

2. Response to Comments

Exhibit “1”

January 10, 2010 Letter from Global Environmental Consulting Company, Inc.
to the Law Offices of Robert C. Hawkins
regarding
Comments on Proposed Revisions to the City of Irvine’s Zoning Code



2. Response to Comments



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January 19, 2010

Robert C. Hawkins, Esq.
Law Offices of Robert C. Hawkins
110 Newport Center Dr., Ste. 200
Newport Beach, California 92660

RE: Comments on proposed revisions to the City of Irvine Zoning Code

Dear Mr. Hawkins:

Comments on proposed revisions to the City of Irvine Zoning Code

Deft, Inc. (hereinafter referred to as "Deft") manufactures paints and coatings for the consumer market and the government. The company is located at 17451 Von Karman Avenue, Irvine, California 92614 in an area known as the Irvine Business Complex ("IBC"). The site, which is approximately 6 ½ acres, consists of one approximately 100,000 ft² building which houses administrative offices; production areas which include paint mixing; warehouse space; packaging, shipping and receiving areas; and quality laboratories. This building was built in 1975 for Deft Inc., and the then County Fire Department required that the building be built with reinforced concrete on all sides including the ceiling. The building was and is rated H-4 occupancy under the Building Code to allow for storing, processing, and manufacturing of flammable materials including solvent, nitrocellulose, and other such materials.

O5-84

Physically, the site is located between McGraw Avenue and Main Street, just north of the railroad tracks. The City of Irvine is currently considering revising its zoning code to allow up to 15,000 dwelling units in the IBC. the construction of a 445 unit residential condominium complex within 1,000 feet of the Deft facility. As part of this process, the City has proposed modifications to the zoning ordinance. The applicable wording of the recirculated proposed ordinance is:

2. Response to Comments

GECCo, Inc.
Page 2 of 6

For all residential or residential mixed-use projects located within the distances to industrial uses as outlined below the Project Applicant shall submit a health risk assessment (HRA) prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment (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 shows that the incremental cancer risk exceeds one in one-hundred thousand ($1.0E-05$), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best Available Control Technologies for Toxics (TBACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms. 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 an existing chrome plating facility, or existing facility using Hexavalent Chromium.*

This recirculated proposed City ordinance dilutes community protection from adverse impacts of activity at existing industrial businesses such as Deft by removing the 1,000 foot buffer zone contained in the original zoning proposal. The recirculated proposal proposes alternative control measures, which are less protective than the 1,000 foot buffer zone. This is not good safety practice and it is not wise community planning. This report addresses the risks associated with the recirculated proposal and presents potential consequences of its implementation, based on reasonably foreseeable, not worst case, situations.

This same conclusion was reached in a 16 May 2006 report¹ prepared for Deft which stated *"Siting residential dwellings nearby to the Deft facility would present such an incompatible land use due to the hazardous materials used at and air emissions emitted from the facility."* Under the proposed changes to the City Zoning Ordinance, residential locations, that is "sensitive receptors" will be allowed within the 1,000 foot set-back by requiring Deft to either (1) provide mechanical air filtration to the residences or (2) install appropriate air scrubbers (emission control technologies).

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O5-85

Land Use Compatibility White Paper: Hazardous Materials Assessment Proposed
2323 Main Street Development, 16 May 2006

2. Response to Comments

GECCo, Inc.
Page 3 of 6

DEFINITION

The recirculated, proposed zoning ordinance uses two technical terms which must be clearly understood in the context of this report and the proposed ordinance.

BACT - Best Available Control Technology: An emission limitation based on the maximum degree of emission reduction (considering energy, environmental, and economic impacts) achievable through application of production processes and available methods, systems, and techniques. BACT does not permit emissions in excess of those allowed under any applicable Clean Air Act provisions. Use of the BACT concept is allowable on a case by case basis for major new or modified emissions sources in attainment areas and applies to each regulated pollutant².

Minimum Efficiency Reporting Value, commonly known as *MERV Rating* is a measurement scale designed in 1987 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) to rate the effectiveness of air filters.

The scale is designed to represent the worst case performance of a filter when dealing with particles in the range of 0.3 to 10 micrometres. The MERV rating is from 1 to 16. Higher MERV ratings correspond to a greater percentage of particles captured on each pass, with a MERV 16 filter capturing more than 95% of particles over the full range.

CURRENT ENGINEERING CONTROLS AT DEFT

Deft has a number of specific hazards for which risks are controlled by a combination of engineering controls and best management practices. These hazards were addressed in the 2006 report, and the current control measures are explained in this report.

Deft, Inc currently uses Best Available Control Technologies to limit the release of hexavalent chromium (Cr⁺⁶). The controls are approved by the South Coast Air Quality District and operated in compliance with the SCAQMD-issued Permit. Even with these controls, permitted released of hexavalent chromium (Cr⁺⁶) occur to the amount of (approximately) 0.3 pounds per year. It is noteworthy that the California Air Resources Board concluded that hexavalent chromium (Cr⁺⁶) is a human and animal carcinogen and should be treated as a chemical without a carcinogenic threshold³. This means that the City of Irvine should implement strategies to achieve a zero exposure objective.

In addition, Deft is permitted to store 2,800 pounds of the highly flammable and explosive chemical nitrocellulose (a.k.a.) "gun cotton". This is stored and handled as permitted by the Orange County Fire Authority. Even with the strict adherence to safe

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O5-87

O5-88

² U.S. EPA, Glossary of Terms
³ CARB Staff Report, 1985

2. Response to Comments

GECCo, Inc.
Page 4 of 6

handling procedures, this is the equivalent of storing (approximately) 1,900 pounds of TNT.

Deft is also permitted to store up to 10,000 gallons of flammable liquids. These are stored and handled as permitted by the OCFA and Cal/OSHA. This is the equivalent of two fully loaded gasoline delivery trailers at the facility.

O5-88
cont'd.

Further, the site uses some chemicals with strong odors. No specific engineering controls are in place to control the odor. The site generates reasonable levels of industrial noise and dust. No specific controls are in place for these community irritants. No controls are required by any Agency. However, the buffer zone currently in-place is a necessary and sufficient control.

O5-89

HEALTH RISK ASSESSMENT

The Deft facility is analogous to a metal plating operation in terms of hexavalent chromium (Cr^{+6}) impact on the community. Hexavalent chromium (Cr^{+6}) is a known potent carcinogen. It is regulated as a toxic air contaminant in California under AB 1807 (1983) and federally as hazardous air pollutant under the Clean Air Act Amendments of 1990. Cr^{+6} has a unit risk factor of $1.5 \times 10^{-1} \text{ ug/m}^3$ which means that a person's chance of developing cancer due to exposure to one ug/m^3 of hexavalent chromium (Cr^{+6}) over a 70 year lifetime would be about 146,000 chances per million people exposed. California Air Resources Board (CARB) modeling scenarios have shown that as little as two grams of annual emissions of Cr^{+6} would yield an estimated cancer risk of ten per million people exposed (at about 20 meters based on volume source). Dioxin is the only other air toxic that is known to be more toxic than Cr^{+6} . As such, the CARB has worked diligently to set policy and promulgate rules and regulations to minimize hexavalent chromium (Cr^{+6}) emissions from stationary sources into the atmosphere.

O5-90

Air Toxic Control Measures (ATCMs) have been established that regulate hexavalent chromium (Cr^{+6}) emissions from cooling tower water, thermal spraying, and chrome plating and chromic acid anodizing facilities. The latter ATCM was established to reduce chromium emissions from chromium plating and chromic acid anodizing facilities (17 CCR 93102 – 93102.16) and amended last on December 17, 2006. One of the prohibitions in the ATCM is that new chrome plating facilities may not operate inside, or within 1,000 of any area that is zoned for residential or mixed use.

Based on the current conditions at Deft, a conservative estimate of the excess cancer risk to residents within 1,000 feet of the facility is 20 per million. This drops off significantly beyond 1,000 feet from the facility⁴.

Deft, Inc. Internal report in support of SCAQMD permitting requirements, 9 Aug 2006



2. Response to Comments

GECCo, Inc.
Page 5 of 6

IMPACT OF REASONABLY FORESEEABLE SCENARIOS ON THE COMMUNITY

Failure of emission control technology. The emissions control system is an active system and active systems fail in various ways. For example, if a particulate filter rips, then particulates containing hexavalent chromium (Cr^{+6}) will be released into the air. These are relatively large and will drop out onto the soil after a few hundred feet.

O5-91

Fire. A fire at an industrial facility is always a concern. If a fire extends to the nitrocellulose storage area and causes a detonation, it will be the equivalent of 1,900 pounds of TNT detonating, causing extensive damage over 1,000 feet beyond the plant boundary.

O5-92

A fire which extends to the flammable liquid storage will be partially controlled by the plant fire suppression system. If this system is overwhelmed, radiant heat would be sufficient to cause structural damage extending about 200 feet from the source of the fire.

Spill. In the event of a spill of a drum of ammonium hydroxide, an irritant odor would be anticipated out to 300 to 400 feet from the spill.

O5-93

NON-APPLICABILITY OF MERV-14 CONTROLS

The recirculated proposed zoning ordinance suggests that Minimum Efficiency Reporting Value filters should be installed by Deft on residences within the 1×10^{-5} zone. These devices impose strict use conditions on the occupants of the residence and do not protect against any non-particulate hazard, such as fire, explosion, odor or noise. In addition, ongoing maintenance of these devices would require regular access to the residences by maintenance personnel and would increase energy use by each residence. MERV filtration is not a reasonably viable alternative.

O5-94

NON-APPLICABILITY OF SCRUBBERS

Deft's operations are not compatible with wet scrubbers (which seem to be the intent of the language in the recirculated, proposed ordinance). The dist/mist collection system is equipped with High Efficiency Particulate filters in compliance with SCAQMD requirements. This is the Best Available Control Technology for operations at Deft.

O5-95

However, Deft cannot be expected to install, operate and/or maintain equipment and filters required by off-site residential projects. Nor can Deft or any other existing industrial facility allow a contractor controlled by a third party (eg. Project Applicant) access to their site to perform such activity.

2. Response to Comments

GECCo, Inc.
Page 6 of 6

APPLICABILITY OF BACT AND A 1000 FOOT BUFFER ZONE

Deft is a well-engineered, properly operated industrial facility. Like other facilities in Irvine, such as Allergan, Deft recognizes that its best engineering and operating controls may not always be adequate to protect the community. Deft management recognizes that the best protection to the community is to provide well-engineered, properly operated production and to reduce the overall risk by separating the facility from sensitive receptors, including residences.

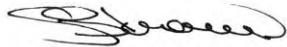
O5-96

CONCLUSION

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

O5-97

Sincerely,



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2. Response to Comments

Exhibit “2”

Land Use Compatibility White Paper: Hazardous Materials Assessment
by Global Environmental Consulting Company, Inc.
dated May 16, 2006

2. Response to Comments

**Land Use Compatibility White Paper:
Hazardous Materials Assessment
Proposed 2323 Main Street Development**

Prepared for:

Deft, Inc.
17451 Von Karman Avenue
Irvine, CA 92614

by:



May 16, 2006



2. Response to Comments

Land Use Compatibility White Paper: Hazardous Materials Assessment Proposed 2323 Main Street Development

Executive Summary

- 1.0 Introduction
 - 2.0 Hazardous Materials Impact Assessment
 - 2.1 Air Toxics
 - 2.1.1 Hexavalent Chrome
 - 2.1.2 Diesel
 - 2.2 Nitrocellulose
 - 2.3 Proposition 65 Chemicals
 - 2.4 Hazardous Waste
 - 2.4.1 Waste Treatment and Security
 - 2.5 Other Nuisance
 - 3.0 Buffer Zones
 - 4.0 Conclusions
 - 5.0 Limitations
- References

2. Response to Comments

Executive Summary

This white paper reviews the land use compatibility of the proposed 2323 Main Street development project with the industrial operations located near the property to be developed. Based on the findings, it is concluded that the industrial manufacturing operations at the Deft Inc. facility are incompatible with nearby residential development due to the potential health and safety hazards that could be posed to residents in the proposed development from the following industrial activities at the Deft facility:

- The use of over 450 hazardous materials at the Deft facility
- The emissions of two toxic air contaminants; Cr⁺⁶ and diesel, both known to cause cancer
- Storage and use of nitrocellulose, a highly flammable and explosive compound, storage
- Storage, use and processing of Proposition 65-listed chemicals known to the State of California to cause cancer and birth defects
- 90-day storage of hazardous waste
- Other nuisances such as odors, noise and lighting

O5-98

While the Deft facility has an excellent compliance history and has obtained regulatory permits and implemented plans and programs to prevent environmental, health and safety risks associated with its operations; these plans and programs are designed to protect Deft workers, not nearby residents.

A buffer, or set-back distance, of 1,000 feet could be used to separate residential land uses from the Deft manufacturing operations. This buffer would maximize the distance between sensitive receptors in a residence and hazardous chemicals thus minimizing the potential for exposure and long-term health effects.



2. Response to Comments

1.0 Introduction

Deft, Inc. (hereinafter referred to as “Deft”) manufactures paints and coatings for the consumer market and the government. The company is located at 17451 Von Karman Avenue, Irvine, CA 92614. The site, which is approximately 6 ½ acres, consists of one approximately 100,000 ft² building which houses administrative offices; production areas which include paint mixing; warehouse space; packaging, shipping and receiving areas; and quality laboratories. This building was reportedly built in 1975 for Deft Inc.

Physically, the site is located between McGraw Avenue and Main Street, just north of the railroad tracks. The City of Irvine is currently considering the construction of a 445 unit residential condominium complex within 1,000 feet of the Deft facility.

2.0 Hazardous Materials Impact Assessment

Deft uses over 450 chemical products in and manufactures wood finishes for the consumer market and specialized industrial coatings for aerospace and military customers. Many of these products are considered hazardous due to their potential health and environmental impacts. Because Deft handles, uses, stores, treats and emits hazardous materials, it is regulated by a variety of government agencies. These include, but are not limited to, the Orange County Fire Authority, the South Coast Air Quality Management District, Regional Water Quality Control Board, California Department of Toxic Substances Control, Occupational Safety and Health Administration, and the Environmental Protection Agency. Deft has developed and implemented multiple programs to protect its workers from exposures to these chemicals in compliance with rules and regulations enforced by these agencies. These programs include Hazard Communication Program, Injury and Illness Prevention Plan, Emergency Response/Action Plan, and Respiratory Protection Program.

The site’s Business Emergency Plan stipulates procedures for employees to follow in the event of an incident involving any hazardous material. As part of this plan, employees are trained and provided with safety information to help control any spill or release. Other related plans maintained at the facility include an Emergency Contingency Plan and Emergency Evacuation Plan. There are no regulatory requirements however, for comparable procedures for any nearby residents.

Deft employees also receive health and safety training to minimize the potential risks associated with the use of hazardous materials. Training topics include:

- Fire extinguisher operation
- Use of personal protective equipment
- Hazard Communication
- Hazardous Waste and Environmental Responsibility
- Evacuation and Disaster Preparedness

O5-99

2. Response to Comments

Although Deft employs industry best management practices and operates at the highest safety levels, these programs are designed to protect worker health and not the health and safety of nearby residents. A “regulatory gap” (ARB, 2004) exists in the case of assessing and addressing environmental, health and safety (EHS) impacts of non-regulated land uses such as new residential developments that are in close proximity to pollution sources. The siting of a new residential development for instance, does not require an air permit. The ARB sees this particular situation as an opportunity for land use agencies to address this gap and assess whether there could be any air pollution or other EHS impacts

The California State Office of Planning and Research (OPR) has stated in its General Plan Guidelines (2003) that residential uses “are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust) and exposure to hazardous materials” (AB 1533 (Keeley, Chapter 762, Statutes of 2001) specified that the General Plan Guidelines, prepared by the California Office of Planning and Research propose methods for local governments to address “providing for the location of new schools and residential dwellings in a manner that avoids proximity to industrial facilities...” As such, the Guidelines further state “residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust), and exposure to hazardous materials.”

O5-100

Siting residential dwellings nearby to the Deft facility would present such an incompatible land use due to the hazardous materials used at and air emissions emitted from the facility. The General Planning Guidelines state specifically that “cities and counties should provide for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce materials that, because of their quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety.” The Deft facility uses hazardous materials in its paint manufacturing operations that are classified as Toxic Air Contaminants, explosive, regulated under Proposition 65, hazardous wastes, and as potentially nuisance causing for nearby residents. These issues are more specifically discussed in the sections below.

Given the nature of the hazardous materials used at the Deft facility, there is the potential for health impacts upon residents of an nearby residential development. The proposed residential land development project is incompatible with the existing Deft manufacturing operations.

2.1 Air Toxics

Several of the products used at the facility are classified as air toxics. The California Air Resources Board (ARB), a California Environmental Protection Agency (Cal-EPA) Board, regulates air toxics and manages the Toxic Air Contaminant List (“List”). This List identifies 244 substances that have either been identified by the ARB as Toxic Air Contaminants (TACs) in California or are known or suspected to be emitted in California and have potential adverse health effects. Two products used and emitted at Deft

O5-101



2. Response to Comments

respectively, contained on this List, are of particular concern given the proposal to construct residential units near to the site: hexavalent chrome and diesel.

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2.1.1 Hexavalent Chrome

Chromium in the form of various alloys and compounds has been in widespread commercial use for over 100 years. Early applications included chrome pigments and tanning liquors. In recent decades, chromium has also been widely used in chromium alloys and chrome plating. The pigments used at Deft contain chromium in its hexavalent form. One of the occupational situations in which high exposure to hexavalent chromium has been documented to occur is in the chrome pigment manufacture (IARC, 1990).

Hexavalent chromium (Cr^{+6}) is a known carcinogen that can enter the body by inhalation or ingestion. Inhalation of Cr^{+6} over an extended period of time causes lung cancer. Epidemiological studies carried out in the Federal Republic of Germany, France, the Netherlands, Norway, the UK and the USA of workers in the production of chromate pigments have consistently shown excess risks for lung cancer (IARC, 1990). Cr^{+6} compounds may also cause adverse effects to the skin, the respiratory tract and, to a lesser degree, the kidneys in humans

O5-102

Cr^{+6} is on most national and international lists of high toxicity materials. In the United States alone, Cr^{+6} is regulated as a Hazardous Substance, Hazardous Air Pollutant, Hazardous Waste, Toxic Chemical, and a Priority Pollutant under the Clean Water Act. In California, it is also listed as a Toxic Air Contaminant, as defined in the CA H&SC 39567 and 39660 et seq., "which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health" (CA H&SC 39655). The ARB has concluded that Cr^{+6} is a human and animal carcinogen and it should be treated as a substance without a carcinogenic threshold (ARB Staff Report, 1985).

Worker protection standards and industry best management practices are required and implemented at the Deft facility in accordance with OSHA regulations. These standards however, are designed to address short-term exposures. Cancer risk is typically scientifically regarded as proportional to lifetime dose. Therefore, a prudent public health measure would be to limit preventable exposures to Cr^{+6} . Specifically, it would be prudent to avoid residential development near the Deft facility, where Cr^{+6} pigments are manufactured, in order to minimize any potential non-occupational exposure and reduce long-term cancer risk.

2.1.2 Diesel

The Deft facility houses shipping and receiving activities that enable the distribution of its products to its customers throughout the U.S. As a result, diesel-fueled trucks travel in and out of the facility all day long to unload materials and pick-up product for distribution.

O5-103

2. Response to Comments

Diesel exhaust includes over 40 substances that are listed by the U.S. EPA as hazardous air pollutants and by the ARB as TACs (OEHHA, 1998). Diesel particulate matter has been identified by the ARB as a TAC and represents 70 percent of the known potential cancer risk from air toxics in California (OEHHA, 2001). Diesel particulate matter contributes to particulate matter air pollution which has been shown to be associated with premature mortality and health effects such as asthma exacerbation and hospitalization due to aggravating heart and lung disease (ARB, 2005). Reducing diesel particulate emissions is in fact one of the ARBs highest public health priorities (ARB, 2005).

In order to quantify the risk associated with diesel particulate matter regulations, the ARB performed air quality modeling to estimate exposure and the associated potential cancer risk of onsite diesel-powered transport refrigeration units (TRU) for a typical distribution center (ARB, 2005). The assessment assumed a total onsite operating time for all TRUs of 300 hours per week. The estimated potential cancer risk was found to be over 100 in a million at 800 feet from the center for the TRU activity. This risk decreased to a 10 to 100 million range between 800 to 3,300 feet and fell off to less than 10 per million at approximately 3,600 feet. While TRU trucks do not typically frequent the Deft facility, the data are useful as emissions from other diesel-fueled trucks could be similar.

The SCAQMD also performed diesel air monitoring from distribution center operations in Mira Loma. This study found about an 80 percent drop off in concentration of diesel particulate matter at approximately 1,000 feet (ARB, 2005).

In short, exposure decreases as distance increases. It is reasonable to conclude, therefore, that an adequate buffer of not less than 1,000 feet between residences and the Deft manufacturing operations would decrease non-occupational exposure to diesel to acceptable levels.

2.2 Nitrocellulose

The Deft utilizes nitrocellulose, a highly flammable compound, in its manufacturing operations in accordance with its permit from the Orange County Fire Authority. The nitrocellulose is brought onsite in 55-gallon drums and dispensed to one of two tanks; 500 gallon and 900 gallon for processing. It is mixed with resins and solvents to make the company's clear wood finish product.

Nitrocellulose is a hazardous substance that is both flammable and reactive. Its primary physical danger is from fire or explosion and has been known to ignite or explode without warning when dry. Nitrocellulose burns fiercely when ignited, so attempts to control or extinguish a fire must be made from a safe distance. The lids of drums or tanks are liable to be blown off during a fire which could present a hazard to residents near the Deft facility. In addition, burning nitrocellulose gives off highly poisonous nitrous fumes which are considered a lung irritant with delayed action.

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O5-104

2. Response to Comments

2.3 Proposition 65-regulated Chemicals

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, (Prop. 65) was enacted as a ballot initiative in November 1986. The Proposition was intended by its authors to protect California citizens and the State's drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm, and to inform citizens about exposures to such chemicals. Prop. 65 requires the Governor to publish, at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. This list, which must be updated at least once a year, has grown to include approximately 750 chemicals since it was first published in 1987.

Prop. 65-listed chemicals found in products used at Deft such as toluene, lead, and cadmium are known as teratogens¹ by the state of California. Listed chemicals such as ethylbenzene, benzene, and ethyl acrylate are known carcinogens².

Under Prop. 65, Deft is required to provide "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, or publishing notices in a newspaper. It is important to understand however, that Prop. 65 does not prohibit a business from exposing people to listed chemicals (OEHHA Fact Sheet). Within a workplace environment, there are other regulatory requirements requiring the use of personal protective equipment and ventilation that would protect workers from potential exposures. These requirements, however, do not address sensitive receptors, such as residents, dwelling in a nearby home or apartment complex.

While it could be argued the exposure to Prop. 65-listed chemicals in nearby residential dwellings would be lower than those at the Deft facility, there are studies that indicate that low level exposure to chemicals could be a precursor to severe health effects. For example, an ongoing population-based Swedish study, Women's Health in the Lund Area, was expanded to include low-level cadmium exposure (Åkesson, Lundh et al., 2005). Analysis of the data collected revealed a small but significant kidney response to low-level cadmium exposure. This suggests that low-level cadmium exposure may pose a significant public health risk. The researchers speculate that effect levels might be even lower for people with diabetes. These data raise concern when potentially sensitive receptors may be living adjacent to a manufacturing facility that uses products containing cadmium.

2.4 Hazardous Waste

Deft is a large quantity generator of hazardous waste as defined in 22 CCR 66262.10. As such, the facility generates approximately 5,000 gallons of liquid hazardous waste and approximately 50 55-gallon drums of solid hazardous waste every 3 months. The types of wastes generated include approximately 500 lbs/yr of wastes with chromium

¹ Teratogens are substances that may cause birth defects.

² Carcinogens are substances that may cause cancer.

2. Response to Comments

compounds; 400 lbs/yr of xylene; 2,000 lbs/yr of methyl isobutyl ketone; and 4,000 lbs/yr of sec-butyl alcohol. These wastes are managed in accordance with EPA hazardous waste generator requirements. The site is also permitted for the temporary storage of hazardous waste through the Orange County Fire Authority.

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2.3.1 Waste Treatment and Security

Certain liquid hazardous waste streams are also treated onsite in a fixed treatment unit (FTU) that operates under the Conditionally Authorized tier of the California Tiered Permitting requirements. Tiered Permitting (Chapter 6.5, Article 9 CA H&SC) refers to a graduated series of requirements applicable to hazardous waste generators conducting onsite treatment their own hazardous waste. California legislation (AB 1772) passed in 1992 established a five-tiered program for authorizing hazardous waste treatment and/or storage at many businesses that are required to have a state permit or authorization to do so. The new tiers were added to make permitting easier for businesses that treat hazardous waste onsite within their normal operations. Under the tiered permit system, the level of regulation is scaled to the relative risk and complexity involved under each treatment tier. In ascending order, the tiers are: conditional exemption (CE); conditional authorization (CA); and permit by rule (PBR) (California Code of Regulations, Title 22, Division 2, Chapter 4.5).

O5-107

The Deft facility treats hazardous waste as a CA facility under the Tiered Permitting requirements. Under the CA tier, the facility is required to take certain measures to prevent unknown entry to the site and to minimize the possibility of the unauthorized entry of persons onto the facility. Deft has indeed implemented measures to address these security issues. However, these security requirements as stipulated in 22 CCR 66265.14 and CA H&SC 25200.3 do not address the situation where a CA FTU is located near residential dwellings where there may be children or adolescents that may want to satisfy their curiosities about a neighboring manufacturing facility and attempt to gain entry to the facility by scaling a fence or locked gate which constitute acceptable security measures for CA FTUs in the regulations.

2.5 Other Nuisance

Odors are a natural occurrence at any paint or coating manufacturing facility because of the nature of the hazardous materials that are being mixed to prepare the coatings. Organic solvents, many recognizable because of their strong or peculiar smell, are employed in the paint manufacturing operation. Odors are the most common source of air pollution complaints from residents (ARB, 2004). In addition to being an annoyance, odors can exacerbate underlying medical conditions and cause stress-induced illness. One way to minimize odor complaints is to utilize adequate buffers between odor sources and the public.

O5-108

Because of the entrance and exit of the many diesel-fueled trucks into and out of the facility, there will be more noise to which a resident would be typically accustomed between the hours of 6 am and 6 pm. Exterior lights are maintained throughout the



2. Response to Comments

evening as a security measure. As a result, daily operating lighting and evening lights could potentially impact nearby residents.

O5-108
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3.0 Buffer Zones

Recent monitoring and health-based studies indicate that air quality impacts from incompatible land uses can contribute to increases risk of illness, missed work and school, a lower quality of life, and higher costs for public health and pollution control. As a result, several California public agencies have addressed the issue of providing adequate distances between industrial land uses and land uses that involve sensitive individuals such as homes and schools.

The California Office of Planning and Research's General Plan Guidelines identifies buffer zones as a broad approach to land use compatibility. Buffer zones can be managed in two ways; a specific distance may be set on a case-by-case basis, or transitional land uses (such as open space, office uses, or commercial uses) may be used.

A review of the literature demonstrates that Cr^{+6} emissions can exist in the atmosphere at measurable levels at great distances from their sources. Grohse (1988) estimated that Cr^{+6} species exist at measurable levels at distances of up to 0.5 miles or greater from chromium emission sources. This is of particular concern given the proposed construction of residential units within 1,000 feet of a facility that uses Cr^{+6} in its manufacturing operations.

State law requires that school districts identify potential sources of toxic air pollutant releases within a quarter mile radius of the proposed school site. The ARB suggests that "planning agencies could use a similar approach to identify air toxics sources in the vicinity of proposed new housing or other types of projects frequented by sensitive individuals" (ARB, 2004). In this case, the siting of a residential development that will house sensitive individuals such as children or the elderly could have potential public health impacts given the Deft facility is a permitted emission source of Cr^{+6} .

O5-109

The ARB has stated that because living or going to school too close to diesel emission sources may increase both cancer and non-cancer health risks, it recommends that proximity be considered in the siting of new sensitive land uses (ARB, 2005). Analyses performed by both the ARB (2005) and the South Coast Air Quality Management District (date) indicate that providing a separation of 1,000 feet would substantially reduce diesel particulate matter concentrations and public exposure downwind of a distribution center. As a result, the ARB has recommended a separation of 1,000 feet based on the combination of risk analyses done for TRUs and the decrease in exposure predicted by the SCAQMD modeling (ARB, 2005).

Other municipalities are also in the early stages of setting policy with respect to management of incompatible land uses with the use of buffers. For instance, the City of San Diego has currently proposed a 1,000 foot buffer to separate industrial facilities that

2. Response to Comments

are a source of toxic air contaminants or toxic substances and residential land uses (Economic Prosperity Element, The City of San Diego General Plan, July 2005).

O5-109
cont'd.

3.1 Master Plating Case Study

In 2000, EPA and San Diego's nonprofit Environmental Health Coalition started a Federal Interagency Environmental Justice Demonstration Project to assist the Barrio Logan neighborhood³ of San Diego, Calif. The goal was to mobilize all levels of government, as well as the community and local industry, to improve Barrio Logan's air quality and public health. EPA and community leaders established a partnership involving residents, government agencies, community groups, businesses, and nonprofits.

One focus of the partnership was incompatible land uses, which expose neighboring residents to excessive pollution levels. Master Plating, for example, a chrome-, nickel-, and cadmium-plating facility next door to homes, was a contentious issue in the community for years. Barrio Logan residents urged state and local agencies to look for "hot spots" where pollutants were concentrated. Master Plating turned out to be such a "hot spot" with high levels of airborne Cr⁺⁶ just outside the facility. While the business had been cited several times for violating laws regarding storage and disposal of hazardous materials, of additional concern was the fact that high levels Cr⁺⁶ had been detected in air samples taken from within the neighborhood

O5-110



In March 2002, the County of San Diego sought a Temporary Restraining Order to close Master Plating. A settlement was negotiated between the County of San Diego and Master Plating which required that the business shut down on or before October 15, 2002; remove equipment; clean and decontaminate the facility; and completely remove all hazardous waste and materials under the supervision of the San Diego County Department of Environmental Health by November 15, 2002.

Chrome plating establishments had been a permitted land use within the Barrio Logan community for many years. A tailored zoning ordinance, the Barrio Logan Planned District Ordinance (PDO), was created in 1983. This PDO accommodated residential, commercial and industrial development but contained minimal development regulations to buffer incompatible land uses. As a result, the Barrio Logan PDO permitted residential development alongside heavy industrial uses, such as chrome plating. This lack of buffers between residential and industrial activities contributed to the unfortunate relationship between Master Plating and its neighborhood residents. The co-location resulted in potential exposure of neighboring residents to Cr+6 and the permanent closure of a local business.

³ Barrio Logan is an inner city San Diego neighborhood of roughly 6,000 residents, 85% of them Latino. The community is a mix of homes, commercial buildings, and industry, including a waterfront industrial and naval complex.

2. Response to Comments

4.0 Conclusions

Based on the findings, it is concluded that the industrial manufacturing operations at the Deft Inc. facility are incompatible with nearby residential development due to the potential health and safety hazards that could be posed to residents in the proposed development from the industrial activities at the Deft facility. While the facility has an excellent compliance history and has implemented plans and programs to prevent environmental, health and safety risks associated with its operations; these plans and programs are designed to protect Deft workers and not nearby residents.

The incompatibility of this siting is further evident in the ARB's Draft Air Quality and Land Use Handbook (2004). This document cites an example of a potential incompatible land use scenario that could result from the placement of new residential areas in close proximity to polluting sources. The example is "a proposed site for new housing is downwind of a permitted small business or light-industrial facility that will emit a small amount of highly potent air toxic, such as hexavalent chrome." The second example listed is "a newly proposed residential area or school that would be near an existing warehousing complex that induces a great deal of diesel truck traffic." Both of these examples are similar to the situation faced by Deft given the proposal to develop residential units near its manufacturing operations.

O5-111

Given the nature of the operations associated with the paint manufacturing activities at the Deft manufacturing facility, and the recent experience in Barrio Logan, California; it would be prudent to adequately separate any new residential development projects from the Deft facility. Based on ARB studies and data, the most appropriate public health approach to this separation would be to establish a buffer of 1,000 feet between the manufacturing and any residential dwellings.

5.0 Limitations

This document is intended for the sole usage of Deft and the parties designated by GECCo. Use of this white paper is subject to the agreement between GECCo and Deft. Any unauthorized misuse of or reliance upon the document shall be without risk or liability to GECCo. This document is to be considered a white paper. It is an educational document that expounds on a particular industry issue – in this case, the potential incompatible land use that would result from the construction of residential units nearby the Deft facility. This document serves as a position paper. It is a document that presents Deft's position or philosophy about a social, political, or other subject, or a not-too-detailed technical explanation of an architecture, framework, or product technology. It is not meant to serve as a scientific study or scientific research paper. Factual information regarding operations, conditions and test data were obtained from Deft and have been assumed by GECCo to be correct and complete. Since the facts stated in this document are subject to professional interpretation, they could result in differing conclusions.

O5-112

2. Response to Comments

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2. Response to Comments

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<http://www.oehha.ca.gov/prop65/pdf/Prop65tenants.pdf>

OEHHA, The Health Effects of Diesel Exhaust, A fact sheet from OEHHA and the American Lung Association, May 21, 2001

http://www.oehha.ca.gov/public_info/facts/dieselfacts.html

2. Response to Comments

Exhibit “3”

May 11, 2009 Letter from Global Environmental Consulting Company, Inc.
to the Law Offices of Robert C. Hawkins



2. Response to Comments



11502 Alborada Drive
San Diego, CA 92127
858.674.9686/9697 tel/fax

May 11, 2009

Robert C. Hawkins, Esq.
Law Offices of Robert C. Hawkins
110 Newport Center Dr., Ste. 200
Newport Beach, California 92660

RE: Use of 1,000 foot buffer to separate sensitive resources from Deft industrial manufacturing activities

Dear Mr. Hawkins:

The Land Use Compatibility White Paper, dated May 16, 2006, states a 1,000 foot buffer between Deft and sensitive resources (residences) would minimize the potential for exposure and long term health effects associated with hazardous materials use at the facility. This letter has been prepared to reinforce the recommendation that a 1,000 ft buffer be utilized to separate sensitive resources from Deft Inc, an industrial manufacturing facility which utilizes hexavalent chromium (Cr^{+6}).

Cr^{+6} is a potent known carcinogen. It is regulated as a toxic air contaminant in California under AB 1807 (1983) and federally as hazardous air pollutant under the Clean Air Act Amendments of 1990. Cr^{+6} has a unit risk factor of $1.5 \times 10^{-1} \text{ ug/m}^3$ which means that a person's chance of developing cancer due to exposure to one ug/m^3 of hexavalent chromium over a 70 year lifetime would be about 146,000 chances per million people exposed. California Air Resources Board (ARB) modeling scenarios have shown that as little as two grams of annual emissions of Cr^{+6} would yield an estimated cancer risk of ten per million people exposed (at about 20 meters based on volume source). Dioxin is the only other air toxic that is known to be more toxic than Cr^{+6} . As such, the ARB has worked diligently to set policy and promulgate rules and regulations to minimize Cr^{+6} emissions from stationary sources into the atmosphere.

Air Toxic Control Measures (ATCMs) have been established that regulate Cr^{+6} emissions from cooling tower water, thermal spraying, and chrome plating and chromic acid anodizing facilities. The latter ATCM was established to reduce chromium emissions from chromium plating and chromic acid anodizing facilities (17 CCR 93102 – 93102.16) and amended last on December 17, 2006. One of the prohibitions in the ATCM is that new chrome plating facilities may not operate inside, or within 1,000 of any area that is zoned for residential or mixed use.

O5-113

2. Response to Comments

GECCo, Inc.

Page 2 of 2

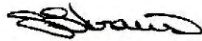
The ARB's Air Quality Land Use Handbook (April 2005) makes the following recommendation: Avoid siting new sensitive land uses within 1,000 feet of a chrome plater. It is evident this guidance document and the above-mentioned ATCMs do not specifically address the types of manufacturing activities that take place at the Deft facility. However, the primary concern and the reason for the policies are emissions of Cr^{+6} to the atmosphere.

O5-113

Because Deft utilizes Cr^{+6} in its coating manufacturing operations, there is the potential for Cr^{+6} to be emitted to the atmosphere. As such, from a land use planning perspective, there is sufficient similarity between the emissions from a chrome plating facility and the Deft facility to treat them with similar restrictions including a 1,000 foot separation from residential and mixed uses.

Thank you for your inquiry. If I may be of further assistance, please let me know.

Sincerely,



Jennifer L. Kraus, MPH, PhD

jkraus@gecco-inc.com



2. Response to Comments

Exhibit “4”

August 2009 Settlement Agreement and Mutual Release between
Allergan, Inc. and the City of Irvine

2. Response to Comments

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. **PARTIES:** This Settlement Agreement ("Agreement") is entered into by and between Allergan, Inc. ("Allergan") on the one hand and the City of Irvine and the City Council of the City of Irvine (the "City Council") (collectively "Irvine"), on the other hand. Allergan and Irvine are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

2. **RECITALS:** This Agreement is made with reference to the following facts:

2.1 Whereas Allergan is a multi-specialty health care company with its International Corporate Headquarters (the "Allergan Property") located in the City of Irvine. More specifically, the Allergan property is located within the Industrial Business Complex ("IBC") area at the City of Irvine.

2.2 Irvine has approved the construction of a number of residential units within the IBC.

2.3 Allergan has brought a number of administrative and court actions challenging the Irvine approvals of residential units within the IBC.

2.4 By entering into this Agreement, the Parties intend to resolve the administrative challenges and all causes of action (including pending motions on either side) reflected in or relating to *Allergan v. Irvine*, (Martin Street) Orange County Superior Court Case No. 07CC01268, Appellate Case Nos 0040755, G040751, G041088 and 0041106, Consolidated Appeal of *Allergan v. Irvine*, (2851 Alton) Orange County Superior Court Case No. 07CC01267, Appellate Case Nos 0040752, G040754, G041087 and 0041066, *Allergan v. Irvine*, (IAA) Orange County Superior Court Case No. 06CC11295, *Allergan v. City of Irvine*, (Shuttle) Orange County Superior Court Case No. 30-2008-00070690, and *Allergan v. City of Irvine*, (ARU) Orange County Superior Court Case No. 30-2009-00264668 (collectively "the Cases").

3. **AGREEMENT:** In consideration of and in return for the promises and covenants made by all Parties to this Agreement, including the releases given by all Parties, the Parties agree as follows:

3.1 **Zone Change Ordinance:** The City Council shall consider for approval a zone change ordinance establishing a zone in which residential uses will be limited as shown on Exhibit "A" attached hereto (the "Zone Change"). As part of this approval Allergan may, in its sole discretion, submit to Irvine a series of proposed findings for either the Zone Change, the California Environmental Quality Act ("CEQA") document accompanying the Zone Change or both (the "Findings"). Irvine shall reasonably consider the Findings as part of the approval of the Zone Change and/or the accompanying CEQA document.

3.2 **General Plan Amendment:** The City Council shall also consider a General Plan Amendment which includes the language necessary to render the General Plan consistent with the Zone Change. Irvine shall undertake all necessary review and approvals required under CEQA as part of the consideration of the General Plan Amendment, and the Zone Change. Any other land use and planning enactments considered by the City Council prior to or



2. Response to Comments

simultaneously with the General Plan Amendment and Zone Change shall be consistent with both the General Plan Amendment and the Zone Change.

3.3 **Stay of Pending Litigation:** Upon the execution of this Agreement by all Parties, the Parties, through their respective counsel, shall all request that the Court in each of the Cases stay all matters until the completion of the Expiration of the Challenge Period as defined in Paragraph 3.4 herein or until either party opts out of this Agreement pursuant to Paragraph 3.5 herein. In the event that either (1) the Court in any of the Cases refuses to stay any of the Cases, or (2) the staying of any of the Cases would eventually result in a dismissal pursuant to California Code of Civil Procedure Section 583.310, then the Parties may move forward with those Cases that are not or cannot be stayed. As to those Cases that are not stayed and therefore move forward, the Parties agree that upon the completion of the litigation for each of those Cases, the Parties stipulate through this Agreement that any judgment or decision issued on those Cases shall be stayed and not enforced until either the Expiration of the Challenge Period as described in Paragraph 3.4 herein, or either Allergan or the City opt out of this Agreement pursuant to Paragraph 3.5 herein. Either Party may reinitiate the Cases if it elects to opt out of this Agreement pursuant to Paragraph 3.5 herein.

3.4 **Dismissal of Cases/Withdrawal of Administrative Challenges:** Upon the approval of the Zone Change and the General Plan Amendment and upon the later of (1) the expiration of any applicable statute of limitations to challenge the Zone Change and General Plan Amendment, including initiative or referendum as well as the CEQA process undertaken to review the environmental impacts of those approvals, or (2) the completion of any litigation, including appeals and approval by the Court of Court ordered returns, if any, challenging the approval of the Zone Change, the General Plan Amendment or the CEQA process undertaken to review the environmental impacts or legal validity of the Zone Change and/or General Plan Amendment (collectively the "Expiration of the Challenge Period"), Allergan shall (1) dismiss each and every one of the Cases and agrees to waive its attorney fees that it has been awarded as a result of the prosecution of the Cases; (2) withdraw any administrative challenges pending against any residential approval on residential projects within the IBC; and (3) dismiss with prejudice any other pending litigation against Irvine. Allergan shall have no obligation to dismiss the Cases in the event that Irvine is unsuccessful in efforts to defend litigation described in this paragraph and/or the Zone Change and General Plan Amendment are never effectuated. Allergan shall have no duty or obligation to pay for any costs of defense relating to defense of the litigation described in this paragraph.

3.5 **Opt Out:** Prior to the Expiration of the Challenge Period, either Party may elect to opt out of this Agreement for any reason by providing the other Party with written notice of its intent to withdraw from this Agreement.

3.6 **Mutual Release:** Upon dismissal of all of the Cases, the Parties hereby agree and generally release each other as follows:

3.6.1 Upon the Expiration of the Challenge Period, the Parties hereby release, remise, and forever discharge each other and their agents, employees, representatives, administrators, attorneys, insurers, lenders, shareholders, owners, officers, directors, divisions, affiliates, partnerships, partners, joint venturers, parents, subsidiaries, and related corporations,

2. Response to Comments

assignors, assignees, heirs, and successors in interest, and each of them, from any and all claims, demands, and causes of action, arising out of, connected with, or incidental to the Cases.

3.6.2 The Parties acknowledge that they may have sustained damages, losses, costs, or expenses which are presently unknown and unsuspected and that they may sustain additional damages, losses, costs, or expenses in the future including but not limited to claims arising out of, connected with, or incidental to the Cases.

3.6.3 The Parties specifically waive the benefit of the provisions of Section 1542 of the Civil Code of the State of California, as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

3.6.4 Notwithstanding the provisions of Section 1542 and for the purpose of implementing a full and complete release, the Parties expressly acknowledge that this Agreement is intended to include all claims that each Party has brought or could have brought including but not limited to claims arising out of, connected with, or incidental to the Cases and any of the facts and circumstances giving rise to the allegations made by any of the Parties in the Cases which they do not know or suspect to exist in their favor at the time of the execution of this Agreement, and that this Agreement will extinguish any such claims. This release is limited to known and unknown claims arising from the Cases and does not extend to legal claims, issues or causes of action arising from an independent factual basis such as, by way of example only: (1) Irvine's adoption or implementation of new municipal taxes or fees; (2) claims against Irvine by Allergan related to any pending or future development applications brought by Allergan; (3) claims against Irvine by Allergan related to any future development applications brought by developers after the Expiration of the Challenge Period; or (4) claims against Irvine by Allergan related to any future land use action implemented by Irvine after the Expiration of the Challenge Period.

3.7 **Irvine Cooperation:** Irvine shall reasonably cooperate, to the fullest extent allowable by law but at no cost to Irvine, with Allergan in: (1) the processing of any land use applications submitted by Allergan to Irvine; and (2) Allergan's efforts to expand its business and operations in the City of Irvine.

3.8 **Notices:** Any notice required pursuant to the terms of this Agreement shall be provided as follows:

For Allergan:	William N. Scarff Jr., Esq. Chief Litigation Counsel Allergan, Inc. P.O. Box 19534 Irvine, CA 92623-9534
---------------	--

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-3-



2. Response to Comments

And with a copy to: Geoffrey K. Willis
Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626

For Irvine: Sean Joyce
City Manager
City of Irvine
One Civic Center Plaza
Irvine, CA 92606

And with a copy to: Philip D. Kohn
City Attorney
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

4. **MISCELLANEOUS:**

4.1 **Advice of Counsel:** The Parties have entered into this Agreement upon the legal advice of their attorneys, who are the attorneys of their choice. The terms of this Agreement have been completely read and explained by such attorneys, and such terms are fully understood and voluntarily accepted by each of the Parties.

4.2 **Entire Agreement:** This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing signed by all Parties.

4.3 **Severability:** Each provision of this Agreement is separate, distinct, and severable from the others. If any provision is held unenforceable, the rest of the Agreement shall be enforced to the greatest extent possible.

4.4 **Successors and Assigns:** This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their agents, employees, representatives, administrators, attorneys, insurers, lenders, shareholders, owners, officers, directors, divisions, affiliates, partnerships, partners, joint venturers, parents, subsidiaries, and related corporations, assigns, heirs, and successors in interest, and each of them.

4.5 **No Presumption Against Drafting Party:** All Parties have cooperated in the drafting and preparation of this Agreement. Consequently, the interpretation of this Agreement shall not be construed against any Party.

4.6 **Choice of Forum and Applicable Law:** This Agreement is intended to be construed pursuant to the laws of the State of California, and each of the undersigned Parties agrees that the only proper venue for any action arising out of the breach of this Agreement or other document delivered pursuant to any provision hereof, shall be the Superior Court of California for the County of Orange.

2. Response to Comments

4.7 **Attorneys' Fees/Prevailing Party:** In any judicial proceeding, arbitration, or mediation between Irvine and Allergan seeking enforcement of any of the terms and provisions of this Agreement (collectively, "Action"), the prevailing Party in such Action shall recover all of its actual and reasonable costs and expenses (whether or not the same would be recoverable in the absence of this Agreement), including expert witness fees. The prevailing Party's attorneys' fees, including costs of investigation and preparation prior to the commencement of the Action shall also be recoverable. However, the prevailing Party's recovery shall be limited to the number of hours actually spent, at the hourly rate paid by Irvine pursuant to its legal services contract for the same or similar services.

4.8 **Ability to Perform:** Each Party represents and warrants to each other Party that it has the ability to carry out the obligations assumed and promised hereunder, and is not presently aware of any pending event which would, or could, hamper, hinder, delay, or prevent its timely performance of said obligations.

4.9 **Further Acts and Amendments:** Each Party to this Agreement agrees to perform all further acts and execute all further documents necessary to carry out the intent and purposes of this Agreement.

4.10 **Section Headings:** The captions, subject, section and paragraph headings in this Agreement are included for convenience and reference only. They do not form a part hereof, and do not in any way modify, interpret, or reflect the intent of the Parties. Said headings shall not be used to construe or interpret any provision of this Agreement.

4.11 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed one and the same instrument.

4.12 **Effective Date:** The effective date of this Agreement is the last date upon which it is executed by all Parties.

Dated: August 10, 2009

By: Ray Diradarian

Dated: August 18, 2009

By: SUKHEE KANG, MAYOR

ATTEST:

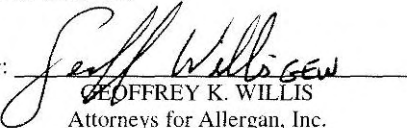
Shawn Ann
CITY CLERK OF THE CITY OF IRVINE




2. Response to Comments

Approved as to form and content:

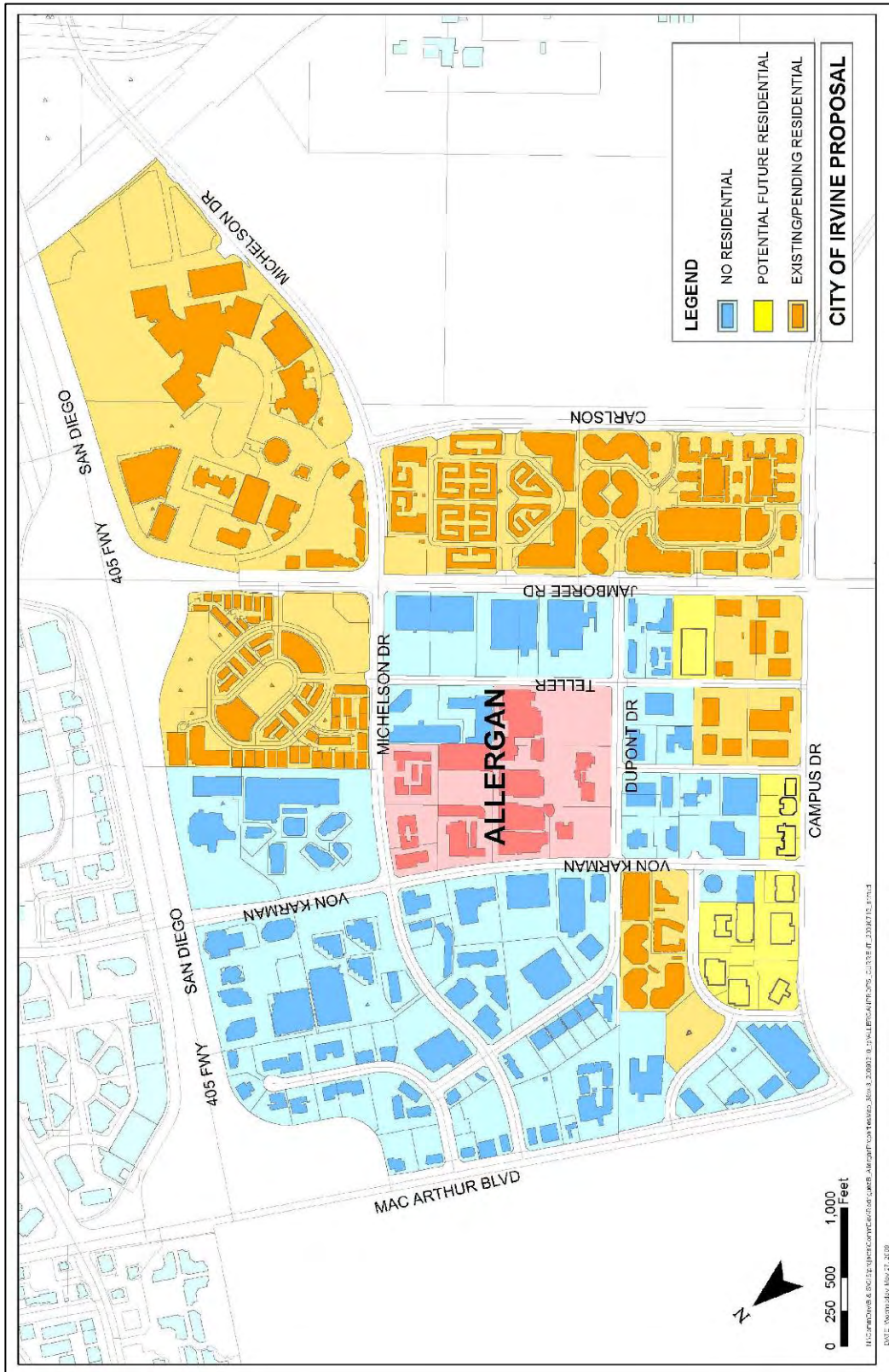
SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

By: 
GEOFFREY K. WILLIS
Attorneys for Allergan, Inc.

RUTAN & TUCKER LLP

By: 
JEFFREY T. MELCHING
Attorneys for the City of Irvine and the City
Council of the City of Irvine

2. Response to Comments



2. Response to Comments

Exhibit “5”

Past and Present Land Use Control Issues in the Irvine Business Complex

dated October 5, 2007

by Ralph Catalano, Professor of Public Health,
University of California, Berkeley

to Douglas Williford, Director of Community Development, City of Irvine

2. Response to Comments

Past and Present Land Use Control Issues in the Irvine Business Complex

Prepared by Ralph Catalano

Submitted October 5, 2007 to

Douglas Williford, Director of Community Development,
City of Irvine



2. Response to Comments

INTRODUCTION

I am providing the following history and recommendations to the City of Irvine as agreed with Douglas Williford, Director of Community Development for the City. The work reflects my training, research, and teaching in urban planning, as well as my service on the City of Irvine Planning Commission and City Council. While I intend the assessment to be as objective as possible, my involvement in the City's regulation of the Irvine Business Complex inevitably affects my views. I trust you will keep this circumstance in mind when considering the following.

I thank Victor Carniglia (City of Antioch, formerly City of Irvine), Douglas Williford (City of Irvine), Brian Fisk (City of Irvine), Anthony Petros (LSA), Timothy Strader (Starpointe Ventures), Larry Agran (IBC Task Force), and Sukhee Kang (Chair, IBC Taskforce) for answering my questions regarding the 1984 and 1992 zoning, as well as the current circumstances in IBC. I, however, am solely responsible for the opinions expressed in this report.

HISTORY

Background and Zoning Strategies

The area now referred to as the Irvine Business Complex (i.e., IBC) has attracted much investment because its location promises high return to those who best anticipate costs and returns of development options. This attraction, however, has raised the cost of land in IBC, forcing developers to aggressively manage risks when bringing uses to market. Part of the risk developers must confront comes from land use regulations devised to minimize externalities of development rather than maximize return on investment.

Irvine has attracted many residents who paid a premium to live in a well-planned community. The City of Irvine has, therefore, had to reconcile high expectations from both developers and residents when devising regulations

2. Response to Comments

for IBC. Investors want the City to reduce their risk by allowing developers to respond quickly to opportunities presented by the market. Residents want the traffic, noise, and other potentially adverse effects on residential areas held to levels generally understood and accepted when making the choice to live in Irvine.

The City's attempt to reconcile these often competing demands led to two important reforms of the original IBC controls inherited from the County of Orange at incorporation. I provide a non-technical history of these reforms because the circumstances leading to, and following from, them explain the dilemma the City now faces.

The most common form of zoning regulates the use, lot coverage, and massing of improvements that developers put on the land. The logic connecting this "use" zoning with health, safety, and welfare has traditionally been that a given land use, industrial for example, generates a more or less knowable amount of traffic, noise, pollution, fire risk and so on per unit of space (e.g., square foot). These "performance characteristics," in turn, have more or less measurable effects on public health, safety, and welfare. Regulating use and intensity, therefore, has the end effect of protecting health, safety, and welfare because regulating use regulates performance.

This static "use" regulation, however, does not respond well to changes in market realities and severely restricts the options available to developers. These regulations may not allow the most profitable use even when it affects public health, safety, and welfare no differently, or even less, than the allowed use.

The Irvine Industrial Complex West Industrial Use Zoning

The City of Irvine, upon its incorporation in 1971, inherited "use" regulations of what we then knew as the Irvine Industrial Complex West (i.e., IICW)



2. Response to Comments

from the County of Orange. The regulations reflected good planning practices for their era but made uses other than industry possible only through arduous and time consuming general plan and zone changes.

By the early 80's, the growing regional economy had diversified and the demand for office space near John Wayne Airport increased dramatically. Office space generated more profit per square foot than industrial space. Land owners, developers, and investors began appealing to the City for exceptions to the industrial use requirement. These appeals made the argument that the performance characteristics of a square foot of office would affect health, safety, and welfare less than a square foot of industrial space. The public, therefore, should have no objection to an amount of office space that generated the same health and safety effects as the previously permitted industrial use.

This argument became problematic when applied to traffic effects or "trip generation." The Orange County General Plan and first Irvine General Plan called for a road system in and around the IICW that would service the originally permitted uses. The capacity of the system, in other words, fit manufacturing uses. While offices may generate fewer health and safety risks than an equivalent amount of manufacturing, the former generates more "peak hour trips" and, therefore, more traffic congestion. The courts had long included such congestion among the threats to public welfare that the state could regulate.

Early applicants for relief from the IICW use zoning noted that at the time of their request, the existing road system had capacity to service their projects even if the project would generate more trips than the previously permitted use. Much to the chagrin of land owners not in the appeals "queue," the City granted several early appeals. These decisions triggered a "permit rush" because entrepreneurs understood that the limited capacity of the road system would soon be "used up" leaving all remaining applicants with no argument for relief from the industrial use zoning. The City staff also

2. Response to Comments

expressed concern that the IICW would become a mix of uncoordinated uses frozen in place when the capacity of the planned road system had been fully committed.

The 1984 IBC Performance Zone

The permit rush in IICW led to a 1983 moratorium on zone changes and a "crash" program to reform IICW land use regulations. This program yielded a landmark zoning code that shifted the logic of regulation from "use" to "performance" management. If protecting public health, safety, and welfare provided the legal justification for zoning, why not regulate the performance characteristics of development rather than land uses? Regulating performance characteristics would protect the public and allow developers to respond to their understanding of market cues. Developers could use whatever technology or means available to make uses fit within performance criteria set by the City and other regulatory agencies responsible for environmental quality and health.

Finding mechanisms to manage the traffic, or "trip generating," effects of land uses impeded quick implementation of performance zoning in IICW. After much analysis and debate, the City decided that the 1984 zoning reforms would manage the trip generation problem with two mechanisms. The first converted the industrial entitlement owners had under the original County zoning to "trip rights." Owners could, in theory, ask for any use that generated trips less than or equal to their rights. Assuming the proposed use did not violate any other performance criterion, the project would be approved. The sum of all projects each generating the trips assumed by the original industrial zoning would have effects on the remainder of the city no greater than the original zoning. In other words, if every land owner asked for uses within their trip rights, the regional road system assumed by the original industrial use zone would be adequate although it served a much more diverse pattern of land uses than originally envisioned by the County.



2. Response to Comments

Of course, at least several developers wanted to develop office commercial uses at intensities well beyond their entitled trip rights. To do so required that they either buy rights not used by other owners, or contribute to a fund that would be used to upgrade the County-planned road system. The City organized an effort to identify and price regional transportation upgrades that could serve IICW development above the entitled level without adding congestion to surrounding residential areas. The cost of these upgrades was converted to a per trip fee. Developers who requested approval for uses that generated more trips than their own and purchased rights had to pay the fee for each trip over the entitled allotment.

The combination of the performance zoning and the two trip management schemes described above solved, at least temporarily, the problems faced by the City in 1984. No land owner need rush to get permitting for uses other than industrial because congestion rights equivalent to those under the original zoning could be held, used for any development that fit performance criteria, or sold. Developers who wanted to go beyond their entitled trip rights had to meet all performance criteria and pay substantial fees to fund improvements that ensured congestion outside IICW would not exceed that expected from the original zoning. The residential community in Irvine could be assured that the effects of IICW development, regardless of the actual uses, would not exceed those they had expected from the industrial zoning.

I have simplified the zoning in several ways. The system did not actually allocate trips but rather used trip-based "points" to create a token economy that could be used not only to manage traffic congestion but also encourage specific uses such as schools, clinics, child care facilities, and the like. I also simplified the timing of fee collection and transportation improvements. As might be imagined, the issue of phasing of road improvements raised questions regarding when a developer had to pay the fees levied against a project.

2. Response to Comments

Despite these complexities, the new land use regulations earned the unanimous support of the Planning Commission, Transportation Commission, and City Council. No affected party testified against the regulations although several expressed concern over the complexity and novelty of the scheme. The area name became the Irvine Business Complex (i.e., IBC) to signal a new era. The IBC rules allowed Irvine land owners, developers, and investors to respond creatively to what they read as market demand. The residential communities in and around Irvine did not have to bear effects greater than those expected under the pre-existing zoning. Irvine, in no small part due to IBC, became an example of prosperity, entrepreneurship, and quality of life envied publicly and privately by all those who knew it.

The 1992 Reforms

When developing the 1984 IBC performance zoning, we understood that requests for residential development would eventually become more common than the single application (i.e., "Douglas Plaza Condominiums") to that date. Residential uses would presumably have brought benefits including a reduction of peak hour trips by allowing those who worked in IBC to live there, a demand for evening activities that would make IBC a more interesting place that could "hold" trips in the area during the evening traffic peak, and an increase in sales tax from commercial uses that served IBC residents and others. Having residents in IBC would also create a political constituency for good planning in the area.

We also understood that residential uses would bring challenges. Three stood out. First, how would the City and affected School Districts finance and locate schools? Second, how would the City meet recreation needs in an area where parks would be difficult to establish? And third, how would the City assess and resolve issues of intra-IBC compatibility among residential, industrial, office, and commercial uses?



2. Response to Comments

Many of us who worked on the 1984 performance zoning suspected that the issue of compatibility between IBC industrial facilities and residential use would eventually come to the fore. That suspicion proved correct when, in the early 1990's, applications for residential uses in the IBC increased dramatically. Approximately 3,500 units of housing had been approved or proposed by 1992 and owners of industrial facilities began to fear encroachment of neighbors who would complain to regulators about noise, pollution, and other real or imagined threats to well being. School and park policies had not, moreover, been formulated for the area.

In addition to the above issues, another problem had emerged. The 1984 assessment of the potential capacity of regional transportation systems appeared obsolete. Many of the regional transportation improvements anticipated by the 1984 zoning had been superseded by more ambitious projects or made impossible by other developments.

The City tried to remedy these problems in 1992 through two changes to the IBC zoning. First, the new zoning "capped" residential use at the sum of units then approved or in the approval process. The cap allowed fewer than 4,000 units in IBC regardless of the performance characteristics of additional units.

Second, the City commissioned a new transportation study. Results included a new list of upgrades (ranked by how quickly they would most likely be needed), as well as the finding that more trips than those unallocated from the 1984 zoning could be awarded to IBC land owners willing to pay fees. The 1992 traffic study estimated that the City had allocated or entitled approximately 52% of the trips that the upgraded road system could accommodate. The 1992 zone change substituted the new upgrades, trip estimates, and fees for those of the 1984 zoning. Land owners received a fraction of the remaining 48% of the "trip budget" equal to their fraction of IBC land area. These trips could not be

2. Response to Comments

used for residential projects unless an owner successfully applied for a general plan amendment and zone change.

While the 1992 reform of the transportation plan and trip allocation system improved upon the 1984 zoning, I can find no compelling argument in the public record for the decision to stop residential development in the IBC. The City and region lost the obvious benefits of having residential units in those areas of IBC with no compatibility problems, and the restraint inevitably created a regulatory impediment to good land use management.

The Current Circumstance

As history would predict, developers eventually responded to market cues by asking permission to build more housing in IBC. Their arguments typically reduced to a simple question. Why can I not build housing if I have the trips; the proposed housing affects the remainder of Irvine less than would industrial use; and intra-IBC compatibility issues either do not apply or have been solved in my case? Lacking a compelling answer to this question, the City has approved several of these requests. Doing so, however, has induced the fear, if not reality, of a new "permit rush." This fear, in my opinion, has much less justification than in the early 80's when the fact of a limited supply of road capacity required no analysis to comprehend. The current concern appears, in contrast, to arise from vaguer circumstances. First, some unknown fraction of the now unused trips allocated in 1992 may have been "absorbed" by development outside IBC unanticipated by the 1992 analyses. Second, the regional road upgrades assumed by the 1992 analyses to occur in the then "out years" will soon be needed and their feasibility remains unclear. The long anticipated policies regarding school and recreation facilities in IBC, moreover, remain unformulated. The uncertainty arising from these circumstances has not only induced the fear of a "permit rush," but also has been cited, perhaps opportunistically, by nearby cities as justification for litigation to stop further permitting in IBC.



2. Response to Comments

The City understands that approving more requests for general plan amendments and zone changes to allow housing would raise important regulatory questions in Irvine and elsewhere. Should, for example, Irvine continue these approvals without formally addressing the issues of parks and schools? Does Irvine have a process to resolve disputes over the compatibility of proposed residential and existing manufacturing uses? Do the 1992 assumptions regarding trip generation, infrastructure upgrades, and fee structure remain sufficiently sound to guide current decisions? The last of these has to be answered definitively because, as noted above, neighboring cities have sued to stop Irvine from issuing more approvals without first assessing the validity of these assumptions.

The City has responded in three ways to these circumstances. First, it has appointed a task force, chaired by Councilman Sukhee Kang, to develop options and recommendations for changes in IBC land use regulations. Second, it has begun traffic and environmental assessments of options developed by the Task Force. Third, it has reached out to those who live in IBC to better assess how their experiences might help in planning the environment and services that additional residents would encounter in the area.

I understand that efforts continue to reach agreement among the school districts that serve the IBC for the provision of facilities including a possible tri-district school. I also understand that the Task Force has creative and feasible plans to provide recreation opportunities to existing and future IBC residents. These opportunities would apparently be supported in whole or in part with fees collected from residential developers under the permitting process. The issue of the current validity of the 1992 traffic studies remains the principal impediment, in my opinion, to the orderly build out of IBC.

2. Response to Comments

RECOMMENDATIONS

The City of Irvine has the experience, talent, and resources to manage the challenges presented by the maturation of IBC into a remarkably successful center of entrepreneurial activity. All involved should, moreover, celebrate that this success has been enjoyed without sacrificing the quality of Irvine's residential communities. The recommendations I make below sum to small, but important, adjustments in the course charted nearly 25 years ago and since followed by several generations of community, business, and staff leaders.

Based on the above understanding of the current circumstances in IBC, I recommend the following actions by the City of Irvine.

1. Reaffirm the policy that the City regulates land uses in the Irvine Business Complex with performance, not use, based controls. Returning to use regulations would ensure that every real or perceived change in market opportunities will bring a cascade of applications for general plan amendments and zone changes in IBC. This circumstance would not only unnecessarily impede the orderly supercession of uses in the Complex without benefit to Irvine residents, but also again invite litigation from neighboring cities and others. It would also imply that a City made famous for sound planning had lost its compass and lurches from one crisis to another.
2. Raise the cap on housing units in the IBC to the highest level allowable under the pending environmental and traffic assessments. The cap made little sense in 1992, makes none now, and has hindered IBC evolution by requiring developers to ask for general plan amendments for projects everyone acknowledges would not make congestion worse



2. Response to Comments

and would improve the jobs to housing ratios. Remember that the trips associated with these residential units would substitute for, not add to, those that would have been generated by the industrial, office, or commercial development foregone to build housing.

3. Any new scheme for allocating trip rights to owners should recognize that location within IBC should influence the allocation of trips. These schemes should also allow for adjustment of congestion rights at the time a developer proposes a use because morning and evening peak hour effects could differ by use.
4. The City should require persons renting or buying housing in IBC to sign material informing them that they live in area in which the City regulates development by effects and not by use. I am sure that many new IBC residents believe that their neighborhood has been planned to the same level of physical detail as the remainder of Irvine. Learning otherwise may lead many to needlessly fear that the City has less interest in their well-being than in that of other Irvine citizens. Understanding that performance zoning actually protects residents as well as, or better than, use zoning should allay this fear.
5. Provide the IBC a new name and identity that reminds residents and businesses alike of the dynamic nature of this special place.
6. Encourage IBC residents to participate in the governance of their neighborhood and of the City as a whole.
7. Do not attempt now to force the formation of residential centers based on idealized notions of neighborhoods in IBC. Doing so will simply lead to the costs of use zoning without its meager benefits. If the placement of schools, parks, and other public services requires some anticipation

2. Response to Comments

of residential concentration, wait as long as possible before committing. Time and the aggregation of resident behavior informs such decisions better than theories of neighborhood that come and go among us academic planners and architects.

8. Do not confuse regulation of design features with sound planning. We planners tend to obsess over, for example, street and landscape designs while ignoring more technically demanding tasks such as modeling traffic and fiscal effects. This problem particularly vexes the implementation of performance zones because their success depends more on continuity in the enforcement performance criteria than on compliance with design standards.
9. Devise a process for assessing compatibility between existing industrial facilities and proposed residential uses in the very few cases in which problems may arise. These procedures could be specified in pending environmental impact assessments as mitigating measures where potential incompatibilities arise. Unless industry has withheld information regarding health or safety threats emanating from their properties, I doubt the City will face many difficult decisions regarding adjacency. I assume that industry would cooperate with the City by providing information regarding threats that might emanate from existing industrial facilities.



2. Response to Comments

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2. Response to Comments

O5. Response to Comments from Robert C. Hawkins, Law Offices of Robert C. Hawkins, dated February 5, 2010.

O5-1 The commenter has requested that its “earlier comments in the administrative record for the environmental documents including the DEIR for the Project as well as in the administrative record for any other environmental impact reports for any other residential projects within the IBC” be included in the Record of Proceedings associated with RDEIR. The City will include within the Record of Proceedings those matters required to be included pursuant to Public Resources Code section 21167.6(e). Included among those documents will be the comments submitted by the commenter on June 27, 2006, July 24, 2006, February 21, 2007 and May 14, 2009. In incorporating these documents, however, the City does not agree that the projects analyzed or at issue in those prior comment letters are the same as the project under analysis in the RDEIR. As the commenter is aware, the details of the Vision Plan Project under analysis in the RDEIR has changed and evolved over time. The analysis in the RDEIR represents the complete analysis of the Vision Plan project.

Separately, the commenter indicates that it incorporates by reference “our comments on other projects in the IBC.” While the City understands the commenter’s efforts to preserve all available opportunities to challenge the RDEIR, the vague incorporation of “comments on other projects in the IBC” is not sufficient enough as to give the City any ability to respond to said comments in the context of the instant, separate and distinct project.

The City acknowledges that letters from Global Environmental Consulting dated January 19, 2010 and May 11, 2009, and May 16, 2006 have been attached as Exhibits 1, 2, and 3 to the Comment Letter.

O5-2 The commenter claims that the RDEIR fails to comply with a Superior Court judge’s orders, made in connection with two project-specific EIRs – the Martin Street Condominiums Project and the 2851 Alton Residential Project. While the orders on those projects are instructive in the context of those projects, they are not binding on the Vision Plan environmental review process. The City has endeavored to, and has, seen that the RDEIR complies with the requirements of CEQA and the CEQA Guidelines.

O5-3 The commenter claims that the RDEIR’s Introduction “remains inadequate and fails to accomplish its purpose” but does not specifically identify any inadequacies or unaccomplished purposes. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-18 through O5-22 below regarding Chapter 2, Introduction.

O5-4 The commenter states that the “project description is still inaccurate and must be revised.” The comment does not describe with any particularity the inaccuracies that the commenter claims require revision. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-24 through O5-37 regarding Chapter 3, Project Description.

O5-5 The commenter claims that “the environmental setting fails to use the appropriate project baseline condition.” The Project baseline condition utilized in the RDEIR is in conformance with CEQA Guideline 15125 which states:

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time the environmental analysis is



2. Response to Comments

commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

Consistent with Guideline 15125, Guideline 15126.2 states:

[I]n assessing the impact of a proposed project on the environment, the Lead Agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time the environmental analysis is commenced.”

In compliance with both of the foregoing Guidelines, the City utilized existing environmental conditions at the time of the issuance of the Notice of Preparation for the Vision Plan Project as the baseline for the environmental analyses in the RDEIR. To the extent more specific concerns regarding baseline conditions are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-38 through O5-70 regarding Chapter 5, Environmental Analysis.

- O5-6 The commenter claims that “the RDEIR’s discussion of air quality impacts is incomplete and requires revision,” but does not explain in the comment how the analysis is either incomplete. Nor does the comment explain what facet of the analysis requires revision. To be sure, the comment suggests revisions to the Vision Plan Project description (geographic expansion of the Business District designation, and creation of a 1000 foot buffer between existing industrial and new residential uses), but the reasons for suggesting those modifications are not evident from the comment. To the extent those reasons are detailed in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-39 regarding air quality impacts of the project (Section 5.2, Air Quality) and use of a 1,000 foot buffer.

It should be noted, however that the RDEIR considered land use compatibility issues, including land use compatibilities between industrial and residential uses, on a variety of dimensions, including but not limited to hazardous materials, noise, light and glare. Where potential impacts were identified, mitigation was proposed. In addition, specific features have been included in the zoning code to ensure that project-specific consideration of those compatibility issues are addressed in connection with the proposal of specific projects.

- O5-7 The commenter claims that “the EIR’s analysis of project impacts on soils and geology fails to analyze fully program and project level impacts.” However, the comment does not identify any specific deficiencies in the RDEIR or aspects of the RDEIR that do not analyze soils and geology impacts. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-40 regarding Section 5.5, Geology and Soils.
- O5-8 The commenter claims that “project impacts on hazards and hazardous materials remain flawed and incomplete, and fails to provide adequate protections between existing industrial uses and new residential uses.” Without a more detailed articulation of the flaws and omissions that the comment claims exist in the RDEIR, it is impossible to evaluate and respond to the asserted environmental concerns. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later

2. Response to Comments

comments. See response to Comments O5-41 through O5-51 regarding Section 5.6, Hazards and Hazardous Materials, and a 1,000 foot buffer.

- O5-9 The commenter claims that the RDEIR “also fails to analyze adequately the programmatic and project-level impacts on hydrology and water quality.” Beyond that general statement, however, the comment articulates no specific concerns regarding hydrology and water quality. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-52 through O5-56 regarding Section 5.7, Hydrology and Water Quality.
- O5-10 The commenter claims that the RDEIR “fails to analyze completely and to propose adequate mitigation for the Project’s land use impacts.” The comment does not raise specific land use impact analysis concerns, nor does it indicate how mitigation strategies are ineffective. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-57 through O5-59 regarding Section 5.8, Land Use and Planning.
- O5-11 The commenter claims that “analysis of the Project’s noise impact remains incomplete and its proposed mitigation is impermissibly deferred.” The comment does not explain what omissions exist in the analysis of the Vision Plan Project’s impacts. Nor does it explain how the proposed mitigation is “deferred” much less how it is “impermissibly deferred.” The RDEIR analyzes noise impacts, and finds them to be significant on at least four separate environmental dimensions. Having identified potentially significant impacts, the RDEIR explains that an effort was made to mitigate those impacts, but no feasible mitigation measures were available. Accordingly, the RDEIR discloses that the impacts are significant and unavoidable. To the extent specific concerns with that approach are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-60 regarding Section 5.9, Noise, and associated mitigation measures.
- O5-12 The commenter claims that “analysis of the Project’s transportation and traffic impacts remains incomplete and its proposed mitigation is impermissibly deferred.” The comment does not explain what omissions exist in the analysis of the Project’s impacts. Nor does it explain how the proposed mitigation is “deferred” much less how it is “impermissibly deferred.” To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-62 through O5-70 regarding Section 5.13, Transportation and Traffic. The Traffic Study and RDEIR analyzed the traffic and transportation impacts of the proposed project by identifying intersections, arterial segments, and freeway segments and freeway ramps that would be significantly impacted by the proposed project according to the traffic impact criteria established by the City of Irvine and surrounding jurisdictions. The City has proposed feasible improvements that will return the circulation system to an acceptable LOS and has identified fair share percentages for providing funding to implement those improvements.
- O5-13 The commenter claims that the “analysis of recreational impacts is incomplete and must be revised.” No specific detail concerning the asserted omission of information and/or need for revisions is provided. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-61 regarding recreational impacts of the project (Section 5.12, Recreation).
- O5-14 The commenter concludes that “discussion of significant and irreversible impacts fails and requires revision.” The comment does not describe how significant and irreversible impacts



2. Response to Comments

“fail” nor does it indicate which revisions are “required.” To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comments O5-81 regarding Chapter 9, Significant and Irreversible Changes Due to the Proposed Project.

O5-15 The commenter claims that “analysis of the Project’s growth inducing impacts is incomplete and inadequate.” However, the comment does not indicate which information is allegedly not provided. Nor does it describe how the analysis is inadequate. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments. See response to Comment O5-82 regarding Chapter 10, Growth-Inducing Impacts of the Proposed Project.

O5-16 The commenter cites various provisions of the Public Resources Code, the CEQA Guidelines and a number of published California cases. However, the comment does not raise any specific environmental concerns. CEQA Guideline 15088 provides:

The written responses shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections).

Consistent with Guideline 15088’s focus on environmental issues, Guideline 15204(a) provides in relevant part:

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environmental and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

Consistent with the foregoing, the City has endeavored in these responses to comments to provide responses to expressed environmental concerns. The fact that the City has not used these Responses to Comments as an opportunity to express its agreement or disagreement with the commenter’s characterization of the law is not an indication of agreement or disagreement with the commenter’s characterization; rather, the City has attempted to confine its responses to the task at hand – namely, addressing specific environmental concerns raised by the commenter.

O5-17 Please see response to Comment O5-5. The commenter claims that “the appropriate baseline conditions are those that existed in the IBC immediately after the approval of the 1992 IBC

2. Response to Comments

Program EIR.” The comment is not consistent with the requirements of CEQA. Guideline 15125(a) establishes the baseline as the “on the ground” conditions that exist as of the date of the publication of the Notice of Preparation. The RDEIR utilized that date for purposes of its environmental analysis.

As to the commenter’s remaining assertions concerning the Superior Court’s Minute Order in connection with the Martin Street Condominiums project, the following additional observations are appropriate. First, the Superior Court’s Minute Order is not binding on the current environmental review process because the project under analysis in the RDEIR is not the same as the projects that were the subject of the Minute Order.

Second, the Superior Court’s judgment in the Martin Street Condominiums case is on appeal, such that the Superior Court’s minute order has not current binding effect even on the Martin Street Condominiums project.

Third, the projects approved by the City within the IBC between 1992 and 2010 that the commenter urges be included in the “baseline” are well beyond any applicable legal challenge period. (See. Gov’t Code § 65009, Pub. Res. Code § 21167.)

Fourth, the effects of previously built projects – both residential and non-residential, and both within the IBC and outside the IBC – are included as part of the environmental analysis in the RDEIR. Those projects are included in the baseline conditions and to the extent that, combined with the Vision Plan Project, they result in an additional environmental impact to which the Vision Plan Project provides a cumulatively considerable contribution, the Vision Plan project is required to mitigate on a fair share basis for that impact. By proceeding in this manner, the RDEIR provides an accurate platform upon which to assess the impacts of future development.



Finally, the commenter claims that the RDEIR did not include a “new traffic analysis and explain the trip budget and trip transfers.” This statement is inaccurate. The RDEIR contains an entirely new traffic analysis from that presented in connection with the Martin Street Condominiums and/or 2851 Alton project (See RDEIR, Chapter 5.13 and the Irvine Business Complex Vision Plan Traffic Study, Parsons Brinckerhoff, December 2009, included as Appendix N). In addition, extensive discussions of trip budgeting and intensity transfers are provided in the RDEIR at page 5.13-1, and at Section 1.4 (page 4) of Appendix N. As disclosed on page 5.13-1 of the RDEIR, specific TDR assumptions are included as Appendix J to the traffic study provided at Appendix N.

O5-18

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

2. Response to Comments

The commenter appears to suggest that the RDEIR Executive Summary was required to include a description of new information added to the EIR between the time of the circulation of the original DEIR and the RDEIR. However, the commenter cites no authority for that proposition, and we are aware of none that exists. Although not required by the CEQA Guidelines, Appendix Q provides written responses to the comments received on the DEIR. A description of why the EIR was recirculated and changes to the DEIR is contained on page 3-9 of the RDEIR.

- O5-19 There are currently 4,779 units and 232 density bonus units, for a total of 5,011 residential units currently constructed in the IBC Vision Plan area (see Table 3-1, IBC Development Summary). At the request of the commenter, the Introduction will be revised:

... The most prominent land use in the IBC is office, with substantial amounts of industrial/warehouse uses and ~~4,524~~ 4,779 medium- and high-density residential units and ~~45~~ 232 density bonus units for a total of ~~4,569~~ 5,011 existing dwelling units.

- O5-20 See response to Comment O5-5 and O5-17.

- O5-21 The commenter claims that the brief description of the Vision Plan Project contained in Section 5.7 Hydrology is in conflict with the description provided in the Executive Summary of the RDEIR. However, on review of the two descriptions, they are consistent. Section 1.3 of the RDEIR states that “the most prominent land use in the IBC is office.” It then goes on to note that there are industrial/warehouse and high density residential units. Consistent with that description in Section 5.7, the RDEIR notes that the IBC is a business-concentrated area that includes a few high rise residential condominiums. Both of these descriptions are true and accurate characterizations of the IBC.

- O5-22 The commenter attempts to add its own characterization of the specific contours of the controversy in the IBC with regard to residential development, parks and recreation, and transportation and traffic. The City acknowledges that the commenter has characterized the areas of controversy from its perspective, and the commenters’ comments will be included in the FEIR. However, in Section 1.7 of the RDEIR, the City sought only to identify areas of controversy, and it achieved that purpose.

The commenter then reaches the conclusion that “new residential uses should not be located within 1,000 feet of existing industrial uses.” The RDEIR analyzes compatibility between new residential uses and existing businesses in the context of land use, hazards and hazardous materials, air quality, and other environmental dimensions. (See, e.g., RDEIR Section 5.6.) However, the RDEIR does not reach the conclusion that the 1,000 foot separation suggested by the commenter is appropriate in all cases. Rather, the project is designed to ensure that land use compatibility issues are considered in a context-specific manner. Specifically, PDF 6-5 provides:

For all residential projects located within 1,000 feet of an industrial facility which emits toxic air contaminants, the Project Applicant shall submit a health risk assessment prepared in accordance with policies and procedures of the state Office of Environmental Health Hazard Assessment and the South Coast Air Quality Management District to the Community Development Director prior to approval of any future discretionary residential or mixed-use project. If the HRA shows that the incremental cancer risk exceeds one in one hundred thousand (1.0E-05), or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that Best

2. Response to Comments

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

Through this measure, the RDEIR provides a mechanism to evaluate land use compatibility issues in connection with future project specific applications, and to conduct that analysis using established protocols.

The commenter also claims that Section 1.7 of the RDEIR, which is devoted to areas of controversy, should have discussed the DEIR as it was originally circulated and a prior mitigated negative declaration. Those documents, however, are not “areas of controversy.” Rather, they are environmental documents that were previously released for public review.

The commenter also claims that the RDEIR must reflect the fact that the negative declaration previously released for public review “is part of the administrative record for the Project.” This comment does not raise an environmental concern but rather an assertion about the proper content of the Record of Proceedings that would exist if litigation over the City’s consideration of the Vision Plan EIR is ultimately commenced. The City notes that the mere request that a document be included in an Record of Proceedings does not render that document part of the Record of Proceedings. That determination is ultimately guided by the requirements of Public Resources Code section 21167. Separately, and in addition, there exists no requirement that every document that is part of the administrative record must be “reflected” in the environmental impact report. To the contrary, the CEQA Guidelines emphasize that the discussion in an EIR should normally be simple (Guidelines 15140), concise (Guidelines 15141), focused on relevant information (Guidelines 15143), and to a level of detail that is commensurate with the project under analysis (Guidelines 15146). Summarizing documents in the RDEIR merely because they are assertedly part of the Record of Proceedings is not consistent with the above-noted principles.



O5-23 In the first paragraph of Comment O5-23, the commenter reiterates that the introduction section of the RDEIR was somehow required to discuss a prior mitigated negative declaration proposed for a prior iteration of the IBC Vision Plan. Please see Response to Comment O5-22 for a discussion of that issue. The commenter also claims that the “Introduction Section” was required to reference Appendix Q to the RDEIR and that the failure to do so requires a revision of the document. The commenter provides no authority for that proposition. Appendix Q, which is part of the RDEIR, includes comments and responses on the DEIR. That information is, and has been, available for public review.

In the second paragraph of Comment O5-23, the commenter claims that the RDEIR is not independent and unbiased. However, the commenter does not provide any specific examples of a lack of independence or the existence of bias. The environmental document has been prepared by an independently hired consulting group, The Planning Center. The environmental document has been prepared without influence from any commercial interests.

In the third paragraph of Comment O5-23, the commenter attempts to impose upon the RDEIR a requirement that it “incorporate by reference properly and clearly earlier documents including EIRs for the IBC.” Incorporation by reference is an optional, not mandatory, approach that may be employed when earlier environmental documents are relied upon in a later environmental document. (See Guidelines § 15150 [“An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public

2. Response to Comments

record and is generally available to the public.). Other environmental documents have not been incorporated by reference here because the City does not rely upon other environmental documents in conducting environmental analysis in the RDEIR.

The commenter also claims that there is reliance upon the 1992 IBC Program EIR by relying on a PowerPoint presentation dated October 5, 2007. The PowerPoint presentation, however, merely described the intensity management devices that were put in place in 1992, and are currently part of the City of Irvine's Zoning Code. The RDEIR does not rely upon the 1992 IBC Program EIR to describe current baseline conditions and/or to forecast future conditions. Those two steps are achieved by surveying existing conditions and by forecasting future development using existing and proposed zoning and other land use devices. Neither of those steps required or involved reliance upon the 1992 IBC Program EIR. It should be noted, in addition, that the commenter's comment is based fundamentally upon a plan-to-plan comparison approach whereby development under the 1992 IBC Program EIR would be compared to development under the Vision Plan Project. CEQA requires a plan-to-ground analysis and that is what has been conducted in the RDEIR.

- O5-24 In the introductory paragraph to Comment O5-24, the commenter states that the RDEIR fails to explain how the Project will advance its goals of protecting existing job base and developing mixed use core. The IBC Vision Plan protects the existing job base through the incorporation of the Business Complex designation for a large portion of the IBC and various protections incorporated into the proposed zoning. Please refer to Section 5.6, Hazards and Hazardous Materials, of the RDEIR for a description of the various PPPs and PDFs intended to protect the existing job base.

The commenter also requests confirmation that the nine components of the Vision Plan Project identified in Section 3 are part of the Project. The components of the Vision Plan Project listed in Chapter 3 of the RDEIR are all part of the Project. The commenter also requests confirmation that the nine components are a complete list of project components. The nine components describe, by category, the components of the Project under analysis in the RDEIR.

- O5-25 The commenter devotes most of Comment O5-25 attempting to reiterate its argument that conditions authorized under the 1992 IBC EIR and/or conditions existing in 1992 should have served as the baseline for analyzing environmental impacts in the RDEIR. Please see responses to Comment O5-5 and O5-17 to address those issues. In addition, please note that the comment conflates (i) an earlier environmental analysis document, i.e., the 1992 Program IBC EIR, with (ii) the zoning approved with that environmental analysis document, i.e., the Zoning Code as it existed in 1992. While neither the intensity allowed under the 1988 zoning or the intensity contemplated in the 1992 IBC EIR are relevant for purposes of this analysis, it does bear emphasis that the 1992 EIR was not a regulatory document but rather an environmental disclosure document.

The comment also claims that the RDEIR does not analyze the impacts of the full project. However, the commenter's assertion is based on the commenter disagreement with the Vision Plan Project description. The project description analyzes ultimate development as contemplated in the Vision Plan Project. That is what is described in Chapter 3 of the RDEIR. The environmental impacts of that project are examined by comparing ultimate buildout of the Vision Plan Project against existing conditions. That is the analysis required by CEQA and conducted in the RDEIR.

2. Response to Comments

The text on page 1-5 of the RDEIR has been corrected to match the existing residential dwelling units within the IBC Vision Plan area shown in Table 3-1 (see Chapter 4 of the FEIR).

O5-26

In Comment O5-26, the commenter requests clarification concerning the reasoning for various changes in the Vision Plan Project description in the area around the Allergan campus, south of Interstate 405. The commenter asserts that the changes in the Vision Plan Project description derive from a settlement agreement between the City and Allergan. The commenter is partially, but not entirely, correct. The City arrived at the settlement with Allergan not only as a means for solving existing litigation, but also after an analysis of realistic residential development opportunities in the areas south of Interstate 405 and a preliminary determination (pending appropriate environmental review and exercise of legislative discretion by the City's policy-making bodies) that confining future residential development to the areas indicated in the RDEIR made good land use planning sense.

The commenter then asserts that the RDEIR and the revised project "recognized this significant impact for Allergan and crafts the boundaries of the business complex district to address Allergan's concerns about industrial adjacency within the new residential uses." While it may be the case that the changes to the Project description address Allergan's concerns at some level, the changes do not constitute an admission by the City or an acknowledgment by the City that those concerns amounted to environmental impacts under CEQA. Nor do they suggest that the "impacts" supposed by the commenter cannot be mitigated or avoided in other ways, such as the ways set forth in the RDEIR.

Building upon its premise that the RDEIR somehow acknowledged land use impacts in connection with the treatment of Allergan south of the 405, the commenter claims that similar treatment should be afforded to industrial uses north of the 405. Again, the City's land use planning decisions or suggestions south of the 405 were based on a combination of factors including an identification of the areas within which the City staff believed development south of the 405 was most likely to occur in the future. City staff has made a similar assessment north of Interstate 405, and understands that the commenter does not agree with that assessment. The City has, however, conducted land use and other environmental analyses to see whether incompatibilities between existing industrial and business uses exist with areas where proposed residential development may occur. (See, RDEIR, Sections 5.2 [Air Quality], 5.6 [Hazards and Hazardous Materials], and 5.8 [Land Use and Planning].)

The commenter suggests that the RDEIR's obligation was to "explain why this mitigation is not extended to other existing industrial uses in the Irvine Business Complex which are located north of Interstate 405 such as Deft." The comment is a misstatement of the RDEIR's obligations. The RDEIR is designed to identify potential environmental impacts, to identify appropriate mitigation for those impacts, and to assess the level of significance after mitigation. The RDEIR accomplishes those purposes (See, RDEIR, Sections 5.2 [Air Quality], 5.6 [Hazards and Hazardous Materials], and 5.8 [Land Use and Planning].)

CARB's recommended buffer distances are provided to lead agencies as guidance when siting new sensitive land uses. Prohibiting residential within 1,000 feet of any industrial business is not warranted. Section 5.2, Air Quality, PDF 2-1 and PDF 2-4 allows for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4. For responses to the January 19, 2010 Global Environmental Consulting Company, Inc report, see response Comments O5-84 through O5-97. New residential land uses within 1,000 feet of a facility that emits toxic air contaminants is required to conduct a health risk assessment. If cancer risk exceeds 10 in one



2. Response to Comments

million, then applicants for new residential developments would be required to show that implementation of specific measures either on-site or at the source would reduce risk or be prohibited from development of residential land uses. If gaseous pollutants contribute significantly to health risk, then MERV filters would not be an effective mitigation strategy. Alternative strategies would be required or residential development would not be permitted. Adherence to this requirement would ensure that the public is protected against elevated concentrations of air contaminants.

- O5-27 In accordance with CARB's Airborne Toxic Control Measure (ATCM), Title 17 of the California Code of Regulations, beginning October 24, 2007, new hexavalent chromium electroplating and chromic acid anodizing facilities would be prohibited from constructing new facilities within 1,000 feet of a boundary of an area that is zoned for residential or mixed uses, or within 1,000 feet of a school (existing or under construction). This rule does not apply to existing land uses. See response to Comment O5-26. Section 5.2, Air Quality, PDF 2-1 and PDF 2-4 allows for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4.
- O5-28 For responses to the January 19, 2010 Global Environmental Consulting Company, Inc report, see response Comments O5-84 through O5-97. If cancer risk exceeds 10 in one million, then applicants for new residential developments would be required to show that implementation of specific measures either on-site or at the source would reduce risk or be prohibited from development of residential land uses. If gaseous pollutants contribute significantly to health risk, then MERV filters would not be an effective mitigation strategy. Alternative strategies would be required or residential development would not be permitted.
- O5-29 In Comment O5-29, the commenter suggests that the only effective mitigation or project feature to address incompatibility would be to impose a separation requirement between industrial and residential uses. In essence, the commenter has proposed an alternative to the proposed project that includes buffers around existing industrial development. The RDEIR, however, studies land use compatibility issues and arrives at the conclusion that impacts can be mitigated. The RDEIR also studies a reasonable range of alternatives, such that the analysis of the additional alternatives proposed by the commenter is not necessary for further analysis. Please see Responses to Comments O5-22 and O5-26 for further information responsive to Comment O5-29.
- O5-30 In Comment O5-30, the commenter focuses on the perceived wisdom of developing multiple mixed use cores within the IBC. In essence, the commenter proposes a different land use plan than that studied in the RDEIR. As an initial matter, the comment concerns land use planning policy, not environmental impacts. (Please see Response to Comment O5-16.) In addition, reasonable range of alternatives to the proposed project have been analyzed in the RDEIR (see, RDEIR, Chapter 7) and it is neither necessary nor appropriate to analyze the additional alternative hinted at in Comment O5-30 because the RDEIR has identified adequate existing regulatory mechanisms to address those issues. Finally, the IBC EIR does include mixed use cores inasmuch as the urban neighborhood district allows for development of a mix of uses.
- O5-31 The IBC infrastructure improvements do not require further analysis in the RDEIR. RDEIR discloses the existence of those improvements and acknowledges that those improvements will be constructed with the buildout of the proposed project. However, the final location and the resulting environmental impacts of the proposed improvements are not known yet and cannot be assessed at the programmatic level of analysis. As noted in Guideline 15146:

2. Response to Comments

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) an EIR on a project such as the adoption of an amendment of a comprehensive zoning ordinance or local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

Consistent with Guideline 15146, Guideline 15152(b) notes that “the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.” Further, Guideline 15145 discourages speculation, noting “If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.”

Here, without knowing the location, design, sequence, and timing of the installation of later infrastructure improvements the City does not have enough information to meaningfully forecast environmental impacts of those improvements. Depending on patterns of development and availability of sources of funds (among other factors) different improvements from the menu of potential improvements may be selected, different locations may be selected, the scale of an improvement may be tailored to fit the later-identified needs, and other “modification” may occur.



The specific concern raised regarding the environmental impacts of *The I-Shuttle* has been addressed. In adopting *The I-Shuttle* program, the City of Irvine found that the Project was CEQA exempt. That determination went unchallenged by any party and is now beyond any legal limitations period. (See Pub. Res. Code § 21167.) In addition, the use of a shuttle circulator program, if anything, would ultimately serve to reduce the number of traffic trips on a roadway system, thereby decreasing air quality impacts, decreasing noise impacts, and decreasing traffic congestion impacts.

O5-32

The comment fails to appreciate that development intensities and “trips” for purposes of the IBC database and transfer of development rights, revisions of the Irvine Zoning Code are one in the same. The City has historically used the term “trips” to refer to allowable development intensities on specific parcels in the IBC. More recently, confusion among the public has arisen because the term “trips” for purposes of intensity management, has been misunderstood as a representation concerning the amount of actual traffic generated by a use. Actual traffic is measured pursuant to the City’s traffic model and established socio-economic protocols.

Other than dictating the limits on the intensity of any type of use (e.g., office, industrial, residential), “trips” in the IBC database had no specific role in predicting the amount of traffic to be generated. The RDEIR explains that to avoid this confusion on a going forward basis, the Zoning Code is being revised to characterize what used to be known as “trips” under the IBC Zoning Code as an intensity budget. Figures 3-7a and 3-7b of the RDEIR merely use the currently applicable “trip” nomenclature. Thus, when the commenter states “Figures 3-7a and 3-7b do not talk about development intensity; they talk about trip budgets and allocating such trips across various land uses” the commenter is simply mistaken. Trip budgets and development intensities are one and the same.

2. Response to Comments

Appendix F of the RDEIR provides a detail of the existing trip budgets for each parcel and the proposed TDR's under the Vision Plan. The only TDR's assumed in the Vision Plan are those for which discretionary applications are currently in process or have been approved but not yet executed. These TDRs are all assumed to be completed in 2015, thus defining the 2015 Vision Plan scenario. No TDRs outside of their originating Traffic Analysis Zones are assumed beyond 2015.

O5-33 For those arterial roadways such as Von Karman and Alton Parkway that require an amendment to the Master Plan of Arterial Highways (MPAH), approval by Orange County Transportation Authority (OCTA) will be required, as is documented in the traffic study and RDEIR. Arterial downgrades along Von Karman and Alton will not require approval by the Federal Highway Administration (FHWA).

O5-34 See response to Comment O5-18. The commenter identifies various proposed amendments to the Master Plan of Arterial Highways (MPAH). These amendments derive principally from the fact that the traffic analysis for the RDEIR confirms that previously contemplated roadway expansions will not be necessary, i.e., at buildout the IBC will not consume the roadway capacity envisioned on MPAH. Thus, the assertion that the amendments to the MPAH require further environmental analysis misunderstands the conclusions from the RDEIR. It is because the City has conducted an environmental analysis that it has discovered that future expansions of roadway systems, together with their environmental impacts, need not take place.

A description of the pending project and pending project location is included in Chapter 3, Project Description.

Chapter 5.5, Geology and Soils, identifies potential impacts associated with subterranean parking garages (see Impact 5.5-2).

O5-35 See response to Comment O5-5 AND O5-17.

O5-36 See response to Comment O5-31 regarding *The i Shuttle*. The commenter asserts that “the assumption . . . that the accessory retail uses do not generate traffic . . . is without foundation.” The commenter misunderstands the nature of the accessory retail use ordinance. That ordinance disallows any accessory retail use unless the use will not generate additional traffic. Accordingly, the statement in the RDEIR that the accessory retail use ordinance “does not, by definition, yield any additional traffic generation.” is, by definition, true.

O5-37 Please refer to response to Comment O5-5 and O5-17.

O5-38 Responses are provided below for comments on the environmental analysis in the RDEIR.

O5-39 Impact 5.2-8 evaluates the potential for new receptors to be significantly impacted by existing sources of air toxics in the IBC Vision Plan area. CARB's Air Quality and Land Use Handbook is offers guidance to jurisdictions when siting sensitive land uses in the vicinity of air pollutant generators. For chrome platters and similar facilities, CARB recommends that no residential land uses be sited within 1,000 feet of the source because of the potential health risk. PDF 2-1 is based on the CARB recommended buffer distances while PDF 2-4 lists additional requirements for residential projects within 1,000 feet of other industrial facilities that emit air toxics. Both PDF 2-1 and PDF 2-4 require that if new residential development within the IBC Vision Plan area is proposed within 1,000 feet of a facility that generates air toxics impacts be mitigated to a risk of no more than 10 in one million. If cancer risk cannot

2. Response to Comments

be feasible reduced to lower than 10 in one million (because filters cannot be installed at the company or at the residences, or if such filters are not effective), residential development would not be permitted within 1,000 feet. Both PDF 2-1 and PDF 2-4 allow for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4.

- O5-40 Impact 5.5-2 of the RDEIR includes an assessment of impacts related to liquefaction and other seismic-related ground failure. New development would be required to assess the relative depth to groundwater in order to evaluate site specific conditions that affect liquefaction potential. As detailed in PPP 5-3, geotechnical investigation reports are required to be submitted and approved by the City to ensure hazards are mitigated according to the standards in the current California Building Code. The California Building Code outlines the performance standards for grading and construction in liquefaction zones and other seismic-related ground failure. No significant impacts would occur with adherence to these existing requirements. .

In addition, the RDEIR evaluates the potential for individual development projects to require dewatering under Impact 5.7-5 and Impact 5.5-3. Before water collected by a dewatering system could be discharged into municipal storm drains, individual projects would be required to obtain a permit pursuant to Order Number 98-67 that the Santa Ana Regional Water Quality Control Board (RWQCB) adopted on July 10, 1998. The requirement to obtain a permit from the RWQCB to allow discharge of water from dewatering operations into storm drains would be incorporated into the Storm Water Pollution Prevention Plan for the project.

Page 5.5-12 will be revised in the FEIR based compiled information from previous geotechnical reports.

Excavations extending deeper than about two feet are expected to encounter wet soil conditions and groundwater may be encountered at depths greater than 5 to 10 feet during construction.

- O5-41 The regulation cited refers to the siting of a new hazardous waste disposal facility. A hazardous waste Hazardous Waste Facility Permit issued by the Department of Toxic Substances Control pursuant to section 25200 of the California Health and Safety Code. Pursuant to this existing regulation, any new facility that is regulated under Section 25200 of the California Health and Safety Code would be required to comply with these regulations.

- O5-42 The Environmental Data Resources Report (EDR) included as Appendix J to the RDEIR contained the Executive Summary of the 2,500 page EDR. The complete EDR report is available on the City's IBC website at:

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

- O5-43 Pursuant to PDF 2-4 and 6-5, new sensitive land uses would be required to conduct a health risk assessment if they are located within 1,000 feet of a facility that generates toxic air contaminants. If the health risk assessment identifies a cancer risk of 10 in a million or higher, than mitigation would be required for future development that would ensure health risk doesn't exceed this performance standard or residential land uses would be prohibited.

SCAQMD's FIND database was queried on September 9, 2008 using the detailed map search engine. A total of eight Title V facilities were identified within the boundaries of the IBC, as



2. Response to Comments

depicted in Figure 5.6-1. There were six facilities in the vicinity, but outside of the IBC boundaries, within the cities of Costa Mesa, Irvine, Santa Ana, and Tustin.

- O5-44 With respect to the analysis of the seven pending residential projects, sufficient information was provided in the project description and analysis to adequately review these projects under CEQA. After the EIR is certified, future environmental analysis of the projects contained in the Vision Plan will build upon the information and conclusions of the IBC EIR. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the Conditional Use Permit (CUP) is processed. In addition, we would note that while pending residential development projects were identified in the EIR, certain site-specific project analyses were not completed as part of the EIR, primarily with respect to site-level noise, circulation, access and land use compatibility issues. Therefore, once the CUP is ready to proceed, staff will conduct a new initial environmental evaluation to determine the scope of any changes to the project and/or the surrounding environment, and will make a determination at that time regarding any additional environmental review necessary for the CUP.

PDFs serve to mitigate localized project impacts related to site compatibility. For example, PDF 2-4 and 6-5 include performance standards in accordance with Section 15126.4 of the CEQA Guidelines. New residential development within 1,000 feet of an industrial facility that emits toxic air contaminants is required to ensure cancer risk does not exceed 10 in one million.

- O5-45 IAA refers to an Industrial Adjacency Assessment (IAA), a document formerly used by the City for analysis of land use compatibility for residential projects. Because several pending residential projects had conducted environmental review in accordance with CEQA prior to the proposed IBC Vision Plan project, these IAAs were included in the RDEIR. The City no longer uses the IAA its previous form. However, the IBC overlay zoning code does require land use compatibility assessments, similar to the provisions of the IAA process, to identify localized impacts for future development in accordance with the PPPs and PDFs detailed in the RDEIR, and incorporated into the overlay zoning code. Health risk assessments for the individual development projects may need to be updated in accordance with PDF 2-4 and 6-5.

- O5-46 See response to Comment O5-39. PDF 2-1 and PDF 2-4 allow for residential land uses to be within the 1,000 foot buffer if risk is minimized to the performance standards listed in the PDF in accordance with CEQA Guidelines Section 15126.4. If scrubbers and filters are ineffective at reducing risk because gaseous pollutants dominant health risk from the facility, then cancer risk would not be minimized to less than 10 in one million and residential land uses would not be permitted.

- O5-47 See also response to Comment O5-39 regarding air toxics. The Business Plan for an industrial facility that stores hazards materials must include requirements for properly storing, labeling, and segregating incompatible hazardous materials. In addition, under the CalARP program which is administered by the CUPA, which is the Orange County Fire Authority (OCFA), businesses that handle more than a threshold quantity of a regulated substance is required to develop a Risk Management Plan (RMP). The RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety &

2. Response to Comments

Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1). Furthermore, PDF 6-4 requires that site compatibility for future environmental projects be evaluated with regard to hazardous materials handling and storage.

- O5-48 Table 5.6-1 includes an evaluation of CalARP facilities for each of the Pending residential development. As indicated in this table, hazardous materials were not identified to be significant. Consequently, impacts were less than significant for the pending project. In accordance with the Zoning for and PDF 2-1, PDF 2-4, and PDF 6-5, if the health risk assessment identifies cancer risk of 10 in one million or higher, then residential land uses are prohibited unless risk can be mitigated to less than 10 in a million.
- O5-49 The requirements of PDF 6-2 are detailed on page 5.6-23. The disclosure would need to indicate issues associated with living in a mixed-use environment, including compatibility with respect to noise, odors, truck traffic and deliveries, hazardous materials handling/storage, air emissions, soil/groundwater contamination, and the John Wayne Airport (see also PDF 6-4).
- O5-50 PDF 6-3 outlines requirements for remediation of existing sites. Removal of hazardous materials would be required in accordance with OCFA's conditions of approval and existing regulations for the removal, treatment, and/or disposal of such materials. Removal, treatment, and/or disposal is effective abatement to reduce hazards.
- O5-51 See response to Comments O5-39, regarding health risk, and O5-47, regarding nitrocellulose.
- O5-52 The recently adopted MS4 Permit, Order No. 2009-0030, includes a hierarchy for use of low impact development (LID) and treatment control Best Management Practices (BMPs) for new development and redevelopment projects within the Santa Ana Region. This includes the implementation of LID and treatment control BMPs in the following order: infiltration, harvest/reuse, evapotranspiration, and bio-treatment.

As part of the MS4 permit, the County of Orange will be revising the Model Water Quality Management Plan (WQMP) to incorporate the requirements of the MS4 permit, including the use of LID features and associated BMP selection hierarchy, as well as the restrictions for use of infiltration BMPs. Following the approval of the Model WQMP by the Santa Ana Regional Board (expected 2010), the City of Irvine will be required to update their LIP and storm water programs and incorporate the new Model WQMP into their discretionary approval processes for new development and redevelopment projects. All individual projects within the IBC EIR area will be subject to these updated regulations.

The permit also recognizes that for some sites, there are conditions that may limit the applicability of infiltration, including site soils, mobilization of naturally occurring contaminants such as selenium, high groundwater levels, etc. Accordingly, the permit includes provisions for the protection of groundwater resources with the use of structural BMPs (Section XII.B.5), as well as references the de-minimis NPDES permits for non-storm water discharges not covered under the MS4 permit, such as groundwater dewatering activities (Findings 58 & 59) for the long-term protection of groundwater resources. The application of these permit requirements occurs at the site-specific level during the construction level design of the project.



2. Response to Comments

The San Diego Creek Natural Treatment System (NTS) program was provided in the EIR as an example of a regional treatment program within the City of Irvine. Although the majority of NTS facilities are proposed to be located outside of the IBC project area, the program is an example of how treatment may be applied on a regional basis. The updated MS4 permit includes criteria for use of watershed-based or regional BMP systems, provided the BMPs are constructed with the requisite capacity to serve the entire common development (Section XII.E.3). The use of alternative, regional, or other in-lieu BMP programs is currently being evaluated by the County, and requirements will be incorporated into the updated Model WQMP. All BMP facilities that are ultimately approved as an alternative, regional or in-lieu facility will require separate CEQA documentation prior their implementation.

O5-53 The city of Irvine's LIP was approved by City Council in 2003, and is reviewed and updated as needed on an annual basis in conjunction with the Annual Program Effectiveness Reports (aka. Annual Storm Water Reports) per the requirements of the Orange County Drainage Area Management Plan (OC DAMP) and MS4 permit. In addition, the City's Stormwater Ordinance is reviewed on an annual basis as part of the PEA requirements, and incorporates the requirements of the LIP and OC DAMP by reference (Ordinance No. 03-16). Future updates to the City's LIP will be conducted in accordance with the schedules provided in the recently-adopted 4th Term MS4 permit.

O5-54 The assumptions that the proposed land use changes will not result in an increase in impervious surfaces are based on the percent impervious values for land use types provided in the Orange County Hydrology Manual (1986). These average impervious values are commonly used in program-level assessments. Figure C-4 of the Manual identifies a percent impervious value of 65 percent to 80 percent for multi-family residential developments, and 90 percent for industrial and commercial developments, thereby indicating the potential for a slight reduction in impervious values in the proposed condition.

In addition, the slight increase in pervious surfaces is not anticipated to impact groundwater resources due to the provisions for use of infiltration BMPs, as outlined in Section XII.B.5 of the MS4 permit.

The Santa Ana Regional Board developed general NPDES permits to regulate the discharges of dewatering wastes into receiving waters. NPDES Permit No. CAG918002 (Order No. R8-2004-0021 as amended by R8-2006-0065, R8-2007-0041 and R8-2009-0045) regulates the discharges of groundwater-related discharges to surface waters within the San Diego Creek and Newport Bay watersheds that contain petroleum hydrocarbons, solvents, metals and/or salts. Dewatering operations that do not contain these constituents are regulated under NPDES Permit No. CAG998001 (Order No. R8-2003-0061 as amended by R8-2005-0041, R8-2006-0004 and 2009-0003). Projects that would require dewatering (whether temporary or permanent) are required to apply for coverage under one of these permits, depending on the type and characteristics of the discharge. As part of the permit application process, each discharger must submit a NOI, site characterization study and report that characterizes the type of discharge, flow rates, concentration of any constituents/contaminants within the discharge, and the proposed treatment system as appropriate. Once approved by the Regional Board and permit coverage is obtained, the discharger must also adhere to the requirements of the permit, including adherence to specified effluent limitations and receiving water limitations, as well as implement a monitoring and reporting program that includes sample collection, self monitoring reports and other discharge report submittals to the Regional Board. The Regional Board may also choose, on a case-by-case basis during the permit application process, to issue individual permits for discharges that have the potential to adversely impact receiving water quality.

2. Response to Comments

Dewatering activities under the jurisdiction of the de-minimis NPDES permits are not anticipated to impact hydrology and groundwater recharge potential as compared to existing conditions.

- O5-55 See response to Comment O5-54. Dewatering activities under the jurisdiction of the de-minimis NPDES permits are not anticipated to impact hydrology and groundwater recharge potential as compared to existing conditions. The commenter's additional claims concerning groundwater rights raise legal, not environmental, issues. The impact of the project on groundwater is what is assessed in Section 5.5 of the RDEIR. In conducting that analysis, RDEIR is premised on the fundamental concept that the law has been, and will be, obeyed.
- O5-56 See response to Comment O5-54. The City of Irvine does not have regulatory authority in approving Permits. This approval is required by the Santa Ana Regional Board. The Santa Ana Regional Board developed general NPDES permits to regulate the discharges of dewatering wastes into receiving waters. As part of the permit application process, each discharger must submit a NOI, site characterization study and report that characterizes the type of discharge, flow rates, concentration of any constituents/contaminants within the discharge, and the proposed treatment system as appropriate. Once approved by the Regional Board and permit coverage is obtained, the discharger must also adhere to the requirements of the permit, including adherence to specified effluent limitations and receiving water limitations, as well as implement a monitoring and reporting program that includes sample collection, self monitoring reports and other discharge report submittals to the Regional Board.
- O5-57 See response to Comment O5-39. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial community. In fact, several residential developments have since been constructed in the IBC Vision Plan area. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-58 The proposed project included incorporation of a Mixed-Use Overlay zone. As part of the objectives of the project when incorporating the overlay zone, is to project the existing job base. The IBC Vision Plan protects the existing job base through the incorporation of the Business Complex designation for a large portion of the IBC and various protections incorporated into the proposed zoning. Please refer to Section 5.6, Hazards and Hazardous Materials, of the RDEIR for a description of the various PPPs and PDFs intended to protect the existing job base.
- O5-59 See response to Comment O5-26, O5-39, and O5-57. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial



2. Response to Comments

community. Prohibiting residential within 1,000 feet of any industrial business is not warranted.

See response to Comment Letter A1 regarding review by the Airport Land use Commission (ALUC). In accordance with Public Utility Code 21676, amendments to a specific plan or general plan affecting the JWA airport planning area is required to be submitted to the ALUC for a determination as to the consistency with the Airport Land Use Plan (ALUP). Consistency evaluation with ALUC has been initiated and recommendations to ensure airport hazards have been minimized have been incorporated into the FEIR.

O5-60 Plans, Programs, or Policies (PPP) and Project Design Features (PDFs) are based on existing federal, state, or local regulations. PDFs reference specific requirements in the City's Zoning Code or General Plan. Where PPPs and PDFs serve to mitigate project impacts, PPPs and PDFs include performance standards in accordance with Section 15126.4 of the CEQA Guidelines. For noise impacts, the City requires that new development be sound attenuated based on the performance standards in the City of Irvine's Municipal Code through use of architectural and site design features that reduce noise. The acoustic analysis must be based on the site plan for individual development applications. Applicants for new residential development would be required to mitigate noise generated at industrial properties (not vice-versa as the industrial users are an existing use) based on the residential noise standard to ensure that industrial business would not be affected. As performance standards are a clear unit of measurement, noise analysis has not been deferred.

O5-61 The commenter incorrectly asserts that there are no park or recreational areas in the IBC Vision Plan area. Such areas are provided; however, they are private, and the proposed project includes new provisions for public neighborhood park space within the IBC, so that recreational opportunities are available to the public in this area.

The proposed project would create demand for new community park space, as outlined in the RDEIR (see Section 5.12, Recreation). This impact is mitigated by payment of community park in-lieu fees, pursuant to the Quimby Act. The proposed project does not require the construction of a community park, as suggested by the commenter. The City has indicated its intent to secure a site south of the 405 freeway to meet the needs of the residents of the IBC. This is not a piecemeal analysis as suggested by the commenter, but the identification of a future facility. Specific environmental analysis cannot be performed until a specific site and design have been formalized.

The commenter also notes that the proximity of Bonita Canyon Park to the IBC was not analyzed as an impact in the RDEIR. Pages 5.12-11 and 5.12-12 provide this analysis, and specifically note the proximity of Bonita Canyon Park to the IBC Vision Plan area. Table 5.12-6 indicates that Irvine has more park facilities and fewer persons per facility than Newport Beach.

The commenter also notes that the proximity of Bonita Canyon Park to the IBC was not analyzed as an impact in the RDEIR. Pages 5.12-11 and 5.12-12 provide this analysis, and specifically note the proximity of Bonita Canyon park to the IBC Vision Plan area. Table 5.12-6 indicates that Irvine has more park facilities and fewer persons per facility than Newport Beach.

O5-62 See response to Comments O5-5, O5-17, and O5-25 regarding use of the 1992 baseline environmental setting. See response to Comment O5-21 regarding the characterization of the nature of land uses in the IBC. The existing land uses within the IBC Vision Plan area are

2. Response to Comments

clearly detailed in Chapter 4, Environmental Setting, and Table 4-2 (see Existing and Existing Development columns). There are 5,011 residential units currently within the IBC Vision Plan area. The breakdown of land uses by TAZ zone is included in the Traffic Study Appendix J (Appendix N of the RDEIR).

To calculate traffic for various land uses within the IBC, the most conservative peak hour trip rate was utilized, AM peak hour trip rate for industrial land uses and the PM peak hour trip rate for all other land uses as stated on page 5.13-12. Proposed units are high density residential units and use of a multi-family trip rate multiplier is therefore consistent with the proposed land use designation.

Please see response to Comment O4-7, O5-17, and O6-6 regarding transfers of development rights.

- O5-63 See response to Comment O5-62. The RDEIR has appropriately addressed the deficient locations and impacts from 2008 Existing Conditions and provided appropriate mitigation associated with the build-out of the IBC Vision Plan. The Proposed project has assessed the impacts associated with changes in the physical environment in accordance with the CEQA Guidelines Section 15064 and 15126.2.
- O5-64 The impacts and mitigation stemming from buildout of the IBC Vision Plan are based upon a constrained network in which the Von Karman downgrade (to existing conditions) is assumed and no high occupancy vehicle (HOV) drop-ramps to Interstate 405 (I-405) are assumed. However, an alternative buildout scenario “Post-2030 With Project (MPAH Network)” was evaluated in Section 5.13.3.7 of the RDEIR and Chapter 7 of the traffic study (Appendix N). This sensitivity analysis assumed the HOV ramp improvement and the widening of Von Karman consistent with the current MPAH. The impacts at Interstate 5 (I-5) MacArthur and I-5 Jamboree intersections are identical in the sensitivity analysis as with the constrained network. The City will continue to coordinate with OCTA in preparing a cooperative study and/or additional analysis to further identify any potential impacts as part of the MPAH Amendment process.
- O5-65 See response to Comment O5-62. The RDEIR and Traffic Study, Appendix J of the RDEIR, identify the existing and projected land use quantities for the 2008 No Project and With Project scenarios. These quantities are based on assumed land uses to be developed for each scenario. The 2008 No Project scenario is based on the existing conditions, built on the ground within the IBC area. The 2008 With Project scenario is identical to the Post-2030 With Project scenario, within the IBC Area (Planning Area 36) and the quantities in Table 5.13-12 correctly reflect this situation. The calculations are correctly based on the percent difference between the 2008 No Project and 2008 With Project scenario. The land use quantities for non-residential land uses were calculated based on an optimization process whereby the additional residential uses to be developed under the build-out of the IBC Vision Plan is trip neutral from the build-out of the existing General Plan. The methodology for this optimization process is further described in the land use section of the RDEIR.
- O5-66 The analysis requested by commenter is provided in Appendix F of the RDEIR. the methodology clearly indicates how existing development intensities are proposed to be redistributed to implement the Vision Plan, and the text discusses the rationale for this distribution. We also wish to reiterate that the proposed land use plan represents an overlay zone assumption. Development may or may not occur as predicted in the Vision Plan model, Property owners may develop under current development assumptions, which is why the proposed mitigation program mitigates to buildout of the existing General Plan.



2. Response to Comments

- O5-67 Table 5.13-20 correctly reflects the 2008, 2015 and Post-2030 land use assumptions analyzed to determine impact locations. The 2008 No Project scenario is based on existing traffic counts taken within the study area. For the 2008 With Project scenario, the traffic volumes are calculated based on the project trips associated with the full build-out of the IBC Vision Plan. The 2008 With Project scenario is required under CEQA and evaluates the full build-out of the project on the existing network. The Post-2030 With Project scenario and the 2008 With Project scenario land uses within Planning Area 36 (TAZ 395-546) are identical because this table contains only those TAZs within the IBC. The interim year 2015 With Project analysis assumes land uses consistent with development expected to be completed by 2015. The interim year 2015 No Project and buildout Post-2030 No Project analyses assume expected growth outside of the IBC area, but no growth within the IBC in order to conservatively identify impacts using a “Ground to Plan” analysis. See also response to Comment A15-70. Assumptions for buildout of the Park Place project are outlined in Appendix F of the RDEIR, and include a partial buildout of the site by 2015 and the remainder by post 2030.
- O5-68 Impact 5.5-2 in Section 5.5, Hazards and Hazardous Materials, evaluates siting residential land uses within the IBC Vision Plan area with respect to existing industrial and warehousing land uses. As described in this section, PDF 6-4 would require that applications for new residential and/or residential mixed-use development shall submit data, as determined by the Director of Community Development, for the City to evaluate compatibility with surrounding uses with respect to issues including, but not limited to: noise, odors, truck traffic and deliveries, hazardous materials handling/storage, air emissions, soil/groundwater contamination, heliports/helistops, and John Wayne Airport compatibility.
- O5-69 The commenter’s assertion is incorrect. While the development intensity levels assumed in the 1992 EIR remain in place, a comprehensive, new ground-to-plan traffic study has been completed for this project. The Vision Plan RDEIR discusses the 1992 Traffic Study in the context of the existing environmental setting of the IBC, however, the 1992 traffic assumptions are superseded by the new traffic study.
- O5-70 Consistent with the City’s Traffic Analysis Guidelines methodology, the proposed capacity along Von Karman between Barranca and Michelson was analyzed in both the AM and PM peak hour periods and found to operate at acceptable levels of service (LOS) during both peak hour periods. Based on this analysis, widening of Von Karman from four lanes to six lanes is unnecessary. See also response to Comment O5-64.
- O5-71 See response to Comment O5-39. Impact 5.2-6 was considered significant and unavoidable because outdoor private-use active areas, such as swimming pools, could be located within 500 feet of a freeway. This impact was considered significant and unavoidable. However, PDF 2-1 and PDF 2-4 required land uses to be within the 1,000 foot buffer to minimize cancer risk to the performance standards listed in the PDF. With adherence to the requirements included in the Zoning Code, no significant impact would occur with regard to health risk from proximity to industrial businesses.
- O5-72 Impact 5.9-5 was considered significant and unavoidable because exterior noise levels may continue to exceed the 65 dBA CNEL noise compatibility criteria for the City despite exterior noise attenuation (i.e., walls and/or berms) because of elevated traffic and/or airport noise. For stationary-source noise, the City requires that new development be sound attenuated based on the performance standards in the City of Irvine’s Municipal Code through use of architectural and site design features that reduce noise. No significant impact would occur from stationary sources of noise.

2. Response to Comments

- O5-73 A Statement of Overriding Considerations will be required for the intersection improvement proposed at Jamboree Road and Michelson Drive because triple left-turn lanes for eastbound Michelson and southbound Jamboree are not feasible. As documented on page 227 of the Traffic Study (see Appendix N to the RDEIR), “the City believes that triple turn movements would not provide the operational improvements intended due to the proximity of downstream destinations and likely distribution of traffic in the triple left turn lanes.” As the triple left turn lanes are the only improvement under the ICU analysis that return the intersection to an acceptable LOS, the intersection improvement is infeasible.
- O5-74 See response to Comment O5-17 regarding the 1992 baseline.
- O5-75 Comment noted. Lead agencies are not required to generate their own original research regarding whether residents within the IBC work in the IBC; however, where specific information is currently available the analysis includes that information (CEQA Guidelines Section 15144). Traffic analysis conducted by Fehr and Peers and Parson Brinkerhoff showed that without the project in Post-2030, the average vehicle trip was 6.59 miles. However, with the proposed project, the average vehicle trip was 6.33 miles. Incorporating retail, residential land, and employment centers in proximity to each other reduces the need to travel farther for these services.
- O5-76 Chapter 7, *Alternatives to the Proposed Project*, compares the impacts of the proposed project to the project alternatives in accordance with Section 15126.6 of the CEQA Guidelines.
- O5-77 To clarify, the Reduced Intensity Alternative reduces allowable development intensity within the IBC as compared to the existing General Plan, not as compared to existing approvals for development. As a result, the following revision has been made in the FEIR:
- Although this alternative would lessen some environmental impacts, it would not avoid the significant environmental impacts to air quality, noise, or transportation/traffic. It would provide less housing opportunities in close proximity to existing employment centers, retail and entertainment uses, and transportation facilities and would not promote the objectives of the City’s long-range goals for the IBC to the same extent as the proposed project. Most of the project objectives would be met, but not to the degree of the project. In addition, this alternative reduces overall allowable development intensity within the IBC below what is currently allowed by the existing General Plan and would impact existing ~~entitlements~~ development intensity values assigned to existing parcels.
- O5-78 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, including the Kilroy project Conditional Use Permit (CUP), so when this project is again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the CUP is processed. Alternatives to the Pending projects are not warranted.
- As stated on page 7-16, the Reduced Intensity Alternative would still require a General Plan Amendment and Zone Change in order to permit an increase in residential units and density in the IBC Vision Plan area. While there would be fewer potential conflicts with existing land uses, impacts would still be significant, albeit reduced from the proposed project.



2. Response to Comments

- O5-79 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. No significant impacts associated with proximity to industrial land uses were identified. Therefore a 1,000 foot buffer alternative is not warranted.
- O5-80 According to CalFire, the fire hazard severity zone for the San Joaquin Marsh is moderate. The IBC Vision Plan area has been developed with office, commercial, and industrial land uses adjacent to this existing wildland area. Calfire does not list the San Diego Creek as having a high fire hazard. The IBC Vision Plan Area is classified by CalFire as Urbanized/developed areas outside of hazard zones. Redevelopment within the IBC Vision Plan area does not result in an increase in fire hazards; and therefore, the Initial Study concluded that no significant impacts would occur.
- O5-81 See also response to Comment O5-17 concerning the 1992 baseline. The project is the IBC Vision Plan and Mixed-Use Overlay Zoning Code. A General Plan Amendment is required as part of the project. The RDEIR evaluates the potential impacts associated with buildout of the proposed project from existing conditions. Existing conditions is based on a snapshot of existing development in the IBC Vision Plan in accordance with CEQA Guidelines 15126.2 the 1992 baseline is not a permissible baseline for the CEQA analysis.
- O5-82 See response to Comment O5-17 regarding the 1992 baseline and evaluation of residential land uses in the IBC Vision Plan.
- See also response to comment O5-66. The proposed increase in residential units is offset by a corresponding decrease in development intensity, based on the adopted intensity rates outlined in Chapter 9-36 of the City of Irvine Zoning Code. The Vision Plan EIR acknowledges the increase in retail demand for new residential in the IBC and has as such programmed additional neighborhood-serving retail into the IBC land use assumptions as outlined in Appendix F of the RDEIR. The Vision Plan RDEIR also acknowledges the increased demand for public services and utilities from additional residential development, and these impacts are addressed in Sections 5.11, Public Services, and 5.14 , Utilities and Service Systems, respectively.
- O5-83 The IBC EIR analyzed the land use policy change of allowing for residential uses in a historically industrial area and covers the cumulative impacts of the land use shift. The EIR does acknowledge and analyze specific projects within the IBC, so when these projects are again reviewed by the City, the project may tier off of the IBC EIR for its environmental review to the extent that environmental conditions have not changed from the time the EIR is certified to the time the CUP is processed.
- See response to Comment O5-39. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial community. In fact, several residential developments have since been constructed in the IBC

2. Response to Comments

- Vision Plan area. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-84 See response to Comment O5-39. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited.
- O5-85 See response to Comment O5-39 and O5-84.
- O5-86 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-87 In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, new residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited.
- O5-88 See response to Comment O5-47. The Business Plan for an industrial facility that stores hazards materials must include requirements for properly storing, labeling, and segregating incompatible hazardous materials. In addition, under the CalARP program which is administered by the CUPA, which is the OCFA, businesses that handle more than a threshold quantity of a regulated substance is required to develop a RMP. The RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety & Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1). Furthermore, PDF 6-4 requires that site compatibility for future environmental projects be evaluated with regard to hazardous materials handling and storage.
- O5-89 Applicants for new development are required to evaluated localized compatibility with regard to odors in accordance with PDF 2-5.
- O5-90 Applicants for new development are required to evaluate localized compatibility with regard to air toxics. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited in accordance with PDF 2-1, PDF 2-4, and PDF 6-5 when located within 1,000 feet of an industrial business or within the CARB buffer zones. The commenter cites a health risk for Deft within 1,000 feet; however, calculations that support this estimate are not included. In accordance with CEQA Guidelines Section 15384 substantial evidence must include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts.
- O5-91 Comment noted. Cancer risk is based on a lifetime exposure to toxic air contaminants and not based on unforeseen events, such as that described by the commenter.
- O5-92 See response to Comment O5-47. The commenter cites a hazard that equates the risk for nitrocellulose to be equivalent to 1,900 pounds of TNT resulting in damage beyond 1,000 feet; however, calculations that support this estimate are not included. In accordance with CEQA Guidelines Section 15384 substantial evidence must include facts, reasonable



2. Response to Comments

assumptions predicated upon facts and expert opinion supported by facts. Furthermore, the RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety & Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1).

- O5-93 Comment noted. In accordance with PDF 2-5, if a residential project is located within 1,000 feet of a facility that emits odors, an odor assessment would be required. Mitigation for odor impacts would be necessary if a facility has received three or more verified odor complaints.
- O5-94 The commenter is incorrect, the RDEIR does not require Deft or any other industrial business to install MERV filters at residential properties. MERV filters would be effective against particulates emitted by facilities or mobile sources impacted by the project and would not be effective against odors, noise, or other hazards.
- O5-95 Comment noted. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited.
- O5-96 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-97 CARB's recommended buffer distances are provided to lead agencies as guidance when siting new sensitive land uses. The RDEIR includes an evaluation of potential risks when siting residential land uses within proximity to industrial land uses. Applicants for new development are required to evaluate localized compatibility with regard to air toxics, odors, noise, hazards, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. New residential developments would be required to ensure that cancer risk does not exceed 10 in one million with mitigation or residential development would be prohibited. Acoustic reports are also required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise. No significant impacts regarding aesthetics from incorporation of high density residential in an urban environment were identified. Furthermore, a site access study is required by the City any time site access to a site is modified. Because compatibility of future residential development will be evaluated with regard to these localized conditions, the project does not have the potential to divide and existing office, commercial, industrial community. In fact, several residential developments have since been constructed in the IBC Vision Plan area. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-98 See response to Comment O5-97. Applicants for new development are required to evaluate localized compatibility with regard to air toxics, odors, noise, hazards, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-99 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-100 The City acknowledges that there is a potential for health impacts for development within 1,000 feet of an industrial facility. The RDEIR evaluated compatibility of new residential land

2. Response to Comments

uses in proximity to hazards associated with industrial facilities. In order to minimize hazards, the Zoning Code requires that new residential developments within the IBC Vision Plan area evaluate compatibility with regard to air toxics, odors, noise, hazards, and site access in order to minimize these hazards.

- O5-101 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-102 Comment noted. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited.
- O5-103 PDF 2-1 requires a health risk assessment if a project is located within 1,000 feet of a facility that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units, or where transport refrigeration unit operations exceed 300 hours per week. If residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-104 See response to Comment O5-47. The RMP is required to include detailed engineering analysis of the potential accidental factors present at the business and measures that can be implemented to reduce this accident potential. Furthermore, OCFA's Safety & Environmental Services Section conducts fire safety inspections, enforces applicable fire codes and ordinances, gathers and maintains inventories of chemicals stored, handled, and used and coordinates hazardous materials emergency plans. Because these existing regulations mitigate hazards by reducing risk, no significant impact would occur at nearby residential land uses (see Impact 5.6-1).
- O5-105 See response to Comment O5-39. In addition to cancer risk, applicants for new residential development are required to assess risk associated with noncancer compounds and ensure a hazard index of 1.0 is not exceeded. If cancer and noncancer risk exceeded, mitigation would be required to reduce risk or residential development would be prohibited.
- O5-106 See response to Comment O5-47.
- O5-107 Comment noted. Trespassing is prohibited and is subject to action by local authorities.
- O5-108 Comment noted. In accordance with PDF 2-5, if a residential project is located within 1,000 feet of a facility that emits odors, an odor assessment would be required. Mitigation for odor impacts would be necessary if a facility has received three or more verified odor complaints.
- With regard to noise, acoustic reports are required to ensure that new residential development is designed to mitigate noise from adjacent properties and traffic noise (PPP 9-2).
- O5-109 See response to Comment O5-39. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-110 Comment noted. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited.



2. Response to Comments

- O5-111 See response to Comment O5-39 and O5-47. Applicants for new development are required to evaluated localized compatibility with regard to air toxics, odors, noise, hazards, and site access in accordance with PDF 2-1, PDF 2-4, PDF 6-5, and PPP 9-2. Prohibiting residential within 1,000 feet of any industrial business is not warranted.
- O5-112 Comment is hereby noted and will be forwarded to the appropriate City of Irvine decision makers for their review and consideration.
- O5-113 See response to Comment O5-39. Applicants for new residential development within 1,000 feet of an industrial facility that emits toxic air contaminants would be required to submit a health risk assessment that identifies cancer and noncancer risks. In accordance with PDF 2-1, PDF 2-4, and PDF 6-5, if residential land uses are unable to reduce risk to less than 10 in a million from industrial sources, then residential land uses would be prohibited. Prohibiting residential within 1,000 feet of any industrial business is not warranted.

2. Response to Comments

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2. Response to Comments

LETTER O6 – Manatt, Phelps & Phillips LLP (6 pages)



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February 5, 2010

Client-Matter: 24904-033

Bill Jacobs, AICP
City of Irvine
Department of Community Development
One Civic Center Plaza
PO Box 19575
Irvine, CA 92623-9575

**Re: Comments on Recirculated IBC Vision Plan and Mixed Use Overlay Zoning
Code Draft Environmental Impact Report**

Dear Mr. Jacobs:

These comments are submitted on behalf of the following stakeholders within the Irvine Business Complex:

- Alton Associates
- AvalonBay Communities
- Greenlaw Partners
- Trammel Crow Residential
- KIFL
- Ygal Sonenshine
- Howard Ahmanson
- Larry Smith
- James W. Ray
- Michael D. Ray
- Starpointe Ventures
- The Irvine Company
- Sapetto Group
- General Investment Funds
- The Colton Company

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2. Response to Comments



Bill Jacobs, AICP
February 5, 2010
Page 2

- Maguire Properties

Based on our review of Recirculated IBC Vision Plan and Mixed Use Overlay Zoning Code Draft Environmental Impact Report, we submit the following comments.

Project Mitigation

1. Many of the Plans Programs or Policies (PPPs) or Project Development Features (PDFs) do not include a standard of mitigation that would be required of mitigation measures. Since these PPPs and PDFs serve as mitigation of project impacts they should be revised to include the same standards and accountability as required for mitigation measures.

O6-1

2. In many cases the source of the PDF is referenced as the proposed zoning regulations. In other cases no reference is made. Where the PDF will be required by the zoning regulations, the section of the proposed zoning ordinance or other regulation should be cross referenced. If no source exists, these PDFs should be converted to mitigation measures so that they can be imposed on the project and future development.

O6-2

3. In many cases the impact analysis misstates the effect of the PDF. This should be reconciled by either revising the PPP/PDF or revising the analysis.

O6-3

Transfers of Development Rights

1. The DEIR reviews the potential for future transfers of development rights on a Traffic Analysis Zone (TAZ) other than for pending TDRs which are based on the sending site designated in the pending TDR applications. Please confirm that the ownership of the development intensity for each parcel within the IBC as shown on the IBC development intensity database will continue to be owned and be transferrable by the property owner of the parcels within the IBC as is the case under the current IBC regulations.

O6-4

2. It is unclear how the City is going to track future TDR applications that propose to utilize the future Vision Plan DU (3,950 potential new units [exclusive of density bonus units]) and where the reduction in office equivalency (TDR) must come from to be consistent with the DEIR. The response to the Sapetto Group comments (dated May 14, 2009) on the original draft of the DEIR indicated that TDRs for future applications must originate in the same TAZ. This is contrary to the representation that have been made to the IBC Owners Group and would be a significant adverse change in the manner which development has been conducted in the IBC potentially affecting significant property rights.

O6-5



2. Response to Comments



Bill Jacobs, AICP
February 5, 2010
Page 3

3. Please define and explain the protocol for processing future TDR applications. More specifically, please clarify the following: Will additional traffic studies be required for residential projects within the 15,000-DU cap? How will the City account for future TDRs, and must they be consistent with the office equivalency reductions reflected in the DEIR? O6-6

4. The revised Traffic Study does not mention whether or not any office equivalency was reduced in the 2015 analysis for the pending residential projects and what assumptions were made as to the availability of office square footage (zoning potential) to complete the required transfer of development rights (TDR) in 2015. Please explain how this was analyzed. O6-7

5. Currently, a TDR is based on the most restrictive a.m. or p.m. peak hour (whichever is higher). Based on review of the known pending projects and required TDR, the office equivalency has been reduced incorrectly from the sending sites for some of the pending projects. Please provide an explanation why the most restrictive peak hour was not used for determining the appropriate reduction in office equivalency square footage. O6-8

Traffic and Transportation

Our traffic consultant has made a detailed review of the traffic study and traffic and transportation section of the DEIR. We request that a meeting be set up to address the issues they have raised. The following is a general description of these issues.

1. There appear to be inconsistencies between the square footages described in Tables 4-8 in the Land Use Methodology report and those provided in the Traffic Study and the DEIR. It is also unclear what assumptions were used in calculating development intensity. O6-9

2. It appears that, unlike the IBC circulation system, the circulation system outside of the IBC assumes all funded and non-funded improvements. What is the basis for assuming that unfunded improvements in non-IBC areas of the Vision Plan study area will be in place when the Vision Plan is implemented? O6-10

3. It appears that a different fair share methodology is proposed for Caltrans facilities as opposed to other intersections within the study area. What is the basis of this distinction? Shouldn't the same fair share program be used for all improvements? O6-11

4. The DEIR provides that all of the Transportation/Traffic impacts will be significant and unavoidable even after mitigation. This is understandable for improvements outside of the City, which may or may not be funded, and for the O6-12

2. Response to Comments



Bill Jacobs, AICP
February 5, 2010
Page 4

intersection of Jamboree Road/Michelson Drive (no feasible improvements); but it is unclear why all the other improvements in the City are considered significant and unavoidable after mitigation. Please clarify.	O6-12 cont'd.
5. No specific mitigation measures or financial obligations have been identified for significant impacts at certain Caltrans improvements. MM 13-4 states that "prior to issuance of a building permit for the 12,000th unit within the IBC, the City shall enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities." This does not appear to be an adequate mitigation measure as it relies on a future study without a specific objective.	O6-13
6. Based on review of the recommended Vision Plan mitigation measures at impacted study area intersections, some of the mitigation measures appear "infeasible" (i.e., additional right-of-way would be required to implement the improvement that could require that property be condemned). Will condemnation be feasible in these locations. CEQA requires that the feasibility of mitigation measures and their impacts be analyzed. The Traffic Study and DEIR should ensure that each improvement is 100 percent feasible and that the impact of the measures have been assessed prior to including the cost of these improvements in the updated fee program.	O6-14
7. Page 4 of the revised Traffic Study states that "the current IBC trip budget database will not change as a result of the IBC Vision Plan." MM 13-3 on page 5.13-197 of the DEIR states that "prior to issuance of the first building permit to the proposed project, the City shall update the Irvine Business Complex Land Use and Trip Monitoring Database (IBC Database) to reflect the land use changes associated with the proposed project." Please clarify and revise these conflicting statements.	O6-15
8. The DEIR does not recommend the use of Advanced Traffic Management System (ATMS) as mitigation. This has been used in the past as mitigation measures within the City and appears to be feasible. Why has the use of ATMS as mitigation measures been rejected?	O6-16
9. Page 5.13-105 of the DEIR says that there are 2,522 DU expected to be completed by 2015. However, all other pages of the Traffic Study (and the DEIR and Land Use Methodology report) state that there are 2,035 pending DU. Please revise all text to be consistent with the current project description of 2,035 pending DU.	O6-17
10. The DEIR recommends the deletion or downsizing of various arterial highway improvements. Very little justification is provided for the recommended modifications to the Circulation Element changes. The only analysis that was provided was a comparison between building all of the subject improvements versus not building any of the improvements. Additional discussion should be provided.	O6-18



2. Response to Comments



Bill Jacobs, AICP
February 5, 2010
Page 5

Climate Change

1. The use of a proposed renewable energy and existing building retrofit program as a mitigation measure for global climate change impacts is not appropriate as this is not a *feasible* mitigation measure. This is only a draft plan which may or may not be adopted or may be adopted in an entirely different form. Whether such a program, if adopted and implemented, would provide adequate mitigation is entirely speculative. The degree of mitigation, if any, cannot be determined. If such a program is not adopted or is adopted in a significantly different form, every project that requires discretionary approvals will be required to conduct a new environmental analysis of global climate change.

O6-19

2. The DEIR currently segregates PPPs and PDFs for transportation measures from building related measures. Since it is reasonably likely that the transportation measures will be implemented by state and federal agencies they should be considered to be feasible and the reductions from these measures should be included in the analysis of climate change impacts. It appears that if the transportation measures and building measures are considered together, it would appear that the impact of the project on global climate change would be less than significant without the proposed renewable energy and existing building retrofit program.

O6-20

3. One other issue that is raised by the analysis in this section is the potential for conflicts with state policies regarding the allocation of regional housing needs and the implementation of SB 375. SCAG has allocated a significant amount of residential development to the City of Irvine including both market rate and affordable housing. This development will need to be accommodated somewhere. That, together with the objectives of SB 375, which emphasize reductions in vehicle miles travelled by encouraging higher density residential development adjacent to jobs (such as in the IBC) or transit facilities, should be considered in this analysis. To the extent residential development can be accommodated in the IBC and other areas near jobs and transportation, a net reduction in GHG will be accomplished. The approach of this section of the EIR is to focus only on reductions within the IBC. It would be better for this analysis to be based on a demographic analysis, which accounts for per capital reductions in GHG impacts and the effect of relocating residents to jobs rich or transit

O6-21

2. Response to Comments

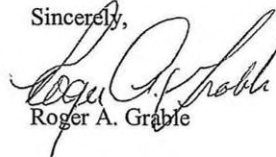
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Bill Jacobs, AICP
February 5, 2010
Page 6

oriented development, not the use of a gross reduction in GHG in the IBC, which will not measure the impact of residential occurring in areas where commutes will be longer.

O6-21
cont'd.

Sincerely,



Roger A. Grable

RAG:rag

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2. Response to Comments

O6. Response to Comments from Roger A. Grable, Manatt, Phelps & Phillips LLP, dated February 5, 2010.

- O6-1 The Commenter states that many of the plans, programs or policies (PPPs), or project design features (PDFs) do not include standard of mitigation that would be required of mitigation measures. PPPs have been included where there are already existing regulatory structures in the form of state, federal, local regulations or standard conditions that would be otherwise applicable to individual development projects. In those circumstances, the City has relied upon the assumption found in the California Civil Code that “the law has been obeyed.” (Civ. Code § 3548). As a result, compliance with the law has been assumed in assessing the impacts of the project. With regard to PDFs, where specific facets of the project have been included, such as specific zoning code requirements that are part of the project’s zoning text, compliance with those project design features has also been assumed. Based upon the assumption that those project designs will be carried out, as required by the project, the environmental impacts were then analyzed.
- To provide further assurances, however, the PPPs and the PDFs will both be integrated into the mitigation monitoring and reporting program, so that an established protocol exists to track and ensure compliance with both the PPPs and the PDFs.
- O6-2 PDFs reference specific requirements integrated into the Zoning Code or General Plan. While individual references to the location of the requirement in the zoning code are not made in every PDF, Appendix D of the RDEIR includes revisions to the zoning code. The final Mitigation Monitoring and Reporting Plan (MMRP) will include proper references for all PPPs and PDFs to applicable code sections or other City policies and/or regulations.
- O6-3 The commenter claims that in many cases the impact analysis misstates the effect of the PDF and that “this should be reconciled by either revising the PPP/PDF or revising the analysis.” The comment provides no specific examples concerning where the circumstances that it claims exist manifests itself in the RDEIR. To the extent specific issues are raised in the commenter’s later comments, those issues will be addressed in response to those later comments.
- O6-4 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights and transferability of these rights will not be changed.
- O6-5 No ownership/or control is assumed for the potential units allocated to a certain Traffic Analysis Zone (TAZ). These units were considered in the land use modeling assumptions; however, they may, or may not, ultimately be used within the TAZ in which they were identified in the traffic model. All IBC properties will maintain their current entitlements in the IBC database, and the remaining potential units will be available as alternative development potential on a first come-first serve basis. The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process, after they are approved) and existing development rights and transferability of these rights will not be changed. The IBC database will be supplemented with a tracking mechanism for the additional units, which will be allocated to the appropriate IBC database project as units are approved.
- O6-6 The Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone as the receiving

2. Response to Comments

site will not be required to process a Conditional Use Permit for the TDR. The City's Traffic Study Guidelines and procedures will not change as a result of this project. Traffic studies will still be required for new TDR's beyond those considered in the Vision Plan. Additional traffic and access studies may be required for projects described in the IBC Vision Plan depending on the timing of the project review after certification of the EIR and any project redesign that may affect access.

O6-7 For the 2015 scenario, no TDRs or changes to office equivalency are proposed, beyond the projects that are already in process. Figures 3-7a and 3-7b outline the specific intensity and land use assumptions for each pending TDR.

O6-8 See also response to Comment O4-3. For traffic study and impact analysis purposes, a TDR is based on the transfer of office equivalency associated with the most restrictive peak-hour time period, which has always been the City's policy. At the time, the City believed the most restrictive peak hour was the AM peak hour. However, it is now clear that the most restrictive peak hour in some cases was the PM. Staff discovered that there were other pending projects that did not identify the most restrictive peak-hour time period for office equivalency for their respective TDR. The total amount of office equivalency under reported for these four projects was approximately 4,500 square feet. However, on another pending project, the Element Hotel, staff over reported the development intensity by approximately 7,200 square feet of office equivalency. Therefore, the end result is that the RDEIR over reported the development intensity for the combination of all these pending projects by approximately 2,000 square feet of office equivalency. Figure 3-7a and Figure 3-7b of the RDEIR has been updated to reflect the most restrictive peak-hour time period for each of the pending projects mentioned above (see Chapter 4 of this FEIR).

Additionally, based on correspondence with Parson Brinkerhoff, no additional impacts resulted from this analysis and all of the conclusions and mitigation measures as identified in the RDEIR and traffic study remain unchanged.

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

O6-9 While the commenter did not provide specific examples of the discrepancies between the RDEIR/Traffic Study and the Land Use Methodology Report, discrepancies, the figures in the RDEIR and Traffic Study are correct.

O6-10 The buildout roadway network includes portions of adjacent cities and therefore the roadway network assumed in the city's General Plan is assumed to be fully funded and included in the buildout (Post-2030) network that was analyzed as part of this study. The exceptions to this assumption include those specific unfunded improvements identified in the 1992 IBC Rezone EIR of which the IBC Vision Plan is intended to replace. These unfunded improvements were removed in order to determine whether they are needed and to identify potential mitigations required if they are removed. Network assumptions for the Year 2015 interim analysis were based on coordination with adjacent jurisdictions.

O6-11 The fair-share methodology used for intersection improvements in adjacent jurisdictions is a standard methodology used in the industry and has been agreed upon by the City of Irvine and those affected City jurisdictions. Due to the complex nature of freeway-related improvements compared to intersection and arterial improvements, the fair-share methodology for freeway facility improvements differs slightly from the intersection and arterial improvement fair



2. Response to Comments

share. This agreed-upon methodology has been used previously in other traffic studies prepared within the City of Irvine.

- O6-12 The RDEIR does not provide that all traffic or transportation improvements will be significant and unavoidable after mitigation. Rather, it indicates that one improvement within the City at Jamboree and Michelson and certain improvements outside the City will be significant and unavoidable. (See RDEIR, § 5.13-7, pp. 5.13-198 through 5.13-200.) With regard to the improvements outside the City, the determination of significance and unavoidability is based on the fact that many adjoining jurisdictions do not have identifiable fee programs for which contributions can assuredly mitigate impacts. Under applicable law, in those instances where adjoining cities do not have a particularized funding plan for an improvement to an identified deficiency, the City of Irvine has no legal obligation to provide funding toward that improvement. (See *In Tracy First v. City of Tracy* (2009) __ Cal.App.4th __ [“the City was **not required to provide for funding** of the improvements to the intersections because the intersections were not under the control of the City and there was **no existing plan** for the county to improve the intersections.”] Nevertheless, the City has agreed to enter into funding agreements with neighboring jurisdictions to see that if and when a funding plan is developed by those jurisdictions, a contribution from the City of Irvine will be made available. However, even without that commitment (which is not legally required), the City ultimately has no jurisdictional control over whether extra-jurisdictional improvements will be constructed and, accordingly, has recommended a statement of overriding considerations to reflect that fact.

- O6-13 All pending projects included as part of the project description are subject to fees associated with improvements to address freeway impacts and other traffic-related improvements identified in the traffic study and RDEIR.

Mitigation Measure 13-4 has been revised based on the commenter’s request to specify that the mitigation obligations are required to occur prior to the adoption of the AB 1600 nexus study identified in Mitigation Measure 13-1.

- 5.13-4 Prior to adoption of the AB 1600 nexus study identified in MM 13-1, issuance of a building permit for the 12,000th unit within the ~~IBC~~; the City and Caltrans shall jointly identify feasible operational and physical improvements and the associated fair-share funding contribution necessary to mitigate project-related impacts to state transportation facilities. The City shall fund said improvements on pro-rata “fair-share” basis in accordance with the terms and conditions of an Agreement to be prepared and agreed to by both agencies. These fair-share contributions for feasible improvements shall be included in the AB 1600 nexus study ~~enter into a mitigation agreement with Caltrans which identifies transportation or operational improvements necessary to mitigate project-related impacts to state transportation facilities.~~

In addition, the requirement to enter into a mitigation agreement is the most the City can do under the circumstances. Caltrans does not have a defined, fair share funding program for the identified impact. Therefore, the City has no specific mitigation obligation to Caltrans (please see Response to Comment O6-12). Nevertheless, in an effort to ensure that impacts can be mitigated if and when a fee program is identified by Caltrans, the City has put in place Mitigation Measure 13-4. As previously noted, even with the implementation of this mitigation measure, there can be no guaranty that Caltrans will implement the mitigation

2. Response to Comments

measure and therefore, there can be no guaranty that the impact will be reduced to below a level of significance.

O6-14 Based on field verification, technical layout plans and cost estimates prepared, all identified improvements that require mitigation, except one improvement located at Jamboree/Michelson, have been reviewed for feasibility and have been determined to be feasible and will be included in the IBC Vision Fee Nexus Study.

O6-15 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights will not be changed. The earlier City response about changing the database was meant to reflect changes necessary to accommodate the additional planned residential, and these will be reflected as a separate accounting in the IBC database, so as not to affect existing trip budgets.

O6-16 In order to address concerns raised by adjacent Cities during the Initial Study and Notice of Preparation phases of the Environmental Process, the Advanced Management System (ATMS) improvements were not proposed as mitigation.

O6-17 At the comment's request, the following language has been modified in the FEIR:

As part of the IBC Vision plan, the ~~2,522~~ 2,035 residential units currently in process would be expected to be completed by 2015, with the exception of 776 approved units at Park Place anticipated to be built after 2015; the remaining 3,950 units plus the 776 approved units at Park Place and associated density bonus units included as part of the Vision Plan are expected to be completed by project buildout or the Post-2030 timeframe. Please refer to Appendix N for a complete discussion of these scenarios.



O6-18 The arterial downgrades identified in the Traffic Study (see Appendix N) are proposed because under the constrained network (most conservative) analysis, the widening of these arterial facilities to meet future forecast conditions is unnecessary. Thus, the downgrades were proposed and the sensitivity analysis validated this conclusion. See also response to Comment A13-2 and O5-70.

O6-19 The Global Climate Change section has been revised in the FEIR in response to comments. On December 30, 2009, the Natural Resources Agency adopted the amendments to the CEQA guidelines concerning greenhouse gas (GHG) emissions. Pursuant to the final Statement of Reasons, a net zero increase in GHG emissions would clearly indicate that no significant impacts would occur as Section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. Consequently, the threshold has also been updated to coincide with the new CEQA Guidelines. The City's Renewable Energy and Existing Building Retrofit Program has been revised to be included as a PPP as the City has received and approved the creation of this program. Changes to the RDEIR concerning the new net-zero threshold in Section 5.15, Global Climate Change, of the RDEIR can be found in Chapter 4 of this FEIR.

PPP 15-14 Renewable Energy and Existing Buildings Retrofit Program:
Pursuant to City Council Resolution 09-52, the City has received federal funding from the U.S. Department of Energy to establish a Renewable Energy and Existing Retrofit Program. Retrofitting is designed to improve a building's energy consumption by using cost-effective measures that do not require extensive remodeling

2. Response to Comments

work. The City of Irvine is proposing to use the "whole building approach" meaning that the City will look at the following:

- Thermal envelope (i.e. the shell insulation and air leakage)
- Mechanical systems (i.e. HVAC and domestic hot water)
- Appliances and lighting that may need replacing

The approach will evaluate these areas and their interaction given usage rates, building site, and climate to assess the building's overall energy efficiency and performance and to make targeted recommendations for improvement and ultimately reduce residential demand. The City of Irvine will create a financing district to help property owners finance energy efficiency improvements and renewable energy installations. The City of Irvine is forming a Property Assessed Clean Energy (PACE) District under the Mello-Roos Community Facilities Act of 1982 and its powers as a charter city. Eligible improvements may include energy efficiency, water conservation, and renewable energy improvements to privately owned buildings or property. Potential funding for initial improvements may come from various sources including American Recovery and Reinvestment Act grants, taxable bonded indebtedness, other external financing arrangements, or City funds.

This PPP replaces the proposed Mitigation Measure 15-1 shown on page 5.15-6 of the RDEIR, which is therefore revised as follows:

5.15.6 Mitigation Measures

No mitigation measures are necessary.

~~MM 15-1 — Prior to the issuance of building permits in the IBC Vision Plan Area, the City shall establish a renewable energy and existing building retrofit program that will establish a framework for funding and implementing renewable energy projects and energy efficiency retrofits of existing buildings within the IBC Vision Plan area or the City as a whole. Applicants for new development projects within the IBC Vision Plan area shall submit evidence to the satisfaction of the Director of Community Development that the retrofits and/or renewable energy (which may include solar thermal, solar photovoltaic, wind, or other sources approved by the City) of existing buildings equates to the reduction of greenhouse gas (GHG) emissions by 32 percent of nontransportation sources. Applicants for new development projects shall first attempt to accomplish renewable energy production or energy efficiency retrofits of existing buildings within the IBC Vision Plan area. If deemed acceptable to the Director of Community Development, applicants for new development projects can implement new~~

2. Response to Comments

~~renewable energy production or energy efficiency retrofits of existing buildings within the City of Irvine to reduce GHG emissions. However, all renewable energy production or energy efficiency retrofits must be within the City limits.~~

- O6-20 PPPs and PDFs that reduce transportation emissions generated by land uses in the IBC Vision Plan area were accounted for in the analysis. The transportation sector is regulated at the state and federal level; whereas, the non-transportation sources can be regulated by local government since the City has land use authority. While transportation and non-transportation measures, when taken together, would achieve greater than a 15 percent reduction from existing conditions, the City has identified two separate GHG reduction targets.
- O6-21 The IBC Vision Plan could provide regional GHG benefits through relocating persons from more remote locations to areas closer to jobs in Irvine as Senate Bill 375 (SB 375) envisions. The regional target for the Southern California Association of Government's (SCAG) region has yet to be established or distributed among the local council of governments (COGs). Therefore, the proposed Climate Action Plan and analysis for the IBC Vision Plan does not currently include any reduction for SB 375.



2. Response to Comments

LETTER O7 – Sapetto Group, Inc. (2 pages)



February 5, 2010

Via e-mail: bjacobs@ci.irvine.ca.us

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

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

Dear Mr. Jacobs:

On behalf of our clients owning property in the vicinity of White Road within the Irvine Business Complex, we have specific questions on implementation of certain aspects of the Vision Plan and Mixed Use Overlay Zoning EIR, recirculated December 23, 2009.

- | | |
|--|------|
| 1. How is the City of Irvine handling Transfers of Development Rights (TDRs) between Traffic Analysis Zones (TAZs)? Will the TDR procedures outlined in the current IBC Zoning (Zoning Code Section 9-36-17) remain as it is today, or is the City changing the procedures? Please explain. | O7-1 |
| 2. Please explain who has ownership and/or control over the "Potential Residential" units in a given TAZ. For example, TAZ 495 includes an allocation of 473 Residential Units under the Optimization program. However, TAZ 495 has numerous Projects identified in the IBC Database each with separate land owners. How does the City envision addressing who has control and/or ownership of the optimized units? Please explain. | O7-2 |
| 3. Please confirm that all development rights granted and allocated in the current IBC Data Base and Zoning remain with the property, and that the IBC Vision Plan has no direct affect on reducing any development rights. | O7-3 |
| 4. Project Design Feature 2-3 reads: "As described in the proposed design criteria for the project, all outdoor active-use public recreation areas associated with development projects shall be located more than 500 feet from the nearest lane of traffic on the Interstate 405." This design criterion has the consequence of essentially prohibiting residential development within 500 feet of the 405 freeway, due to the fact that the City requires residential | O7-4 |

Sapetto Group, Inc. 231 East Memory Lane • Santa Ana, California 92705 • (949) 252-0841 • Fax (949) 252-0842 • www.sapettogroup.com

2. Response to Comments

Mr. Bill Jacobs
CITY OF IRVINE
February 5, 2010
Page 2

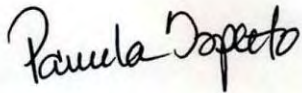
developments to include recreational facilities within the projects. Please clarify the intent of this criterion and circumstances under which it could be applied. Please note that this would essentially create a situation of several parks, and at least one school in other portions of the city to be in violation of this situation.

O7-4
cont'd.

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

Sincerely,

SAPETTO GROUP, INC.



Pamela Sapetto
CEO / President

cc: Eric Rubery, Sapetto Group, Inc.
Mr. Ygal Sonenshine
Mr. Howard Ahmanson
Mr. Larry Smith
Mr. James W. Ray
Mr. Michael D. Ray.

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2. Response to Comments

O7. Response to Comments from Pamela Sapetto, CEO / President, Sapetto Group, Inc., dated February 5, 2010.

- O7-1 The Transfer of Development Rights (TDR) procedures currently outlined in Chapter 9-36 will remain unchanged, with the only exception being that any projects proposing a transfer exclusively from another sending site within the same Traffic Analysis Zone (TAZ) as the receiving site will not be required to process a Conditional Use Permit for the TDR.
- O7-2 No ownership/or control is assumed for the potential units allocated to a certain TAZ. These units were added considered for land use modeling assumptions and may or may not ultimately used within the TAZ in which they were identified in the traffic model. All IBC properties maintain their current entitlements in the IBC database, and the remaining potential units are available as alternative development potential on a first come-first serve basis.
- O7-3 The trip budgets in IBC database will not be changed as part of this project (except for the specific development projects in process after they are approved) and existing development rights and transferability of these rights will not be changed.
- O7-4 The City acknowledges that the 500 foot distance for recreation areas will affect properties along the south side of White Road. The IBC Vision Plan project allows for greater flexibility in design of park and recreation space, therefore, should a residential use be proposed in this area, staff will work with the applicant to ensure that necessary recreation areas can be properly located.