

2. Response to Comments

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

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February 16, 2010

VIA FEDEX AND E-MAIL

Bill Jacobs, AICP, Principal Planner
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Community Development Department
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Re: Comments Concerning Recirculated Draft EIR for IBC Vision Plan

Dear Mr. Jacobs:

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

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

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



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

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The RDEIR is, in many respects, an improvement over the original Draft EIR circulated in May 2009. Unfortunately, the document retains significant flaws identified in our previous comments and includes new flaws described below. Thus, the RDEIR fails to satisfy the requirements of the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000, et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq.).²

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

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

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

A15-2

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

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

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

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

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I. GENERAL COMMENTS

A. The Baseline for Analyzing Environmental Impacts is Improper.

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

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

A15-4



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

The RDEIR neglects to evaluate the whole of the proposed Project. Under CEQA, a project is defined as "the whole of the action" that may result in either a direct or reasonably foreseeable indirect physical change to the environment." (CEQA Guidelines, § 15378, subd. (a); Pub. Resources Code, § 21065.) This broad definition of "project" is intended to maximize protection of the environment. (*McQueen v. Bd. of Directors of the Midpeninsula Regional Open Space Dist.* (1988) 202 Cal.App.3d 1136, 1143; *Tuolumne County Citizens for Responsible Growth v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1227.) In performing its analysis, a lead agency must not "piecemeal" or "segment" a project by splitting it into two or more segments. This approach ensures "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284 [same].)

A15-5

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

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

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

(Minute Order regarding the 2851 Alton project, p. 4, ¶ 9.)⁴ The potentially significant impacts caused by numerous IBC projects that have already been approved are relevant to the cumulative impacts of the Vision Plan project. (*Environmental Protection & Information Center v. Cal. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 523 (*EPIC*) [cumulative impact analysis must also consider the impacts of past projects].)

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

A15-6
cont'd.

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

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

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

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

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

A15-8

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

A15-9

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

A15-10

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



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exemption. (CEQA Guidelines, § 15061, subd. (b)(3).)⁶ This conclusion, however, was unfounded. The common sense exemption is only available to projects for which, as a matter of common sense, “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (*Ibid.*) Rather, there is substantial evidence that businesses within the ARB designation category will generate traffic.⁷ The accessory retail uses within residential and office complexes, now authorized under the ARB designation, will have a significant effect on land use within the IBC and will generate at least some traffic (though how much is unknown, because this has not been analyzed). Moreover, because Irvine’s zoning ordinance does not place a cap on the total amount of allowable square footage of ARB uses within the IBC, the ARB designation has the potential to significantly change the face of the IBC. In light of this, it is impossible for Irvine to conclude with the requisite level of certainty that the ARB designation will have no possible effect on the environment. As such, the RDEIR must analyze the various impacts that will be caused by the ARB designation. The ARB designation should be considered part of the Vision Plan project, or at the very least, should be considered in the cumulative impact analyses.

A15-10
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The ARB designation also exempts ARB uses in the IBC from Irvine’s Transfer of Development Rights (“TDR”) mechanism. The TDR mechanism allows trading of development intensity rights between parcels up to a maximum development cap. Allowing this broad exception to the TDR program’s development limitations, without any environmental analysis, raises further concerns regarding the associated potentially significant impacts and Irvine’s commitment to address them.

A15-11

In summary, the ARB designation constitutes a broad change in land use regulation within the IBC that should have been considered along with other related regulatory changes in the Vision Plan RDEIR. Irvine was wrong to consider the ARB designation as distinct from the Vision Plan and must instead analyze the potential direct, indirect, and cumulative impacts of the businesses that will be permitted through this designation. Considering the ARB Designation as a separate, previously approved project constitutes improper segmentation of the Vision Plan project.

A15-12

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

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

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

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

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

A15-14

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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The RDEIR states that the General Plan Land Use Element would be amended to include the proposed cap of 15,000 dwelling units for the IBC and a corresponding "offsetting" reduction of nonresidential office uses, as depicted in Table 3-1, Maximum Intensity Standards by Planning Area, of the General Plan Land Use Element. (RDEIR, pp. 3-10 to 3-12.) While the RDEIR acknowledges that the Project involves increasing the residential development cap in the IBC through the reallocation of permitted development intensity within the IBC (RDEIR, p. 1-6; see also *id.* at p. 3-10), it fails to acknowledge this development intensity will result in significant and unavoidable impacts.

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

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

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

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

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cont'd.

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

A15-23



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

A15-24

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

A15-25

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

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

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

A15-25
cont'd.

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

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

A15-26

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

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

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

A15-27
cont'd.

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

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

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

A15-28



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

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

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

II. SPECIFIC COMMENTS

A. Section 5.2 – Air Quality

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

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

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

A15-30

B. Section 5.8 – Land Use

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

A15-31

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

A15-32

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

A15-33

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

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

A15-34

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

A15-35

Section 5.8.4 – Cumulative Impacts to Land Use

“[I]t is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them.” (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79; see *Citizens to Preserve the Ojai, supra*, 176 Cal.App.3d 421, 430-432.) In general, the poorer the quality of the existing environment, the more likely it is that a project’s incremental contribution to future cumulative conditions will be significant (i.e., “cumulatively considerable”). (*CBE, supra*, 103 Cal.App.4th at p. 120; see also *Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 720.)

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

A15-36

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

A15-37



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

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

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

A15-37
cont'd.

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

C. Section 5.10 – Population and Housing

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

A15-38

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

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

A15-38
cont’d.

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

A15-39

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

A15-40

D. Section 5.12 – Recreation

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

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

A15-42

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

A15-43

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

A15-44

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

A15-45

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

A15-46

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

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park dedication that has been discredited by these surveys. This description of the two surveys should be amended, as well as the subsequent section concerning parks, in order to confirm that the results of these and other timely surveys will be used for park dedication and impact analysis purposes. The Parks and Open Space description should also be amended to reflect the proposed development of community and neighborhood parks within the IBC. (See *id.* at p. N-9.) Currently, this aspect of the proposed IBC Element is silent concerning this issue.

A15-47
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Irvine asserts that its reliance on the 1.3 residents per unit figure to calculate parkland dedication requirements complies with the Quimby Act (Gov. Code, § 66477). (RDEIR, 5.12-1.) Irvine does not acknowledge, however, that Government Code section 66477, subdivision (a)(2) states that there is “a *rebuttable presumption* that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census.” (Italics added.) The 2005 and the 2007 Alfred Gobar surveys provide the evidence that rebuts this presumption. The difference in household population estimates found in the 2000 census and in the 2005 and 2007 surveys strongly suggests that Irvine has underestimated the projected population of the Project. The Recreation chapter does not adequately address this issue, despite the assurance in Response to Comment A11-24 that it does. (See Appendix Q to RDEIR, pp. 2-161, 2-252.) If Irvine continues to insist on using the 1.3 persons per unit figure for calculating parkland dedication requirements, please explain why this occupancy level is accurate for residential projects that include as many as 3 bedrooms per unit. (See RDEIR, p. 3-31 [description of Martin Street project].)

A15-48

Section 5.12.1 – Environmental Setting

City of Irvine Park Standards (p. 5.12-1). The City’s standard for new residential development is five acres of new parkland (three acres neighborhood / two acres community) for each 1,000 residents. The vast majority of residential development in Irvine is in the form of single-family homes, each of which typically have some sort of play area or “mini-park” in their back or front yards for its inhabitants to utilize. In contrast, residential development in the IBC is characterized by condominium developments with private common recreational areas with no public parks within the IBC itself. The Project is anticipated to add 7,583 residential units (including density bonus units) at build-out of the IBC, all of which would be high density multi-story apartments or condominiums. Due to the high-density development pattern in the IBC, which does not allow for the typical open space areas attached to single-family residential development, the Project should not be evaluated using the same standards as single-family detached homes. Instead, development within the IBC should be subject to a standard that emphasizes public open space.

A15-49

Current Inventory of Parks and Recreation Facilities (p. 5.12-1). The section fails to disclose the lack of public community or neighborhood parks in the IBC. This deficiency has an impact on the public parks located in neighboring Tustin. Without public parks in the IBC, public recreational opportunities for IBC residents would have to be provided either at Irvine public parks outside the IBC or at parks outside Irvine’s jurisdiction, including Tustin parks. The Recreation section indirectly acknowledges this fact by stating that Irvine residents have access to recreational opportunities outside of Irvine, including Laguna Wilderness Park and

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

A15-50
cont'd.

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

A15-51

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

A15-52

Section 5.12.3– Environmental Impacts

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

A15-53

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

Impact 5.12-1 (p. 5.12-8). Irvine continues to incorrectly apply a population ratio of 1.3 residents per dwelling unit to assess the impacts of the Project to parks and recreational facilities. Although Irvine's General Plan and Subdivision Ordinance specifies 1.3 persons per household based on density factors and information gathered from the 2000 Federal Census, the actual number of persons per household within the IBC area is higher, according to the 2005 and 2007 surveys conducted by Alfred Gobar Associates. Using a factor of 1.3, and based on the Project's proposed addition of 7,583 units, the RDEIR estimates that the residents added by the Project will be 9,858 people. However, using the more conservative factor of 1.86 residents per dwelling unit, the added residents would total 14,104. The RDEIR fails to consider the impacts of the additional 4,246 people.

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

A15-55

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

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

A15-56



The RDEIR does not provide any information concerning the projected average number of persons per dwelling unit for high-density, 50.1+ dwelling units per acre, development. The Subdivision Ordinance should be amended to include an accurate and factually supported estimate of the number of persons for this density level and even higher density levels (since there apparently will no longer be a maximum residential density for the IBC). The amendment should then be included as part of a revised Project description and analyzed in this chapter of the RDEIR.

The RDEIR notes that park and recreation facility needs have historically been met by on-site recreational opportunities, including swimming pools, fitness centers, community rooms, and tot lots and that any neighborhood facility shortcomings would be mitigated by the provision of in-lieu fees for the creation or improvement of neighborhood parks "available to IBC residents." (RDEIR, p. 5.12-5.) The RDEIR does not acknowledge that all of these existing facilities are private nor does the RDEIR explain whether any shortcomings would be mitigated by public neighborhood and community parks that are actually located in the IBC.

A15-57

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

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proposed neighborhood and community facilities and states that actual park amenities for individual projects would not be defined until the “Park Plan process” occurs. As a result, we cannot determine how much of the required amount of recreational facilities would be provided on-site, elsewhere within the IBC, or even outside of the IBC. By failing to provide specific information regarding these facilities, the RDEIR improperly defers analysis of the Project’s impacts to recreation. Moreover, by not analyzing the park facilities that will be necessary to serve current and future IBC residents, the RDEIR improperly segments environmental review for the Vision Plan project as a whole.

A15-58
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Further, the language quoted above provides no assurance that Irvine will move past the stage of seeking an appropriate park site the single neighborhood park. Conceivably, Irvine could continue to collect in-lieu fees for its park fund but never actually select a park site it deems appropriate. Although residential developments have historically paid park in-lieu fees to meet park requirements, the exaction of in lieu fees for parks has not led to the development of parks in the IBC. The RDEIR should include enforceable mitigation that would require Irvine to apply its park in-lieu fees so that recreational opportunities within the IBC are provided in a timely manner. Furthermore, the RDEIR should describe provisions that will guarantee funding sources will be available when Irvine is ready to purchase sites for recreational facilities.

A15-59

The park planning process must occur *now*, during the updated programmatic analysis for the IBC. The public and Irvine’s elected decision makers must be able to ascertain whether or not adequate facilities *will be* provided, either on- or off-site. This is currently not possible, because the RDEIR relies primarily on conjecture and preliminary conclusions, neither of which may be used to satisfy the requirement that EIRs provide effective, enforceable mitigation for impacts. If an in-lieu fee is proposed as a mitigation measure, the RDEIR must demonstrate that such fee will actually result in mitigation of the Project’s impacts on parks and recreational facilities. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189 (*Anderson First*) [cumulative traffic impacts analysis held inadequate because agency relied on uncertain funding and therefore had insufficient evidence to conclude that necessary road improvements would, in fact, be built].) Currently, there is insufficient evidence supporting the assumption that collection of in lieu fees for recreation impacts will result in mitigation. For example, in 2005, Irvine created a future IBC community park fund, but since then no community parks have been created in the IBC, even though Irvine has continued to approve residential projects. Thus, the RDEIR’s analysis concerning impacts to parks here is analogous to the cumulative traffic impacts analysis in *Anderson First*. The RDEIR presents inadequate impact analysis and improperly defers mitigation under CEQA.

A15-60

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

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

According to the Tustin's consultant, based on the projected population at buildout, the RDEIR must include mitigation that requires the construction of at least two community parks and eight neighborhoods parks.¹⁵ Any additional park resources that will be included in the IBC should be reflected in updated General Plan figures denoting the location of these parks.

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

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

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

We urge Irvine to more carefully consider the impact of the Project on the existing recreational resources as well as how these impacts will be mitigated through the timely development of additional parks. The Project area is already highly urbanized, and this trend is expected to continue through Project buildout, there is therefore an escalating need for recreational amenities within the IBC. The timely dedication of adequate park facilities is an important step in satisfying several Vision Plan goals, such as creating a vibrant community, usable open space, and well-designed neighborhoods. (RDEIR, p. 3-1.) Moreover, specifically identifying neighborhood and community park sites is the only way to satisfy the Project objective to "[i]dentify and pursue opportunities for open space areas that serve the recreational needs of IBC residents and employees." (*Id.* at p. 3-2.)

A15-61
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A15-62

A15-63

¹⁵ / See Attachment C, pp. 8-9.



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

A15-64

E. Section 5.13 – Transportation and Traffic

General Comments

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

A15-65

Assumptions Regarding the IBC Roadway Network. The 2004 Traffic Impact Analysis ("TIA") Guidelines adopted by Irvine require traffic studies to provide detailed information regarding improvements that are assumed to be in place in the interim year (i.e., 2015).¹⁶ According to the TIA Guidelines, such information includes the nature and extent of the improvement project, the implementation schedule, and the agency or funding source responsible. (TIA Guidelines, pp. 7-8.) The RDEIR does not include this information. The traffic study refers the reader to unnumbered pages buried in the appendix, where only a portion of this information is presented. (See Appendix N-1 to DREIR, pp. 19-21; see also Appendix N-2 of DREIR, Appendix E – Intersection Improvement List, .pdf file pp. 612-634.) The information regarding future lane configurations that is presented in Appendix N-2 is incomplete: the tables do not provide all lane configuration information for future years under the "constraint" and "MPAH" scenarios. In addition, to assist the reader in reviewing the table, the table should repeat the heading on page one which provides a key to lane type and orientation. (See Appendix N-2 to DREIR, .pdf file p. 612.) Thus, the RDEIR does not provide the required information, contrary to the unsubstantiated and conclusory assertion in response to comment A11-34. (See Appendix Q to RDEIR, pp. 2-164 – 2-165, 2-253.)

A15-66

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

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

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assumed improvements for the interim year and buildout scenarios in a manner accessible to the reader. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 442 (quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239) “[t]he data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. “[I]nformation ‘scattered here and there in EIR appendices,’ or a report ‘buried in an appendix,’ is not a substitute for ‘a good faith reasoned analysis. . . .’”].)

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

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

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

A15-67

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

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

A15-68



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

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

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

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

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

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

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

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

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

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

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

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

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A15-69

A15-70



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potential land use patterns. Table 2-2 of the traffic study found in Appendix N-1 further evidences the fact that the land use assumptions have resulted in questionable results. Table 2.2, Trip Generation Summary for Future Forecast Scenarios, indicates that the average daily trip differences between the 2015 No Project scenario and the 2030 No Project scenario is just 8 trips, a negligible change. This conclusion seems to indicate there will be no regional growth from 2015 to 2030 without the Project. The analysis does not explain this improbable scenario, even though Response to comment A11-39 asserts that our prior comments concerning this issue have been addressed. (See Appendix Q to RDEIR, pp. 2-166, 2-254.) Instead, other sections in the RDEIR refute this information. For example, the Population and Housing section reports that the County as a whole will experience a substantial increase in both residents and employees, and that much of this growth will be focused in Irvine. (RDEIR, Table 5.10-1.) Population and employment growth in the amount reported in Table 5.10-1 will certainly cause substantial land use changes and bring associated traffic. The negligible difference in 2015 and 2030 no project traffic conditions appears to completely ignore these growth projections. Thus, the traffic analysis improperly considers the cumulative impacts of the Project based on erroneous and likely under-estimated land use assumptions.

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

A15-71

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

A15-72

As noted above, on March 24, 2009, Irvine approved a zone change that created an ARB zoning designation. The City Council's approval occurred only a few days before the release of the original DEIR for the Vision Plan. The ARB Designation was a foreseeable future project at the time the NOPs for the Vision Plan was issued. Despite this, the RDEIR's assumptions regarding particular land uses, including restaurants and commercial uses, fail to take into account potential land use changes that will result from the ARB Designation. (See RDEIR, p. 5.13-12; Appendix N-1 to DREIR, Traffic Study, pp. 4, 33.) Because the language instituting the ARB Designation does not place an overall cap on the total square footage of ARB uses allowed in the IBC, land use patterns could change significantly, thereby creating additional

A15-73

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

A15-73
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The RDEIR also states that Irvine calculated its future forecast volumes using the Irvine Transportation Analysis Model ("ITAM"). (RDEIR, p. 5.13-11.) Traffic engineers and planners from Irvine and the Cities met to consult regarding the scope of the traffic study and the ITAM 8.1 modeling for the DEIR. There has not been any discussion between Irvine and Tustin officials regarding the ITAM 8.4 model or its use in the RDEIR. Tustin notes that there are unexplored discrepancies between the results of ITAM 8.1, ITAM 8.4 and the OCTAM 3.2 and 3.3 models used for recent projects in Tustin. For example, ITAM forecast volumes for Red Hill Avenue and Barranca Parkway in the 2030 scenarios are substantially lower than OCTAM 3.2 forecast volumes for these segments. In addition, the ITAM 8.1's forecast ADT traffic volumes for Jamboree were in the 60,000 range, whereas the OCTAM 3.2 reports these volumes to be in the 90,000 ADT range. Similar discrepancies have been observed with respect to ITAM 8.4.¹⁸ Thus, while the OCTAM model confirms the need for larger capacity arterials, Irvine proposes to downgrade a number of facilities. In order to downgrade arterial segments, Irvine must ensure that the roadway network has sufficient capacity and must follow specific guidelines and procedures required for reclassification of MPAH roadways.

A15-74

IBC Development Caps and the TDR Mechanism. Irvine will apparently continue to use the TDR mechanism, and will rely on the existing development caps for the IBC. The RDEIR does not address the likely development pattern that will arise through multiple transfers of development rights.¹⁹ The potential development pattern arising from implementation of the TDR mechanism also affects the land use assumptions used in the Transportation and Traffic Chapter. The RDEIR must be revised to identify the current development patterns in the IBC and to anticipate and analyze the development patterns that will likely arise over time through multiple TDRs.

Revised Zoning Code section 9-36-4 now states that the intent of Chapter 9-36 is "to specify regulations to maintain the development and traffic intensity at the levels analyzed in *and mitigated by* the final [EIR] for the IBC Vision Plan project." (Italics added.) By deleting the reference to the 1992 Program EIR, Irvine apparently would like to rely on the 1992 trip caps without ever addressing the impacts that were identified when those trip caps were adopted.

A15-75

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

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

¹⁹ / The footnote to the table in revised Zoning Code section 9-36-5 suggests that the 15,000 unit cap, is not really a cap, but can be adjusted upward or downward as long as development in the IBC remains within the Planning Area Trip Budget. The RDEIR, however, analyzes the impacts of the proposed mix of uses. Any deviation from the 15,000+ residential development cap would be inconsistent with the Project and would require separate environmental review. Furthermore, the ultimate number of residential units must be analyzed in the RDEIR, to the extent these future development projects are foreseeable.



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

The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.

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

As Irvine is well aware, a Superior Court judge confirmed that Irvine is required to address these impacts if it wishes to use the TDR mechanism (see rulings in the 2851 Alton and Martin St. cases, referenced above). Unfortunately, by not addressing these impacts in this RDEIR, Irvine apparently intends to ignore Judge Sundvold's rulings. This RDEIR, as the purported comprehensive analysis for the IBC, must squarely address the unmitigated impacts identified in 1992 or perform an entirely new analysis for the so-called "development intensity values" allotted to IBC parcels.²¹

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If the unavoidable impacts identified in 1992 have been mitigated, the RDEIR must describe the measures that have achieved reduction of the impact to less-than-significant levels. Irvine cannot assume (as it has routinely in the past) in this program RDEIR, that Project impacts will be less-than-significant as long as overall development within the IBC remains below limits managed through the TDR mechanism. Rather, a fresh analysis of the overall development capacity for the IBC is required. In addition, the RDEIR must analyze the impacts caused by transferring development rights from one area of the Project to another and from one type of use (office/industrial) to another (residential) and must provide feasible mitigation for these impacts. This discussion would help ensure that the analysis of the Project's impacts to local and regional traffic is accurate.

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

²⁰ / The DREIR itself makes only passing reference to the 1992 IBC PEIR and instead emphasizes a "1988 EIR" prepared for the IBC. These references may be to the EIR prepared for the General Plan amendment in 1989 (referred to as "GPA-16"), but this is not clear from the text of the DEIR. The DEIR must clarify what it is referring to, and the referenced document must be included in the administrative record for this Project. Moreover, it is unclear why the DEIR does not reference the 1992 IBC PEIR instead, as this was the last comprehensive environmental review addressing the plan for development in the IBC.

²¹ / The change from "trips" to "intensity values" in the Zoning Code does not address the real issue concerning unmitigated impacts. In addition, the change in nomenclature is confusing. "Intensity values" still sound like "trips" and there are still references to "trip budgets."

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impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area.” (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 709 (*Woodward Park*) (citing *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354).) Instead, the traffic impact analyses for future year scenarios fail to disclose impacts associated with increased residential development because it assumes this development will occur through “reallocation” of existing permissible nonresidential development intensity. (See, e.g., Appendix N-1 to RDEIR, pp. 4, 11.) By utilizing the 1992 IBC development cap, the RDEIR understates the impacts that will occur upon IBC buildout, because it impermissibly deducts projected traffic that hypothetically would have been generated by industrial and office uses, but in many instances that hypothetical development will never occur on the sending site.

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Moreover, under newly added Zoning Code section 9-36-17(H), no CUP or Master Plan will be required for transfers of development intensity values within the same traffic analysis zone (“TAZ”) or between adjacent TAZs. This suggests there will be no discretionary review and traffic analysis for such TDRs, even if future transfers are not consistent with the “optimization” assumptions used for the EIR traffic study. The RDEIR must address this new subsection to the Zoning Code and explain what discretionary review, if any, will be required for TDRs within the same TAZ or adjacent TAZs. If Irvine wishes to rely on this RDEIR as the environmental review document for this new subsection, the traffic analysis must specifically address the potential impacts that may be caused by the TDRs permitted under the subsection. For example, while “Town Centers” are no longer a part of the proposed Vision Plan, the new subsection provision may foster *de facto* Town Centers with the possibility of no subsequent environmental review. The RDEIR must address this distinct possibility.

A15-76



The RDEIR must also thoroughly discuss the TDRs for the seven individual projects that are pending in the IBC. Information regarding the TDRs associated with these projects is available to Irvine, and should be presented in the RDEIR. In addition, the RDEIR must analyze and mitigate impacts of concentrating development rights at the locations of the seven pending projects.

A15-77

Section 5.13.1.3 – Traffic Analysis Methodology

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

A15-78

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

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Section 5.13.2 – Thresholds of Significance

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

Pursuant to the RDEIR’s thresholds of significance, the Project would have a significant effect if the project could exceed the LOS standard established by the respective jurisdiction within the study area. (RDEIR, pp. 5.13-15 – 5.13-20.) Irvine’s continued use of LOS E as the acceptable baseline condition throughout the IBC is inappropriate. This standard establishes levels of unsatisfactory traffic differently for the IBC (LOS E) than for the remainder of the study area outside of Irvine (i.e., LOS D). This may have made sense when the area was almost exclusively industrial, commercial, and office uses, but does not make sense with increased residential uses, which have intensified exponentially in recent years. The thousands of new IBC residents should be entitled to the same traffic level protection as other residents.

A15-80

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

Section 5.13.3 – Environmental Impacts

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

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

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

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

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

A15-82

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

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

A15-83

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

A15-84

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

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study further assert that these deficiencies “are temporary and are addressed as part of already planned circulation improvements within the study area.” (*Ibid.*) There is no substantial evidence, however, supporting this assertion. The RDEIR does not explain how these deficiencies will be addressed because it does not discuss the relationship between planned improvements and identified deficiencies. The RDEIR should describe the improvements with greater specificity and provide an explanation concerning the adequacy of funding for the assumed intersection improvements and the likelihood that they will be implemented in a timely manner. While CEQA does not require that the EIR set forth a time-specific schedule for the lead agency to complete specified improvements, it does require that the agency have a reasonable plan for mitigation. (*Save Our Peninsula Com., supra*, 87 Cal.App.4th at p. 135.) The RDEIR does not describe Irvine’s plan for mitigating these impacts.

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

A15-86

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

A15-87

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

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

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

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

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

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

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

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

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

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

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

A15-89

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

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

A15-90

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

A15-91

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

Section 5.13.6 – Mitigation Measures

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

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

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

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Differences in Traffic Modeling Results Raises Concerns Regarding Identified Mitigation. Chapter 6 of the traffic study in Appendix N-1, entitled Future Improvements and Mitigation, identifies mitigation improvements at locations impacted by the proposed Project. Due to the substantial differences in traffic forecast volumes and modeling methodologies, Tustin is concerned that there are unidentified locations where the Project will have potential impacts.²⁴ In other words, based on numerous inconsistencies between the traffic models used by Irvine and Tustin, Irvine cannot rule out with sufficient certainty that the identified locations are the only locations impacted by the Project. Irvine's responses to comments concerning deficiencies in the modeling procedures and discrepancies in modeling results were simplistic and dismissive. (See Appendix Q to RDEIR, pp. 2-172, 2-181, 2-255, 2-257.) CEQA requires a good faith reasoned response to these and all other comments.

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

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

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

A15-94

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

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

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

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Mitigation is not Sufficiently Enforceable. To satisfy the requirement to mitigate project impacts, EIRs must set forth mitigation measures that decisionmakers can adopt at the findings stage of the CEQA process. (Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, §§ 15126, subd. (e), 15126.4.) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. The RDEIR fails to ensure that the required intersection and roadway improvements will occur when needed to serve future conditions, and that project proponents will pay their appropriate fair share.

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

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

(TIA Guidelines, p. 19.)

In spite of this requirement, Irvine has failed to coordinate mitigation with adjacent affected jurisdiction and to enter into the required agreements concerning mitigation for traffic impacts. For example, the RDEIR identifies deficient performance at the segment of MacArthur Boulevard, from Main Street to SR-55 in the City of Santa Ana. (RDEIR, p. 5.13-157.) To mitigate this impact, it will apparently be necessary to upgrade the MPAH designation for this arterial. Irvine must coordinate its mitigation for this impact with the City of Santa Ana, and then enter into an agreement regarding the mitigation, rather than simply identify possible mitigation. (See also *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1259, 1262 [mitigation measures must be “incorporate into the project or required as a condition of project approval in a manner that [would] ensure their implementation”].)

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

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

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

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

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

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

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

The mitigation measures included to address freeway mainline and ramp improvements impermissibly defer mitigation. The RDEIR states that Caltrans has the primary responsibility to implement transportation improvements to Caltrans facilities, including freeway mainlines. (RDEIR, p. 5.13-199.) According to the RDEIR, neither Caltrans nor the State has adopted programs to ensure locally contributed impact fees will fund improvements to freeway mainlines and only Caltrans has the authority to ensure these fees are tied to implementation of mitigation. (RDEIR, p. 5.13-191, 5.13-199.) Although the RDEIR recognizes that Orange County has some programs to improve and upgrade regional transit systems, it notes that the lead agency's hands are tied. Instead of grappling with mitigating the potential impacts to freeway mainline segments and ramps, the RDEIR concludes that, if the relevant agencies do not implement these programs, the impacts will remain significant and unmitigated. The RDEIR must be revised to squarely address the feasibility of these mitigation measures.

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In each of the above examples, the details of mitigation are not sufficiently defined. CEQA requires more. To the extent that the Project is responsible for impacts, Irvine must ensure that feasible measures are defined and enforceable. (See CEQA Guidelines, § 15126.4, subd. (a)(1)(B); see also *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-794; *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-1029 (SOCA); see also *Federation of Hillside and Canyon Associations, supra*, 83 Cal.App.4th at p. 1262.)

The RDEIR is impermissibly vague in other respects. For example, the RDEIR states: "If an intersection impact occurs only in 2015 and subsequent improvements allow the intersection to perform at an acceptable LOS under buildout conditions, the improvement is viewed as temporary and may be overridden." (RDEIR, p. 5.13-165.) The RDEIR does not explain, however, the circumstances that would allow Irvine to "override" an improvement. It is entirely unclear whether the improvement addressing an identified impact would be overridden entirely, partially, or at all. If an impact is felt in 2015 or sooner, but does not become mitigated until post-2030, that certainly is not timely mitigation. Rather, it is an improper deferral of mitigation.

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

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Mitigation may be Physically Infeasible. Because the IBC is already intensively developed, and new developments, such as the recently approved HCG Irvine project (with reduced building setbacks), provide limited room for right-of-way expansion, the RDEIR must more specifically address the feasibility of acquiring right-of-way for required roadway expansion for each identified mitigation measure. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 727-728 [EIR's treatment of groundwater issues was deficient in part because there was no evidence in the record showing that any replacement water was, or would be, available for purchase"].) The availability of right-of-way for necessary traffic mitigation is analogous to the availability of replacement groundwater in *Kings County*. For many required mitigation measures, the RDEIR does not describe, with sufficient specificity the feasibility of acquiring necessary right-of-way. (See RDEIR, p. 5.13-165 [identifying, in general terms, physical constraints to mitigation implementation].) The responses to comments on the original DEIR for the Vision Plan fail to address this issue. (See Appendix Q to RDEIR, p. 2-255.)

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

The RDEIR goes on to state that despite the physical constraints, "a future pedestrian overcrossing is planned at this intersection which may improve signal operations and [ICU] levels at this intersection." (*Ibid.*) This language is problematic because the measure fails to ensure that identified impacts will be mitigated at all. Furthermore, the measure fails to describe how a future pedestrian bridge would improve signal operations. This discussion concerning mitigating the impacts at Intersection #145 also does not address the effect on mitigation feasibility caused by the pending HCG Irvine project. The discussion for example, does not consider whether mitigation would be feasible if the project approvals for the HCG Irvine were rescinded as a consequence of the pending litigation challenging the EIR for that project. The RDEIR should address whether mitigation at Intersection #145 would be feasible if the HCG Irvine project does not go forward or is modified.

Revisions to Zoning Code Section 3-37-28.1(I) suggests that there will be no setbacks for residential uses in the Mixed-Use district other than from freeways and transportation corridors. (Appendix D to RDEIR, .pdf file p. 71.) If this is correct, the RDEIR must explain how the elimination of the setback requirement for residential uses may affect the feasibility of future right-of-way acquisition for necessary traffic mitigation. The RDEIR must also address how inconsistent General Plan provisions for setbacks among different use types will be implemented so as not to interfere with right-of-way requirements and needs. The response to the Cities comment regarding these issues was inadequate. (See Appendix Q to RDEIR, p. 2-256.)

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

For example, mitigation measures included for Intersection #62 Campus Drive at Bristol Street NB state that, "[i]mplementation of the identified improvements results in acceptable operations under both scenarios and the mitigation appears to be physically feasible although potentially cost prohibitive due to potential impacts to a structure adjacent to the intersection." (RDEIR, p. 5.13-173.) The RDEIR does not specifically state whether any funds would be available in the future to carry out these improvements. Additionally, the EIR fails to identify the timing for particular improvements. Stating that a necessary mitigation measure may or may not be feasible does not satisfy CEQA's requirements for enforceable mitigation that the agency commits itself to implementing, and fails to provide the public and decision-makers with important information concerning required mitigation. Please provide the required information regarding the anticipated timing and funding sources for implementation of these mitigation measures.

A15-100
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Fee Assessment/Fair Share for Improvements. The RDEIR states that a fair share fee program will be developed to address the overall cost of improvements required for significant Project impacts identified in adjacent jurisdictions. (RDEIR, p. 5.13-197.) This description of a fair share program does not address whether sufficient fees for particular improvements will be collected and whether the improvement will be completed by the time it is needed.

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

A15-101

In *Gray v. County of Madera* (2008) 2008 Cal.App.4th 1099, an EIR prepared for a 900,000 ton per year aggregate quarry required the applicant to "[c]ontribute an equitable share of the cost of construction of future improvements[.]" (*Id.* at p. 1121.) The court struck down the adopted fee program, because there was "no definite commitment on when improvements [would] take place[.]" (*Id.* at p. 1122.) The same error has occurred here. The RDEIR must provide the required information concerning mitigation funding and the timing of implementation.

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The RDEIR describes the IBC Development Fee Program as an existing plan, program, or policy that will help reduce and avoid potential traffic impacts. (RDEIR, p. 5.13-38.) It states that the IBC Development Fee program funds IBC areawide circulation improvements within the IBC area. (*Ibid.*) “Fees are assessed when there is new construction or when there is an increase in square footage within an existing building or the conversion of existing square footage to a more intensive use.” (*Ibid.*) It further states that development fees collected are used strictly for circulation improvements and right-of-way acquisition in the IBC area. (*Ibid.*) The RDEIR fails, however, to explain that the IBC Fee program was established in 1992 to fund the numerous mitigation measures that were called for then. Many of these mitigation measures have not been implemented. Now Irvine seeks to delete several of these mitigation measures by downgrading arterial segment and interchange designations in the MPAH. Irvine may not delete these mitigation measures in the absence of a legitimate reason for doing so, supported by substantial evidence. (*Katzeff, supra*, 181 Cal.App.4th 601) In addition, the RDEIR’s discussion of the fee program should more clearly explain how funds will be applied in a timely manner to implement required mitigation. The analysis should also address the feasibility of acquiring sufficient funds to timely implement planned mitigation. By failing to provide these explanations and the supporting analysis, the RDEIR improperly defers mitigation.

A15-101

The RDEIR Fails to Analyze Impacts that will be Caused by Traffic Mitigation. The RDEIR does not analyze the impacts associated with infrastructure improvements that will be funded by IBC Fees, including the impacts caused by the right-of-way acquisition. These impacts must be analyzed now, at the programmatic level, to the extent these indirect impacts are reasonably foreseeable. CEQA requires that lead agencies analyze both the direct and indirect impacts of the “whole of the project,” including impacts that may arise from implementation of mitigation measures. (See CEQA Guidelines, § 15003, subd. (h).) Failing to consider these impacts is a form of impermissible piecemeal review. (See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 [EIR failed to analyze impacts of constructing facilities necessary to deliver water to project].)

A15-102

Section 5.1.6.7 – Level of Significance After Mitigation.

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

A15-103

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



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a Statement of Overriding Considerations, it must explicitly and specifically state Irvine's compelling reasons to approve the Project despite its significant and unmitigated impacts. Irvine must also support its determination that specific measures are infeasible. A decision to adopt a Statement of Overriding Considerations may not be made without sufficient factual support. All feasible mitigation measures must be adopted and enforced, especially in light of the numerous remaining significant unmitigated traffic impacts that date back to the 1992 IBC Program EIR.

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

A15-103
cont'd.

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

The RDEIR's cumulative impact analyses do not consider the cumulative impacts caused by adding thousands of residential units to an area that has historically been dominated by office and industrial uses. The rapid conversion of a formerly predominantly commercial and industrial area to high-density residential uses has had profound and adverse effects on the area, including impacts to traffic levels, parks and recreational facilities, and land use. The cumulative impacts must also consider the impacts of past projects. (*EPIC, supra*, 44 Cal.4th at p. 523.)

Furthermore, the RDEIR must evaluate the cumulative effects of both the ARB zone designation and the *i* Shuttle service. As discussed above and in prior comments, both are part and parcel of the Vision Plan and must be analyzed accordingly. Even if not considered part of the Vision Plan, the RDEIR must consider the Project's cumulative impacts in conjunction with the impacts caused by past projects.

A15-104

A robust analysis of the Project's cumulative impacts is especially important here, given the existing current demands on the area's transportation infrastructure and the current lack of parks and recreation facilities in the IBC. (*San Franciscans for Reasonable Growth, supra*, 151 Cal.App.3d at p. 79.) In general, the poorer the quality of the existing environment, the more likely it is that a project's incremental contribution to future cumulative conditions will be significant (i.e., "cumulatively considerable"). (*CBE, supra*, 103 Cal.App.4th at p. 120; see also *Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 720.)

Recreation. The RDEIR does not address the cumulative impacts to parks and recreational facilities caused by other pending and reasonably foreseeable development projects within the IBC and the surrounding area. Moreover, the geographic scope of analysis for

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cumulative impacts to parks fails to consider impacts in neighboring jurisdictions, such as Tustin, where recreational facilities are used by IBC residents. Instead, the RDEIR merely states that park in-lieu fees for parkland dedication would be collected for the provision of neighborhood and community parks, thus finding that no significant cumulative impacts will result from the Project. The RDEIR does not demonstrate, however, that in-lieu fees will actually result in mitigation of the Project's contribution to cumulative impacts on recreation facilities. The RDEIR also fails to consider whether the park in-lieu fees would be adequate to develop the requisite amount of parkland at buildout. If these fees are insufficient, the RDEIR must identify alternative funding sources. Furthermore, the RDEIR's use of a lower population ratio to calculate needed parkland undermines the veracity of the analysis concerning cumulative impacts to parks and recreational facilities.

A15-105
cont'd.

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

Transportation and Traffic. The RDEIR must evaluate the cumulative effects of the Project in light of the various "closely related past, present, and reasonably foreseeable probable future projects" to ensure that all cumulatively significant environmental effects resulting from the Project are adequately identified and mitigated. (CEQA Guidelines, § 15355, subd. (b); *L.A. USD, supra*, 58 Cal.App.4th at pp. 1024-1025.) The RDEIR fails to adequately consider the potential impacts and applicable mitigation measures for all of the residential development projects that have already been approved in the IBC, which have contributed to the measurable and rapid transformation of the IBC. The RDEIR, for example, does not address the cumulative impacts that have been and will continue to be caused by Irvine's use of the TDR mechanism to promote intensive redevelopment within the IBC. (See RDEIR, p. 5.13-155.)

The RDEIR analyzes cumulative traffic impacts by applying a threshold of significance that does not appropriately consider smaller impacts that may nonetheless be cumulatively considerable. Specifically, Irvine applies a change in ICU or LOS of 0.02 as the threshold of significance for both direct and cumulative traffic impacts to intersections and segments. (RDEIR, p. 5.13-15.) In the context of cumulative impacts, the issue is not the relative contribution of the project as compared to existing conditions, but whether "any additional amount" contributed by the project should be considered significant in light of the severity of the existing problem. (*CBE, supra*, 103 Cal.App.4th at p. 120.) Tustin urges Irvine to change the threshold of significance for identifying cumulative traffic impacts to a change in LOS or ICU of 0.01. If Irvine insists on using the same threshold of significance for cumulative traffic impacts as it does for direct traffic impacts, Tustin requests a reasonable explanation verifying that application of this threshold complies with CEQA's requirements for analyzing cumulative impacts.

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

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

A15-107

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

A15-108

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

A15-109

Table 7-4, Ability of Each Alternative to Meet the Project Objectives, provides a side-by-side comparison of the alternatives. This table concludes that all alternatives except the No Project/Existing General Plan Alternative meet the following Project objectives: 1) “Provide neighborhood level amenities to serve the level of mixed-use development envisioned by the City’s General Plan and IBC Vision Plan,” and 2) “Identify and pursue opportunities for open space areas that serve the recreational needs of IBC residents and employees.” (RDEIR, p. 7-35.) The RDEIR does not provide sufficient evidence or analysis to support this determination as to each alternative. The RDEIR must provide evidence that supports the conclusion that the recreational needs of IBC residents will be met, under each alternative scenario, through implementation of the in lieu fee program and parkland dedication. As discussed above, until

A15-110

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

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

A15-110
cont'd.

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

A15-111

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

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

A15-112

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

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

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

A15-113

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

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

A15-114
cont'd.

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

A15-115

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

A15-116

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

A15-117

III. CONCLUSION

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

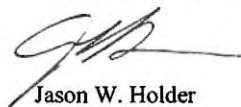
A15-118

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

Very truly yours,



Jason W. Holder

Attachments:

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

A15-19 The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). The City of Irvine, as required by Government Code Section 66477 derives the average persons per household (city wide) based on the most recent Federal Census, with those factors codified in Municipal Code Section 5-5-1004-D. The City uses the 1.3 residents per unit value to estimate population, based on the approved 2000 Federal Census for the densities from 31.1 to 50 dwelling units per acre. Number of bedrooms for the pending projects is not necessary to determine population estimates. At this time, given changing economic conditions, the City believes that the average of 1.3 persons per unit is the accurate forecast for the IBC Vision Plan area. Physical environmental impacts are based on buildout of number of units (see Table 3-1). Further, specification of specific bedroom configuration on specific development projects is a level of detail that is not currently available to the City in a form that can be relied upon.

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

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

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

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



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

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

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

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

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

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

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

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

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

A15-25 See responses to Comments A15-22 through A15-24. The traffic and air quality analyses are based upon assuming a full buildout of the IBC Vision Plan project and adding that full buildout to existing conditions. This is precisely the analysis required by CEQA. (See Guideline 15126.2 [“in assessing the impact of a proposed project on the environment, the Lead Agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the Notice of Preparation is published, or where no Notice of Preparation is published, at the time environmental analysis commenced.”])

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Project applicants would be required to dedicate park land and/or fees in lieu. All park fees are paid directly to the City Cashier prior to the issuance of any residential building permits for the building site or sites from which fees are to be derived. These fees are used only for developing new or rehabilitating existing park or recreational facilities to serve the subdivision. Page 5.12-10 discusses impacts on surrounding cities. As describes in this



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

- A15-35 Current development regulations and trip caps place sufficient restrictions on a project site so that an overall density limitation is irrelevant. There are no anticipated impacts from this proposed amendment. The City agrees that subsequent environmental review will be necessary for future development requests, including TDRs not assumed in the RDEIR, which does include analysis of pending projects and TDRs. See also response to Comment A15-18.
- A15-36 Please see Responses to Comments O5-17, and A5-2 through A5-7 regarding the 1992 baseline setting. The cumulative impacts of previously approved projects are accounted for as part of the existing baseline conditions. This is precisely the analytic approach that is mandated by CEQA and the CEQA Guidelines. The commenter claims that there is a “failure to provide the public and decision makers with information that will enable them to intelligently take account of the Project’s environmental consequences.” However, the commenter fails to explain how adding the entire future development of the IBC on top of existing conditions fails to fully account for the impacts of the Project, both direct and cumulative. Cumulative impacts were addressed in Chapter 5, Environmental Analysis, of the RDEIR for each respective area. Past projects within the IBC Vision Plan area were included within the existing baseline environmental analysis. The proposed project considered cumulative effects associated with an increase in residential density within the IBC Vision Plan area.
- A15-37 See response to Comment A15-38. While the Gobar surveys from 2005 and 2007 indeed suggest a higher persons per household figure, the City is required by State Law, in particular the Quimby Act, to use U.S. census data to derive this figure. The Tustin Legacy project is a residential and commercial development north/northeast of the proposed project. Existing uses include medium- to high-density residential, commercial, institutional, office, and industrial land uses, the same mix of land uses as the IBC. Intensifying residential uses within the IBC Vision Plan area was evaluated in the RDEIR on adjacent jurisdictions.
- A15-38 See response to comment A15-37. The RDEIR adequately evaluates cumulative impacts of the project in the individual topical sections in Chapter 5 of the DEIR. For instance, the traffic analysis includes a cumulative analysis in its buildout scenario, which is based on assumed population density of 1,000 persons per 80 acres (ITAM ver. 8.4).

Cumulative impacts with regard to the construction of parks are measured by the park needs generated by the project, which are in turn based (as required by law) on census data. More specifically, as required by Government Code Section 66477, the City derives the average persons per household (city wide) based on the most recent Federal Census, with those factors codified in Municipal Code Section 5-5-1004-D. The City uses the 1.3 residents per unit value to estimate population, based on the approved 2000 Federal Census for the densities from 31.1 to 50 dwelling units per acre. This population generation rate has been adopted by the City consistent with state law relative to parkland dedication and has been incorporated into the City’s Subdivision Code Section 5.5.1004-D. Accordingly, use of data derived from a survey other than a full census, would be in conflict with the Irvine Municipal Code as well as State Law.

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The Commenter also suggests that the Alfred Gobar survey results from 2005 and 2007 should be used in lieu of the census data. The Gobar analysis was based, however, on a response rate between 5 and 10 percent, as compared to the 100% response rate utilized in the 2000 census. Therefore, the use of the adopted population factor of 1.3 persons per household from the 2000 Federal Census for this project is considered more accurate and is justified.

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

- A15-39 The issue of affordable housing is beyond the scope of CEQA, and will be discussed in the recommendations to the decision-making bodies (see also response to Comment A15-26). All projects are subject to the City's affordable housing provisions as outlined in Chapter 2-3 of the Zoning Code. Furthermore, the proposed project includes incentives for affordable housing units. The IBC Vision Plan caps development at 15,000 residential units. SB 1818, enacted in 2005, requires local jurisdictions to amend density bonus ordinances with the intent to encourage the production of more affordable housing. In summary, the legislation allows large density bonuses in exchange for limited affordable housing and includes a mandate requiring cities to grant up to three incentives for a development depending on the amount of the affordable housing provided. These incentives include: a reduction in the development standards; approval of mixed-use zoning in conjunction with a housing project if the nonresidential component would reduce the cost of the housing and the nonresidential component is compatible with housing and any surrounding development; and other regulatory incentives proposed by the developer or the city that would reduce the cost of the project. SB 1818 also requires limited sales price controls on moderate income housing rather than affordability covenants and could preclude local inclusionary requirements. The City allows a density bonus for affordable units in the IBC Vision Plan area. The City's density bonus provisions allow a potential additional 2,038 units within the IBC Vision Plan area. A discussion of proposed affordable units is included in Section 5.10, *Population and Housing*, in the RDEIR.
- A15-40 See response to Comment A15-39.
- A15-41 See response to Comment A15-34 regarding recreational impacts and Comment A15-38 regarding use of 1.3 persons per household.
- A15-42 See responses to Comment A15-6, A15-34, and O5-31. A specific location for a new community park has not yet been determined, therefore, to analyze a specific location would be speculative under CEQA. The City has an established fee program which has collected over \$12 million in funds to secure a new community park facility, and will continue to collect more with additional residential development. Subsequent environmental review will be conducted once a location and design are proposed.
- A15-43 See response to Comments A15-6, A15-34, A15-42, and O5-31 regarding recreational impacts.
- A15-44 See response to comments A15-6, A15-34, A15-42, and O5-31 regarding recreational impacts. A total of \$9.5 million in Community Park fees have been collected from IBC developments for use towards improvements in Bill Barber Park. The Vision Plan proposes additional connections to this park, thus strengthening the connection of this community park to the IBC.



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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

*Table 5.13-11
Study Area Committed Intersection Improvements*

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



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*Table 5.13-11
Study Area Committed Intersection Improvements*

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

Notes: [1] Status as of March 2008

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

Legend:

EBT = Eastbound Through Lane

WBT = Westbound Through Lane

NBT = Northbound Through Lane

EBR = Eastbound Right

SBR = Southbound Right

SBT = Southbound Through Lane

EBL = Eastbound Left

WBR = Westbound Right

WBL = Westbound Left

NBL = Northbound Left

VLD = Variable Lane Deployment

NBR = Northbound Right

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.13.6.1 Summary of Mitigation Program

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



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

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

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

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

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

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

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

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

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

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

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

A15-102 See response to Comment A15-101. Specific impacts cannot be identified until such projects have been formally sited and designed. The RDEIR evaluates impacts in accordance with the degree of specificity required (CEQA Guidelines Section 15168). An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a specific plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as the environmental document to be prepared for the specific traffic improvements that would be constructed at a later date (CEQA Guidelines Section 15146).

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

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

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

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

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

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



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threshold states if the project would increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. As stated in Section 5.12 of the RDEIR, the proposed project would increase the use of existing neighborhood and regional parks or other recreational facilities. However, with any future projects, project applicant would be required to dedicate park land and/or fees in lieu. All park fees are paid directly to the City Cashier prior to the issuance of any residential building permits for the building site or sites from which fees are to be derived. These fees are used only for developing new or rehabilitating existing park or recreational facilities to serve the subdivision. Page 5.12-10 discusses impacts on surrounding cities. As describes in this section several parks within Irvine are closer than parks in the surrounding facilities, and four parks within three miles include lighted fields for sports activities. Because in-lieu fees would mitigate impacts to park facilities by contributing to the expansion/improvement of park facilities within proximity to residents within the IBC, the project would not result in a cumulative impact on adjacent cities.

The City of Irvine, as required by Government Code Section 66477 derives the average persons per household (city wide) based on the most recent Federal Census, with those factors codified in Municipal Code Section 5-5-1004-D. The City uses the 1.3 residents per unit value to estimate population, based on the approved 2000 Federal Census for the densities from 31.1 to 50 dwelling units per acre. This population generation rate has been adopted by the City consistent with state law relative to parkland dedication and has been incorporated into the City's Subdivision Code Section 5.5.1004-D. Accordingly, use of data derived from a survey other than a full census, would be in conflict with the Irvine Municipal Code as well as State Law. In addition, the Alfred Gobar surveys had a response rate between 5 and 10 percent. Therefore, the use of the adopted population factor of 1.3 persons per household from the 2000 Federal Census for this project is considered more accurate and is justified.

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

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

- A15-107 Alternatives selected were based on the potential to avoid or lessen environmental impacts of the proposed project. Chapter 7, *Alternatives to the Proposed Project*, compares the impacts of the proposed project to the project alternatives in accordance with Section 15126.6 of the CEQA Guidelines. The IBC Vision Plan EIR evaluates a reasonable range of alternatives. The RDEIR does not state that there are no other sites on which mixed use development could be accommodated within Orange County. However, the objectives of the project are based on incorporating residential into this existing job center in Irvine, consistent with SCAG's Compass 2% Strategy.

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

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



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

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