



**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Honorable Chair and Members of the  
Board of Directors  
Orange County Transportation Authority  
600 South Main Street  
Orange, California, 92868  
Email: ClerkOffice@octa.net

Re: City of Irvine’s Comments & Objections to Draft Initial Study/Mitigated  
Negative Declaration – June 13, 2022 Meeting: Item No. 29: Board  
Consideration of Mitigated Negative Declaration Finding for the Orange  
County Maintenance Facility Project

Dear Honorable Chair and Members of the Board of Directors:

This letter provides comments from the City of Irvine (“City”) on the Draft Initial Study/Mitigated Negative Declaration (“MND”)<sup>1</sup> for the proposed Metrolink Orange County Maintenance Facility Project (the “Project”). The City of Irvine is designated as a responsible agency in the MND.

City staff was advised by Orange County Transportation Authority (“OCTA”) staff that this matter was scheduled for consideration by the OCTA Board of Directors (“Board”) on June 27, 2022. However, on June 10, 2022 City staff was informed that the hearing date on this matter was accelerated to June 13, 2022 – *i.e.*, one business day following notification to the City of the accelerated date. Later on June 10, 2022, the City was informed by an OCTA official that the deadline for submitting comments on the agenda item is 5:00 p.m. on Sunday June 12, 2022, and that any comments submitted after that deadline would not be considered by the Board. The comments that follow have been assembled to the best of the City’s ability given the late-noticed accelerated timeline for Board consideration and the associated weekend deadline for submitting comments.

With that background, it is the City’s hope that the Board and OCTA staff will seriously consider, evaluate and address the City’s numerous and significant concerns.

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<sup>1</sup> All citations to the MND are to the February 2022 version, because that is the version that was previously made available on OCTA’s website: <https://www.octa.net/Projects-and-Programs/All-Projects/Rail-Projects/Orange-County-Maintenance-Facility-Project/?frm=13884#!Overview>. Based on the recently released June 2022 version of the IS/MND, it appears that the MND has been revised numerous times since that original release, but those versions do not appear to be publicly available.

According to the MND, the Project involves construction of several facilities, including a transportation building, employee parking area, train-wash building, pump house, utility building, guard booth, equipment booth, sand silos, a maintenance facility and facility extension, and 11 tracks, which consists of a total building area of approximately 90,000 square feet, when combined.

The Project is located on a 21.3-acre OCTA-owned parcel south of the intersection of Ridge Valley and Marine Way, north of an existing OCTA rail line and north of Technology Drive, in the City of Irvine (the "Site"). The Site and surrounding area are within the closed and redeveloped military base, Marine Corps Air Station (MCAS) El Toro, formerly owned by the U.S. Department of the Navy (DON), and previously owned by the City.

The Project would be developed in two phases, with an anticipated completion date of 2028. Phase 1 includes facilities for train storage, including Service and Inspection (S&I) Facility tracks, train-wash track, storage tracks, set-out track(s), yard lead tracks, transportation building, and employee parking. Phase 2 includes construction of a maintenance building and associated tracks. Other potential actions included in Phase 2 would be the conversion of the West Lead Track into a drill track and construction of a (second) runaround track within the mainline track corridor.

Operationally, the Project will accommodate rail functions, such as rail fleet services and rail transportation, daily inspections, and localized train movements. (MND, p. 20.) OCTA intends to perform the following work on a daily basis:

- The Automatic Train Protection system is tested
- Emergency braking system is tested
- The brakes are tested
- The doors are tested including their sensitive edges
- The couplers are checked
- The destination signs are tested
- The master controller and deadman controls are checked
- Defaced (graffiti) and worn passenger seats are documented
- Interior and exterior lights are checked
- Public address and intercom systems are tested
- Air conditioning system is checked
- Vehicle horn and gong is checked (MND, p. 20.)

As described below, the analysis in the MND is legally deficient and factually incorrect in numerous respects. As a result, many of the conclusions in the MND are not supported by substantial evidence, or are otherwise flawed. More to the point, there is ample evidence to support multiple fair arguments that the Project will have unmitigated adverse environmental impacts. Prior to approving the Project, the City requests that OCTA address the issues raised herein, and then re-circulate a corrected environmental document for the public's review.

## 1. The MND Relies on an Inaccurate Project Description

The MND is based on the unsupported assumption that the Project is permitted under the Project Site's existing General Plan land use designation and zoning. As the MND acknowledges, the Project is located on property that is within the Planning Area 51 land use designation, also referred to as the "Orange County Great Park." (Irvine General Plan, Land Use Element, p. A-7; id. Figure A-2 ["Planning Areas"].) Per Table A-1, paragraph 17, Planning Area 51 includes "122,500 square feet for Orange County Transit Authority facilities.

The MND acknowledges that OCTA has existing facilities throughout Planning Area 51, but does not quantify the existing square footage. Therefore, prior to assessing the Projects' consistency (or inconsistency) with the General Plan, OCTA must provide additional information to explain how OCTA believes that it has not exceeded the 122,500 square foot limitation. Until that information is provided, neither OCTA, nor the public can determine whether the Project is consistent with the City's existing General plan.

The MND suffers from an additional, even more fundamental defect – it **admits** that the Project is **not** consistent with the General Plan. (See MND, p. 44 ["Although the land use assumptions are not consistent with land use assumptions in the General Plan (which is why the Project would be requesting a CUP), the purpose of the Project is to provide the space and equipment to inspect, clean, and maintain train cars and locomotives on a regular and efficient basis."].)

Additionally, the Project Site is currently zoned 6.1 – "Institutional." (MND, p. 131.) The MND concludes that the Project can be conditionally approved under the 6.1-Institutional zoning designation, under the theory that the Project is a "government facility." This conclusion is erroneous. The proposed Project calls for the development of a railyard facility to support the maintenance and efficient operations of the OCTA railroad system. As such, from a zoning standpoint, the Project would seem to qualify as a "Transportation Support Facility," which is categorically **prohibited** within the 6.1-Institutional Zone. (See Irvine Zoning Ordinance ["IZO"], § 3-3.1 [Land use matrix].)<sup>2</sup>

The Project is also inconsistent with the stated intent of the 6.1-Institutional zoning designation. Under IZO § 3-37-37, the 6.1-Institutional "category applies to land for public and quasipublic facilities such as churches, schools, or utilities." In other words, this category is intended to focus on uses that serve the public directly, even if they may have limited access, which is why the IZO expressly authorized uses including schools, shelters, and parks, and (if adequate conditions can be imposed) conditionally authorizes ambulance service, child care, residential care facility, and similar facilities (IZO §§ 3-37-

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<sup>2</sup> The City of Irvine, as the agency with land use authority over the Project, is owed substantial deference in its interpretation of its zoning code, land use compatibility issues, and land use categorizations. Additionally, it should be noted that the City is not obligated to reach the same conclusions as OCTA, and is free to exercise its own discretion when considering OCTA's project in the future.

37(B) and (C).) The proposed Project does not directly serve the public and therefore is not similar, from a use characteristic standpoint, to the other uses allowed in the 6.1-Institutional zone.

Plainly, in order to develop the Project, OCTA will need to secure a zone change, and potentially a General Plan amendment (if the additional evidence reveals that OCTA's equipment goes beyond the allotted square feet). Those discretionary actions are required because the Project is *not* consistent with current land use designations, and is fundamentally incompatible with adjoining uses. By mistakenly concluding those inconsistencies do not exist, the MND fails to grapple with, much less mitigate, the serious land use and other environmental impacts created by the Project. Accordingly, the entire MND should be revised accordingly, and recirculated for public review. (See 14 Cal. Code Regs. § 15073.5.)

**2. The MND's Land Use and Planning Analysis is Fundamentally Flawed**

For the foregoing reasons, Section 3.11 of the MND incorrectly concludes that the Project is consistent with both the General Plan and zoning designation. (MND pp. 129-133). The MND must be revised to correctly reflect that the Project is inconsistent with the existing General Plan land use and zoning designations, and then analyze the Project's potential impacts on land use and planning that may result from the necessary General Plan and zoning amendments.

Additionally, the MND's discussion of land use impacts must address the fact that the proposed use of the Project is fundamentally incompatible with both the existing land uses as well as expected land uses in the future. The Project Site is located near the Great Park, and its surrounding communities, as well as the existing residential community to the northwest of the property. The railyard maintenance facility is categorically inconsistent with these uses.

By failing to address this fundamental impact, the MND is fatally flawed.

**3. The MND Must Be Updated To Condition the Project on its Acquisition of a Conditional Use Permit**

The MND assumes that the Project requires a "conditional use permit" from the "City of Irvine Community Development Services Department." (MND, p. 21.) However, the MND should be revised to reflect that the CUP must be acquired from the City of Irvine's Planning Commission. (IZO § 2-9-4(B) ["For all other conditionally permitted uses the Planning Commission shall be the final approval body, with other commissions, as deemed appropriate, acting as advisory bodies, meaning that the appropriate governing body must issue the CUP, in the City's discretion."].) As such, the MND should be revised to reflect that the Project requires a CUP be issued by the City of Irvine's Planning Commission.<sup>3</sup>

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<sup>3</sup> By providing these comments, the City does not waive or limit in any way its discretion

**4. The MND Does Not Adequately Analyze or Mitigate the Project's Impacts on Air Quality.**

The MND's modeling for construction impacts assumes that all construction fleet equipment greater than 100 horsepower would be Environmental Protection Agency (EPA) Tier 4 Final/Interim equipment. (See, e.g., MND, p. 46 [Table 3.3-4 to Table 3.3-8]; see also p. 51 [Table 3.3-11].) However, this assumption is not included in the Project as a project design feature, and it is not included as a Mitigation Measure (MM). Because of this, the results shown in Table 3.3-4 through 3.3-8 drastically underestimate the Project's daily construction nitrous oxide (NOX) emissions. Given that the proposed project's construction NOX emissions are already near the threshold (75 pounds), with Tier 4 Final equipment being incorrectly applied, changing this to be the fleet mix for the year 2023 (Phase 1) or 2026 (Phase 2) will likely cause the proposed project to exceed South Coast Air Quality Management District (SCAQMD) thresholds. As a result, there is a fair argument that the Phase 1 and Phase 2 construction activities will result in an unmitigated environmental impact.

The MND similarly concludes that the emissions associated with the Operational Impacts from both Phase 1 and Phase 2 from "in-transit locomotive" operations would remain similar to existing conditions because the "Project would not result in an increase in commuter rail service or additional locomotive train travel in the region." (MND p. 48.) In doing so, the MND focuses on the claim that the Project will not increase regional air quality impacts, and even seems to imply the Project will benefit the area surrounding the existing maintenance facilities because it will move the emissions from those facilities to the Project Site. (MND, p. 49.) However, aside from admitting that the total emissions at the Project Site will increase, thus impacting the surrounding environment, the MND does not otherwise explain what this increase would be, making it impossible for the public to understand the potential environmental effects that could result from the Project.

The MND concludes that the Project will not expose sensitive receptors to substantial concentrations of pollution, and thus determines that the Project will have less than a significant impact in that regard. (MND pp. 53-56.) In doing so, the MND fails to provide distances between the Project and the nursery, and between the Project and the recreational receptors at the Great Park. The MND must be revised to include this information, and to also analyze whether the Project would result in significant impacts in light of this information.

The MND also claims that the Project will avoid any significant impacts from potential asbestos exposure during construction because the Project will be required to comply with certain demolition requirements (see MND, p. 54.) This alleged requirement should be re-characterized as formal mitigation measures and adopted as part of the Project's Mitigation Monitoring and Reporting Program ("MMRP"). (See, *Lotus v. Department of Transportation, et al.* (2004) 223 Cal.App.4<sup>th</sup> 645.)

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in its role as land use regulator for the Project. The MND should acknowledge the City's discretion in that process.

The MND fails to address the cumulative impacts that could result from combining the cancer and non-cancer risks from the emissions during both the construction and operational phases. As acknowledged by the MND, Phase 2 construction phase will occur while the Project is in its operational phase, and yet the MND treats these impacts separately.

The MND also fails to address all potential sources of emissions that could generate objectionable odors. The Project calls for the construction of a hazardous chemical storage area, a waste management area and a trash compactor. These uses can result in the production of noxious fumes that are currently not addressed in the MND. As such, the MND must be revised to address these uses, and the potential resulting impacts.

Appendix B to the MND, which is the Air Quality and Greenhouse Gas Technical Memorandum for the Project, suffers from the same infirmities discussed above, but also reveals additional flaws with the MND's analysis:

- Page 47, Table 10.1-6: The maximum daily emissions of PM2.5 is greater than PM10 for the Yard Equipment and Sand Silos operational sources, which appears incorrect, given that PM2.5 emissions are part of PM10 emissions. This must be corrected.
- IS/MND PDF Page 357, Attachment A, Table "Maintenance Facility On-Site Emissions": The analysis states: "Daily idling time estimated as up to 5 minutes upon arrival and departure (10 minutes total) per train per day. Additional onsite engine operations for movement, maintenance, testing based upon project engineer input." Please provide information regarding the results and analysis included for the "project engineer input" regarding onsite locomotive activities. As it stands, this information is not included in the MND.

**5. The MND Does Not Adequately Analyze or Mitigate the Project's Impacts on Biological Resources.**

The MND recognizes that the Project will require the construction of a bridge over the Bee Canyon Channel, which is subject to the jurisdiction of the California Department of Fish and Wildlife and the Regional Water Quality Control Board, but states that it is unclear whether the channel is subject to the jurisdiction of the US Army Corps of Engineers. (MND, p. 62.) The MND then goes on to state:

The Project proposes to construct a new bridge over Bee Canyon Channel that would require reprofiling of the wash. Construction of the bridge over Bee Canyon Channel would likely require a permit pursuant to Section 404 of the CWA. Construction of the Project would meet the terms and conditions of a Letter of Permission (LOP), and operation and maintenance would potentially meet the criteria for authorization under Regional General Permit (RGP) No. 74. (*Id.*)

In sum, the MND claims that that Project *may* require a 404 Permit or another permit. This is essentially admitting that the Project will likely impact an aquatic feature, and that OCTA is deferring analyzing whether or not it needs subsequent permitting. This is improper deferral of both analysis and mitigation. The MND must be revised to include a mitigation measure that requires OCTA to secure all necessary approvals from the USACE, RWQCB, and CDFW.

The MND's reliance on Mitigation Measure BIO-1 to offset impacts to the channel is also insufficient. Here, the MND acknowledges that the project will require "reprofiling of the wash," which is a direct physical impact to the existing water feature. MM BIO-1 imposes requirements that will mitigate impacts to nesting birds, and does nothing to ensure that Project does not significantly impact the existing channel. As such, despite acknowledging a potential impact, the MND fails to address and mitigate that impact.

Other sections of the MND (p. 63) state that the Project will require a 404 Permit, and potentially a Lake and Streambed Alteration Agreement ("LSAA") pursuant to Cal. Fish and Game Code § 1602. However, these purported requirements should be incorporated as mitigation measures, and enforced as such. (See, *Lotus v. Department of Transportation, et al.* (2004) 223 Cal.App.4<sup>th</sup> 645.)

Furthermore, the MND must be revised throughout to ensure that the its conclusions as to the Project's impacts to the channel and other potentially protected or sensitive areas are consistent. As it stands, there are portions of the MND that hedge and imply that certain permits may not be required, and there are other portions that clearly state that a certain permit and approval is needed. The MND should be revised to specifically determine whether the Project will impact jurisdictional areas, and to then also describe what permits will be required as a result of that determination.

## **6. The MND Does Not Adequately Analyze or Mitigate the Project's Impacts on Energy.**

After stating the Project's total energy consumption, the MND claims that the operation of the Project will have a less than significant impact simply because "the purpose of the Project is to provide the space and equipment to inspect, clean, and maintain cars and locomotives on a regular and efficient basis." (MND, p. 82.) This does not explain the reasoning or factual basis of the MND's conclusion, let alone substantial evidence. As such, the MND should be revised to provide the requisite analysis and explanation to justify the less than significant impact finding.

Lastly, on Page 82, Section 3.6.3.2, the MND references the City of Irvine Strategic Energy Plan, but does not complete a consistency analysis. The MND must be revised to include a consistency analysis to explain how the Project is consistent with the City's plan. Stating that the proposed project would be built to meet Title 24 and other legislative requirements is not adequate to support compliance. Specifically, as shown in Table 3.6-3, approximately 105,000 MMBTu of the energy consumption is from fuel usage, not energy consumption. The discussion does not provide substantial evidence to

demonstrate how the proposed project is consistent with the City of Irvine Strategy Energy Plan.

Lastly, the MND does not analyze the potential for the Project to incorporate sources of renewable energy, such as solar panels on roofs, among many other opportunities. (MND, pp. 75-82.) The MND should be revised to include this analysis and impose mitigation measures relating to the same. (See *League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer* (2022) 75 Cal.App.5th 63.)

## **7. The MND Does Not Adequately Analyze or Mitigate the Project's Impacts Relating to Hazards and Hazardous Materials.**

The MND claims that the Project will not interfere with the ongoing monitoring of the environmental remediation conducted by the Department of Navy, by insuring that the "Project Site [will] be developed to provide for periodic access to the wells by the DON." (MND, p. 104.) This purported project design feature should be incorporated as a mitigation measure, and enforced as such. (See, *Lotus v. Department of Transportation, et al.* (2004) 223 Cal.App.4th 645.)

As a general point, the MND fails to adequately provide a description of how the Project will use and handle hazardous materials on the site. For instance, there is no discussion of the estimated quantities, or the types of hazardous materials (hazmat) to be used, stored, and disposed of. Based on proposed project uses (including maintenance), hazmat likely will be stored in quantities that would trigger oversight from the local Certified Unified Program Agency (CUPA), via a Hazardous Materials Business Emergency Plan program (oversight could also include other CUPA programs as well). The MND must address these possibilities prior to finding that the Project will have less than a significant impact.

The MND claims that to avoid impacts to existing emergency response plans or emergency evacuation plans, the Project will coordinate with the City of Irvine to prevent closure of any emergency access route. (MND, p. 111.) This is impermissible deferral of analysis and mitigation. Prior to approving the Project, OCTA must consult with the City of Irvine to determine what emergency response or evacuation plans may impact the Project, and impose mitigation to avoid any impacts to those routes. Alternatively, the MND can be revised to incorporate a new mitigation measure, requiring City of Irvine concurrence that the development and operation of the Project will not impact any such route.

Mitigation Measure HAZ 3 (MND pp. 110-111), also amounts to an impermissible deferral of analysis and mitigation. MM-HA-3 provides:

MM-HAZ-3: Soil assessment for hazardous materials. Prior to construction activities at the Project, if required by the state or local regulatory oversight agencies, then further assessment including soil, soil vapor and/or groundwater investigations shall be conducted to reveal the presence, if any, of potential hazardous materials at the Project Site that were identified as a result of the Phase

**I ESA, and would assist in determining further mitigations required to address human health and/or the environment impacts due to potential hazardous materials exposures.**

Essentially, this mitigation measure is acknowledging that the Phase 1 ESA identified a list of potential hazardous materials that may be on the Project Site, but the Project (and the MND) have not sought to fully understand and address these concerns. The MND must be revised to analyze the potential hazardous materials, and to further identify the specific mitigation measures that would be required to “address human **health and/or the environment impacts due to potential hazardous materials exposures.**”

**8. The MND Does Not Adequately Analyze or Mitigate the Project’s Impacts Relating to Hydrology and Water Quality.**

The MND claims that during the construction phase, the Project will result in a less than significant impact because the Project will incorporate certain “best management practices” (“BMP”) (see MND pp. 119-121). This purported project design features should be incorporated as a mitigation measure, and enforced as such. (See, *Lotus v. Department of Transportation, et al.* (2004) 223 Cal.App.4<sup>th</sup> 645.)

Likewise, for the operational phases, the MND claims that a “Project WQMP” must be developed. (*Id.*) This requirement should be included as a mitigation measure, and enforced as such.

The MND fails to address potential impacts to the groundwater basin. For instance, the Project calls for pile driving activities, and the MND acknowledges that groundwater is at a depth of about 30 feet below grade. Further, the Project will result in the majority of the property becoming impervious for the purpose of recharge, which will increase the volume of runoff of water and waste and the associated pollutants that will be generated from the Project. The MND must be revised to acknowledge the impacts that the Project will have on the existing groundwater basin, and on the existing runoff from the project site, and impose additional mitigation measures if necessary.

Furthermore, because the Project is impacting a site of 1 acre or more, the MND should be revised to list the BMPs that must be implemented as part of the Construction General Permit/SWMPP.

**9. The MND Does Not Adequately Analyze or Mitigate the Project’s Impacts Relating to Noise**

The MND fails to address all of the Project’s potential noise impacts. Most notably, the project acknowledges that during the operational phase, the Project site will be used to test locomotives’ horns and brakes. Likewise, the Project requires pile driving activity, but there does not appear to be any analysis of the noise impact that would result from this construction activity. The MND’s analysis of the Project’s noise impacts omits any analysis of these activities, and is a fatal flaw.

These uses will result in a strong likelihood of a significant impact without any mitigation. If mitigation is possible at all, it will likely involve additional sound proofing of the relevant buildings and limitations on hours of operation, and/or testing location restrictions (i.e. indoor testing of equipment). The full list of potential mitigation measures, and the determination whether adequate mitigation is even possible, cannot yet be provided because the underlying analysis is deficient.

The MND fails to include the noise levels associated with each of the onsite noise sources, the number of rail movements, the distances from the sources to the receptors, or any onsite shielding that may reduce the proposed project's impacts. (See MND, p. 146.) Therefore, it is not possible to recreate the noise impacts listed in Table 3.13-8 that would support the conclusions in the analysis. The MND's operational noise analysis discussion must be expanded to include this information.

The MND claims that the Project will have a less than significant impact from the generation of ground borne vibration or noise. (MND, p. 148.) In support of this conclusion, the MND relies on the assumption that the Project will not result in additional train service or increases in the number of trains at the Project site. This is incorrect. The Project's stated purpose will direct more trains and locomotives to the Project site, moving the resulting impacts from the existing maintenance facilities to the City of Irvine. Likewise, the Project will result in trackage that will accommodate, store, and move train cars, resulting in new vibrational impacts in the immediate area, and it will also result in noise impacts to the surrounding the community that previously did not exist. The MND must be revised to correct this faulty conclusion, and to acknowledge the new operational impacts of the Project.

In Section 3.13, the MND implies that OCTA will comply with the City's construction limitations to avoid noise impacts (MND. p. 144-145). This requirement must be included as a mitigation measure, because as written it is unclear whether OCTA can be compelled to comply with those limitations.

Lastly, the MND purports to list the City's own levels of significance/standards that are used to determine whether the Project could result in a significant noise impact, but does not explain whether the Project satisfies those standards. While it is difficult to cross-reference the MND's noise levels with the City's thresholds of significance, it appears that some of the projected noise levels exceed the City's thresholds, which impacts must either be mitigated, or analyzed in an EIR and a statement of overriding considerations. At a minimum, the MND must be revised to explain how the Project's potential impacts measure as compared to the City's thresholds of significance.

**10. The MND Does Not Adequately Analyze or Mitigate the Project's Impacts Relating to Transportation.**

The MND's vehicle miles transferred ("VMT") is deficient. The MND appears to treat the Project as a "Transportation project" and relies on 14 Cal. Code Regs. § 15064.3(b) to claim that the project will not have a significant impact. In support of this conclusion, the MND cites to two conclusory paragraphs stating that it is unlikely the

Project will result in a significant VMT impact without any analysis. The MND must be revised to actually evaluate the Project's vehicle miles traveled in order to support this finding. As it stands, the MND has completely failed to assess the VMT impact that would result from the Project, other than to simply claim there is no VMT impact.<sup>4</sup>

Further, the MND's discussion of the operational impacts related to VMT is inconsistent. The analysis states as follows:

While some increase in localized vehicle miles traveled (VMT) is anticipated due to vehicles traveling to and from the proposed Orange County Maintenance Facility (OCMF), impacts resulting from increased VMT would be minor and would not generate a permanent increase in VMT.

Based on this analysis, it is clear that the Project will result in an increase in VMT. Yet, the MND erroneously concludes that the Project will not "generate a permanent increase in VMT." By failing to acknowledge the Project's true impact (i.e. increase in VMT), the MND is fatally flawed, and must be revised.

Furthermore, the Project calls for the construction of a new street that connects to the Ridge Valley-Marine Way intersection. The MND does not address who will build this road, and who will take ultimate ownership and maintenance responsibilities. The MND must be revised to address these issue, and impose mitigation measures where necessary.

The MND also states that the "final design configuration for the access road would be coordinated with third-party stakeholders, including but not limited to the County of Orange, City of Irvine, Irvine Ranch Water District, and Heritage Fields LLC." This constitutes an unlawful deferral of analysis and mitigation. Prior to approving the Project, and the MND, the MND must be revised to analyze what type of roadway and traffic signal improvements will be needed.

Additionally, because the roadway extension is the only means to access the Project Site, a mitigation measure must be added to ensure that the extension will be completed, and further defining the standards that the extension and traffic signal improvement must meet to ensure that the Project will not result in any significant impacts (including Transportation, Air Quality, and GHG).

**11. The MND Does Not Adequately Analyze or Mitigate the Project's Impacts Relating to Utilities.**

The MND claims that because it is likely the Project site will utilize a nearby Irvine Ranch Water District stub-out to provide sewer and wastewater drainage for the Project, there would be less than significant impact resulting from the construction of new wastewater drainage systems to serve the Project. However, this requirement is not

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<sup>4</sup> While analyzing the potential VMT impact of the Project, OCTA should have used and relied upon the City's VMT implementation guidelines and regulations.

included as either a project design feature or a mitigation measure. The MND must be revised to ensure that this assumption is included as either of these options.

The MND also acknowledges that the Project will require the construction of new stormwater drainage facilities within the Project Site, but then states that the design and development of these facilities is being deferred until prior to construction. This is improper. The MND must be revised to include the requisite drainage analysis, and adequately describe the facilities that will be required.

**12. OCTA is Impermissibly Piecemealing its Project**

The MND states that OCTA has “immediate plans to install a single 1,000-foot-long, single ended storage track and fencing of the perimeter of the property,” but that this portion of the development is not a part of the Project. Since this work is supposed to be performed on the same property as the Project, and will likely work with the Project, the impacts of the installation of the storage track fencing must be addressed as a part of this MND.

While portions of this work may have already been completed, the MND must be revised to accurately reflect the existing condition of the Site, and to further explain whether the existence of some of these developments will result in different impacts from the Project. Likewise, to the extent the development has not occurred, the MND must be revised to include an analysis of the impact of this additional development.

**13. The June 2022 IS/MND Should Explain What Revisions Were Made Since February 2022**

Per the June 2022 IS/MND, the MND was revised several times since the public comment period ended. Nowhere in the record is there any explanation of these revisions, making it impossible to determine whether recirculation of the MND was required. The final MND must be revised to explain what changes were made since the original circulation of the February 2022 IS/MND so that the public can determine whether the MND must be recirculated.

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We have provided these comments in good faith on the accelerated timeline that was disclosed to us on Friday June 10, 2022. In summary, we find the MND fundamentally deficient, principally because it relies on conclusory statements with minimal analysis or factual support. A significant amount of additional analysis and corrective work will need to be performed before the document could be legally adequate, and it is possible (indeed, likely) that the additional work will reveal the need to prepare an Environmental Impact Report, rather than an MND.

Last, we want to express that by providing comments on the MND, the City does not waive or limit, in any way, its discretion to evaluate the Project in its role as a land use regulator. As expressed above, City staff have significant concerns with the compatibility of the Project with surrounding land uses. For that, and many other, reasons City staff

has serious reservations as to whether a conditional use permit, zone change, or General Plan amendment for the Project would receive a favorable staff recommendation ***even if*** the MND were corrected and legally adequate. The ultimate evaluation of those issues is reserved for the sound discretion of the City's Planning Commission and City Council.

We appreciate the Board's careful consideration of these comments.

Sincerely,

CITY OF IRVINE

A handwritten signature in black ink that reads "Oliver Chi". The signature is written in a cursive, flowing style.

Oliver Chi  
City Manager

cc: Darrell Johnson, Chief Executive Officer