and the May 11, 2009 Letter from Global Environmental Consulting Company, Inc. to the Law Offices of Robert C. Hawkins, attached to our May 14, 2009 Comments as Attachment “C” and attached hereto as Exhibit “3.” Indeed, chrome plating operations use hexavalent chromium (Cr<sup>+6</sup>) for its operations. Deft also uses hexavalent chromium (Cr<sup>+6</sup>). Each chrome plating operations and Deft has the potential for hazardous emissions. Hence, Deft and other users of hexavalent chromium (Cr<sup>+6</sup>) should receive similar separation requirements.

Although the RDEIR recognizes that Deft is sufficiently similar to chrome plating facilities, the RDEIR removes the protections provided in the DEIR including the 1,000 foot buffer. That is, the DEIR and its Appendix D prohibits residential uses within 1,000 feet of chrome plating facilities.

The RDEIR removes this restriction and only requires that if residential uses are proposed within 1,000 feet of existing industrial uses, the RDEIR only requires that the applicant “. . . shall submit a health risk assessment (HRA) . . .” Appendix D, page 12. Further, Appendix D requires:

“If the HRA shows that the incremental cancer risk exceeds one in one-hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the

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applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (TBACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units.

Id.

Unfortunately, the HRA and the identified TBACTs will protect neither industrial uses nor residential uses. As indicated in the January 18, 2010 Global Environmental Consulting Company, Inc. report to this office, the HRA with its TBACTs are “an unacceptable dilution of community protection;” they recommended reestablishing the 1,000 foot buffer between existing industrial uses and any new residential uses. See the January 19, 2010 Report from Global Environmental Consulting Company, Inc. which is Exhibit “1” hereto.

O5-26  
cont'd.

Clearly, the City cannot put the toothpaste back in the tube: in the DEIR, the City has already recognized that new residential uses should not be located within 1,000 feet from a chrome plating facilities. This separation is the appropriate Project design feature to address and lessen to insignificance the potential impact caused by siting new and incompatible residential uses near existing industrial uses.

Second, the DEIR’s proposed buffer for chrome plating facilities complies with the California Air Resources Board’s requirements. Under the CARB’s Air Toxic Control Measure (“ATCM”) for hexavalent chromium (Cr<sup>+6</sup>), new hexavalent chromium facilities, in addition to installing BACTs and meeting a very stringent emission limits, are prevented from operating inside, or within 1,000 feet of an area zoned residential or mixed use, or within 1,000 feet of a school or school under construction. As indicated in the January 18, 2010 Global Environmental Consulting Company, Inc. report to this office (Exhibit “1” hereto), clearly, the 1000’ buffer between existing industrial uses and new residential uses is the better planning course of action; the DEIR already recognized this.

O5-27

Third, as indicated in the January 18, 2010 Global Environmental Consulting Company, Inc. Report to this office (Exhibit “1”), the identified TBACTs including scrubbers or MERV filters will not adequately address any hexavalent chromium (Cr<sup>+6</sup>) issues or other hazardous materials present at Deft and other industrial facilities. As indicated in this Report, such TBACT’s are not fully effective to eliminate problems with Deft’s permitted emissions. Moreover, these measures will not even address other materials including the nitrocellulose and odoriferous materials used by Deft, or other issues including light and noise generated by industrial uses.

O5-28

The only effective mitigation or project feature to address this incompatibility of uses is separation: either expand the Business Complex District north of Interstate 405 from Armstrong and

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MacArthur east to Jamboree Road or establish a 1,000' buffer between existing industrial users and any new residential uses. Indeed, under the CARB's ATCM, the requirement is 1,000' between the two zones. With appropriate setbacks, the buffer would be larger.

The RDEIR should be revised to discuss and evaluate these options of further expanding the Business District on the north side of Interstate 405 akin to its expansion under the Project south of Interstate 405; or establish a 1,000 foot buffer between new residential uses and existing industrial uses throughout the Irvine Business Complex.

O5-29  
cont'd.

Another project feature is the densities of residential uses allowed under the Project:

"As a result, future residential projects would not have a restriction on maximum density, but would have to comply with a minimum density of 30 units per acre to ensure the benefit of higher-density housing necessary to establish a vibrant mixed-use community."

RDEIR, page 3-12.

Although the RDEIR recognizes "the benefit of higher density housing," it fails to recognize and appreciate the need for several individual mixed use cores. If higher density housing creates a benefit, that benefit accrues to more people are concentrated into core areas, not dispersed throughout the entire Irvine Business Complex.

As indicated in our May 14, 2009 comments, earlier in the process, the City considered developing mixed use cores or Town Centers in various locations including along the Jamboree Corridor. In a February 27, 2007 presentation, the City's consultants, EDAW, recognized the benefit of concentrating new residential uses in core areas. They opined that although ad hoc placement of residential units in the IBC such as the Project may facilitate market forces, its disadvantages are large, many and significant:

- Ad hoc, unfocused development patterns
- Trip-capture/intensification opportunities go unexploited
- Reduces "clustering" of residential and therefore leads to more extended/ adverse edge condition with remaining industrial uses
- Less chance for effective transit"

O5-30

In this presentation, EDAW recommended that the Project implement the mixed use cores within the Irvine Business Complex at certain nodes, e.g. along Jamboree Road. Unfortunately, the RDEIR fails to appreciate fully the benefit of higher density housing and ignores the recommendations of its experts to embrace mixed use cores.

In the Response to our May 14, 2009 Comments, Appendix Q states that "The IBC Vision Plan does include mixed-use cores." However, the "cores" are simply the two districts in the IBC:

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the Business Complex District and the Urban Neighborhood District. This is beside the point: our comment and EDAW's presentation made clear: the Project must include residential cores within the Irvine Business Complex at specific nodes or areas, not the entire area. EDAW rejected turning large portions of the IBC, e.g. the Urban Neighborhood District, as a core because it does not allow for "focused development patterns," "trip capture," "effective transit," and "'clustering' of residential."

Section 3.3.2.1 and following sections address the Project in some detail; however, these sections are sketchy and problematic. Section 3.3.2.3 discusses the General Plan Amendment required by the Project. It includes the raised caps on residential uses and lowered caps for nonresidential uses. It also proposes to delete maximum densities for residential uses which are currently 52 units per acre and opts instead for a minimum density of 30 units per acre. As indicated above, the RDEIR regards this concentration of residential uses as a benefit but without the concept of residential cores.

O5-30  
cont'd.

Figure 3-5 identifies the proposed IBC Infrastructure Improvements which are not analyzed at all in the RDEIR. Given that these improvements aka public works projects are part of the Project, the RDEIR must analyze such project features. In addition, Deft understands that the "i-Shuttle" is also part of the Project.

The RDEIR cannot defer analysis of these Project features. As indicated above, CEQA has forbid "piecemeal" review and analysis of the significant environmental impacts of a project. Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 391, fn. 2. This prohibition stems in part from CEQA itself: Public Resources Code section 21002.1(d) requires that an environmental document "consider[] the effects, both individual and collective, of all activities involved in [the] project." Further, CEQA Guidelines Section 15165 provides that:

**"Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168 . . ."**

O5-31

Under the Guidelines, the term "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably indirect physical change in the environment . . ." Id. at CEQA Guidelines section 15378(a).

The RDEIR must be revised to describe fully the Project including the infrastructure improvements and the i-Shuttle, to analyze the impacts of such Project features and to mitigate any significant impacts.

Section 3.3.2.6 discusses land use assumptions of the Project. Among other things, this section attempts to identify land use assumptions for the interim year 2015. However, the RDEIR

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has no discussion of such assumptions. Rather, it inserts new figures, Figures 3-7a and 3-7b, without any explanation to identify the transfer of development rights assumptions. Because the RDEIR describes such transfers, not as traffic trips but development intensities, Figures 3-7a and 3-7b are inadequate and require explanation. Please provide an explanation of the figures. In addition, these figures appear to contain notes indicated by “\*” without any explanation of the note. Please provide an explanation of the asterisks and explain the notes.

However, Figures 3-7a and 3-7b are interesting in their identification of the transfers of development rights. As indicated in our May 14, 2009 Comments, the DEIR and the RDEIR attempt to clarify what these transfers are all about:

“The intensity budgets [established in the 1988 General Plan amendment] were measured in units called ‘trips.’ Beyond indicating the maximum potential development intensity for a parcel, however, those trips are no longer used by the City to reflect the amount of traffic generated on a specific parcel. The City’s development intensity management mechanism allowed **market forces to dictate how and where development intensity would ultimately be utilized through the Transfer of Development Rights (TDR) provisions established in the Zoning Code.**”

O5-32  
cont’d.

RDEIR, 3-2. However, Figures 3-7a and 3-7b do not talk about development intensities; they refer to trip budgets and allocating such trips across various land uses. Indeed, Figure 3-7b refers to am peak hour trips, pm peak hour trips and average daily trips. This is far from development intensities. The RDEIR must be revised to explain these figures, to explain how to apply these numbers as either intensities or trips, and to explain how the trip budgets work in the Project which talks about “development intensities.”

In addition, the Project includes proposed amendments to the City’s Circulation Element. These include: downgrade Jamboree Road from Barranca Parkway to McGaw from a 10-lane divided roadway to a 8-lane divided roadway; downgrade Main Street between Red Hill to Harvard from a 6-lane divided arterial with 2 auxiliary lanes to 6-lane divided roadway; down grade Alton Parkway between Red Hill Ave. and Jamboree Road from a 6 lane divded roadway to a 4 land divided roadway; and downgrade Von Karman Ave. between Barranca Parkway and Michelson from a 6-lane roadway to a 4-lane roadway. These latter two downgrades, Alton and Von Karman, also require amendments to the County’s Master Plan of Arterial Highways (“MPAH”). The RDEIR indicates that the City will initiate the amendments.

O5-33

Also, the Project includes changes to the state and interstate freeways at Interstate 405 and Von Karman; and State Route 55 and Alton. Currently, the freeway plans call for high occupancy vehicle drop down ramps at Von Karman and Interstate 405, and Alton and State Route 55. The Project proposes to delete these as well as the proposed bride over SR 55 at Alton.

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All of this requires environmental review as part of the Project. However, it is clear that these parts of the Project require action by other agencies including the California Department of Transportation (“Caltrans”) and the Federal Highway Administration. It is also clear that the City proposes to analyze these Project features in a piecemeal fashion. As indicated throughout, CEQA forbids such piecemeal analysis. The RDEIR should be revised to describe fully these Project features, analyze their impacts and propose necessary mitigation.

O5-33  
cont'd.

Section 3.3.3 is supposed to focus on the Project level description for the RDEIR. However, it fails to do so. First, Table 3-4 lists seven (7) specific residential projects which are part of the Project. The DEIR included two more projects: the 186 unit Mountain Vista proposed at 2501 Alton; and the 151 unit development at 6542 Millikan. However, the RDEIR fails to discuss what happened to these projects. Please explain what happened to these two projects in sufficient detail, explain why they are not part of the Project, and if the Project and the Overlay Zone is approved, what steps will need to be taken to resurrect these projects.

More importantly, Section 3.3.3's discussion of these individual projects fails to discuss these projects at a project level. Many, if not all, of these individual projects have undergone environmental review including preparation of EIR. The detail in these project level environmental documents should be included in the RDEIR, but it is not. The RDEIR should be revised to provide a sufficient project level analysis of the individual projects so that the decisionmakers and the public may understand their project features, their impacts, and any and all appropriate mitigation.

Moreover, the RDEIR fails to explain who the applicants are for these individual projects and where they are located. For each individual Project which is part of the Project, please identify the project applicant and provide contact information for the applicant. In addition, if other entities or groups are listed in any of these applications, provide the identity and contact information for each such entity, person or group.

O5-34



In addition, three (3) of the individual projects have subterranean parking: Martin St. Condos; 2851 Alton; and the Irvine Technology Center. However, the RDEIR fails to describe the depth of these subterranean parking structures. As we noted in our May 14, 2009 Comments, groundwater is shallow in the Project area; at many areas in the Irvine Business Complex, groundwater rises to four feet below ground level. It is crucial to understand and discuss the depth of the parking structures. Please explain in detail these features of the individual projects and identify any other subterranean features, e.g. swimming pools, which may serve to create Project related impacts on hydrology and water quality as well as any and all necessary mitigation measures.

### **VII. Section 4, the “Environmental Setting,” Is Inaccurate and Requires Substantial Revision.**

As we indicated in our May 14, 2009 Comments, the environmental setting serves as the base condition against which the impacts of the Project are measured. See CEQA Guidelines

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section 15125(a). As such, the environmental setting is key to the analysis. Inaccurate or skewed conceptions of the environmental setting undercut the environmental analysis. In addition to the requirements of CEQA including those of CEQA Guidelines section 15125(a), Judge Sundvold also provided direction in connection with the DEIR and now the RDEIR. As noted above, Judge Sundvold held that the City has never performed an overall environmental review of the Project, the residential transformation of the IBC:

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

Martin St. Minute Order, page 4 (Emphasis added.) As indicated in our May 14, 2009 Comments, the DEIR and Section 4 failed to provide any appropriate analysis or discussion of the environmental setting before the Project, that is, before the City commenced the residential transformation of the IBC. The RDEIR continues this failing.

Moreover, the RDEIR states that:

“The last major General Plan Amendment and Zone Change for the whole of the IBC was adopted in 1988. At that time, the General Plan and Zoning Code envisioned 58.255 million square feet of nonresidential development and 3,571 dwelling units at buildout. The 1988 entitlements also included a Circulation Mitigation Program and revised funding program, including a fee program.”

RDEIR, page 4-8. However, this ignores what the RDEIR calls the “1992 IBC rezoning program” by which “the development intensity assigned to each parcel [in the Irvine Business Complex.]” Moreover, it conflicts with Section 3’s discussion of the state of land use controls in the Irvine Business Complex. For instance, Section 3 states:

“A General Plan amendment and rezoning project was approved by the City of Irvine for the IBC in 1992. As approved at that time, the IBC entitlements included 48.255 million square feet of nonresidential development and 3,571 dwelling units. The 1992 approvals also included a circulation mitigation program and revised funding program, including a fee program.”

RDEIR, page 3-2. The RDEIR must be revised to explain this conflict and, as indicated above, please clarify and explain why the RDEIR does not refer to the 1992 EIR and Project. In addition, the RDEIR must be revised to explain fully and completely the nature and the role of the 1992 EIR and the Project in connection with the RDEIR and this Project.

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Moreover, in our May 14, 2009 Comment Letter, we noted that the Project should include discussion of the March 2009 Zoning Code Amendment regarding retail accessory uses. The Response to this Comment O3-36 states that:

“The Accessory Retail Use Ordinance is not part of the IBC Vision Plan project and was processed separately.”

However, the RDEIR states:

“For purposes of the IBC Vision Plan, the utilization of the accessory retail use designation has been assumed, although that assumption does not, by definition, yield any additional traffic generation.”

O5-36

RDEIR, page 4-8. In reality, the Accessory Retail Use Ordinance is part of the Project and serves to facilitate additional uses which were not earlier allowed in the Irvine Business Complex without additional traffic analysis. Moreover, the assumption– that the accessory retail uses do not generate traffic–is without foundation. The RDEIR must show that such uses will not generate traffic; it cannot simply assume that they won't. The RDEIR should be revised to provide this explanation and to show that this Ordinance does not have traffic impacts which either may affect the Project or which the Project will affect.

Finally, as we have indicated above, the baseline for analysis must not be the existing conditions on the ground today but rather the conditions that existed prior to the Project– the residential transformation of the Irvine Business Complex. CEQA Guidelines section 15125 provides that:

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

O5-37

The RDEIR and the Responses to Comments on the DEIR maintain that this means that the baseline condition for the Project is that condition which existed on the ground at the time of the notice of preparation. However, this creates several problems.

First, the Project has been under consideration for more than ten years. Moreover, the environmental analysis for the Project has been underway for more than four years. Hence, the baseline condition must extend, at the very least, back to when the City first began considering the Project.

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Second, this approach conflicts with Judge Sundvold's direction. As indicated above, Judge Sundvold required that the City analyze the impacts of the full residential transformation of the Irvine Business Complex. For such an analysis, the baseline must extend back to the conditions on the ground after the last programmatic analysis of the land uses in the Irvine Business Complex—back to the conditions on the ground after certification of the 1992 EIR and Project approvals.

Third, given the Project—the residential transformation of the Irvine Business Complex, the RDEIR must analyze the impacts of the entire Project. The only way to do this is to regard the base condition before this transformation in 1992. Any other baseline will include approved residential projects in the baseline.

O5-37  
cont'd.

The RDEIR must be revised to explain the baseline analysis, explain and analyze the baseline pre-Project in 1992, and provide a detailed discussion of the Project's impacts on the environment as it existed in 1992.

### **VIII. Section 5, "Environmental Analysis," is Inadequate and Must be Revised.**

Section 5 attempts to address and discuss the environmental impacts of the Project. The Project has many such impacts; the RDEIR misses many such impacts and fails to analyze the impacts completely or fully. Hence, Section 5 and the entire DEIR must be revised and recirculated.

O5-38

#### **A. Section 5.1, "Air Quality," Fails to Analyze and to Mitigate the Project's Full Air Quality Impacts.**

Section 5.1 tries to analyze the Air Quality impacts of the Project. It fails from several perspectives.

First and most importantly, Section 5.2.3 discusses the environmental impacts of the Project. Among other things, Section 5.2.3 sets forth existing plans, programs, and policies ("PPP") as well as proposed Project design features ("PDF"). Although regulations from the California Air Resources Board are existing plans, programs, and policies, the RDEIR regards such as Project design features. For instance, PDF 2-1 under the title "CARB Recommended Buffer Distances" requires that:

O5-39

"As described in the proposed zoning for the project and based on the recommended buffer distances of the California Air Resources Board, for all residential or residential mixed-use projects within the distances to industrial uses outlined below, the Project Applicant shall submit a health risk assessment (HRA) prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment (OEHHA) and the South Coast Air Quality Management District (SCAQMD) to the Community Development Director prior to approval of any future discretionary residential or residential mixed use project. If the HRA

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shows that the incremental cancer risk exceeds one in one hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value (MERV) filters rated at 14 or better at all residential units.

- “• 1,000 feet from the truck bays of an existing distribution center that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units, or where transport refrigeration unit operations exceed 300 hours per week.
- “• 1,000 feet from an existing chrome plating facility or facility that uses hexavalent chromium.”

RDEIR, 5.2-13. However, PDF 2-1 raises several issues. First, the California Air Resources Board recommends that **no** residential be sited within 1,000 feet of chrome plating facilities. See 17 Cal. Code of Regulations §§ 93102 et seq. PDF 2-1 substantially weakens this protection. Second, PDF 2-1 recognizes the significant impact of facilities using hexavalent chromium (Cr<sup>+6</sup>) but improperly defers mitigation. The DEIR and the proposed Zoning Code Amendment which was part of the earlier Project properly recognized the importance of a buffer between facilities using hexavalent chromium (Cr<sup>+6</sup>) and residential uses.

Third, as indicated in the reports of Global Environmental Consulting Company, Inc., the HSA and its proposed measures to limit such exposure are ineffective. In its January 19, 2010 report, Global Environmental Consulting Company, Inc. states that neither the scrubbers or the filters are applicable in this situation. They conclude:

“In our professional opinions, the replacement of the 1000 foot set-back with TBACT or MERV-14 controls is an unacceptable dilution of community protection on the part of the City of Irvine. The original 1000 foot set-back, along with the oversight provided by Agencies such as SCAQMD and OCFA provide a significant and very high level protection to the community. The 1000 foot set-back should be retained and residents should not be potentially exposed to chemical and physical hazards which are controllable.”

Global Environmental Consulting Company, Inc. January 19, 2010 report, page 6. As we have already pointed out, the Project analyzed by the DEIR included this 1,000 foot buffer from chrome plating facilities. Hence, the City recognizes that such a buffer is effective and feasible. The RDEIR also recognizes that any facility using hexavalent chromium (Cr<sup>+6</sup>) poses a risk of exposure.

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Hence, the buffer should be extended to industrial users such as Deft. Rather than the HSA, the RDEIR must return to the 1,000 foot buffer and provide such a buffer around Deft.

In addition, it is unclear under what authority the City can require the installation of scrubbers on private property which complies with appropriate regulations. The RDEIR must be revised to discuss who bears the costs of the access, installation, operation and maintenance of these scrubbers on industrial properties. It may be that the regulators such as the South Coast Air Quality Management District would not allow third parties to perform these tasks and/or that the industrial users would not allow third parties access and/or the ability to perform such tasks.

If the City proposes to impose this duty on industrial users, then those costs are another significant impact as a result of the Project. Moreover, such costs would work a taking on industrial businesses in the area and be in violation of state and federal constitutional protections.

Finally, this requirement for separation between existing industrial users and new residential uses is not new to the City. The City already requires substantial setbacks for certain uses. For instance, Section 2-13-7 of the Zoning Ordinance requires that residential uses be separated from hazardous waste residual depositories by a buffer of 2,000 feet.

The RDEIR must be revised to analyze this impact fully and propose a 1,000 foot buffer between new residential uses and existing industrial uses which use hexavalent chromium (Cr<sup>+6</sup>).

O5-39  
cont'd.

PDF 2-1 is really unworkable and will not provide the protections the City must require. The earlier Project had a much more effective and workable measure: 1,000 separation between new residential uses and existing industrial uses which use hexavalent chromium (Cr<sup>+6</sup>). The RDEIR and the Project must be revised to include this measure.

Further, Impact 5.2-5 requires revision. Impact 5.2-5 addresses the Project's potential to expose sensitive receptors to air quality emissions. Although the RDEIR's analysis of Impact 5.2-5 has expanded somewhat, it fails to identify and evaluate the Project's potential to expose new sensitive receptors, e.g. new Project residents, to toxics and other hazardous materials in the area. It fails to identify any such industrial sources: it simply defers the analysis until the preparation of a health risk assessment. This is improper. The DEIR earlier recognized the feasible and effective mitigation for such impacts: distance. The RDEIR should incorporate this feature and/or mitigation measure and require that new residential uses are set back from existing industrial uses by a buffer of 1,000 feet or expand the Business Complex District north of Interstate 405 to include all Key Businesses in the area including Deft.

In addition, although Impact 5.2-6 states that residential uses may be sited within California Air Resources Board ("CARB") recommendations, as noted above, the Project allows residential uses to be sited within the CARB limitations. This raises several problems. First, the RDEIR must be revised to reflect the Project: residential uses should be sited outside of the CARB limits. Second, although the Impact 5.2-6 references the CARB 1,000 foot buffer for chrome plating

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facilities, it contains no discussion of such a restriction. (Also, the analysis of Impact 5.2-6 refers to the "Multi-Use and Urban Neighborhood District." This must be corrected.)

Indeed, regardless of the Project and the CARB's limitation to chrome plating facilities, the DEIR recognizes that facilities with similar chemicals and emissions require a 1,000 foot buffer in order to avoid a significant air quality impact by exposing sensitive receptors to such emissions including hexavalent chromium (Cr<sup>+6</sup>). Deft has similar emissions and qualifies for a 1,000 foot buffer from any residential uses, not as the Project indicates, residential structures.

O5-39  
cont'd.

Section 5.1 must be substantially revised to reflect the Project, to explain any and all buffers including buffers for chrome plating facilities, and to address fully and fairly all air quality impacts of the Project including the potential to expose residents to hexavalent chromium (Cr<sup>+6</sup>) emissions.

**B. Section 5.5, "Geology and Soils," Again Fails to Analyze Program and Project Impacts.**

Section 5.5 tries unsuccessfully to address the Project's impacts on IBC's geology and soils.

First, as we indicated in our May 14, 2009 Comments, Section 5.5 fails to discuss fully and completely the Project's impacts on soils including liquefaction. Although Section 5.5 has been revised to address the shallow groundwater issues, it fails to propose adequate features or mitigation measures to address such impacts. Moreover, it fails to state how high the groundwater levels are. For instance, Impact 5.2 recognizes that "future development could potentially be subjected to seismic related ground failure, including landslides, lateral spreading, subsidence, liquefaction, or collapse, resulting in risks to life." With the existing plans, programs and policies, Section 5.5 concludes that this impact will be less than significant.

O5-40

However, the existing plans, programs and policies do not support this conclusion. For instance, PPP-3 states:

"In accordance with the City of Irvine Grading Code (Municipal Code Title 5, Division 10) and Grading Manual, detailed geotechnical investigation reports for each Rough Grading Plan shall be submitted to further evaluate faults, subsidence, slope stability, settlement, foundations, grading constraints, liquefaction potential, issues related to shallow groundwater, and other soil engineering design conditions and provide site-specific recommendations to mitigate these issues/hazards. The geotechnical reports shall be prepared and signed/stamped by a Registered Civil Engineer specializing in geotechnical engineering and a Certified Engineering Geologist. The City of Irvine Geotechnical Engineer/Engineering Geologist shall review the rough grading plan to ensure conformance with recommendations contained in the reports."

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RDEIR, page 5.5-9. Or again, PPP-5 provides:

“In accordance with the City of Irvine Grading Code (Municipal Code Title 5, Division 10) and Grading Manual, grading and earthwork shall also be performed under the observation of a Certified Engineering Geologist to provide professional review and written approval of the adequacy of natural ground for receiving fills, the stability of cut slopes with respect to geological matters, and the need for subdrains or other groundwater drainage devices. The geologist shall geologically map the exposed earth units during grading to verify the anticipated conditions, and if necessary, provide findings to the geotechnical engineer for possible design modifications.”

RDEIR, page 5.5-9. However, these impermissibly defer the analysis of the geologic impacts of the Project and any necessary mitigation to some future time and some future study. See Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276. The City cannot now await a report from some consultant to determine what is necessary to mitigate or eliminate a geologic impact of the Project. The RDEIR must analyze the impact and propose necessary mitigation.

In addition, Impact 5.5-2 is entitled:

“FUTURE DEVELOPMENT COULD POTENTIALLY BE SUBJECTED TO SEISMIC RELATED GROUND FAILURE, INCLUDING LANDSLIDES, LATERAL SPREADING, SUBSIDENCE, LIQUEFACTION, OR COLLAPSE, RESULTING IN RISKS TO LIFE AND PROPERTY.”

O5-40  
cont'd.

RDEIR, page 5.5-11. After analysis, the RDEIR concludes that this impact is insignificant. However, the analysis is not specific and fails to provide a project level analysis as indicated in the RDEIR. The RDEIR must be revised to provide this project level analysis so that the decisionmakers and the public may understand the full nature and extent of the Project and the individual projects, their impacts and consider any necessary mitigation.

For instance, under Impact 5.5-2, the RDEIR discusses the potential for dewatering activities. It notes:

“For projects where the existing groundwater level is above the subterranean floor level, the floor slabs may be subject to hydrostatic uplift. In addition, there is potential for water seepage through floor slabs and walls which may result in water accumulation and ponding in the basement. Therefore, it will be necessary to incorporate adequate water-proofing and drainage measures for subterranean walls and floor slabs. Also, an active dewatering system consisting of well-points and pumps (with automatic or manual controls) around the buildings may be necessary to control groundwater level and to mitigate water flow into basements during an

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emergency. The well-points installed for construction dewatering may be incorporated into the dewatering.”

RDEIR, page 5.5-12. However, given that at least three of the individual projects which are subject to a project level review have subterranean garages, it is unclear what is required for these projects. The RDEIR cannot defer this analysis and/or mitigation; it must provide the analysis and propose mitigation now. Indeed, the dewatering systems may cause their impacts.

The RDEIR must be revised to discuss these issues, provide sufficient information regarding any and all subterranean features of the Project including swimming pools, parking and other features, provide a complete analysis of all such impacts and develop appropriate mitigation measures.

Moreover, as indicated above, Section 5.5 fails to state what the groundwater levels are in the Project area. However, under Impact 5.5.3, the RDEIR states:

“Excavations extending deeper than about two feet are expected to encounter wet soil conditions and groundwater may be encountered at depths greater than 10 feet during construction.”

O5-40  
cont'd.

RDEIR, page 5.5-12. However, this conflicts with the estimates in Section 5.6, “Hydrology and Water Quality.” There, the RDEIR states:

“Based on previous geotechnical investigations performed in the region of the Irvine Business Complex, groundwater may occur at depths ranging from 5 to 10 feet below ground surface (bgs) for portions of the project sites.”

RDEIR, page 5.7-48. This conflict undercuts Section 5.5's analysis in connection with the potential for liquefaction. Because of this, the RDEIR must be revised to account for the impacts of the Project on geology given these high groundwater levels.

The RDEIR must be revised both at the program level and at the project level. It fails to include any project level features for the seven (7) individual projects and to provide specific project features or mitigation which can be enforced. On the programmatic level, the RDEIR fails to provide any specifics about dewatering, how and when it will occur, and under what authority it will occur. The RDEIR must analyze the impacts of the Project and these individual projects on geology and soils including their potential for liquefaction at those individual project sites.

**C. Section 5.6, “Hazards and Hazardous Materials,” Must be Revised to Include an Adequate Buffer for Existing Industrial Uses from New Residential Uses.**

O5-41

Section 5.6 proposes to address the Project's impacts on Hazards and Hazardous Materials. As before, it is inadequate for several reasons.

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First, Section 5.6.1.1 discusses the regulatory background including federal, state, and regional regulations. However, it ignores the City's own regulations. As indicated above, Section 2-13-7 of the Zoning Ordinance requires that residential uses be separated from hazardous waste residual depositories by a buffer of 2,000 feet. The RDEIR must be revised to review and analyze the applicability of both City and County regulations regarding hazardous materials, conform the Project to such regulations and propose any necessary mitigation.

Second, it is odd that the RDEIR for the Project– the residential transformation of the Irvine Business Complex– focuses on the regulatory environment for hazardous materials, rather than the regulations which prevent siting residential uses near existing industrial uses. These regulations include the California Air Resources Board's requirements as well as the City's own requirements. Please remember that the Project is not the siting of a new hazardous materials facility in the City; rather, the Project is bringing new residential uses in areas adjacent to existing industrial uses which use hazardous materials. Please explain how various regulations may affect the siting of new residential uses in the vicinity of existing industrial uses, why the RDEIR and the Project fail to include such regulations, what Project impacts are related to failing to consider such regulations and what necessary mitigation is necessary for the Project which may conflict with such regulations.

O5-41  
cont'd.

Third, Section 5.6 refers to a technical report by Environmental Data Resources, Inc. on the Irvine Business Complex dated September 9, 2008. The DEIR relied on this same report. The RDEIR notes that: "[a] complete copy of the Environmental Data Resources Report is included in Appendix J." RDEIR, page 5.6-1. However, Appendix J includes only the Executive Summary and several maps; it does not include the full Environmental Data Resources, Inc. Report.

O5-42

Section 5.6.1.2 addresses the local setting regarding hazards and hazardous materials. It provide no programmatic analysis and attempts to conduct the analysis based upon the seven (7) specific projects. However, it is unsuccessful for many reasons.

At the outset, the Project setting is the entire Irvine Business Complex which has "511 regulated facilities in or in the immediate vicinity of the IBC" which are subject to regulation by the South Coast Air Quality Management District for hazardous air emissions. These 511 may affect air quality emissions throughout the Irvine Business Complex. Yet, the RDEIR fails to discuss these 511 regulated facilities in any detail or discuss their potential to create significant Project related hazardous materials or air quality impacts. Please explain and discuss the impacts of Project on such regulated facilities and how the Project will protect such facilities and the new residential users.

O5-43

The DEIR noted: "14 are identified as Title V facilities (see Figure 5.6-1)." DEIR, 5.6-8. However, without explanation, the RDEIR states that "Of these, 8 are identified as Title V facilities within the confines of the IBC (see Figure 5.6-2)." Given that the DEIR and the RDEIR rely on the same EDR Report dated September 2008, it is unclear how these can be different; one must be incorrect. Moreover, RDEIR offers no explanation of the difference in number of facilities within the nine month intervening period and with no new technical study. The RDEIR must be revised to

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discuss this difference and provide an appropriate explanation with reference to a correct technical report.

O5-43  
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Further, the Project level analysis of the seven pending projects is itself inadequate. Table 5.6-2 is really a summary analysis but it is the only analysis in the RDEIR. Table 5.6-2 is replete with suggestions for further study. For instance, Table 5.6-2 discusses the Avalon Jamboree II project and states:

“Further evaluation of the potential risk to project occupants associated with exposure to toxic and carcinogenic air emissions from Cosmotronic, Inc. and B. Braun was recommended.”

RDEIR, page 5.6-10. See also the Irvine Technology Center Project (“Further evaluation of the potential risk to project occupants associated with exposure to the toxic and carcinogenic air emissions was recommended.”); the Kilroy Project (“While emissions from these facility were characterized as low to moderate, an air exposure assessment was recommended to quantify the potential risk to human health and determine compatibility with the proposed residential project.”); the Alton/Millikan Apartments (“Further evaluation of the potential risk to project occupants associated with exposure to the toxic and carcinogenic air emissions was recommended.”); the 2852 Kelvin Project (“Diesel particulate may be emitted by the generators. Further evaluation of the potential risk to project occupants is recommended.”).

O5-44

These recommendations must be pursued **now**, not when the applicant conducts a health risk assessment. As indicated above, CEQA requires that the analysis must occur now and the mitigation proposed now; it cannot await some experts’ reports which are not subject to public review and comment. Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276.

Also, Tables 5.6-2 (Title V Facilities) and 5.6-3 (Hazardous Substance Releases) reference an acronym: “IAA.” This is not explained in the RDEIR. Presumably, it refers to the Industrial Adjacency Assessment which has been rejected in the proposed Project Zoning Code Amendment. Given that the City has rejected such analysis, it is unclear what relevance the IAA’s for the pending projects have. Indeed, together with the IAA, the pending projects had DEIRs drafted and circulated for public review and comment. The RDEIR should refer to these documents. As for the IAA analysis, given that the proposed Zoning Code and PDF 6-5 requires HRAs for such projects, the project proponents should prepare health risk assessments for those projects. The RDEIR should be revised and recirculated to include such assessments and to explain what the IAA is and what is its utility given that the Project does not require such studies.

O5-45

More appropriately, the RDEIR should consider substantial set backs to solve this adjacency problem. Rather than wait for further studies to determine whether the siting of these new residential projects is safe, as recommended by Global Environmental Consulting Company, Inc., the City should establish well recognized buffers around existing industrial users such as Deft so that the safety issue is clear now. Also and importantly, such buffers will address the future

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concerns about incompatibility: the residential users will be concerned about industrial users next to them. If the City establishes substantial buffers, this potential problem will dissolve with the application of such good and sound planning principles.

Unfortunately, the RDEIR fails to follow good and sound planning principles. Instead, the RDEIR employs two weak PDFs which it hopes will serve as a replacement. The PDFs do not serve this purpose.

First, PDF 6-4 provides:

“As required by the proposed zoning code, applications for new residential and/or residential mixed-use development shall submit data to the Director of Community Development, to evaluate compatibility with surrounding uses with respect to issues including but not limited to: noise, odors, truck traffic and deliveries, hazardous materials handling/storage, air emissions, and soil/groundwater contamination.”

Second, PDF 6-5 states:

“For all residential projects located within 1,000 feet of an industrial facility which emits toxic air contaminants, the Project Applicant shall submit a health risk assessment prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment and the South Coast Air Quality Management District to the Community Development Director prior to approval of any future discretionary residential or mixed-use project. If the HRA shows that the incremental cancer risk exceeds one in one hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. T-BACTs may include, but are not limited to, scrubbers at the industrial facility, or installation of Minimum Efficiency Reporting Value filters rated at 14 or better at all residential units.

RDEIR, page 5.6-23. PDF 6-5 is similar to PDF 2-1 and has similar problems. As indicated in the Global Environmental Consulting Company, Inc.’s various reports including the January 19, 2010 report, the scrubbers and filters will not work; the appropriate project feature was identified in the DEIR: 1,000 foot buffers between existing industrial users and new residential users.

Further, as noted in the Global Environmental Consulting Company, Inc.’ January 19, 2010 report at page 5, nitrocellulose also poses a substantial problem for adjacent residential uses. They note:

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"If a fire extends to the nitrocellulose storage area and causes a detonation, it will be the equivalent of 1,900 pounds of TNT detonating, causing extensive damage over 1,000 feet beyond the plant boundary."

This report also notes other problems including fire and spills for which the appropriate mitigation or project design feature is separation. Indeed, the only way to protect residential users and Deft from such a potentially disastrous event is to establish a substantial buffer, e.g. 1,000 feet, between Deft and any new residential uses. Given these potential problems, the DEIR's proposal to separate facilities which use hexavalent chromium (Cr+6), and the expansion of the Business Complex District, please explain why the RDEIR does not expand the Business Complex District north of Interstate 405 westerly from Jamboree Road to MacArthur and Armstrong or require a 1,000 foot buffer between new residential uses and existing industrial uses.

PDF 6-4 fails for several reasons. First, it impermissibly defers analysis and mitigation. Second, it lacks any standards by which the Director of Community Development may evaluate the relevant data.

For both of these features, the better approach, the good and sound planning approach, is to require 1,000 foot separation between existing industrial uses and new residential uses or expansion of the Business Complex District west of Jamboree Road. The RDEIR should be revised to discuss these issues and evaluate the impacts of a revised project which includes these features.

Impact 5.6-1 recognizes that the Project may expose "development of sensitive land uses in proximity to facilities that handle, store, or transport hazardous materials." RDEIR, page 5.6-24. Surprisingly, the analysis of this impact relies upon federal and state regulation to mitigate such uses from exposure to accidental releases from such facilities.

However, accidents really cannot be regulated other than by separation of incompatible land uses such as existing industrial uses and new residential uses. Moreover, relying upon regulation of industrial uses to site residential uses adjacent to such uses is problematic: the such regulations require reasonable distances between existing industrial uses which employ hazardous materials and new residential uses.

In addition, the analysis of Impact 5.6-1 relies upon disclosures to residential uses to mitigate such exposure. Such disclosures may protect developers, public agencies and others responsible for siting new residential uses near existing industrial uses but it will neither protect the residential users nor the existing industrial users. The only method to protect such uses is distance: a 1,000 foot buffer between existing industrial uses and new residential uses; or expand the Business Complex District north of Interstate 405 easterly from Armstrong and MacArthur to Jamboree.

Further, the analysis of Impact 5.6-1 recognizes that future study is necessary to finalize the analysis. For instance, the RDEIR states: "Further evaluation of the toxic and carcinogenic air

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emissions would be necessary to determine the risk to project occupants.” However, the focus of this analysis is the occupants of the pending projects. All potential residents within the Project area may be exposed to such emissions. Indeed, the RDEIR must state the potential for any Project resident to be exposed to toxic and carcinogenic air emissions from the Project. As indicated above, the RDEIR cannot permissibly defer such analysis. The RDEIR must be revised to discuss these impacts and propose necessary mitigation and/or project features including establishing a 1,000 foot buffer between new residential uses and existing industrial uses and/or expanding the Business Complex District north of Interstate 405 and west of Jamboree Road.

Importantly, this analysis also notes that PDF 6-5 may address this potentially significant impact. It states:

PDF 6-5 states that for all residential projects located within 1,000 feet of an industrial facility which emits TACs, the Project Applicant shall submit an HRA, prepared in accordance with recognized policies and procedures, to the Community Development Director prior to approval of any tentative tract map. If the HRA shows that the recognized risk and/or hazard thresholds are exceeded, the applicant will be required to identify and demonstrate that T-BACTs are capable of reducing risks and/or hazards to an acceptable level. TBACTs may include, but are not limited to, installation of pollution control equipment at the industrial facility, or installation of MERV filters at all residential units.”

O5-48  
cont'd.

RDEIR, page 5.6-25-26. However, this shows why PDF 6-5 is inadequate: it may be ineffective; and the Director has no power to deny the Project based upon the HRA. PDF 6-5 must be strengthened to require 1,000 foot buffer between industrial uses which employ hazardous materials and new residential uses.

Finally, under Impact 5.6-1, the RDEIR states that PDF 6-2 requires disclosures to new residential users of the new residential uses. However, it also states: “The language for this disclosure shall be as specified by the Community Development Director.” Given the importance of such disclosure, the RDEIR should state the nature and extent of such disclosure and the standards for such disclosures.

O5-49

Impact 5.6-2 also recognizes that the Project area includes various hazardous material sites. Again, the discussion of this Impact relies upon PDF 6-1, 6-2, 6-3 through 6-8. However, the analysis fails to discuss how the Project including all PDFs protects existing industrial users which employ hazardous materials from new residential uses and it protects new residential users from existing industrial uses. This analysis must be revised to discuss and identify how the PDFs may protect existing industrial uses and the new residential uses including a discussion of the DEIR’s proposal to separate chrome plating facilities from new residential by a 1,000 foot buffer.

O5-50

Section 5.6.5 concludes that the Project will have less than significant impacts on hazards and hazardous materials. However, this analysis relies extensively upon existing regulations of

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industrial users with hazardous materials. These regulations can neither serve to evaluate and protect existing industrial uses from new and adjacent residential uses nor to evaluate and protect new residential uses. The better and sound planning policy is to separate such incompatible uses: this is the appropriate local regulation. This is the regulation that the City must incorporate in the Project.

O5-50  
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Finally, as noted above, the DEIR recognized the need to separate facilities with hazardous materials such as hexavalent chromium and nitrocellulose from new residential uses. The RDEIR also recognizes the need to separate existing industrial uses from new residential uses by prohibiting residential uses near Allergan and establishing the Business Complex District where the City had earlier proposed residential uses. All of this means that the City recognizes that adequate separation between existing industrial uses such as Deft and new residential uses is effective and feasible. The RDEIR and the Project must revised to include Project features which establish a 1,000 foot buffer between Deft and new residential uses and/or expand the Business Complex District north of Interstate 405 westerly from Jamboree Road..

O5-51

**D. Section 5.7, "Hydrology and Water Quality," Fails to Address and Mitigate Programmatic and Project Level Impacts.**

Section 5.7, "Hydrology and Water Quality," focuses on the Project's potential impacts on hydrology and water quality. As noted above, in contrast to the rest of the RDEIR, Section 5.7 correctly characterizes the Irvine Business Complex:

"The IBC is a **business-concentrated area** located within the City of Irvine and is generally bounded on the west by the Costa Mesa Freeway (SR-55), on the south by Campus Drive, and on the east by the San Diego Creek Channel (Reach 1). The existing condition of the IBC consists primarily of commercial and office buildings, warehouses and a **few residential high rise condominiums.**"

O5-52

RDEIR, 5.7-1 (Emphasis supplied.). Section 5.7 also correctly notes that groundwater is quite high in the Project area:

"Based on previous geotechnical investigations performed in the region of the Irvine Business Complex, groundwater may occur at depths ranging from 5 to 10 feet below ground surface (bgs) for portions of the project sites."

RDEIR, page 5.7-48. Unfortunately, it fails on many other fronts.

First, in our May 14, 2009 Comments, we stated that Section 5.7 included a discussion of bioswales and other water conservation/water quality improvements. We noted that these features may adversely affect the already high groundwater levels. The Response to this Comment No. O3-55 states:

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“Due to the developed nature of the IBC, there are very few opportunities to construct detention basins or bioswales within individual project sites.”

RDEIR, Q-148. However, Section 5.7 goes on for pages about the City’s Local Implementation Plan (“LIP”) under the County of Orange’s Drainage Area Management Plan (“DAMP”) which LIP includes best management practices which will be included in the Project including bioswales and detention basins. Indeed, under Impact 5.7-5, the RDEIR states that:

“Since infiltration BMPs, such as pervious pavement and infiltration trenches, require a depth of 10 feet or greater to groundwater to minimize impacts from storm water pollutants, infiltration BMPs are not proposed to serve as primary treatment BMPs for storm water runoff in areas with high groundwater. Any pervious pavement used at these sites will require impermeable linings and underdrain systems to eliminate contact with groundwater and reduce the potential for ponding water on the surface.”

O5-52  
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RDEIR, page 5.7-48. As indicated below, this statement creates problems for several areas of the impact analysis.

Section 5.7 also recognizes that an alternative approach is to participate in a regional and basin treatment systems such as the Irvine Ranch Water District’s San Diego Creek Natural Treatment System Program. However, Section 5.7 lacks specifics on how the City or project proponents could or would participate in such established programs or how such regional programs would avoid local runoff and local water quality problems. Please explain how the Project and its applicants would participate in such regional programs, and/or is the RDEIR proposing additional regional programs which would require additional environmental analysis.

Interestingly, although the RDEIR refers to the City’s LIP and to a model LIP under the County’s DAMP, the RDEIR does not state when or if the City has adopted a LIP and what are its specific best management practices. The RDEIR should be revised to discuss the City’s LIP, when it was adopted and what are its components.

O5-53

Impact 5.7-1 states that the Project would not adversely affect groundwater recharge because it would not substantially increase impervious surfaces. It continues:

“It is reasonable to assume that the proposed General Plan amendment will not increase the amount of impervious surfaces in Irvine Business Complex, but more likely reduce the imperviousness, as industrial sites generally have a greater percentage of impervious surfaces in comparison to residential sites.”

O5-54

RDEIR, page 5.7-42. However, this raises several problems. First, the RDEIR should not assume anything. The Project can require increased use of pervious surfaces. Second, as noted above, the Project area suffers from high groundwater, as high as four feet below grade at the Deft site.

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Increasing pervious surfaces may have an adverse impact on groundwater recharge by causing rising groundwater and flooding in the Project area. Indeed, as noted above, the RDEIR recommends installing impervious layers below pervious layers where groundwater is within ten feet of ground surface. This condition permeates the Irvine Business Complex. Hence, it is likely that the impervious surfaces will increase and may create problems for groundwater recharge. (The RDEIR notes that some of the Project area soils do not percolate well so that infiltration in some areas may not occur. However, the technical appendix K and its reports do not provide any basis for such an assertion.)

Moreover, Impact 5.7-1 notes that the individual projects will also not cause significant hydrology impacts, because these also will not interfere with groundwater recharge. However, as indicated in Section 5.5 and later in Section 5.7, these individual projects and other may require dewatering activities which will adversely affect groundwater recharge by sending stored water into some disposal site and away from beneficial uses. Dewatering is required because the individual projects may suffer from rising groundwater and therefore inundation in connection with various subterranean project features such as parking, swimming pools and other such features. Such results are adverse to groundwater recharge and may require groundwater storage activities to be cut back.

O5-54  
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Impact 5.7-3 addresses impervious surfaces and surface water impacts. It concludes that the Project will not result in increased impervious surfaces and will not adversely affect storm water run-off. This is incorrect.

As indicated above in our comments on Section 5.5, the Project will intercept groundwater and be required to dispose of it. Groundwater which rises to the surface or is otherwise brought to the surface will mingle with surface waters. However, as noted below and in Impact 5.7-5, such groundwater may have contaminants and/or other problems which would render it unfit for disposal into storm drains as proposed by the Project. The RDEIR must be revised to address this concern and to develop a method of disposal.

Impact 5.7-5 addresses whether the Project may violate water quality standards. It concludes that it will not create significant impacts on water quality. However, the groundwater analysis is deficient for several reasons. First, it is unclear that the City and/or project proponents will have the right to intercept groundwater. The City and/or project proponents will produce groundwater and dispose of that groundwater into the storm drains. That disposal will constitute a waste of water in violation of California Constitution Article 10, Section 2. The City and/or project proponents who plan on intercepting groundwater, dewatering their sites, and disposing of the potentially contaminated water in the storm drains will need permission from the Orange County Water for such a special water project and perhaps a permit from the State Water Resources Control Board for the waste of water. The RDEIR must be revised to address the rights and responsibilities of entities seeking to produce groundwater in the Orange County Water District boundaries. Moreover, again, this appears to be piecemealing the Project analysis.

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Second, Appendix K's Water Quality Technical Report states that:

"Due to the relatively shallow groundwater levels within portions of the San Diego Creek and Newport Bay watersheds, excess pollutants in groundwater may pose threats to surface water quality when discharged. Discharges that may pose a threat to water quality include wastes associated with well installation, development, test pumping, dewatering from subterranean seepage, and groundwater dewatering wastes from construction sites."

Appendix K, page 8. Although this report indicates that the Santa Ana Regional Water Quality Control Board may permit limited discharges, permanent discharges would require their own permits. The three projects with subterranean garages would require such individual permanent permits for permit discharge. Other projects may have subterranean features such as swimming pools which would also require dewatering. These would also require such permanent permits.

Third, it is unclear that the intercepted water with "excess contaminants" would be permitted discharge rights without first some treatment to meet the standards of the permit. The RDEIR must be revised to provide the character of the groundwater proposed to be discharged and discuss the standards for discharge under the temporary permit by the Santa Ana Regional Water Quality Control Board.

O5-55  
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Fourth, the analysis under Impact 5.7-5 states:

"The requirement to obtain a permit from the RWQCB to allow discharge of water from dewatering operations into storm drains would be incorporated into the Storm Water Pollution Prevention Plan for the project."

RDEIR, page 5.7-48. However, several things remain unclear and require answer: What is the quality of the water proposed to be discharged? What are the contaminants in such water? Will the Santa Ana Regional Water Quality Control Board allow such contaminant water to be discharged into storm drains which empty into San Diego Creek and Upper Newport Bay which already suffer substantial water quality problems recognized in the RDEIR? The RDEIR should be revised to address these and other questions.

Moreover, the City cannot defer such permits and measures until after the City's project approvals. This amounts to piecemeal environmental review. The Santa Ana Regional Water Quality Control Board may not issue the permit or may condition it substantially. All of this study and discussion must occur now for the pending projects. It cannot await some hearing at the Regional Board. The RDEIR must be revised to review and analyze completely the Project full impacts on hydrology and water quality and propose any necessary mitigation measures.

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**E. Section 5.8, "Land Use and Planning," Again Fails to Analyze Fully the Project's Land Use Impacts.**

Section 5.8 attempts to address the Project's land use impacts; again it is unsuccessful. Section 5.8 begins with a characterization of existing land uses. It notes that:

"Several companies, like Allergan, Edwards Life Sciences, St. John Knits, and Taco Bell have located their company headquarters in the IBC, some of which date prior to the City of Irvine's incorporation in 1971."

RDEIR, 5.8-1. Deft Incorporated proudly counts itself as having located their headquarters and a production facility in Irvine since 1975. Allergan lies within the Business Complex District and St. John Knits have moved their facility to an area in the Business Complex. Unfortunately, other businesses are not within the Business Complex District; this creates the land use compatibility impact which the RDEIR recognizes.

For instance, Section 5.8 contains moments of candor. For instance, PDF 8-2 provides:

"As described in the proposed zoning code relating to compatibility with surrounding uses, the IBC mixed-use environment is an urbanized area, and **land use compatibility issues are expected to occur**. Therefore, applications for new residential and/or residential mixed-use development shall submit data, as determined by the Director of Community Development, for the City to evaluate compatibility with surrounding uses with respect to issues including, but not limited to: noise, odors, truck traffic and deliveries, hazardous materials handling/storage, air emissions, and soil/groundwater contamination."

RDEIR, page 5.8-8 (Emphasis supplied). However, the "land use compatibility issues" cannot be addressed by data or reports approved by anyone including the Director of Community Development. The incompatibility can only be mitigated by adequate separation between incompatible uses. See Global Environmental Consulting Company, Inc.'s January 19, 2010 letter to this office which is incorporated herein.

As noted above, Urban Neighborhood District boundaries and the Business Complex District boundaries have changed since the DEIR. Under the DEIR, the Urban Neighborhood District extended south of Interstate 405 and from east of Jamboree to MacArthur Blvd. Under the RDEIR, the Business District now consumes much of this area. The reason for the change is the City's settlement with Allergan, Inc. which objected to residential uses on its borders. The City recognized this incompatibility and redrew the boundaries. However, this revision left other industrial uses such as Deft to continue to suffer the land use incompatibility of having residential uses on their borders.

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As stated above, Global Environmental Consulting Company, Inc. has stated that the only effective way to limit and mitigate such land use incompatibility is to separate new residential uses by more than 1,000 feet from existing industrial uses. Surprisingly, as discussed below, Section 5.8 agrees.

Impact 5.8-1 addresses the Project's potential to divide existing communities; it concludes that the Project will have a less than significant effect in creating such division. This is incorrect. Indeed, with the revised Project as a result of the Allergan settlement, this division becomes patent. The Business District south of Interstate 405 extends from Jamboree Road to MacArthur. The DEIR earlier had indicated that this would be in the residential district.

However, north of Interstate 405, the Business District begins well west of most industrial uses, extends westerly from MacArthur and up along Armstrong Ave. to the City boundaries. This leaves many of what the Vision Plan formerly called "Key Businesses" potentially surrounded by residential uses. That is, it cuts off-divides- the industrial businesses north of Interstate 405 such as Deft from the businesses south of Interstate 405 within the Business Complex District.

The only way to eliminate this potentially significant impact is to redraw the Business Complex District north of Interstate 405 from Armstrong and MacArthur to Jamboree. This would unify the Business Complex District and eliminate the potentially significant impact which would divide the industrial businesses which have historically flourished in the Irvine Business Complex. The RDEIR and the Project should be revised to include this expansion of the Business Complex District, discuss how this Project feature alleviates many Project impacts including issues regarding land use incompatibility, and discuss mitigation measures, if any, akin to any mitigation measure required by the expansion of the Business Complex District south of Interstate 405.

Impact 5.8-2 addresses the Project's potential to conflict with applicable adopted land use plans. As indicated in our May 14, 2009 Comment letter, the Project conflicts with the City's General Plan and other land use plans.

For instance, the analysis for Impact 5.8-2 states the Project is consistent with the City's General Plan, Land Use Element, Objective A-2 which provides that the City will "[r]etain and attract manufacturing and industrial uses within designated business centers." RDEIR, page 5.8-11.

This analysis indicates that the Project establishes two districts within the Irvine Business Complex, the Urban Neighborhood District and the Business Complex District, and that the Business Complex District will serve to retain and attract manufacturing and industrial uses.

However, the entire Irvine Business Complex was once such a district for industrial and manufacturing uses; with the Project- the residential transformation of the Irvine Business Complex- businesses are being ignored or moved into the narrowly drawn Business Complex District, e.g. St. John Knits. The Project has changed the location and area of the business district; the RDEIR cannot claim that it will attract and retain businesses and that it will not hurt businesses in the redrawn and expanding residential district. It is like the game of musical chairs: businesses

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without seats in the new and smaller Business Complex District will be out of business. Without an enlarged Business District which includes industrial businesses north of Interstate 405 and west of Jamboree Road, the Project conflicts with Objective A-2. Please explain how the Project retains and attracts industrial businesses north of Interstate 405 and east of Armstrong Ave. without substantial buffers or expansion of the Business Complex District.

O5-58  
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Or again, the analysis for Impact 5.8-2 states that the Project is consistent with the City's General Plan, Land Use Element, Objective A-6 which provides that the City will:

"Ensure, through the discretionary review process, the public health, safety, and welfare of sensitive receptors/land uses when locating such uses in close proximity to the following land uses ):

- Uses which handle, generate, and/or transport hazardous substances (as defined by federal and state regulations).

RDEIR, page 5.8-13. The analysis states that Section 5.6 shows that the Project will preserve public health, safety and welfare, and that the disclosures required by the Project will further this goal.

As indicated in our comments on Section 5.6, the Project threatens to expose sensitive receptors to a whole host of hazards and dangers. The only effective method of ensuring that public health, safety, and welfare is maintained while retaining and preserving existing industrial uses is either to expand the Business Complex District to include Deft and other industrial users north of Interstate 405 or to establish a buffer of 1,000 feet between the existing industrial users and the new residential users. Although the Project described in the DEIR adopted the latter option, the Project in the RDEIR protects neither new residential users nor existing businesses. Hence, the Project conflicts with Objective A-6. Again, given that the only effective project design feature and/or mitigation measures to ensure safety is separation, please explain why the RDEIR has rejected the 1,000 buffer set forth in the Project analyzed by the DEIR. Also, please explain how and by what principled analysis the boundaries of the Business Complex District were narrowly drawn so as to exclude within that District many Key Businesses located north of Interstate 405.

O5-59

For instance, the analysis of Impact 5.8-2 which notes that the Project may conflict with applicable land use plans notes that the Project is consistent with the SCAG RCP Consistency Analysis. The Impact 5.8-2 analysis finds that the Project is consistent with the SCAG Air Quality Action Plan, because it provides:

"As outlined in PDF 2-1, based on the recommended buffer distances of the California Air Resources Board, applicants for new residential developments in the IBC are required to place residential structures outside of the recommended buffer distances to the following stationary air pollutant sources:

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- 1,000 feet from the truck bays of an existing distribution center that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units, or where transport refrigeration unit operations exceed 300 hours per week.
- 1,000 feet from an existing chrome plating operation.

RDEIR, page 5.8-41. PDF 2-1 contains no such prohibition. Hence, the conclusion here must be the reverse: the Project which contains no such prohibition on siting of residential uses adjacent to industrial uses must therefore be inconsistent with SCAG's RCP Consistency Analysis. Therefore, the Project will create a significant impact on land use and conflict with approved and applicable land use plans.

However, the City can easily address this inconsistency: The RDEIR must be revised to bring the Project in line with SCAG's RCP Consistency Analysis and forbid residential uses within 1,000 feet of chrome plating facilities and facilities using hexavalent chromium (Cr<sup>6+</sup>). The RDEIR must be revised either to recognize this significant impact or to modify the Project to provide for a 1,000 foot buffer between new residential uses and chrome facilities or facilities using hexavalent chromium (Cr<sup>6+</sup>).

Further, as indicated throughout, the Project conflicts with other elements of the City's General Plan including the Seismic Element, Noise Element, and other elements.

O5-59  
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As for cumulative impacts, the RDEIR states that:

"Cumulative intensification of various land uses in the IBC has the potential to result in land use compatibility impacts related to hazards/hazardous materials, air quality, noise, and traffic. In light of the mixed-use nature of the IBC, each residential development application in the IBC is reviewed by the City of Irvine and other agencies, such as OCFA, the Irvine Police Department, and ALUC (when deemed necessary), for compatibility with surrounding land uses. Land use compatibility is determined after a complete evaluation of potential land use conflicts. Cumulatively, placing additional residential projects in the IBC after a land use compatibility analysis, as is the current practice, would provide needed housing in the IBC while still retaining the mature industrial development and its associated job base. As a result, cumulative impacts to land use and planning are not considered significant."

RDEIR, page 5.8-50. However, this does not address the land use incompatibility between existing industrial uses and new residential uses. As indicated above, the only method to address this incompatibility is separation: either enlarge the Business Complex District from Armstrong to Jamboree, north of Interstate 405; or establish a buffer of 1,000 feet between new residential uses and existing industrial uses. The RDEIR and the Project should be revised to enlarge the Business

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Complex District as indicated above; or require a substantial buffer between existing industrial users and new residential users.

Finally, Section 5.8 concludes that, as revised and with existing regulations, the Project will not create a significant impact in connection with the Project's potential to divide an existing community (Impact 5.8-1). However, as indicated above, the City cannot rely on existing regulation on industrial businesses to lessen the significance of this impact. Rather, the City should either enlarge the Business Complex District as indicated above, or require a substantial 1,000 foot buffer between existing industrial uses and new residential uses.

O5-59  
cont'd.

As for Impact 5.8-2, consistency with appropriate land use plans, the RDEIR notes that the Airport Land Use Commission ("ALUC") has not yet reviewed the revised Project. The Council could override the Land Use Commission and adopt a Statement of Overriding Considerations relating to ALUC. However, as indicated above, Project creates other inconsistencies which must be addressed. The RDEIR must be revised to resolve these inconsistencies and to create substantial protections for existing industrial uses including expanding the Business Complex District as indicated above, and/or establishing a 1,000 foot buffer between existing industrial uses and new residential uses.

**F. Section 5.9, Noise Impacts of the Project, Still Fails to Address the Core Noise Issues.**

In our May 14, 2009 Comments, we noted that the Project will create substantial noise impacts from stationary sources by exposing residential uses to loud noises generated by industrial uses including loading and unloading, equipment testing and so forth. The Response to Comments and the RDEIR state that these impacts are less than significant due to PPP 9-2 which requires applicants prior to issuance of building permits to submit an acoustical report to the satisfaction of the Director of Community Develop which shows that the project will be sound attenuated against present and projected noise levels, including roadway, aircraft, helicopter and railroad, to meet City interior and exterior noise standards. However, as we indicated in our May 14, 2009 Comments, this is insufficient and fails to satisfy the requirements of CEQA.

O5-60

As indicated above, the RDEIR cannot defer analysis and feasible mitigation. As indicated above, "... an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. (Citation omitted.)" Defend the Bay v. City of Irvine (2004) 119 Cal. App. 4th 1261, 1276. Here, the City is going too far by deferring this noise analysis and not addressing it now.

Further, as we indicated in our May 14, 2009 Comments, Table 5.9-4 which sets forth the requirements of the City's Noise Ordinance displays the problems clearly. The City's Noise Ordinance limits exterior noise levels for residential uses at night as follows: 50 dBA for 30 minutes; 55 dBA for 15 minutes; 60 dBA for 5 minutes; 65 dBA for 1 minute; and 70 dBA maximum. However, Code allows industrial uses to emit noise at the following levels 24 hours a

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day: 70 dBA for 30 minutes; 75 dBA for 15 minutes; 80 dBA for 5 minutes; 85 dBA for 1 minute; and 90 dBA maximum. This 20 dBA increase for industrial uses is significant when residential uses are located adjacent to a existing industrial use which emits a maximum 90 dBA. As indicated throughout, the appropriate way to resolve this noise impact is separation of the incompatible land uses: further expand the Business Complex District north of Interstate 405 from Jamboree to MacArthur and Armstrong; or establish a substantial 1,000 foot buffer between existing industrial uses and new residential uses.

O5-60  
cont'd.

The RDEIR and the Project must be revised to provide protection from noise impacts of the Project by exposing Project residences to industrial generated noise.

**G. Section 5.12, Recreation Impacts of the Project, Fails to Discuss Fully and Analyze the Project's Recreational Impacts.**

Section 5.12 addresses the Project's impacts on recreational resources. It concludes that the Project will have no such impacts. However, this is incorrect.

Section 5.12.2 lists the thresholds of significance for recreational resources:

- "R-1 Would increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.
- "R-2 Includes recreational facilities or requires the construction or expansion of recreational facilities which might have an adverse physical effect on the environment."

O5-61

RDEIR, page 5.12-5. However, Section 5.12 really only analyzes threshold R-1 and virtually ignores R-2.

Impact 5.12-1 which allegedly addresses both R-1 and R-2 recognizes that:

"THE PROPOSED PROJECT WOULD GENERATE APPROXIMATELY 9,858 ADDITIONAL RESIDENTS, WHICH WOULD INCREASE THE USE OF EXISTING PARK AND RECREATIONAL FACILITIES. [THRESHOLDS R-1 AND R-2]"

RDEIR, page 5.12-8. Further, the analysis of Impact 5.12-1 states:

"Based on the Park Code, the project would generate a need for a total of 49.3 acres of parkland at buildout, with 19.7 acres of community parkland and 29.6 acres of neighborhood parkland."

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However, the Irvine Business Complex contains no parks or recreational areas. Table 5.12-1 shows the City's parks; only Bill Barbour Park is in close proximity (.5 miles) from the Irvine Business Complex. Table 12-5 shows that Bonita Canyon Sports Park in the City of Newport beach lies within .6 miles of the Irvine Business Complex. However, the RDEIR contains no analysis that the increased population brought to the Irvine Business Complex by the Project will adversely impact the Bonita Canyon Park. The RDEIR should be revised to address this impact.

Moreover, as indicated above, Threshold R-2 addresses the potential that the Project will require creation of new parks or expansion of existing parks. Section 5.12 states that:

"The City is also currently seeking adequate sites within the IBC for construction of a public community-level park. Funds from the general IBC community park account would be used for purchase of the site and construction of the park. Since there is insufficient available land in the IBC for a community-level park, the City is investigating opportunities adjacent to the IBC where more land for such a use may be available and convenient to nearby residents."

O5-61  
cont'd.

RDEIR, page 5.12-10. The Project requires this new public community level park within the Irvine Business Complex; it is part of the Project. However, the RDEIR fails to analyze the Project under Threshold R-2. Again, the City seeks to engage piecemeal analysis which is forbidden by CEQA. The RDEIR improperly segments the Project into the residential project and then the park project. As indicated above, CEQA requires that the RDEIR analyze the entire Project including the acknowledged new community level park. The RDEIR must be revised to analyze this part of the Project and develop any necessary mitigation measures.



**H. Section 5.13, the Project's Transportation and Traffic Impacts, Fails to Comply with Judge Sundvold's Orders, Fails to Discuss Fully and Analyze Completely the Project's Traffic Impacts, and Fails to Propose Adequate Mitigation.**

Section 5.13 attempts to analyze the Project's transportation and traffic impacts. However, Section 5.13 fails in this analysis and continues the errors which Judge Sundvold found and barred.

O5-62

Section 5.13.1.1 discusses the Project study area. In contrast to the candid characterization of the Irvine Business Complex in Section 5.7, Hydrology and Water Quality, Section 5.13 is vague about the existing uses in the Irvine Business Complex:

"The Irvine Business Complex, also referred to within the City of Irvine as Planning Area 36, is a mixed-use area that encompasses approximately 2,800 acres, located wholly within the City of Irvine."

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RDEIR, 5.13-1. This broad characterization is unfortunate because Section 5.13 uses the area's land uses to predict traffic patterns and volumes. Section 5.13.1.1 should be revised to state clearly the predominant uses in the Irvine Business Complex as stated in Section 5.7 or similar refer to the characterization in Section 5.7.

Section 5.13.1.2 discusses the transfer of development rights ("TDR") which it acknowledges were established in 1992. As indicated above, the RDEIR must include a discussion of the 1992 Project, the establishment of the TDR program, and the 1992 EIR. Interestingly, this section states:

"Although the land use assumptions for the Vision Plan will supersede the 1992 assumptions, the existing TDR mechanism, and the existing development intensity, i.e. 'trip', budgets will remain in place. The current IBC development intensity database will not change as a result of the IBC Vision Plan; however, as new land uses are proposed, the database will be updated accordingly and reconciled with the City's traffic model, which assumes buildout of the land use assumptions of the Vision Plan."

Id. This is unclear. Please explain how the Project assumptions will supercede the 1992 assumptions but the 1992 mechanism will still work. For eons, putting new wine in old bottles has always been a bad idea. Indeed, it is unclear that the existing trip budgets and transfers which have already occurred will fit with the Project assumptions. Please explain how this occurs.

O5-62  
cont'd.

Section 5.13.1.4 discusses the traffic analysis methodology. Among other things, this section discuss the trip budget. It indicates that:

"For industrial land uses the AM peak hour trip rate was utilized, for all other land use categories the PM peak hour trip rate was utilized."

RDEIR, page 5.13-12. It is unclear that this is the most conservative or realistic method to calculate traffic within the Irvine Business Complex. Indeed, it is unclear why the RDEIR is using only one peak hour trip rate rather than both AM and PM for all uses. In addition to number of trips, the RDEIR must also consider and analysis the timing and direction of those trips in order to provide a true and conservative characterization of the Project's traffic impacts.

Also, this Section notes that the trips for new residential uses were based upon "land use trip rates for multi-family residential units." RDEIR, page 5.13-12. It is unclear that this is the most conservative method of calculating trips for the new residential or if this is the methodology used for prior transfers. Please explain this methodology on both issues and why it is the most conservative traffic calculation method.

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Section 5.13.1.5 addresses existing conditions. It begins:

“The current setting for land use is focused on the IBC as a major employment center and office park complex. **Recent development patterns have been slowly transforming the IBC into a mixed-use community, through integration of residential and supporting land uses.** Land use quantities for 2008 Existing Conditions (No Project) have been developed by the City of Irvine and are illustrated in Table 5.13-7.”

RDEIR, page 5.13.21 (It appears that Table 5.13-7 has resolved its earlier conflicts with Tables 3-1 and 4-2.) However, as we noted in our May 14, 2009 Comments, the “redevelopment patterns [which] have been slowly transforming the IBC into a mixed-use community, through integration of residential and supporting land uses” are part of the Project. As indicated above, Judge Sundvold already found that the City had never fully analyzed this residential transformation of the Irvine Business Complex. The RDEIR must do this. In order to accomplish this task, the RDEIR must not use “[l]and use quantities for 2008 Existing Conditions (No Project)” but rather the land use quantities for 1992 Existing Conditions as the No Project condition. Only in this manner can the RDEIR evaluate the traffic impacts of the Project, the residential transformation of the Irvine Business Complex. Please explain how the RDEIR has adequately evaluated these traffic impacts and provided necessary mitigation.

O5-63

Impact 5.13-1 states:

“BUILDOUT OF THE IBC PURSUANT TO THE PROPOSED PROJECT WOULD GENERATE ADDITIONAL TRAFFIC VOLUMES AND IMPACT LEVELS OF SERVICE FOR THE EXISTING AREA ROADWAY SYSTEM. [THRESHOLD T-1,T-2]”

RDEIR, page 5.13-38. However, it is unclear whether such Project impacts can be mitigated. Rather, the Conclusion for the analysis of Impact 5.13-1 discusses changes in planned but unfunded roadways, bridges and on ramps as indicated above. It is further unclear how such changes are warranted if the Project will generate additional traffic volumes and impact levels of service.

O5-64

For instance, one of the proposed changes to the MPAH is to reduce Von Karman from 6 to 4 lanes between Barranca and Michelson. However, when volumes increase along Jamboree and MacArthur, traffic will divert to Von Karman. Please explain why this traffic diverted together with the downgrade will not adversely affect traffic on Von Karman.

Section 5.13.3.4 addresses the existing traffic conditions plus the Project. This Section notes:

“Table 5.13-12 presents the land use quantities by ITAM code for the IBC traffic study area, while Appendix N (see Appendix J of the traffic study) presents land use

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quantities by type and by IBC TAZ as well as a land use summary by individual project.”

O5-65  
cont'd.

RDEIR, page 5.13-43. Table 5.13-12 and Appendix N's Appendix J show existing land use, projected Project land use and the percentage changes. However, it is unclear how the changes in nonindustrial land uses were calculated. Please explain and support these calculations.

The Project residential change is clear based upon Table 3-1. However, residential uses and the trip transfers may come from a variety of a variety of uses including office, industrial, warehouse, retail, and even hotel. Nonetheless, Table 5.13-12 projects that, with the Project, residential uses will increase by 240%, retail uses will increase by 29%, hotel uses will increase by 24%, office uses will increase by 28%, industrial uses will decrease by 10%, miniwarehouse uses will decrease by 53% and extended stay hotel uses will increase by 244%.

However, it is unclear where all of the trips will come for the increase residential, retail, office and extended stay hotel. Miniwarehouses do not generate many trips; industrial uses generate fewer trips than office uses. Neither Section 5.13.3.4 nor the Traffic Study offer an explanation for where the trips for the increases will come. Moreover, what is the basis for the projections? The Project fixes the increased residential uses; all other uses are up for grabs. So, how does Section 5.13.1.4 and/or the Traffic Study accurately predict that industrial and miniwarehouse uses will decline at a certain number or percentage or that retail and office will increase by a certain number or percentage? Moreover, each use generates trips at different rates. How can the RDEIR and the Traffic Study make any accurate assumptions about increased and decreased use square footage and then translate that into trips?

O5-66

Further, Table 5.13-20 clearly shows a substantial increase in traffic in the Irvine Business Complex for both 2015 and 2030 with Project as compared to the same years without the Project. However, the traffic counts remain unclear. For instance, the peak hour trips and the average daily trips are constant with the Project in 2008 and 2030. However, the Park Place Project will only be developed after 2015. Hence, the numbers for 2030 must be larger. Table 5.13-20 is crucial to understand the traffic impacts of the Project, yet it appears that its numbers are incorrect. Please revise the numbers and explain the nature of the error or why it is not in error.

O5-67

Impact 5.13-2 discusses the Project's potential to increase hazards due to a design feature or incompatible uses. The analysis focuses upon the design issue: the City's roadway standards insure that the Project will not create a hazard due to a design feature. However, the analysis is silent on the potential for hazard due to incompatible uses. Although the Project brings sensitive receptors to the IBC with hazardous materials which are delivered on roadways, the analysis does not address this issue. Please explain why the Project which may site new residential uses adjacent to industrial uses which receive and transport hazardous uses will not potentially increase hazards to Project residents due to the transport of hazardous materials.

O5-68

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In addition, the Traffic Study attempts to explain the Project's program of the transfer of development rights. The Traffic Study states:

"Since 1992, the IBC Planning Area has had provisions in place to allow for Transfers of Development Rights (TDRs) through the creation of a trip budget system in which an allocation of AM, PM and ADT trip budget were assigned to each property in the IBC."

O5-69

Traffic Study, Appendix N-1, page 4. Although the Traffic Study references the 1992 program which established the transfer program, it fails to discuss the 1992 Project, the 1992 EIR or its Traffic Study in any detail. The Project and the RDEIR continue to build on the 1992 Project and the 1992 EIR without discussing or explaining it. The Traffic Study and the RDEIR should be revised to discuss the 1992 Project, its EIR and the Traffic Study, and then explain how the Project differs from the 1992 Project and discuss the traffic impacts in the RDEIR.

Finally, the RDEIR and the Traffic Study projects substantial for Von Karman from Barranca to Alton and further to Main are of particular concern. Beginning in 2015 with the Project, the Von Karman segment functions at deficient levels. Although the proposed traffic cure for these deficiencies is widening Von Karman, the Project proposes the exact opposite: narrowing streets to allow for pedestrian access. The DEIR predicts that Von Karman will continue to function at deficient levels, LOS E or F, with the Project. The DEIR must provide adequate mitigation or project level features so that the Von Karman segments will function properly. The DEIR must be revised to provide these measures.

O5-70



**IX. Section 6, "Significant and Unavoidable Impacts" Conflicts with the Impacts Analysis, Is Incomplete and Inadequate, and Must be Revised.**

Section 6 attempts to summarize and identify impacts which Section 5 has concluded remain significant and unmitigated after the Impact Analysis. Unfortunately, it fails due to its incomplete and cryptic statements.

For instance, Impact 5.2-6 states:

"DEVELOPMENT OF RESIDENTIAL USES WITHIN THE IRVINE BUSINESS COMPLEX COULD BE LOCATED WITHIN THE CALIFORNIA AIR RESOURCE BOARD'S RECOMMENDED BUFFER DISTANCES FROM I-405 OR EXISTING DISTRIBUTION CENTERS, CHROME PLATERS, DRY CLEANERS, OR GAS STATIONS."

O5-71

This raises several problems. First, it is incomplete: Section 5.2 treats chrome plating facilities the same as any facility using hexavalent chromium (Cr<sup>+6</sup>). Second, and most importantly, the discussion of this impact states:

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“No mitigation measures are feasible that would reduce exposure of people to elevated concentrations of air pollutants within 500 feet of a freeway in an outdoor environment. Consequently, Impact 5.2-6 would remain **significant and unavoidable.**”

RDEIR, 6-2. This applies air pollutants from freeways. Air pollutants from other sources, e.g. existing distribution centers, chrome platers, dry cleaners, or gas stations, may be mitigated by siting residential uses outside of the buffers recommended by the Air Resources Board. Indeed, the DEIR had feasible and effective mitigation of development of new residential in the Irvine Business Complex with chrome plating facilities and facilities using hexavalent chromium ( $\text{Cr}^{+6}$ ): a substantial buffer of 1,000 feet between new residential uses and existing industrial uses. The RDEIR is implicit with another mitigation measure or PDF which would mitigate such impacts: as with Allergan south of Interstate 405, the Project could expand the Business Complex District north of Interstate 405 easterly from Armstrong and MacArthur to Jamboree. Either of these mitigation measures or PDFs are feasible and effective: the DEIR embraced the former and the RDEIR embodies the latter south of Interstate 405.

O5-71  
cont'd.

Further, Impact 5.9-3 concludes that the Project will have significant and unmitigated noise impacts due to exterior noise in the vicinity of the airport or stationary noise in IBC. However, as discussed above, such impacts may be feasibly and effectively mitigated: separating residential uses from stationary noise sources by a sufficient buffer, e.g. 1,000 feet; and/or by placing such noise generating stationary industrial uses in the Business Complex District.

O5-72

Also, Impact 5.13-1 states that the intersection of Jamboree Road and Michelson Drive will remain at unacceptable levels and cannot be mitigated. As we indicated in our May 14, 2009 Comments, this impact can be mitigated. For instance, three of the corners of this intersection are improved with Vision Plan projects. As part of the Project, these could be modified, moved, or changed to allow for the necessary traffic improvement.

O5-73

However, because the City failed to plan the Project appropriately, these individual projects are already built and affect traffic levels of the Project. This is not infeasible mitigation: this is poor planning. The Project should be revised and downsized to accommodate the traffic of the downsized Project alternative.

### **X. Section 7, “Alternatives,” Is Incomplete and Must be Revised.**

Section 7 identifies Project alternatives including alternative sites. Section 7 rejects the alternative sites due to its conflict with the 1988 EIR, the Open Space Initiative, and GPA 16. Because of these commitments, the City has no other sites because of the City's open space requirements.

O5-74

The other alternatives include:

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- “• No Project/Existing General Plan Alternative
- Reduced Residential Alternative
- Increased Residential (20,000 du) Alternative
- Increased Residential (25,000 du) Alternative”

RDEIR, 7-5. As indicated throughout, the No Project Alternative is incorrect: the No Project Alternative should mirror the appropriate baseline: the uses in the Irvine Business Complex immediately after the approval of the 1992 Project and certification of the 1992 EIR. The residential number of units was 3,896 dwelling units, not the 9,455 dwelling units considered in the RDEIR. Any units over the 1992 dwelling unit count are part of the Project– the residential transformation of the Irvine Business Complex. The RDEIR should be revised to study the true No Project Alternative which is the conditions on the ground after the 1992 Project was approved and the 1992 EIR was certified.

O5-74  
cont'd.

Also, Section 7 states that the No Project Alternative fails to achieve any of the objectives of the Project. However, the No Project Alternative would serve to preserve the existing jobs base and would retain existing businesses. None of the other Alternatives meet this objective in the fashion and to the extent that the No Project Alternative meet this objective.

As in the DEIR, the increased residential alternatives, 20,000 dus and 25,000 dus, do not lessen the significant and unmitigated impacts of the Project and will have fewer vehicular air quality impacts due to an alleged decrease in vehicle mile trips. The No Project Alternative suffers a similar impact due to the DEIR's assumption that increased housing in the IBC would eliminate some vehicle trips due to Project residents walking to work. The RDEIR simply continues this assumption without support. However, given that much of the Project is already built, the RDEIR should be revised to determine whether residents in the Project area do in fact work in the Project area.

O5-75



The increased residential alternatives suffer similar impacts. However, Section 7 fails to discuss the full scope of these Alternatives and to discuss and analyze fully the inconsistency of these impacts with the General Plan and the Project objectives in that both include requirements to protect existing business and job base. The discussion of all of the Alternatives requires further discussion and explanation.

Section 7 concludes that the Reduced Intensity Alternative would:

O5-76

“ . . . reduce impacts associated with air quality, hazards and hazardous materials, land use and planning, noise, public services, recreation, local traffic and utilities and services. However, this alternative would have greater population and housing and global climate change impacts and increase regional VMT. All other impacts would be similar.”

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RDEIR, page 7-18. However, Section 7 concludes:

“In addition, this alternative reduces overall allowable development intensity within the IBC below what is currently allowed and would impact existing entitlements.”

Id. If true, this would be a significant land use impact. Unfortunately, Section 7's analysis of the land use impacts for the Reduced Intensity Alternative concludes that this Alternative would have fewer land use impacts than the Project. Further, a comparison of Table 3-1 which tabulates the units and square footage allowed under the Project with Table 7-1, a Summary of the Alternatives, appears to show that the Reduced Intensity Alternative would not affect existing entitlements. Please explain how the Reduced Intensity Alternative would adversely affect existing entitlements, identify which entitlements are affected and how the comparison of Table 3-1 and Table 7-1 misses this impact.

O5-77

Finally, as with the DEIR, the RDEIR identifies the Reduced Intensity Alternative as the environmentally superior alternative. Although this Alternative will have similar impacts to the Project, it will lessen important impacts including traffic, air quality, land use and noise impacts. However, as compared to the Project, the Reduced Residential Alternative is superior. However, the City must analyze each of the individual pending projects to understand the significant impacts of such projects which are part of the Project and part of the Reduced Intensity Alternative. The RDEIR must be revised to conduct this analysis, determine the preferred alternative and analyze the other alternative given this analysis.

Unfortunately, Section 7.8 states that the Reduced Intensity Alternative

“... would lessen some environmental impacts, it would not avoid the significant environmental impacts to air quality, land use and planning, noise, or transportation/traffic.”

O5-78

RDEIR, page 7-28. However, as indicated above, Section 7.5.8 which discusses the land use impacts of the Reduced Intensity Alternative states:

“Under the Reduced Intensity Alternative, 5,333 fewer residential units would be constructed than under the proposed project. However, this alternative would still require a General Plan Amendment and Zone Change to allow for the increase in residential units and the increase in density requirements. However, the decrease in residential development in the IBC would result in fewer potential conflicts with existing and future commercial land uses. As a result, land use impacts under this alternative would be reduced.”

RDEIR, page 7-16. Given this discussion and analysis, please explain how this means that this Alternative will have significant land use and planning impacts.

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Finally, the DEIR analyzed a Reduced Urban Neighborhood Alternative which proposed to move residential development north of I-405 and froze residential development south of I-405. Although the numbers differ slightly, the Project is the Reduced Urban Neighborhood Alternative. As we have argued above, this alternative must be expanded north of Interstate 405 to avoid or mitigate a whole host of impacts which arise from the siting of new residential uses in close proximity with existing industrial uses. Either the Business Complex District should be expanded or the City should require a 1,000 foot buffer between existing industrial uses and new residential uses.

O5-79

The DEIR should be revised to discuss fully each of the Alternatives, to analyze fully the Reduced Alternative and to determine that the Reduced Alternative is the appropriate and preferred Alternative over the Project.

### **XI. Section 8, "Impacts Found Not to be Significant," Requires Revision.**

Section 8 refers to the Initial Study for its discussion of Impacts Found Not to be Significant. Among other things, the Initial Study concluded the Project would not expose people to the potential for wildfires because the area is urbanized.

However, in our February 21, 2007 Comments on the Initial Study, we stated that:

"Unfortunately, the IS concluded that the Project will have no impact by exposing people or structures to wildfires. The IS states that:

'The IBC (Planning Area 36) project area currently consists of flat, graded land. The site is surrounded by urban development and is not adjacent to, or intermixed with, wildlands.'

O5-80

"However, Figure 5 of the IS recognizes that the Project will include recreational amenities through and near the rural area of San Diego Creek. This area is a wildland and is subject to wildfires. The DEIR should discuss the Project's impacts in connection with its residential development near such an area with the potential of wildfires."

Moreover, Figure 3-6 shows that the Project is adjacent to the San Joaquin Marsh which is a wildland and has the potential of wildfires.

The RDEIR should be revised to address this issue and explain how and why this impact will be insignificant with the Project.



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### **XII. Section 9, "Significant Irreversible Changes," Requires Additional Analysis and Revision.**

Section 9 attempts to comply with the requirements of CEQA Guidelines section 15126.2(c) which requires EIR to analyze any significant irreversible environmental changes caused by the Project. As we stated in our May 14, 2009 Comments,

"This conclusion cuts two ways. First, the City may have already made such an irreversible commitment that the Project approval is not open to question; that it is already predetermined. That is, the Project includes development of 15,000 dwelling units (plus 1,191 density bonus units) and a corresponding reduction of non-residential square footage. As indicated above, the City has already approved and/or permitted to built almost 60% of this allotment. This 60% of the Project is itself a significant irreversible effect. If so, then the DEIR should be revised to analyze the full Project before this irreversible commitment— before the 1992 DEIR.

O5-81

"Second, the IBC itself under its current configuration and entitlement represents a significant irreversible commitment: Deft's land and improvements which are specially built for Deft's coatings operations represent a significant investment. Other key businesses have made similar or greater investments. Yet, despite these investments, the Project seeks to ignore these investments and site incompatible uses adjacent to these existing industrial businesses."

May 14, 2009 Comment of Deft Incorporated, page 9-10. Please note that we quote this section because Response to Comment 105 did not address it. We have incorporated the May 14, 2009 Comments in these comments in their entirety; we make this quotation for special emphasis only.

The RDEIR must fully analyze the current irreversible commitment and the Project related impacts on such commitments.

### **XIII. Section 10, "Growth Inducing Impacts," Requires Substantial New Analysis and Must be Revised.**

Section 10 addresses the Growth Inducing Impacts of the Project. However, this analysis was and remains stilted and incomplete. Regarding the Project's tendency to remove obstacles for growth, Section 10 concludes that the Project may have a growth inducing impact because the Project would increase the cap for residential uses. However, it also notes that:

O5-82

"However, the increase in residential units is offset by a corresponding decrease in nonresidential intensity in the IBC."

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RDEIR, page 10-2. The decrease in nonresidential intensity is largely from miniwarehouses and industrial uses. These are not intense uses. Please explain how the decrease in miniwarehouse and industrial uses provides a corresponding decrease to the increase in residential uses.

Moreover, the IBC is an industrial area with many existing industrial uses. The Project – the residential transformation of the IBC – has removed substantial obstacles and facilitated the Project. Currently, about 60% of the Project is built and/or approved. The Project has had substantial growth inducing impact which have gone unchecked and created substantial impacts on land use, hazards and hazardous materials, hydrology and traffic. These must be analyzed and mitigated. The RDEIR should be revised to conduct this analysis and, if necessary, propose adequate mitigation.

Second, replacing current non-residential entitlements with residential entitlements requires additional growth including additional service facilities and retail uses. Staff, the Planning Commission and the City Council have already recognized this tendency and need for additional retail and service uses, and have encouraged the development of such uses. Section 10 recognizes this, and its is a growth inducing impact which it should address.

As to the Project's facilitating other economic effects, as noted above, the Project will increase new retail and service uses in the IBC. Section 10 notes that, although this may be growth inducing, it **may** improve air quality and traffic by limiting vehicular trips outside of the IBC. However, it is unclear that those benefits will be appreciated within the IBC given that more residents will live, work and drive in the IBC. Moreover, this alleged benefit does nothing to limit or lessen the land use impact of this growth inducing aspect of the Project. The DEIR should be revised to address and mitigate these issues.

As for the Project's tendency to create a precedent setting action, Section 10 states that:

“[A]lthough the project may be considered a precedent-setting action, the impacts of subsequent similar actions would require environmental analysis and associated mitigation to ensure that such subsequent impacts would not significantly affect the environment.”

RDEIR, 10-2. As we noted in our May 14, 2009 Comments, this is incorrect. First, the Project—the residential transformation of the IBC— was a precedent setting action: it essentially removed residential caps from the IBC which were established in the 1992 DEIR and GPA. Second, the City has done little environmental analysis for these individual projects which were the early parts of the Project. Indeed, as Judge Sundvold noted, the City handled many of the early projects through Addendums which alleged the residential increases in the IBC were consistent with the 1992 EIR. As Judge Sundvold found, this was incorrect and the City's environmental review process found sorely wanting.

O5-82  
cont'd.



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## 2. Response to Comments

Bill Jacobs

- 52 -

February 5, 2010

The RDEIR must be revised to address all of the growth inducing impacts of the Project and, if necessary, propose adequate mitigation.

O5-82  
cont'd.

**XIV. Conclusion: The RDEIR Must Be Revised to Analyze Fully the Project and Must Address and Mitigate Project Impacts including Establishing a Buffer for Existing Industrial Users.**

The RDEIR fails to explain fully the Project and all of its aspects including the individual projects. Although the RDEIR purports to be a program level RDEIR, it attempts to satisfy programmatic aspects of the Project as well as individual projects which are currently pending. It fails to analyze the full program and fails to analyze the impacts of the Program as well as those of the individual projects. Further, it fails to provide adequate and necessary mitigation.

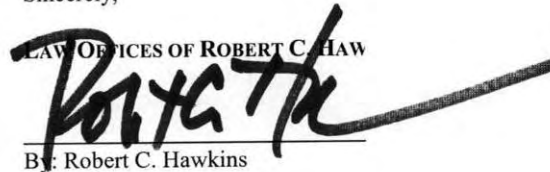
Importantly, although the RDEIR recognized that the Project will have important air quality, land use and hazardous materials impacts, it proposed Project features—a 1,000 foot buffer between existing chrome plating facilities and new residential uses—for uses such as chrome plating facilities which do not exist in the City. The RDEIR removed this protection and instead required a health risk assessment be prepared for any new residential developments within 1,000 feet of existing chrome plating facilities or similar facilities using hexavalent chromium (Cr<sup>+6</sup>). However, as fully discussed above, the health risk assessment does not offer any protections to new residential uses or existing industrial uses. As we have stated throughout, the Project must be revised to include either: an expansion of the Business Complex District north of Interstate 405 easterly from Armstrong and MacArthur to Jamboree; or the establishment of a 1,000 foot buffer between new residential uses and existing industrial uses. The RDEIR must be revised to provide this protection for all facilities including Deft which use hazardous materials that may adversely affect new residential uses.

O5-83

Again, thank you for the opportunity to provide these comments. Please include Deft and this office on all notices, documents, responses to comments and other items in connection with the Project and the DEIR.

Of course, should you have any questions, do not hesitate to contact me.

Sincerely,

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

RCH/kw  
Attachments as indicated above

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