

The Draft EIR needs to be updated to acknowledge that the Project is located north of Highway 8, while the District's current schools are located south of Highway 8 requiring the District to bus students generated from the Project to the available schools within the District in the event that the elementary school proposed within the Project is not constructed and operated. In addition, with the Project school having grades K-6, the District will have to bus the 7-8 students to other schools within the District. This bussing impact on the District needs to be addressed in the Draft EIR. In addition, the information in the Draft EIR needs to be updated to the current conditions of the District, particularly as it relates to the new school facility.

The Draft EIR provides the following table

Table 5.8-7: McCabe Elementary School Summary

| School | Location | Distance from Project Site | Enrollment | Capacity | % of Capacity |
|--------------------------|--------------------|----------------------------|------------|----------|---------------|
| McCabe Elementary School | 701 W. McCabe Road | 3.6 miles | 824 | 455 | 181% |

Source: McCabe Union Elementary School District, 2005.

This table needs to be updated to reflect the current conditions of the District.

The Draft EIR states:

“The Elementary School District has plans to build new and expand existing school facilities. A 900 student school adjacent to the existing school at 701 W. McCabe Road is under construction and scheduled to open in August 2007. Plans indicate that this school would ultimately become a middle school. In addition, a new 600-student school site is planned within the project site.”

This information needs to be updated to reflect the current conditions of the District. In addition, the Draft EIR needs to identify that although the District intends to pursue the development of a new school within the Project, the District does not and would not have adequate funds to construct the school under the current financial mitigation as proposed in the Draft EIR. There needs to be further discussion as to the feasibility of the development of the school within the Project. In addition, the Project proposes that this school would consist of an 11.77-acre site. It is unclear in the Draft EIR if this is an 11.77-acre site that is exclusively a school or if the 11.77-acre site includes as a portion of the school site, a park that would be a joint use facility with the District. A 600-student school requires a 15-net acres site, exclusively set aside for a school in order to be in conformance with the State Guidelines and the District's policies. The District has however agreed to a joint use school/park facility with a 10-net acre exclusive school site

MUSD-10

MUSD-11

and a 5-net acre adjoining park site, and a joint use development, maintenance, and operation agreement between the District and the City or a Project homeowners association. This needs to be discussed in the Draft EIR and the Project description and the site plan needs be modified.

Therefore, an additional 3.23-net acres would be required for the site. Finally, the District is cautious with regard to accepting a site that is bounded by four streets. This has internal safety, traffic safety, supervision, site design, and financial implications and impacts that need to be addressed. Therefore, this discussion in the Draft EIR needs to be revised and expanded.

The school site proposed within the Project requires a number of State agency approvals including but not limited to the California Department of Education and the Department of Toxic Substances Control. These agencies have very stringent requirements that must be met in order to ensure that the ultimate school site is an approvable site under the State's requirements. The Draft EIR needs to consider and evaluate whether or not the proposed school site meets these special school siting requirements so that any potential "fatal flaws" are identified and the impacts mitigated. The MUSD advised the City of this in September 2006. The following are the most important of the State's criteria:

1. Adjacent/near roadways with high traffic volume;
2. Within 1,500 feet of railroad tracks;
3. Within two miles of an airport runway;
4. Close to high-voltage power lines;
5. Close to high-pressure lines, including natural gas, gasoline, petroleum, sewer or water lines;
6. Contaminants in soil or groundwater;
7. On or near a fault zone or active fault;
8. Subject to 100-year flood or dam inundation;
9. Hazardous air emissions or hazardous material handlers located within ¼ mile;
and
10. Subject to liquefaction, landslide or other geologic hazards.

MUSD-11

Even though the MUSD advised the City of these concerns, the Draft EIR did not consider any of these topics. Therefore, the Draft EIR is incomplete and requires revision.

MUSD-11

Students traveling to and from the McCabe Union Elementary School and the District's new facility from the project will be required to travel on Austin Road and McCabe Road which are not improved to acceptable design standards. The current street frontages have no curbs, gutters, sidewalks, or turn lanes for access to the MUSD school sites. The two streets, McCabe Road and Austin Road, are old narrow two-lane roads with a large irrigation canal immediately adjacent to Austin Road. The existing conditions create a safety hazard for students and parents accessing the MUSD school sites. The MUSD has no local or State funding to provide for the construction of the necessary road improvements in these areas. The MUSD advised the City of these concerns in its September 2006 letter to the City. However, this was not addressed in the Draft EIR. The Draft EIR needs to address this concern.

MUSD-12

The Draft EIR states:

“The Central Union High School District provides 9th through 12th grade education to the students that reside in the City of El Centro and the surrounding areas. Students from the El Centro Elementary School District, the Heber Elementary School District, the McCabe Union Elementary School District, the Meadows Elementary School District, and the Seeley Elementary School District attend the Central Union High School District for secondary education. The High School District operates two high schools and a continuation school. A summary of each school is provided in Table 5.8-8.”

This is acknowledged by the District.

The Draft EIR provides the following table

MUSD-13

Table 5.8-8: High School Summary

| School | Location | Distance from Project Site | Enrollment | Capacity | % of Capacity |
|---|--------------------------------|----------------------------|------------|----------|---------------|
| Central Union High School | 1001 Brighton Avenue | 2.1 miles | 1,740 | 1,440 | 121% |
| Southwest High School | 2001 Ocotillo Drive | 0.4 miles | 2,147 | 2,200 | 98% |
| Desert Oasis High School (Continuation School) | 1302 S. 3 rd Street | 2.8 miles | N/A | N/A | N/A |
| N/A = Not Available Source: Central Union High School District, November 17, 2005. | | | | | |

This table needs to be updated to reflect the current conditions of the District.

The Draft EIR states:

“The High School District has plans to build new and expand existing school facilities. A School Facilities Needs Analysis, dated November 11, 2004, analyzed planned development projects with the district boundaries and detailed the High School District's anticipated facilities needs through 2010. Table 5.8-9 summarizes future enrollment growth and the facilities needed to accommodate these students.”

This information needs to be updated to reflect the current conditions of the District. In addition, the Draft EIR needs to identify that although the District intends to pursue the development of a new high school, the District does not and would not have adequate funds to construct the school under the current financial mitigation as proposed in the Draft EIR. In addition, the high school is proposed to be located in an area that does not serve the Project. Also, the proposed high school would already be a capacity based on the current Projects that have received approval from the City and the County and other Projects that are already in the planning cycles of the City and County. Therefore, a further detailed analysis needs to be conducted to determine if the proposed high school would be able to address the impacts of the Project. The Draft EIR needs to provide greater detail as to the proposed new high school.

MUSD-13

The Draft EIR provides the following table

Table 5.8-9: Anticipated Enrollment Growth and Facilities Needs

| Planned Dwelling Units | Student Generation Factor | Calculation | Total Student Generation | Site Factor | Calculation | New School Sites Needed |
|--|------------------------------|---|--------------------------|--------------------------------|---|-------------------------|
| 8,587 dwelling units | 0.38 student / dwelling unit | (8,587 dwelling units) x (0.38 student / dwelling unit) | 3,264 students | 2,000 students / 1 school site | (3,264 students) / (2,000 students / 1 school site) | 1.63 sites |
| Planned Dwellings Units are for years 2005-2010. Source: Central Union High School District, School Facilities Needs Analysis, November 11, 2004. | | | | | | |

This table needs to be updated to reflect the current and future conditions of the District. The table analyzes the needs of the District by using a planned development projection for the period of 2005 through 2010 of 8,578 units. However, this is only a portion of the development which is current anticipated in the District. This analysis should present the current projection of units that is currently in the planning cycles of the City and the County. The District suggests that this amount is in excess of 16,098 units, including the Project. Based on these current planned units and a capacity of 2,000 students per school,

the District currently would require 2.85 high schools in addition to the current two schools. The District understand that there are additional residential projects proposed within the District which have not been formally filed with the City or the County, and which would have additional impacts on the District requiring additional facilities. This information needs to be disclosed in the Draft EIR.

The Draft EIR states:

“As shown above, the High School District would need to acquire 1.63 new school sites to meet anticipated enrollment growth through 2010. The School Facilities Needs Analysis estimates that acquiring these sites and building school facilities will cost the High School District more than \$32 million.”

This is not an accurate analysis. The cost of a high school has been estimated to be \$125,083,784. Therefore, 1.63 high schools would have a cost of \$203,886,567.16. The District projects that State funding would provide \$65,812,543.15, leaving \$138,074,024.01 to be funded by the Distract. Assuming 8,587 units with an average of 2,000 square feet per unit, development fees would generate \$46,541,540.00, leaving a net deficit in funding of \$ 91,532,484.01, resulting in a significant impact on the District.

Assuming the 16,098 units there would be a need for 2.85 schools. The 2.85 schools would have a cost of \$356,488,783.06. State funds would generate \$115,071,011.03, leaving a local obligation of \$241,417,772.04. Development fees are projected to fund \$87,251,160.00 leaving a net obligation to the District of \$154,166,612.04. This level of additional analysis is required in the Draft EIR in order to provide the decision-makers with an accurate understanding of the District’s concerns and to provide for full and complete disclosure. These above stated costs and revenues are in current 2007 dollars.

MUSD-13

The Draft EIR states:

“Appendix G of the CEQA Guidelines indicates that a project would result in a significant public education services impact if it would:

- Result in a substantial adverse physical impact associated with the provision of new or physically altered public education facilities; or
- Result in the need for new or physically altered public education facilities in order to maintain acceptable service ratios, response times, or other performance objectives, the construction of which could cause significant environmental impacts.”

The District has already offered it comments with regards to these statements.

“The estimated student generation for the Elementary School District is summarized in Table 5.8-10.

Table 5.8-10: McCabe Elementary School District Student Generation Estimate

| Student Generation Factor | Calculation | Estimated Student Generation |
|--|---|------------------------------|
| 0.83 student per dwelling unit | (494 dwelling units) x (0.83 student per dwelling unit) | 411 students |
| Source: McCabe Union Elementary School District, December 8, 2005. | | |

MUSD-14

This table needs to be updated based on the current student generation rates of the District. The number of students based on the current student generation rate of .630 is 311.22 students.

The Draft EIR states:

“The proposed project is expected to add 411 students to the Elementary School District. The Elementary School District's existing school is already beyond capacity and new school facilities would be needed to serve the proposed project. This is a potentially significant impact.”

This statement needs to be updated. It is noted that the projected students would be 256.88 elementary school students and 54.34 middle school students. The school proposed within the Project is a K-6 elementary school. The Draft EIR has not identified how the middle school students will be addressed, if the elementary school students are house in the proposed school within the Project. This needs to be addressed in the Draft EIR.

MUSD-15

The Draft EIR states:

“The proposed project would dedicate 11.77 acres on the project site to the Elementary School District for a 600-student school. The 411 elementary school students from the proposed project would attend this school. (Note that this school site is not analyzed in this EIR and will be analyzed in a separate environmental document). In addition, the proposed project would be required to pay development fees to the Elementary School District to fund capital improvements at the time building permits are sought. In 2005, the Elementary School District prepared a School Facility Needs Analysis indicating that development fees are warranted.”

MUSD-16

The District acknowledges that the Project will dedicate 11.77 acres. However, this is inadequate and does not meet the District's requirements. The District requires 15-net acres. Therefore an additional 3.23-net acres would be required. The District

acknowledges that students from the Project would attend the school. However, this school would be a K-6 grade elementary school. The Project will generate 256.88 K-6 elementary school students and 54.34 middle school students grades 7-8. These middle school students would not attend the school within the Project. Therefore, the Draft EIR provides no assurance that the middle school students can be accommodated by the District.

MUSD-16

The Draft EIR suggests that the environmental analysis of the school within the Project will be conducted as a separate environmental document. However, the school is an integral part of the Project both in terms of site design environmental impacts, and actual development. Therefore, according to the CEQA Guidelines, this aspect of the Project is required to be considered in the Draft EIR. The Draft EIR has failed to consider any of the impacts of the site plan, design, construction, and operation of a school site within the Project, and has not adequately discussed the impacts of this part of the development. Therefore, the Draft EIR is not complete and does not comply with the CEQA Guidelines.

The development of a school within the Project would have a cost of \$22,135,356 (current 2007 dollars). This cost includes land acquisition at \$75,000 per acre or \$1,125,000. Because the site is being dedicated (no cost to the District), the District cost for the school would be \$21,010,356. The Project's fair share of the cost would be 42.81% or \$8,995,233.62. The State's share of this Project's cost would be \$3,569,972.03, requiring a local share of \$5,425,261.59. The 494 units would generate \$2,697,240.00 in development fees assuming an average of 2,000 square feet per unit. Allocating 23.89% of the development fees to the middle school costs or \$644,488.58 and 76.11% to the elementary school or \$2,052,751.42, the District would experience a Project fair share deficit of \$3,372,510.17.

MUSD-17

In addition, there would be a need for interim facilities prior to the development of a permanent school facility and District-wide support facilities (i.e. food services, administration and office facilities, warehouse and storage facilities, transportation facilities, and central computer facilities) that would be required to serve the Project. These need to be disclosed in the Draft EIR and additional analysis is required to provide for a full disclosure to decisions-makers.

The Draft EIR states:

“The dedication of the school site and the payment of development fees are considered self-mitigating features of the project and would reduce potentially significant impacts to a level of less than significant.”

Although the dedication of a school site and the payment of development fees may be considered “self-mitigation” features of the Project, they do not reduce the potential

significant impacts to a level of less than significant. On the contrary, if the impact will still exist after the mitigation is imposed, the impact would not be reduced to a level less than significant. This finding is not supported by data, and quantitative and qualitative analysis that is presented in the Draft EIR. The Draft EIR should therefore be revised.

MUSD-17

The Draft EIR states:

“The estimated student generation for the Central Union High School District is summarized in Table 5.8-11.”

Table 5.8-11: Central Union High School Student Generation Estimate

| Student Generation Factor | Calculation | Estimated Student Generation |
|--|--|------------------------------|
| 0.358 student per single-family dwelling unit | (494 dwelling units) x (0.358 student per dwelling unit) | 177 students |
| Source: Central Union High School District, November 17, 2005. | | |

This table needs to be updated based on the current student generation rates of the District. The number of students based on the current student generation rate of .354 is 174.88 students.

MUSD-18

In addition, there would be a need for interim facilities prior to the development of a permanent school facility and District-wide support facilities (i.e. food services, administration and office facilities, warehouse and storage facilities, transportation facilities, and central computer facilities) that would be required to serve the Project. These need to be disclosed in the Draft EIR and additional analysis is required to provide for a full disclosure to decisions-makers.

The Draft EIR states:

“The Central Union High School District's two existing mainstream high schools are at or above capacity and the addition of the proposed project's 177 students would require the construction or expansion of existing facilities. This is a potentially significant impact.”

This is an accurate statement. However, it does not provide the analysis of the detail of the impact and the consequences of these schools being at or above capacity.

The Project's fair share of the cost of a high school to accommodate the students generated by the Project would be 8.74% or \$10,937,075.86. The State's share of this Project's fair share cost would be \$3,530,378.62, requiring a local share of \$7,406,697.25. The 494 units would generate \$2,677,480.00 in development fees

assuming an average of 2,000 square feet per unit. The District would experience a Project fair share deficit of \$4,729,217.25

In addition, there would be a need for interim facilities prior to the development of a permanent school facility and District-wide support facilities (i.e. food services, administration and office facilities, warehouse and storage facilities, transportation facilities, and central computer facilities) that would be required to serve the Project. These need to be disclosed in the Draft EIR and additional analysis is required to provide for a full disclosure to decisions-makers.

The Draft EIR states:

“In accordance with SB 50, the project proponent will be required to pay a school impact fee to each affected school district, to help fund new and expanded classroom and support facilities. Currently the McCabe Union Elementary School District and Central Union High School District impose fees of \$2.57 and \$2.01 per square foot of residential development respectively; however impact fees are determined by the findings of the annual School Facilities Needs Analyses prepared by each school district throughout the State. Therefore, homebuilders will be required to pay the school impact fee as published at the time of issuance of building permits. As cited in the Government Code Section 65995, the payment of this statutory fee, "is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization. Therefore, potential impacts on schools would be less than significant.”

MUSD-18

This does not accurately state the development fees levied by the Districts. The MUSD levies a current fee of \$2.73. The CUHSD levies a fee of \$2.71. These fees are currently being updated for 2008. These fees are annually updated based on the criteria and formulas as provided in State law. The criteria and formulas as provided in State law should be described in the Draft EIR.

The District partially acknowledges the provisions of State law which state that the payment of this statutory fee, "is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization.” However, the Draft EIR does not accurately state the applicable provisions.

MUSD-19

Section 65995 (h) states:

“(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in

Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.”

The provisions of Section 65995 do not state “Therefore, potential impacts on schools would be less than significant”. On the contrary, there is nothing in the provisions of SB 50 which states that any development fee reduces the potential impacts on schools to a level of less than significant. Therefore, this conclusion is not supported by the recital of Section 65995 of the Government Code. It needs to be supported by other data, and quantitative and qualitative analysis as provided for in the CEQA Guidelines.

The Draft EIR further does not acknowledge the other means of mitigating impacts on schools as are described in SB 50 and Section 65995.

The Draft EIR states:

“Therefore, potential impacts on schools would be less than significant.”

This is a conclusory statement which is not supported by data, and quantitative and qualitative analysis as presented in the Draft EIR. It does not comply with the provisions of the CEQA Guidelines and requires further support. The District has determined that the impacts on the District would be significant.

MUSD-19

The Draft EIR states:

“No mitigation measures are required.”

Based on the District’s analysis, additional mitigation measures are required. The mitigation measures that should be considered and included in the Draft EIR are as follows:

1. Dedicate a one (1) 15-net acres site with the Project as a K-6 elementary school.
2. Participate in the financing of the construction of the one (1) 15-acre elementary school site within the Project based on a “fair share” of the enrollment of the school generated by the Project
3. Participate in the financing of the acquisition and construction of one (1) 25-acre middle school site to be located south of Highway 8 to serve the Project based on a “fair share” of the enrollment of the school generated by the Project.

4. Provide for the “fair share” of the financing of interim facilities and District-wide support facilities as may be required to serve the Project.
5. A Growth Management Program which provides for the annual phasing of development of the residential uses within the Project concurrent with the availability of permanent and interim facilities, District-wide support facilities, and transportation facilities and services to accommodate the students generated by the Project.
6. Impose a Mello-Roos Community Facilities District on all properties within the Project to generate revenue equal to the difference between the cost of permanent and interim facilities, District-wide support facilities, and transportation service and facilities, less a) the revenues generated by statutory development fees as provided for pursuant to SB 50; and b) revenues allocated to the District per the State School Facilities Financing Program.
7. The entering into a School Facilities Mitigation Agreement with the District to generate revenue equal to the difference between the cost of permanent and interim facilities, District-wide support facilities, and transportation service and facilities, less a) the revenues generated by statutory development fees as provided for pursuant to SB 50; and b) revenues allocated to the District per the State School Facilities Financing Program.
8. The reduction of the number of units to be developed in the Project to a level that is equal to the number of students that can be accommodated by the District based on the revenues generated by statutory development fees plus revenues of the State School Facilities Financing Program.
9. Issuance of the State of California Department of Real Estate Subdivision Report (“White Paper”) including the disclosure of inadequate school facilities to serve the Project to potential homebuyers and the requirement for realtor disclosures prior to the sale of residential units.

MUSD-19

The Draft EIR states:

“No mitigation is required for public education services; impacts are considered less than significant.”

This is a conclusionary statement which is not supported by data, and quantitative and qualitative analysis as presented in the Draft EIR. It does not comply with the provisions of the CEQA Guidelines and requires further support. The District has determined that the impacts on the District would be significant and require further mitigation.

District's Request for Topics of Inclusion in Draft EIR

The Draft EIR acknowledges that there are areas of controversy. The Draft EIR states:

“2.2 - Areas of Controversy/Issues To Be Resolved

The potential areas of controversy and issues to be resolved through the EIR process are derived from the Initial Study/Notice of Preparation (NOP), dated August 14, 2006; and the Revised NOP, dated September 22, 2006, (Appendix A) and responses thereto. These areas are summarized as follows:

- The project site currently supports agricultural production and has supported agricultural production since at least 1949. Additionally, the project site is zoned for agricultural land uses. Project implementation will result in the conversion of the project site from agricultural land uses to urban uses (Section 5.1, Agricultural Resources).
- The proposed project will have air quality impacts in the short-term during the mass grading of the site, the construction of the residential units, and associated infrastructure and in the long term as vehicular traffic increases in the project area (Section 5.2, Air Quality).
- The project site is known to provide dispersing, foraging, and nesting habitat for the borrowing owl and there are four known burrowing owls (two pairs) that are located onsite. The project site also contains suitable habitat for nesting birds (Section 5.3, Biological Resources).
- Project implementation will result in directly impacting the adjacent drain and canal system, which is part of a greater system that is considered an historic district and in the event that there are unknown cultural resources below grade, these resources could be disturbed during trenching for utilities (Section 5.4, Cultural Resources).
- The project site is located in an area that is seismically active and may experience primary and secondary seismic activity. The site may be subject to geological constraints including but not limited to, ground shaking, liquefaction and expansive soils (Section 5.5, Geology and Soils).
- The project site historically supported agricultural land uses, which may have involved the application of pesticides or herbicides. There is the potential for pesticide residues in onsite soils. Project implementation will increase the use of what the US Environmental Protection Agency terms

MUSD-20

Household Hazardous Wastes in the project area (Section 5.6, Hazards and Hazardous Materials).

- The proposed project will result in the generation of noise in the short-term during construction and in the long term as vehicular traffic increases in the project area (Section 5.7, Noise).
- The proposed project will result in generating an increased demand for public services and require the extension of services to the project site. (Section 5.8, Public Services).
- The proposed project will introduce 5,868 daily vehicle trips to the project area circulation system, of which 732 trips will be during the AM peak hour and 573 will be during the PM peak hour. Additionally, the project will result in the addition and/or reconfiguration of roadways within the project area (Section 5.9, Transportation and Traffic).
- The proposed project will result in generating demand for domestic water and require the extension and/or upgrades of water supply to the site (Section 5.10, Utility Service Systems).”

MUSD-20

Although the Draft EIR indicates that comments have been received regarding potential impacts relating to these areas of controversies, the specific areas of controversy have not been identified and the details of these controversies are not set forth in the Draft EIR. The specific areas of controversy need to be addressed and discussed in detail in the Draft EIR, so as to provide decision-makers with the information that is required pursuant to CEQA.

In addition, CEQA 15123 of the CEQA Guidelines states:

“(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be a clear and simple as reasonably practical.

(b) The summary shall identify...

(2) Areas of controversy known to the Lead Agency including issues raised by agencies and the public...”

MUSD-21

Although the discussion states that “The proposed project will result in generating an increased demand for public services and require the extension of services to the project site”, the statement does not 1) identify schools as being an area of controversy; and 2)

does not provide a summary of what the specific areas of controversy are with regards to these potential effects.

However, even though potential impacts to public services (i.e. schools) is identified as a key environmental concern as stated early in the Draft EIR, the comments contained herein provide evidence that the required data, and the quantitative and qualitative analysis that was used in the Draft EIR did not address these concerns in a comprehensive and complete manner and to the level of clarity that is required by the CEQA Guidelines. There appears to be a common thread of the lack of reasoned good faith analysis as to the project-specific and cumulative impacts and mitigation measures set forth in the Draft EIR in compliance with the CEQA Guidelines.

The Draft EIR states:

“2.6 - Summary of Significant Environmental Impacts and Mitigation Measures

Table 2-1 summarizes the potential environmental effects of the proposed project, the recommended mitigation measures, and the level of significance after mitigation. Impacts that are noted in the summary as "significant" after mitigation will require the adoption of a statement of overriding considerations, if the project is approved as proposed (CEQA Section 15903).

Impacts of the project are classified as (1) Less than Significant, adverse effects that are not substantial according to CEQA or adverse effects that have been mitigated to levels that are considered less than significant or (2) Significant and Unavoidable, substantial changes in the environment that cannot be avoided even with feasible mitigation. Mitigation measures are listed, when feasible for each impact. The EIR also identifies other effects, which are either not considered significant or are beneficial effects of the proposed project; such effects are not the focus of the following summary. The reader is referred to the full text of this EIR for a description of the environmental effects of the proposed project and feasible mitigation measures recommended to reduce these effects to a level considered less than significant.”

The District has serious concern that the Project's significant direct impacts cannot be mitigated to less-than-significant levels by the measures identified in the various sections of the Draft EIR, particularly as they relate to schools., The Project would contribute to significant cumulative impacts for which mitigation adequate to reduce impacts is not feasible. Significant and unmitigated impacts have been identified for the Project's contribution to significant cumulative impacts. However, the Draft EIR fails to provide these stated inclusions, particularly as they relate to schools and District facilities and services.

MUSD-21

Rather than doing the comprehensive analysis of the project-specific and cumulative impacts of the Project on the District that would be dictated by the knowledge of these controversial areas, the Draft EIR only superficially discusses these areas or provides an analysis that does not address the issues in a manner that would be required by the CEQA Guidelines so that the decision-makers can make informed and unbiased decisions with regards to the adequacy of the Draft EIR and the mitigation of impacts to a level of insignificance.

The District has consistently advised the City that residential development project impacts would not be mitigated by the provision of the SB 50 development fees and that mitigation may be requested by the District on a project-by-project basis in order to adequately house students generated by the Project and other new projects within the District.

The Draft EIR has failed to acknowledge this District position.

The District believes that if the Draft EIR was prepared in compliance with the CEQA Guidelines, that the following finding could reasonable be made:

1. School facilities and public services offered by the District will not adequately be available to the area to which the Proposal applies, and cannot be provided in an efficient and orderly manner in accordance with the planning, financing, development, and operational policies and requirements of the District.
2. School facilities and services currently offered by the District are inadequate District-wide because of the over-crowding of the District and the lack of adequate facilities to accommodate projected and proposed enrollments. The Proposal sets forth no adequate financial plan which sets forth the resources and implementation provisions to support the finding that adequate school facilities for both existing and proposed land uses within the annexation territory will be available to accommodate the student generated by the Proposal.
3. The City has no plan of services that demonstrates that needed public services and facilities will be available for the Proposal and the Project, including sufficient revenue sources for those facilities and services.
4. City has provided no qualitative or quantitative analysis which substantiates that school facility financial resources and implementation provisions will be available to address the needs of the District as a result of the Project's impacts.

Based on the Project, the District has determined the student generation impacts on the District and the financial consequences caused by those impacts. These impacts and financial consequences need to be evaluated in the EIR to offer a full and

complete disclosure of the impacts of the Project in order to enable the City to make a full and informed decision on the Project and the entitlement applications.

The District is prepared to provide additional detailed data on the schools and the current enrollments and capacities of each school within the District as additional support to the District's findings and conclusions stated herein. The District suggest that during the preparation of the responses to these District comments, that the City contact the District and obtain the additional information to insure that the Draft EIR presents a complete and accurate evaluation of the impacts of the Project on the District.

MUSD-21

Additional Topics That Should Be Discussed in the Draft EIR

The inadequacies of the Draft EIR suggest that the document should be revised to address the issues on the District in greater detail. Data, and quantitative and qualitative analysis should be completed on a number of topics that were not discussed in the Draft EIR. Without addressing these topics, the full disclosure of the impacts of the Project cannot be determined. The District requests that the Draft EIR be revised to address the following:

1. The direct, indirect, and cumulative impacts on the increased enrollments, increased required employees, increased school facilities, increased District-wide facilities, increased interim facilities, and increased transportation facilities and services required by the students generated by the Project on the District, needs to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
2. The direct, indirect, and cumulative impacts on the circulation and traffic patterns throughout the community as a result of overall traffic generated by the Project, as well as private and public traffic generated by the transportation needs of students to and from the Project and schools throughout the District required to accommodate students that cannot be accommodated at these schools. The impacts of this traffic on the schools and the surrounding areas need to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
3. The direct, indirect, and cumulative impacts on the routes and safety of students traveling to schools by vehicle, District busing, walking and using bicycles need to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
4. In order for the District to accommodate the students from the Project, which are not accommodated at current District schools, the District will have to modify

MUSD-22

attendance area boundaries, program double-session schedules, load classrooms with students in excess of District and State standards, and house students in inadequate and inappropriate school facilities, etc., throughout the District. This effect on the overall operation and administration of the District, and the students, employees, and constituents affected by such actions need to be addressed in the Draft EIR. This will have physical, social, financial, and psychological effects on the students, employees, and constituents of the District. These potential impacts need to be addressed in the EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.

5. In the event that the impacts of the Project are not mitigated, students and employees will experience overcrowding conditions in the schools that are impacted by the Project. This may result in operational and administrative modifications that would be necessary to accommodate the increased overcrowded enrollments. This may have physical, social, financial, and psychological effects on the students, employees, and constituents of the District. These potential impacts need to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
6. In order to accommodate students at current District schools, permanent and interim classrooms and support facilities may need to be installed, constructed, and developed on the school sites. The impacts of these additional facilities on school site utilization, wastewater treatment, water and utility services, parking, traffic and circulation, loss of parking, open space, and field areas, and State site and design compliance needs to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
7. SB 50 places limitations on the statutory development fees to be paid by the development for each residential unit. The Draft EIR needs to address the deficiencies in the fees paid versus the revenues required to fund the permanent and interim school facilities, and the District-wide support facilities to accommodate the students generated by the Project. In the event the SB 50 limitations result in financial deficits that would result in facilities not being fully funded, then the Draft EIR should identify the measures that will be taken to address the unfunded facilities to accommodate the students generated by the development. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the Project as proposed, the effects of the mitigation measure should be discussed. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.

MUSD-22

8. The Draft EIR should evaluate all alternatives to the Project, including but not limited to a) the development of land uses that do not generated students (i.e. non-residential, active adult senior citizen housing, public facilities, and parks and open space, etc.); b) reduction in the number of units to be developed on the Property; c) the implementation of a Growth Management/Phasing Program, including the annual allocation of building permits based on the availability of school facilities; and d) the “no project” alternative. The direct, indirect, and cumulative impacts of these alternatives should be evaluated in the Draft EIR. Mitigation measures to the impacts of these alternatives need to be offered to reduce the impacts to a less than significant impact.
9. The Draft EIR should evaluate the “growth inducing” impacts of the Project on the Community and the region, including but not limited to the direct and indirect environmental impacts of the growth inducement on schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, land use. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
10. The increased traffic of the Project will have an impact on increased traffic on the surrounding collector and arterial streets, as well as State Highways. These traffic increases will impact the District’s busing and transportation timing and routes. The Draft EIR should address these impacts on the District. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
11. The Draft EIR should identify the significant environmental effects on schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, and land use which cannot be avoided if the Project is implemented, together with the direct and indirect consequences of the unavoidable environmental effects.
12. The Draft EIR should identify the significant irreversible environmental changes on schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, and land use, which would be caused by the Project should the Project be implemented.
13. The Draft EIR should address how the Project is consistent with the land use map, and the ALL goals, polices, objectives, and implementation programs of the City of El Centro General Plan and the County of Imperial General Plan, including but not limited to schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, and land use.

MUSD-22

SB 50 provides:
14.

- a. Section 65995 (e) “The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or non-financial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.
- b. Section 65995 (h) “The payment or satisfaction of a fee, charge, or other requirement levied or imposed ... are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization ..., on the provision of adequate school facilities.”
- c. Section 65996 (a) “... the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization...”
- d. Section 65996 (b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization,... on the basis that school facilities are inadequate...”

MUSD-22

The Draft EIR needs to identify the deficiencies and inadequacies between the legal provisions of SB 50 and the actual implementation of the provisions with

regards to the Project. In addition, the Draft EIR needs to identify any and all impacts that have not been mitigated by the provisions of SB 50.

15. The cumulative impacts of the Project on traffic and circulation, noise, schools, public facilities and services, wastewater treatment, water and water table, and utilities need to be evaluated in the Draft EIR based on the build-out of the City of El Centro General Plan and the County of Imperial General Plan, the build-out of the land uses of the area, and the build-out of the land within the jurisdiction of the public agencies providing service to the Project. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
16. The Draft EIR should identify all federal, State, and local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the Draft EIR by contract or other authorization.
17. The Draft EIR should identify and describe all entitlements required for the approval and development of the Project.
18. The Draft EIR should identify the economic or social information relative to the impacts of the Project. The Draft EIR should trace the chain of cause and effect from a proposed decision on a Project through anticipated economic or social changes resulting from the Project to physical changes caused in turn by the economic or social changes. The economic and social analysis should focus the analysis on the physical changes that will result on the District from the Project. Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a Project are feasible to reduce or avoid the significant effects on the environment identified in the Draft EIR.
19. The Draft EIR should identify through data and quantitative and qualitative analysis supported by independent evaluation and expert analysis how the provisions and policies of the City of El Centro General Plan and the County of Imperial General Plan, and the mitigation measures as set forth in the General Plan Program EIR's address the project-specific and cumulative impacts the Proposal will have on the traffic and circulation, noise, schools, public facilities and services, wastewater treatment, water and water table, and utility impacts caused by the Proposal.
20. The Draft EIR should identify the inadequacies contained in the City of El Centro General Plan and the County of Imperial General Plan, and the consequences of compliance or lack of compliance of the current General Plans with the applicable provisions of Section 65300 et. seq. of the Government Code.

MUSD-22

21. In the event that the data, information, analysis and mitigation measures that are set forth in the General Plans and the General Plan Program EIR's are used in the Proposal Draft EIR, the data, information, analysis and mitigation measures should be updated to address the current conditions of the community and the differences should be identified, including but not limited to the changes in the community resulting from a) the unprecedented growth that has occurred in the past several years since the General Plan's were adopted; b) the residential development projects which have been approved by the City and County and not developed as of yet, since the General Plans were adopted; e) the changes in the General Plans and zoning of the City and County since the General Plans were adopted; and d) environmental conditions and characteristics of the City and the County and the region.
22. The Draft EIR should identify the operational, administrative, financial, and legal impacts of the Project on the District.
23. The Proposed Draft EIR should describe how the current City of El Centro and the County of Imperial General Plans and Housing Elements are or are not in compliance with State law, and identify the lack of internal consistency between the General Plan elements, and how these deficiencies affect the Project, if any.
24. If the Developer is proposing a School Facilities Impact Mitigation Agreement to be entered into between the Developer and the District, the terms and conditions of such a proposal should be identified in the Draft EIR as a mitigation measure, and a discussion should be presented as to how such an Agreement would address the impacts caused by the Project and the concerns that the District may have with regards to the adequacy of facilities to serve the Project.
25. The Draft EIR should address the legal constitutionality of the provisions of SB 50 as applicable to the mitigation of the Project impacts, the limits on cities and school districts to impose additional mitigation measures in excess of the limits of SB 50, and the limitations on the part of the City and County to deny the Project on the grounds of inadequate facilities, unmitigated impacts, or the refusal of the applicant to pay development fees in excess of statutory provisions.
26. The Draft EIR should identify how the Project is in compliance with the requirements and policies of the County of Imperial Local Agency Formation Commission applicable to annexations.
27. The Draft EIR should evaluate the interim facility requirements of the District to accommodate student enrollments that will be generated over the phasing of the

MUSD-22

Project and prior to permanent facilities being available for students generated from the Project.

28. The Draft EIR should accurately identify the projected student enrollments to be generated by the Project by grade level, the specific schools that are intended to serve the Project, the current and future capacities of all existing schools within the District by grade level, the identification of future schools and the projection of capacities, the enrollment and capacities of permanent classroom facilities of all existing schools by grade level, the enrollment and capacities of portable classroom facilities of all existing schools by grade level, the capacity utilization of portable and permanent classrooms of all existing schools by grade level.

MUSD-22

Many of the issues that relate to these topics need to be addressed in the Draft EIR. Following the revisions, the revised Draft EIR should recirculated.

Draft EIR Consideration of the District's Mitigation Measures

The Draft EIR attempts to suggest that any mitigation measure offered by the District, which in any way directly or indirectly addresses school concerns, is preempted by the provisions of SB 50 and there is no requirement that they be considered or discussed in the Draft EIR. The District suggests that it is the City's responsibility to fully disclose the impacts of the Project, regardless of the provisions of SB 50, and the failure to provide such a disclosure and offer adequate mitigation measures is not in compliance with the CEQA Guidelines.

It is clear when comparing what was requested by the District in comparison to the contents of the Draft EIR that the City has not provide a good faith reasoned response based on data, and quantitative and qualitative analysis.

MUSD-23

It is the finding of the District that the City has failed to adequately address the all mitigation measures that are available to mitigate the impacts of the Project. The District would suggest that the provisions of the CEQA Guidelines requires that the preparers of the Draft EIR a) do the research; b) pursue consultation with the District or others, including seeking technical and professional consultation; c) collect the data or information; d) conduct the quantitative or qualitative analysis; e) identify reference materials or individuals; f) draft language and incorporate such language in the Draft EIR; and g) include the information, findings, and conclusions in the Draft EIR that addresses the comments/requests of the District in a good faith or reasoned manner in compliance with the CEQA Guidelines. The District would suggest that the Draft EIR does not fulfill this requirement. The Draft EIR has failed to adequately address a way of reducing the impacts on the District to a less than significant level and the purpose of the CEQA Guidelines are not complied with regards to it being a full and complete disclosure and information document. This therefore is not in compliance with the

CEQA Guidelines and requires revision of the Draft EIR and re-circulation for further review and comments.

The District would suggest that the following mitigation measures be considered to reduce the impacts to a level of insignificance:

1. Dedicate a one (1) 15-net acres site with the Project as a K-6 elementary school.
2. Participate in the financing of the construction of the one (1) 15-acre elementary school site within the Project based on a "fair share" of the enrollment of the school generated by the Project
3. Participate in the financing of the acquisition and construction of one (1) 25-acre middle school site to be located south of Highway 8 to serve the Project based on a "fair share" of the enrollment of the school generated by the Project.
4. Provide for the "fair share" of the financing of interim facilities and District-wide support facilities as may be required to serve the Project.
5. A Growth Management Program which provides for the annual phasing of development of the residential uses within the Project concurrent with the availability of permanent and interim facilities, District-wide support facilities, and transportation facilities and services to accommodate the students generated by the Project.
6. Impose a Mello-Roos Community Facilities District on all properties within the Project to generate revenue equal to the difference between the cost of permanent and interim facilities, District-wide support facilities, and transportation service and facilities, less a) the revenues generated by statutory development fees as provided for pursuant to SB 50; and b) revenues allocated to the District per the State School Facilities Financing Program.
7. The entering into a School Facilities Mitigation Agreement with the District to generate revenue equal to the difference between the cost of permanent and interim facilities, District-wide support facilities, and transportation service and facilities, less a) the revenues generated by statutory development fees as provided for pursuant to SB 50; and b) revenues allocated to the District per the State School Facilities Financing Program.
8. The reduction of the number of units to be developed in the Project to a level that is equal to the number of students that can be accommodated by the District based on the revenues generated by statutory development fees plus revenues of the State School Facilities Financing Program.

MUSD-23

9. Issuance of the State of California Department of Real Estate Subdivision Report (“White Paper”) including the disclosure of inadequate school facilities to serve the Project to potential homebuyers and the requirement for realtor disclosures prior to the sale of residential units.

MUSD-23

The Draft EIR needs to address these alternatives.

Draft EIR – School Related Impacts

The Draft EIR describes the Draft EIR document as a project specific EIR.

The District notes that the Proposal is to proceed with the development of the Project in conformance with the City of El Centro General Plan. However, the District suggests that the Proposal is not in conformance with the General Plan, as is discussed herein and does not conform to the goal, policies, objectives, and provisions contained therein.

The accuracy, completeness, and comprehensiveness of the Draft EIR is critical to the process in that it will subsequently be used as the “base” environmental document for future discretionary approvals. As such, the Draft EIR needs to address all of the concerns that are known at this time, regardless of the complexity or magnitude of such analysis. The City is required to conduct a “good faith and reasoned analysis” of the impacts based on the technical input and the input of others during the process. Without such analysis, the Draft and Final EIR cannot provide decision-makers with the information so that they can make an informed decision.

MUSD-24

It is because of the subsequent use of the Draft EIR that the District wants to be assured by the City that all of the environmental impacts have been considered in the Draft EIR and that there is a full and complete disclosure of the data and analysis that leads to the conclusions, findings, and mitigation measures as is required to be stated in the Draft EIR. Failure to do this places greater burden on the subsequent environmental documentation and puts into question the adequacy of this Draft EIR and the ability for the City to find in the future that subsequent approvals are consistent with the Project and the Project’s environmental documentation.

In accordance with the CEQA Guidelines, the Draft EIR needs to provide a good faith reasoned analysis substantiated by evidence in order to provide a document that will allow decision-makers to make findings and approve mitigation measures to address the impacts of the Project on the environment. The contents of this letter suggests that this level of analysis is incomplete and does not provide the comprehensive analysis or offer full and complete disclosure and transparency of the analysis, conclusions, and mitigation measures.

The District acknowledges the format of the Draft EIR which is stated in the Draft EIR as follows:

“1.4 - Components of the **EIR** Analysis

The analysis of each environmental category within Section 5, Existing Conditions, Project Impacts, Mitigation Measures, and Level of Significance After Mitigation, of this EIR is organized into the following discussions:

- Existing Conditions - describes the regulatory and physical conditions that exist at this time and which may influence or affect the issue under investigation.
- Project Impacts - describes the potential environmental changes to the existing physical conditions that may occur if the proposed project is implemented.
- Mitigation Measures - are those specific measures that may be required of the project by the decision-makers in order to (1) avoid an impact, (2) minimize an impact, (3) rectify an impact by restoration, (4) reduce or eliminate an impact over time by preservation and maintenance operations, or (5) compensate for the impact by replacing or providing substitute resources or environment.
- Level of Significance After Mitigation - discusses whether the project and the project's contribution to cumulative impacts can be reduced to levels that are considered less than significant.

MUSD-25

In addition, Section 6, Cumulative Impacts, describes the potential environmental changes to the existing physical conditions that may occur with the proposed project, together with anticipated growth in the vicinity of the project site.”

The Draft EIR states:

“1.3 - EIR Focus and Effects Found Not To Be Significant

Based on the findings of the IS/NOP, a determination was made that an EIR is required to address the potentially significant environmental effects, including the cumulative effects of the proposed project. The scope of the EIR includes issues identified by the City during the preparation of the IS/NOP for the proposed project, as well as environmental issues raised by agencies and the general public in response to the IS/NOP. The following are the issues addressed in this EIR:

- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Noise
- Public Services
- Transportation and Traffic
- Utility Service Systems (Water Supply)

The environmental issues determined not to be significantly affected by the proposed project and therefore, do not require evaluation in the document, per section 15063(c) of the CEQA Guidelines, are as follows:

- Aesthetics
- Hydrology/Water Quality
- Land Use and Planning
- Mineral Resources
- Population and Housing”

Although the Draft EIR appears to follow the format discussed in the Draft EIR, the District has serious reservation that the Draft EIR has not addressed all of the topics that it should in the body of the environmental analysis. The Draft EIR offers an environmental analysis of:

- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Noise
- Public Services
- Transportation and Traffic
- Utility Service Systems (Water Supply)

The Draft EIR fails to provide detailed analysis of the following topics which are normally included in the body of a Draft EIR:

- Aesthetics
- Hydrology/Water Quality
- Land Use and Planning

- Mineral Resources
- Population and Housing

The District would suggest that the Draft EIR be revised accordingly to address these topics. This is a flaw in the Draft EIR that needs to be corrected, requiring recirculation of the Draft EIR.

MUSD-25

As it relates to the environmental impact on schools, the Draft EIR states as follows with regards to "significance" criteria":

"Thresholds of Significance

Appendix G of the CEQA Guidelines indicates that a project would result in a significant public education services impact if it would:

- Result in a substantial adverse physical impact associated with the provision of new or physically altered public education facilities; or
- Result in the need for new or physically altered public education facilities in order to maintain acceptable service ratios, response times, or other performance objectives, the construction of which could cause significant environmental impacts."

In particular, the impact significance criteria which would affect the analysis of the school issues is that the impact would result in a substantial adverse physical impact associated with the provision of new or physically altered public education facilities; or result in the need for new or physically altered public education facilities in order to maintain acceptable service ratios, response times, or other performance objectives, the construction of which could cause significant environmental impacts."

MUSD-26

This criterion is much too limiting. There are no specific criteria offered for the impacts on schools by which one would measure the impacts. The District would suggest that the analysis should be based on "service ratios, response times, performance objectives, number of apparatus devoted to the project vicinity, etc." (i.e. thresholds) However, there are no such criteria of thresholds identified for schools with the exception of what appears to be "school capacity utilization". In essence, the only criterion for determining significant impact is "school capacity".

Section 15064.7 of the CEQA Guidelines states:

"(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative,

qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.”

The “significance criteria” as set forth in the Draft EIR does not offer an identifiable quantitative, qualitative, or performance level of a particular environmental effect, the non-compliance with which means the effect will normally be determined to be significant by the City and the compliance with which means the effect normally will be determined to be less than significant. In addition, the “significant criteria” as set forth in the Draft EIR has not been adopted by an ordinance, resolution, rule, or regulation of the City and has not been developed through a public review process. Further, the criterion is not supported by substantial evidence.

This same conclusion can be reached with regards to the many of the other “significant criteria” as used for the other ten (10) environmental topics set forth in the Draft EIR (i.e. agricultural resources, agricultural resources, air quality; biological resources; cultural resources, geology and soils; hazards and hazardous materials, noise; public services; transportation and traffic; and utility and service systems

MUSD-26

Before the City proceeds with the consideration of the Draft EIR, each “significant criteria” for all ten (10) topics should be reviewed against the requirements of the CEQA Guidelines, revised accordingly, adopted by the City, and used as a measurement to further review the impacts of the ten (10) topics in order to determine if the level is significance or insignificance. This is not in compliance with the CEQA Guidelines and needs to be corrected and addressed before the Draft EIR is finally considered.

The District suggests that the Project will result a) in substantial adverse physical impacts associated with the provision of new or physically altered school facilities; and b) the need for new or physically altered school facilities. The construction of such activities will cause significant environmental impacts in order to maintain acceptable service ratios and other performance objectives for school services offered by the District. This will come in the form of permanent school facilities, interim school facilities, District-wide support facilities and student bussing and transportation. In addition, the impacts of the Project will affect a) the operations and administration of the service offered by the District; b) the physical work and learning environments offered to the students, teachers, and employees; c) the physical plant of the District including, but not limited to transportation services and facilities, food service, warehouse, and administration; and d)

financial stability of the District. These short- and long-term impacts will have a secondary affect on the quality of life of the residents of the Project and the community, and the services of other local, regional, and State agencies. This letter substantiates that the standard of significance has not been met.

MUSD-26

The Draft EIR states the Project objectives, as follows:

“3.3 - Project Objectives

- Supply single family housing that is contiguous with the similar development and within the City's Sphere-of-Influence;
- Supply single-family housing to meet the growth projections of the City of El Centro;
- Locating development to meet anticipated growth in areas of relatively lesser environmental sensitivity;
- Provide public infrastructure improvements for the orderly expansion of urban development; and
- Locate housing adjacent to a major highway arterial (Interstate-8) to better promote efficient traffic flows and minimize traffic demands on local and collective streets.”

MUSD-27

Missing from these objectives is the provisions of public facilities and services to create a sustainable development (including schools) concurrent with the development of the Project land uses, and the remedies to address the impacts on public services providers.

The Draft EIR discusses the existing conditions of “schools” as previously noted.

The Draft EIR does not identify where this information was obtained. Section 9 does not identify the District representatives that were contacted in order to develop the schools analysis in the Draft EIR. Section 11 does not identify any reference materials to develop the schools analysis. The District has numerous documents (i.e. School Facilities Needs Assessment, District facilities planning documents, etc.) that should have been used to develop the data, and the quantitative and qualitative analysis of the impacts on the District. It is interesting to note that the preparers of the Draft EIR did not contact the District to verify or update the information. In addition, they did not contact the District to determine if their statements to be included in the Draft EIR were accurate and were consistent with the District’s short- and long-range planning.

MUSD-28

There appears to be an intent to define the existing conditions of the District and to determine the potential physical impacts associated with the provision of expanded school services to meet future demand of the Project. However, this intent was not fulfilled in the further discussions set forth in the Draft EIR.

The Draft EIR discusses the potential significant impacts and sets forth specific mitigation measures relating to schools, as follows:

“Impacts

McCabe Union Elementary School District

The estimated student generation for the Elementary School District is summarized in Table 5.8-10.

The proposed project is expected to add 411 students to the Elementary School District. The Elementary School District's existing school is already beyond capacity and new school facilities would be needed to serve the proposed project. This is a potentially significant impact.

MUSD-28

The proposed project would dedicate 11.77 acres on the project site to the Elementary School District for a 600-student school. The 411 elementary school students from the proposed project would attend this school. (Note that this school site is not analyzed in this EIR and will be analyzed in a separate environmental document). In addition, the proposed project would be required to pay development fees to the Elementary School District to fund capital improvements at the time building permits are sought. In 2005, the Elementary School District prepared a School Facility Needs Analysis indicating that development fees are warranted.

The dedication of the school site and the payment of development fees are considered self-mitigating features of the project and would reduce potentially significant impacts to a level of less than significant.

Central Union High School District

The estimated student generation for the Central Union High School District is summarized in Table 5.8-11.

The Central Union High School District's two existing mainstream high schools are at or above capacity and the addition of the proposed project's 177 students would require the construction or expansion of existing facilities. This is a potentially significant impact.

In accordance with SB 50, the project proponent will be required to pay a school impact fee to each affected school district, to help fund new and expanded classroom and support facilities. Currently the McCabe Union Elementary School District and Central Union High School District impose fees of \$2.57 and \$2.01 per square foot of residential development respectively; however impact fees are determined by the findings of the annual School Facilities Needs Analyses prepared by each school district throughout the State. Therefore, homebuilders will be required to pay the school impact fee as published at the time of issuance of building permits. As cited in the Government Code Section 65995, the payment of this statutory fee, "is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization.

Therefore, potential impacts on schools would be less than significant.

Mitigation Measures

No mitigation measures are required.

Level of Significance After Mitigation

No mitigation is required for public education services; impacts are considered less than significant."

MUSD-28

The Draft EIR uses a single-family unit student generation rate of .83 per unit for the District. This is not an accurate student generation rate. The current student generation rate is .63. The Project would generate 256.88 K-6 grade students, 54.34 7-8 grade students, for a total of 311.22 students.

The Draft EIR acknowledges that the implementation of the Project would increase student enrollment at local public schools beyond current and future capacity. This is an accurate statement.

Additionally, the mitigation measures offered are inaccurate. With regards to schools, the Draft EIR states:

"The dedication of the school site and the payment of development fees are considered self-mitigating features of the project and would reduce potentially significant impacts to a level of less than significant....

In accordance with SB 50, the project proponent will be required to pay a school impact fee to each affected school district, to help fund new and expanded classroom and support facilities. Currently the McCabe Union Elementary School District and

Central Union High School District impose fees of \$2.57 and \$2.01 per square foot of residential development respectively; however impact fees are determined by the findings of the annual School Facilities Needs Analyses prepared by each school district throughout the State. Therefore, homebuilders will be required to pay the school impact fee as published at the time of issuance of building permits. As cited in the Government Code Section 65995, the payment of this statutory fee, "is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization.

Therefore, potential impacts on schools would be less than significant."

The Draft EIR states that the increase in student enrollment generated by the Project is considered a less than significant CEQA impact. This is not substantiated by data, and quantitative or qualitative analysis support by factual information. Because the Draft EIR does not establish "thresholds", the Draft EIR provides no information to substantiate this conclusion. The Draft EIR acknowledges that the Project will provide additional students that will add to the already overcrowded school conditions at both MUSD and CUHSD. However, the Draft EIR does not define what this added strain is or the consequences of such strain on the already overcrowded conditions. The Draft EIR acknowledges that the Project applicant would be required to pay State-mandated developer fees to the District to help offset the costs of the additional enrollment generated by the Project. The Draft EIR does not provide and data, and quantitative or qualitative analysis which supports this conclusion or provide and analysis of what these costs may be in comparison to the actual costs the District would incur to provide for the mitigation of the impacts of the Project. Finally, the Draft EIR concludes that with payment of these fees, the Project would not result in a significant impact to schools. This again is a conclusion that is not supported by data, and quantitative or qualitative analysis supported by factual information.

MUSD-28

The District has the responsibility to provide education to the students generated by the Project. In the event that school sites are not provided within the Project, off-site school sites and facilities may be used in lieu of on-site school sites and facilities where available and appropriate. However, the District suggests that the Draft EIR needs to assume that no current schools and capacity are available and that all students generated from the Project will need to be housed in new schools located south of Highway 8. This is due to the fact that the District cannot speculate on the availability of school capacity at existing schools based on the current and future facilities and planning of the District.

The District acknowledges that the Developer will is required to pay the State-mandated school development impact fee as levied and imposed by District and that school impact fees are required to be used to construct additional new school facilities as necessary for the Project. However, the Draft EIR fails to do the analysis to determine if these fees are

adequate to fund the facilities that would be required for the Project. The District suggests that statutory fees are inadequate to fund the local financing portion of school facilities. It is acknowledged that additional funding for new school facilities may come from State funds under the State School Facilities Financing Program. However, the State contributions to schools are inadequate when added to the local statutory development fees. In addition, the State does not fund interim facilities, District-wide support facilities, or students bussing and transportation. These are all local funding responsibilities and need to be addressed in the Draft EIR.

There is no certainty that State funding would be available to meet school facility needs for the Project. The Draft EIR needs to conclude that if statutory fees are not provided sufficiently in advance to allow school facilities to be constructed prior to the arrival of students, statutory fees would likely be spent on interim school facilities (e.g., portable classrooms) and not on the construction of new school facilities. The Draft EIR needs to acknowledge that if there is no funds available for permanent facilities as a result of the use of these funds for interim, facilities, then students would not be housed in permanent facilities and that some time after the lifecycle of the interim facilities, the District would incur costs to replace or modernize these facilities, thereby placing additional financial and environmental impact burdens on the District and the Community.

The Draft EIR appears to indirectly state that based on State law, payment of school mitigation fees constitutes full mitigation of school impacts regardless of the size of the project and the District's conditions. The Draft needs to provide a full and complete disclosure of the provision of SB 50. In addition, an analysis of the inadequacies of the funding under SB 50 should be disclosures in the Draft EIR and these identified as unmitigated impacts.

MUSD-28

With much of the Draft EIR failing to provide a comprehensive analysis of the school issues, it is interesting to note that at no time from the date of the Notice of Preparation of the Draft EIR to the date of the Notice on the Draft EIR, did the preparers of the Draft EIR contact the District, the District's consultant, or any of the District's professional advisors (i.e. legal counsel, architect, development fee justification report consultant, etc.) to obtain information, data, documents, reports, or any other materials that would have enabled the preparers to provide accurate information in the Draft EIR, to conduct the proper analysis in accordance with the CEQA Guidelines, and to identify with accuracy and completeness the impacts and mitigation measures that should and would be appropriately included in the Draft EIR. This is a failure in the process of preparing the Draft EIR and has resulted in inaccuracies contained in the Draft EIR, many of which have been identified in these comments of the District.

The environmental impacts on the District are readily apparent with a thorough analysis. Without adequate school facilities and adequate funding of facilities concurrent with the development of residential units, the District will be significantly impacted and will have

to implement operational and administrative measures to address the impacts. These will have secondary and tertiary impacts on the District that need to be discussed in the Draft EIR.

In addition, the discussion of schools in the Draft EIR is incomplete and does not provide an accurate understanding of the School Facilities Financing Program of the State as it relates to statutory development fees and the State's portion of funding facilities. This needs to be expanded so that the decision-makers have an accurate understanding of how school districts fund school facilities and the inadequacies of the School Facilities Financing Program. This is critical to understanding and clarifying the adequacy of the mitigation measures offered by the Draft EIR.

The District suggests that the Project will result in substantial adverse physical impacts associated with the provision of new or physically altered school facilities, the need for new or physically altered school facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios or other performance objectives for school services. As such, these impacts need to be addressed and mitigation measures offered to reduce the impacts to a level of less than significant.

MUSD-28

There is no data, and quantitative or qualitative analysis to substantiate that the mitigation measures offered will provide for adequate and well designed public school facilities to meet future demand of the Project. Only through a proactive level of commitment by the Applicant and the City, regardless of the provisions of Section 65995 et. seq. of the Government Code, can there be any assurance that the mitigation measures will address the impacts reducing them to a level of insignificance.

The District suggests that the evaluation of impacts on the Project needs to be addressed in a comprehensive way and not through the piece-meal evaluation of second-tier environmental analysis. There is no data, and quantitative or qualitative analysis to substantiate that the mitigation measures identified in the Draft EIR addresses the potentially significant impacts of the Project and provides for the adequate operation of schools and school facilities.

Draft EIR – Cumulative Impacts

The CEQA Guidelines required that the Draft EIR consider cumulative impacts. Section 15355 of the CEQA Guidelines defines "cumulative impacts" as follows:

“ ‘Cumulative impacts’ refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

MUSD-29

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(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.”

Further Section 15130 of the CEQA Guidelines states:

“(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in Section 15065(a)(3). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the

MUSD-29

attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area-wide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIR's may be incorporated by reference pursuant to the provisions for tiering and program EIR's. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or area-wide cumulative impacts of the proposed project have already been adequately addressed, as defined in Section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183(j)."

The Draft EIR acknowledged that the District provides services and facilities to the area within and to a substantially larger area surrounding the Project. This is critical in the analysis of cumulative impacts in the Draft EIR. The analysis of cumulative impacts is required by the CEQA Guidelines to consider the geographic area of all projects that can, in conjunction with the Project, have cumulative impacts. In this case, the cumulative analysis failed to consider the build-out impacts of all developments that cumulatively would impact the District, including the cumulative impacts of the build-out of the General Plan land uses. This same conclusion can be reached with regards to the other ten (10) environmental topics set forth in the Draft EIR (i.e. agricultural resources, air quality; biological resources; cultural resources, geology and soils; hazards and hazardous materials, noise; public services; transportation and traffic; and utility and service systems).

The Draft EIR is not in compliance with the CEQA Guidelines based on the fact that the Draft EIR acknowledges project-specific impacts and does not conduct the cumulative qualitative and quantitative analysis based on data of all developments in the larger area outside of the project. The Draft EIR should be revised to address the larger cumulative impacts on the District, the City, and the region for all of the other ten (10) environmental topics set forth in the Draft EIR (i.e. agricultural resources, air quality; biological resources; cultural resources, geology and soils; hazards and hazardous materials, noise; public services; transportation and traffic; and utility and service systems resources; geology/soils; noise; public services; and traffic/circulation/access).

MUSD-29

The Draft EIR identifies the following with regards to cumulative impacts and related projects:

“6.1 - CEQA Requirements

Cumulative Impacts

Section 15130 of the CEQA Guidelines requires that the EIR discuss cumulative impacts of a project when the incremental effects of a project are cumulatively considerable. Cumulative impacts are defined as two or more individual effects which, when considered together, are considerable or which, compound or increase other effects. The individual effects may be changes resulting from a single project or a number of separate projects. The cumulative impacts from several projects are the change in the environment, which results from the project when added to other closely related projects. In identifying projects, which may contribute to cumulative impacts the CEQA Guidelines allow the use of: (1) a list of past, present, and probable future projects producing related or cumulative impacts even if they are not in the jurisdiction of the lead agency; or (2) a summary of projection contained in an adopted General Plan or related planning document which is designed to evaluate regional or area-wide conditions.”

MUSD-29

The Draft EIR further states:

“6.2 - Cumulative Impact Setting

The cumulative analysis discussed in this section depends on the environmental component that is analyzed. The cumulative analysis for Transportation and Traffic includes both a near-term cumulative scenario, which examines the project plus cumulative projects impacts in the year 2008, at the time of project buildout (see Table 6-1) and a future year 2025 scenario.

The cumulative analysis for Air Quality and Noise are based upon the Future 2025 scenario.

The cumulative analysis for Agricultural Resources, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, and Public Services, Utility Services (Water Supply) is based on the list of projects identified in Table 6-1.”

Table 6-1: Cumulative Project List

| Project Name | Type | Size | Daily Trips | AM Trips | PM Trips |
|------------------------------------|-------------|---|-------------|----------|----------|
| 8 th Street Subdivision | Residential | 6.9 AC MFDU, 14.82 AC Manufacturing | 2,000 | NA | 240 |
| Adams Avenue Apartments | Residential | 73 MFDU | 760 | NA | 50 |
| El Centro Town Center | Commercial | 235 KSF ¹ Retail, 3.5 KSF ¹ Fast Food, 6-pump service station | 14,789 | 431 | 1,604 |
| Imperial Plaza | Commercial | 342 KSF ¹ Shopping Center | 15,088 | NA | 1,410 |
| Kinder Castle Child Facility | Child Care | NA | 330 | NA | 61 |

Table 6-1 (Cont.): Cumulative Project List

| Project Name | Type | Size | Daily Trips | AM Trips | PM Trips |
|------------------------------|-------------|---|-------------|----------|----------|
| Morning Star Residential | Residential | 468 SFDU, 198 MFDU, 650 Student Elementary School | 6,490 | 680 | 704 |
| Morningside Subdivision | Residential | 95 SFDU | 1,094 | 84 | 113 |
| Santa Fe Subdivision | Residential | 24 SFDU | 280 | NA | 30 |
| Sunset Ranch/Din Subdivision | Residential | 260 SFDU | 2,600 | 208 | 260 |
| Wal-Mart Super Center | Commercial | 203 KSF ¹ Retail | 14,835 | NA | 1,141 |

¹ Thousand square feet.
 Source: Katz, Okitsu & Associates. Miller Barson Traffic Impact Study, March 2006.

MUSD-29

The Recirculated Draft EIR has expended the discussion of cumulative impacts for the purposes of the revised traffic and air quality analysis. The Recirculated Draft EIR states:

“4.2 - Cumulative Impact Setting

Table 4-1 identifies the projects considered in the cumulative analysis. The cumulative analysis includes both a near-term cumulative scenario, which examines the project plus cumulative projects impacts in the year 2008, the time of project buildout and a future-year 2025 scenario.”

Table 4-1: Cumulative Projects List

| # | Project Name | Type | Size |
|---|------------------------------------|-------------|---|
| 1 | 8 th Street Subdivision | Residential | 6.9 AC ² MFDU ¹ , 14.82 AC ² Manufacturing |
| 2 | Imperial Plaza | Commercial | 342 KSF ³ Shopping Center |
| 3 | Kinder Castle Child Facility | Child Care | NA |
| 4 | Morning Star Residential | Residential | 468 SFDU ⁴ , 198 MFDU ¹ , 650 Student Elementary School |

Table 4-1 (Cont.): Cumulative Projects List

| # | Project Name | Type | Size |
|----|-------------------------------|-------------|--|
| 5 | Morning Side Subdivision | Residential | 95 SFDU ⁴ |
| 6 | Santa Fe Subdivision | Residential | 24 SFDU ⁴ |
| 7 | Sunset Ranch/Din Subdivision | Residential | 260 SFDU ⁴ |
| 8 | Wal-Mart Super Center | Commercial | 203 KSF ³ Retail |
| 9 | Lerno-Verhaegen Specific Plan | Mixed Use | 2,156 SFDU ⁴ , 84 MFDU ¹ , 467 CONDO, 27.95 AC ² Commercial, 10.79 Light Manufacturing, 21.78 AC ² Parks, 2 Schools (23.09 AC ²) |
| 11 | Lotus Ranch | Residential | 660 SFDU ⁴ , 6.7 AC ² Park |
| 12 | Courtyard Villas | Residential | 54 SFDU ⁴ , 1 Park |
| 13 | Renaissance | Residential | 70 SFDU ⁴ |
| 14 | Desert Village West | Residential | Approximately 250 SFDU ⁴ |
| 15 | Monterey Park | Residential | 598 SFDU ⁴ , 2 AC ² RV Storage |
| 17 | Orange | Residential | 38 SFDU ⁴ |
| 19 | McCabe School Expansion | School | (89 KSF) 750 Students |
| 20 | Desert Village #6 | Mixed Use | 95 SFDU ⁴ , 260 MFDU ¹ , 7.3 AC ² Commercial |
| 21 | Wake Avenue Autopark | Commercial | 34.62 AC ² Autopark |
| 22 | Linda Vista | Residential | 173 SFDU ⁴ , One 14 AC ² Elementary School |

¹ Multi-family dwelling unit
² Acre
³ Thousand square feet
⁴ Single-family dwelling unit
 Source: Katz, Okitsu & Associates, April 2007.

MUSD-29

The District notes that the Draft EIR provides a brief discussion of the some of the many projects that should be considered in a cumulative analysis. However, there is no total statement as to the cumulative number of units that these projects would generate to determine the cumulative impact on the District in terms of the number of students that would impact the schools within the District.

The District has a current record of over 12,400 residential units that are in the planning cycles of the City of El Centro or the County of Imperial that would impact the District.

This list is summarized as follows:

| El Centro School Districts Project List | | | |
|--|--------|-------|---|
| Central Union High School District El Centro Elementary School District McCabe Union School District Heber Elementary School District | | | |
| | | Date: | October 26, 2007 |
| Name | Units | Type | Entitlements |
| Las Aldeas Specific Plan | 2,019 | SF/MF | Annexation Specific Plan |
| Desert Lakes Specific Plan | 6,064 | SF/MF | Annexation Specific Plan |
| Mosaic Specific Plan | 1,151 | SF/MF | General Plan Amendment Zone Change Specific Plan Tentative Subdivision Map |
| El Centro Apartments | 248 | MF | General Plan Amendment Zone Change |
| Citrus Grove Map | 156 | SF | Annexation General Plan Amendment Zone Change Tentative Subdivision Map |
| Los Flores Estates Map | 150 | SF | Annexation Zone Change Tentative Subdivision Map |
| McCabe Ranch II Specific Plan | 3,711 | SF/MF | Specific Plan |
| 1650 Clark Road | 134 | MF | General Plan Amendment Zone Change |
| Miller Burson | 496 | SF | Annexation Zone Change Tentative Subdivision Map |
| Palmilla | 1,838 | SF/MF | Specific Plan Annexation Zone Change |
| Willow Bend Annexations | 131 | SF | Annexation Tentative Subdivision Map |
| Total | 16,098 | | |
| Impact Central Union High School District | 16,098 | | |
| Impact on McCabe Union School District | 12,446 | | |

MUSD-29

There is no analysis of the cumulative number of units that are stated in this table. In addition, there is no analysis of the projected number of units that could be expected from the probable future projects based on the zoning densities of the areas within the District which should be considered in the cumulative analysis.

The District also notes that even though the Draft EIR acknowledges that the projects listed in Table 6.1 of the Draft EIR and Table 4.1 of the Recirculated Draft EIR should be

considered in any cumulative analysis, the Draft EIR projected a cumulative impact on the Central Union High School District based on a planned dwelling unit projection of 8,587 units based on development to occur between 2005 and 2010. There was no cumulative analysis of the McCabe Union School District. Further, there was no cumulative analysis completed for both Districts using the El Centro School Districts Project Lists

As it relates to cumulative effects, the Draft EIR simply states the following with regards to public services (including schools):

“Public Services

The proposed project will result in an increased demand for public services. As discussed in Section 5.8 of this EIR, with the exception of solid waste impacts, the payment of development fees and/or in lieu fees and the dedication of land, the project will not result in any significant public services impacts. Like the proposed project, those cumulative projects listed in Table 6-1 will increase the demand for public services; however, these projects have or will be required to pay development fees and/or in lieu fees and dedicate land as appropriate. Additionally, similar to the proposed project solid waste impacts would be mitigated on a project by project basis through compliance with AB 930 and other solid waste regulation and recreational impacts will be mitigated on a project by project basis through the dedication of parkland as appropriate. In addition to compliance with applicable regulations to reduce public service impact the payment of development and/or in-lieu fees will assist in the financing for the construction of new facilities, purchase of new equipment, and/or the employment of additional staff needed to serve cumulative development.

MUSD-29

Mitigation Measures

No mitigation measures are required for all public services discussed above.

Level of Significance After Mitigation

All cumulative impacts would be less than significant.”

In essence, there was no cumulative analysis completed setting forth the data, and the quantitative and qualitative analysis that would support the conclusions in this discussion in the Draft EIR.

The comments previously offered with regards to the project-specific impacts apply to the Draft EIR statements on cumulative impacts. There is no data, and qualitative or quantitative analysis to support the conclusions or statements set forth in this discussion.

Even though the Draft EIR acknowledges the related projects, the Draft EIR fails to conduct the analysis to determine the cumulative impacts or offer any mitigation measures. More importantly, it suggests that there is "no mitigation" required, even though there was no analysis. It further suggests that the impacts would be "less-than-significant" even though there was no analysis that indicated what the magnitude of the impacts would be and did not discuss any mitigation measures because none were required.

As with the project-specific impacts, the Draft EIR states that the school cumulative impacts (which were not specifically determined) would be addressed by the fact that related development projects within the District would be required to pay school impact fees and therefore the payment of school impact fees would be considered full mitigation, and thus cumulative impacts on schools would be less-than-significant. This again is the argument that is based on the conclusion that any mitigation measure offered by the District, which in any way directly or indirectly addresses school concerns, is preempted by the provisions of SB 50 and there is no requirement that they be considered or discussed in the Draft EIR. The District suggests that it is the City's responsibility to fully disclose the impacts of the Project, regardless of the provisions of SB 50. The failure to provide such a disclosure and offer adequate mitigation measures is not in compliance with the CEQA Guidelines.

MUSD-29

The following elements of the CEQA Guidelines are necessary to an adequate discussion of significant cumulative impacts were not offered:

"(1) Either:

- (A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or
- (B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area-wide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency."

Neither of these discussions is presented in the Draft EIR with an accurate level of detail.

In addition to considering the Project and the known approved and proposed projects in a cumulative analysis, the Draft EIR should have considered the "worst case" scenario of cumulative impacts which would be based on the Project, the approved and proposed know projects, as well the full build-out of the City and County General Plan's as they

are currently adopted and based on the land use authorizations of the General Plans. The Draft EIR did not complete such an analysis. The Draft EIR is not in compliance with the CEQA Guidelines.

The CEQA Guidelines requires that the geographic scope of the area affected by the cumulative effect be provided and that a reasonable explanation for the geographic limitations used be defined. The Draft EIR did not provide this definition. The District would suggest that the areas within the entire boundaries of the District and the entire City and sphere of influence areas are the appropriate definition of the areas to which cumulative impacts should be considered.

The Draft EIR did not provide a summary of the expected environmental effects to be produced by the Project with specific reference to additional information stating where that information is available. Further, the Draft EIR did not provide a reasonable analysis of the cumulative impacts of the relevant projects relating to the Project or examine reasonable, feasible options for mitigating or avoiding the Project's contribution to any significant cumulative effects of the development of the region. Therefore, the analysis of cumulative impacts is not in compliance with the CEQA Guidelines.

Section 15065 of the CEQA Guidelines states in part:

MUSD-29

“(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

- (1) The project has the potential to: substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.
- (2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
- (3) The project has possible environmental effects that are individually limited but cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly...”

As noted, environmental effects that are individually limited, but cumulatively considerable are required to be addressed in the Draft EIR. Cumulatively considerable means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. The Draft EIR only addresses the impacts of the Project within the Project area. The cumulative impacts need to be viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects resulting from all of the areas of the District, the City, and the City’s sphere of influence area in order for the analysis to comply with the provisions of the CEQA Guidelines. The Draft EIR is not in compliance with the CEQA Guidelines because it does not provide an adequate cumulative analysis to consider the entirety of these areas.

MUSD-29

Draft EIR Growth Inducement

Section 15126.2 of the CEQA Guidelines states, in part:

“(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.”

The Draft EIR stated the following with regards to the growth inducement of the Project:

“8.2 - Growth Inducing Impacts

There are two types of growth inducing impacts a project may have: direct and indirect. To assess the potential for growth-inducing impacts, the project characteristics that may encourage and facilitate activities that individually or cumulatively may affect the environment must be evaluated. Direct growth-inducing impacts occur when the development of a project imposes new burdens on a community that directly induces population growth or the construction of additional

MUSD-30

developments in the same area of the proposed project, thereby triggering related growth-associated impacts. Included in this analysis are projects that would remove physical obstacles to population growth (such as a new road into an undeveloped area or a wastewater treatment plant that could allow more construction in the service area). Construction of these types of infrastructure projects cannot be considered isolated from the development they trigger. In contrast, projects that physically remove obstacles to growth, projects that indirectly induce growth, are those which may provide a catalyst for future unrelated development in an area (such as a new residential community that requires additional commercial uses to support residents).

Implementation of the proposed project will result in growth inducement directly through the construction of new residential units. However, the proposed residential land uses are in accordance with the planned development Tier II growth patterns for southwestern El Centro as outlined in the General Plan - Urban Development Program. The project does not introduce any new offsite roadways (arterials or collectors) or interchanges and it does not result in any extensions or upgrades of circulation facilities not already planned pursuant to the General Plan - Circulation Element. Thus, the project is not introducing any new facilitations to growth inducement not already envisioned to be needed to accommodate planned future growth. Hence, while it is recognized that the project will induce growth in the project area, such growth is in concurrence with the planned growth patterns established by the City through its General Plan process.”

MUSD-30

The Draft EIR discussion certainly promotes the “benefits” of the Project as the catalyst for providing and extending urban service to the area where the Project is located. However, the discussion only touches the surface on the growth inducing effects and the catalyst that the Project will have on other land uses and areas of the City and sphere of influence area infrastructure and services. There appears to be an underlying assumption in the words used in the Draft EIR, that the growth inducing effects are “beneficial”. However, the CEQA Guidelines specifically require that the Draft EIR discuss the characteristic of the Project that may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. The CEQA Guidelines specifically state that this discussion must not assume that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

There appears to be a prejudicial position in the discussion in the Draft EIR that suggest that the growth inducing impacts of the Project are beneficial, resulting in an unsupported statement of consequences and impacts.

The District suggests that the Draft EIR is not in compliance with the CEQA Guidelines because it does not discuss the Project in terms of how its growth inducing effects would significantly affect the environment, a) individually and cumulatively; and b) positively and negatively. The City cannot and should not simply assumed that the Project and the

growth resulting from the Project directly or indirectly in any area of the City with the level of project-specific and cumulative impacts (positive or negative) is necessarily beneficial or of little significance to the environment.

Further, the Draft EIR fails to acknowledge that the increases in the population may tax existing community service facilities (including schools), requiring construction of new school facilities that could cause significant environmental effects. The Draft EIR further does not discuss how the characteristic of the Projects may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. This is particularly relevant in terms of the extension of development to the south of the urban area of the City, and the creation of potential unincorporated islands due to the unreasonable extension of the City's boundaries through the annexation of the Project.

MUSD-30

Draft EIR - Project Alternatives

The CEQA Guidelines required that the Draft EIR consider alternatives to the Project.

Section 15126.6 of the CEQA Guidelines states:

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

MUSD-31

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (County of Inyo v. City of Los Angeles (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

MUSD-31

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

MUSD-31

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).”

The Draft EIR states that it discusses “three” alternatives. However, there are only two alternatives discussed in the Draft EIR. The Draft EIR describes the two (2) alternatives, as follows:

“7.1 - No Project/No Development Alternative

MUSD-31

Under the No Project/No Development Alternative (No Project Alternative) the entire project site would remain unchanged and no new development would occur on onsite. In general the Miller Burson project site would continue to support undeveloped agricultural land uses and the project site would not be annexed into the City of El Centro.”

“7.2 - No Project/Development in Accordance with the Existing Zoning Alternative

The No Project/Development in Accordance with the Existing Zoning Alternative (Zoning Alternative) would result in the development of the project site under the existing zoning designation. Similar to the No Project Alternative, under this alternative scenario, the project would not be annexed into the City of El Centro. Currently the project site is zoned by Imperial County as General Agriculture/Urban Overlay (A2U). Under this designation, agricultural land uses are allowed. The density permitted is one dwelling unit per 40 acres. Therefore, under the current County zoning designation, the 160-acre project site could support up to four residential units and allow agricultural production and associated activities.”

There are a number of problems with the discussion of alternatives in the Draft EIR that are discussed herein. As noted, the Draft EIR is required to describe a range of reasonable alternatives to the Project which would feasibly attain most of the basic objectives of the Project, but would avoid or substantially lessen any of the significant effects of the Project, and evaluate the comparative merits of the alternatives. The Draft EIR does not need to consider every conceivable alternative to the Project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. The Draft EIR is not required to consider alternatives which are infeasible. The City is responsible for selecting a range of alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.

MUSD-31

The Draft EIR did not provide the reasoning for selecting the two alternatives, or provide the data, and quantitative and qualitative analysis that should have been conducted to support the conclusions set forth in the Draft EIR. It is understood, that the no project alternative is required by the CEQA Guidelines.

The District believes that there are additional alternatives that would attain the Project activities and which are reasonable for consideration in the Draft EIR. These including the following:

1. Provide phasing of development of the residential uses within the Project according to a Growth Management Plan which would insure that development

occurs concurrent with the availability of permanent and interim school facilities, District-wide support facilities, and bussing transportation facilities and services to accommodate the students generated by the Project.

2. The reduction of the number of units to be developed in the Project to a level that is equal to the number of students that can be accommodated by the District based on the revenues generated by statutory development fees plus revenues of the State School Facilities Financing Program.
3. The development of land uses that do not generated students (i.e. non-residential, active adult senior citizen housing, agriculture and farm usage, parks and open space, etc.);

These kinds of alternatives should have been and are requested to be considered in the Draft EIR and the direct and indirect, and the project-specific and cumulative impacts of these alternatives should have been evaluated. Mitigation measures to the impacts of these alternatives need to be offered to reduce the impacts to a less than significant level.

Again, the Draft EIR failed to even consider these as alternatives or partial alternatives that could modify the Project and feasibly attain most of the basic objectives of the Project, and would avoid or substantially lessen any of the significant effects of the Project. The Draft EIR is not in compliance with the CEQA Guidelines.

MUSD-31

The Draft EIR appears to suggest that the alternatives must attain the objectives of the Project. This is the Project that is being processed in conjunction with the Draft EIR. As has been previously stated, the Project objectives are described as follows in the Draft EIR:

“As stated in Section 3, Project Description, of this EIR, the project objectives are to:

- Supply single-family housing that is contiguous with the similar development and within the City's Sphere-of-Influence;
- Supply single-family housing to meet the growth projections of the City of El Centro;
- Locating development to meet anticipated growth in areas of relatively lesser environmental sensitivity;
- Provide public infrastructure improvements for the orderly expansion of urban development; and

- Locate housing adjacent to a major transportation route (Interstate-8) to better promote efficient traffic flows and minimize traffic demands on local and collective streets.”

The presumption is that only the Project and the Alternatives stated in the Draft EIR meet the objectives of the Applicant as being acceptable. It is the Applicant that has created the objectives by which the alternatives are to be measured, thereby potentially limiting the alternatives. However, within these objectives, there appears to be a number of alternatives that the Draft EIR could have considered including the ones that have been offered by the District herein, all of which would be reasonable according to the CEQA Guidelines. The District would request that the City revise the Draft EIR to consider these alternatives.

It is interesting to note that none of the Project objectives listed in the Draft EIR address economic viability and availability of infrastructure as two of the factors that are cited in the CEQA Guidelines. Also, it is also interesting that none of the objectives identified the economic return and profit to the Applicant as a result of implementation of the Project. This evaluation of economic viability, availability of infrastructure, economic return, and profit to the Applicant are basic factors that should be considered in the selection of alternatives. Failure to do this leaves many alternatives on the table without proper consideration as to their feasibility. The District would suggest that there are many alternatives that relate to a range of residential densities, a variety of land uses, availability of infrastructure, and viable economics that are more superior than the Project and are additional alternatives that should have been considered.

MUSD-31

The District is also concerned with the conclusions stated with regards to the two (2) evaluated alternatives. Many of the statements are conclusions that are not supported by data, and quantitative and qualitative analysis. They are speculative statements that are unsupported by the text of the Draft EIR.

The CEQA Guidelines states:

“The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed.”

There is a need to provide “sufficient information” in the evaluation of an alternatives to allow for meaningful “evaluation, analysis, and comparison”. Although summaries can be provided, in the form of a matrix as an example, there still is a need to evaluate,

analyze, and compare the alternatives. Such evaluation requires data, and quantitative or qualitative analysis. The Draft EIR fails to provide this analysis of the two alternatives.

With regards to the “No Project/No Development Alternative, the Draft EIR states the following with regards to public services:

“Public Services

Project implementation will generate a demand for public services and utilities and will require the extension of utility infrastructure to the site. The introduction of new residences and populations has the potential to place constraints on public services. However, as discussed in Section 5.8, Public Services, of this EIR, in addition to mitigation measures PS 5.8-1 through PS 5.8-5 and the generation of new tax revenue, the project applicant will be required to dedicate land, pay development fees, and/or pay one-time presumptive payment fees, which reduce project public service and utilities impacts to less than significant. Yet, the No Project Alternative would not generate a demand for services or require the extension of infrastructure to the site. Therefore, the No Project Alternative is considered to have less public services impacts in relation to the proposed project.”

MUSD-31

There is no data, or qualitative and quantitative analysis to support the conclusions stated in these findings. The Draft EIR is not in compliance with the CEQA Guidelines.

With regards to the “No Project/Development In Accordance with the Existing Alternative, the Draft EIR states the following with regards to public services:

“Public Services

Project implementation will generate a demand for public services and utilities and will require the extension of utility infrastructure to the site. The introduction of new residences and populations has the potential to place constraints on public services. However, as discussed in Section 5.8, Public Services, of this EIR, in addition to mitigation measure PS 5.8-1 through PS 5.8-5 and the generation of new tax revenue, the project applicant will be required to dedicate land, pay development fees, and/or pay one-time presumptive payment fees, which reduce project public service and utilities impacts to less than significant. Yet, the Zoning Alternative would not generate as great a demand for services. Therefore, the Zoning Alternative is considered to have less public services impacts in relation to the proposed project.”

There is no data, or qualitative and quantitative analysis to support the conclusions stated in these findings. The Draft EIR is not in compliance with the CEQA Guidelines. The Draft EIR is not in compliance with the CEQA Guidelines.

The entire chapter of the Draft EIR relating to alternative projects needs to be revisited and appropriate analysis of the alternatives needs to be conducted in order to provide the date, and the quantitative and qualitative analysis to substantiate the conclusions that any one alternative is environmentally more or less superior than another.

MUSD-31

Draft EIR - Irreversible Environmental Changes

Section 15126 of the CEQA Guidelines state, in part:

“All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed....

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.”

Further, Section 15126.2 of the CEQA Guidelines state, in part:

“(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.”

MUSD-32

The Draft EIR states the following with regards to irreversible environmental changes:

“8.3 - Irreversible and Irretrievable Commitment of Resource

The environmental effects associated with the development of the proposed project are summarized in Table 2-1 and in Sections 5 and Section 6 of this EIR. Implementation of the proposed project will require a long-term commitment of land. Specifically, the primary effect of development under the proposed project would be the commitment of approximately 160 acres of undeveloped land historically utilized for agricultural production to residential uses. The financial and material investments that would be required of the applicant and the City to develop the proposed project and corresponding infrastructure and circulation improvements would result in further

commitments of resources, thus making it likely that the same or similar land uses would continue in the vicinity of the project site in the future. Implementation of the proposed project represents a long-term commitment to urbanization.

Environmental changes associated with the implementation of the proposed project would result in alterations of the physical environment. In order to develop the proposed project, existing undeveloped land would be irrevocably committed to residential uses. If the proposed project is approved, and subsequently implemented, new structures would be built, additional utilities would be constructed, and circulation improvements would be made. Nonrenewable resources would be committed, primarily in the form of fossil fuels, and would include fuel oil, natural gas, and gasoline used by vehicles and equipment associated with the construction of the proposed project. The consumption of other nonrenewable or slowly renewable resources would result from development of the proposed project. These resources would include, but not be limited to, lumber and other forest products, sand and gravel, asphalt, petrochemical construction materials, steel, copper, lead, and water. Because alternative energy sources such as solar or wind energy are not currently in widespread local use, it is unlikely that a real savings in nonrenewable energy supplies (i.e., oil and gas) could be realized in the immediate future.”

MUSD-32

The discussion of irreversible environmental changes is just as significant as any other impact analysis contained in a Draft EIR. As such, the analysis of such changes should be evaluated with the same level of analysis as other impacts. Conclusions stated in this section of the Draft EIR need to be supported by data, and quantitative and qualitative analysis, as set forth in this section of the Draft EIR or in the other sections of the Draft EIR. However, there is no data, or quantitative or qualitative analysis that identifies the magnitude of the irreversible changes or provides any clarity as to the consequences of such changes and there is no reference to where this analysis can be found in the Draft EIR. The Draft EIR is not in compliance with the CEQA Guidelines.

In addition, the stated irreversible changes appear to be superficial. As an example, the most significant irreversible change is the lost of prime agricultural land. This is a significant irreversible change and should be addressed in detail in the Draft EIR. In addition, there will be an irreversible change to the District as a result of exacerbating the overcrowded condition of the District. Other irreversible changes include the following for example:

1. Active agricultural land and operations will be committed to urban development.
2. Permanent dewatering of the site will lower ground water levels.

3. Additional impermeable surfaces and increases in runoff will occur. New sources for potential surface water pollution will be introduced.
4. Potential habitat will be lost with implementation of the Project. Jurisdictional waters may also be impacted.
5. Increases in ambient noise levels will occur.
6. Increases in emissions from stationary and mobile sources will degrade air quality.
7. Additional traffic will be generated by Project land uses, and incremental increases in local and regional congestion will occur.
8. A new population base and housing supply will be introduced into an area previously undeveloped.
9. Increased levels of public services will be required to serve the Project causing increases in the use of services and facilities.
10. Water supplies for consumption, wastewater sewage treatment, and other utility resources will be permanently committed to the Project.
11. The current agricultural and undeveloped character of the Project site will be committed to residential uses. Light effects will incrementally affect the night sky.
12. The potential for disturbing potentially unknown historic and prehistoric cultural resources will occur with site development and occupation.

MUSD-32

These and other irreversible changes need to be identified and discussed in detail.

The lack of such information prevents the decisions-makers and the public from making an informed and reasoned decision base on the failure to provide the data, and the quantitative and qualitative analysis. The Draft EIR is not in compliance with the CEQA Guidelines and this needs to be corrected.

Draft EIR - Unavoidable Significant Impacts

Section 15126 of the CEQA Guidelines states, in part:

“All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed

MUSD-33

below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed....

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented..."

Further, Section 15126.2 of the CEQA Guidelines state, in part:

"(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described."

Section 8.1 of the Draft EIR states in part:

"8.1 - Significant Unavoidable Impacts

According to CEQA Guidelines Section 15126, an EIR must disclose the significant unavoidable impacts that will result from a project. Moreover, these guidelines state that an EIR should explain the implications of such impacts and the reasons why the project is being proposed, notwithstanding such impacts. Implementation of the Miller Burson residential subdivision project will result in the alteration of the physical environment. Section 5, Project Impacts, Mitigation Measures, and Level of Significance After Mitigation and Section 6, Cumulative Impacts of this Draft EIR provide a description of the potential environmental impacts of the proposed project, as well as measures to reduce the environmental impacts to the maximum extent feasible. After implementation of the Miller Burson project and the project-related mitigation measures, it has been determined that with the exception of agricultural resources and air quality impacts, as summarized below, all project related impacts can be feasibly mitigated to a level that is considered less than significant."

The discussion of significant effects which cannot be avoided is just as significant as any other impact analysis contained in a Draft EIR. As such, the analysis of such impacts should be evaluated with the same level of analysis as other impacts. Conclusions stated in this section of the Draft EIR need to be supported by data, and quantitative and qualitative analysis, as set forth in this section of the Draft EIR or in the other sections of the Draft EIR.

MUSD-33

The District provided adequate evidence that the mitigation measures to address the impacts on schools does not mitigate the impacts to a level of insignificance. Therefore, significant unavoidable impacts will be caused by the Project on the District's school facilities and operations.

There is no data, or quantitative or qualitative analysis that identifies the magnitude of these impacts or provides any clarity as to the consequences of such impacts and there is no reference to where this analysis can be found in the Draft EIR. The Draft EIR is not in compliance with the CEQA Guidelines.

The Draft EIR states that the majority of the potentially significant impacts, with mitigation measures, will be reduced to levels below significance. Therefore, the Draft EIR concludes that there will be no significant effect after mitigation. The District suggests that many of the impacts that are listed in the Draft EIR are not mitigated to a level of insignificance, and that the data, and the quantitative or qualitative analysis do not support the conclusion that the impacts are mitigated to a level of insignificance. Therefore, these should be added to the list of unavoidable significant adverse impacts.

In addition, the impacts to be considered need to be both project-specific and cumulative. The Draft EIR appears to only address the project-specific impacts and not the cumulative impacts to the same level of detail.

MUSD-33

The CEQA Guidelines require more than simply a short list of the unavoidable adverse impacts. The CEQA Guidelines state that where there are impacts that cannot be alleviated without imposing an alternative design, their "implications" and the "reasons why the project is being proposed, notwithstanding their effect", should be described. In this case, there is simply a short and incomplete listing without the description of their implications or the reasons why the Project is being processed notwithstanding their effects.

The Draft EIR appears to contemplate that the stated unavoidable adverse impacts will be addressed with a Statement of Overriding Considerations. Section 15093 of the CEQA Guidelines states:

"(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or

substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.”

Although a Statement of Overriding Considerations it is not required to be included in the Draft EIR, the information, data, and quantitative and qualitative analysis that would lead to the findings should be included. These findings are based on the economic, legal, social, technological, or other benefits that the Project would have over the unavoidable adverse impacts. Unless this information is presented in the Draft EIR, it cannot be weighed against the unavoidable adverse impacts to determine that these economic, legal, social, technological, or other benefits and factors actually outweigh the unavoidable adverse environmental effects, resulting in the adverse environmental effects being considered acceptable. However, this information is not presented in this section of the Draft EIR and does not enable the decision-maker to weigh the impacts against the benefits.

MUSD-33

In this case, the Draft EIR appears to contemplate a Statement of Overriding Considerations. The City is required to state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The Statement of Overriding Considerations shall be supported by substantial evidence in the record. It appears only appropriate that if the Draft EIR contemplates the Statement of Overriding Considerations, the Draft EIR should provide the substantial evidence and the specific reasons to support this potential and proposed action and decision.

The lack of such information prevents the decisions-makers and the public from making an informed and reasoned decision base on the failure to provide the data, and the quantitative and qualitative analysis. The Draft EIR is not in compliance with the CEQA Guidelines and this needs to be corrected.

Draft EIR – Persons Consulted

Sections 15129 of the CEQA Guidelines states:

“The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.”

MUSD-34

The Draft EIR states the agencies and persons consulted. The District notes that it was not contacted by the preparers of the Draft EIR. The only contact with the District was through the NOP comment letter of the District. It is also noted that there are no District documents referenced in Section 11 which were used in the drafting of the Draft EIR.

Section 15083 of the CEQA Guidelines states:

“Prior to completing the draft EIR, the Lead Agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.”

MUSD-34

Apparently, the City chose to not consult with any agency, organization or person with regards to the District’s school facility issues and impacts except by using the District’s prior letters. As such, the intent of early consultation was not fulfilled.

Early consultation with the District may have resolved the need for the magnitude of this correspondence and as such the Draft EIR could have been a more comprehensive and adequate document. It further would have provided an opportunity for the District and others to offer a range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the Draft EIR. The contents of the Draft EIR is evidenced that the Draft EIR did not address the many topics and mitigation measures as were set forth in the District’s comments responding to the Notice of Preparation on the Draft EIR and this correspondence.

Effects Found Not To Be Significant

Section 15128 of the CEQA Guidelines states:

“An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.”

Section 1.3 appears to identify the effects found to not be significant. The Draft EIR states:

“The environmental issues determined not to be significantly affected by the proposed project and therefore, do not require evaluation in the document, per section 15063(c) of the CEQA Guidelines, are as follows:

- Aesthetics
- Hydrology/Water Quality
- Land Use and Planning
- Mineral Resources
- Population and Housing”

MUSD-35

As one reviews the Initial Study, it is clearly apparent that there was no data, and quantitative or qualitative analysis to support these conclusions. Instead, the Draft EIR attempts in this Section 1.3 to simply set forth conclusions that are not supported by data, and quantitative and qualitative analysis. Conclusory statements are not supported by factual information.

Draft EIR – Other Comments

The following is a list of comments relating to several topics in the Draft EIR. These are only examples of the failure of the Draft EIR to be a comprehensive full disclosure document. These comments do not present all of the concerns the District has with regards to the adequacy of the Draft EIR. However, they do provide a sample of the concerns the District has which substantiates the need to revise the Draft EIR and re-circulate an additional 45-day review period to receive additional comments on the revised Draft EIR. There are many similar deficiencies in the Draft EIR that need to be reviewed and revised. These are presented and are by no means limiting as to the adequacy of the Draft EIR.

MUSD-36

Land Use

The Draft EIR does address land use impacts. The Draft EIR appears to conclude that the Project is in compliance with the General Plan goals and objectives, but provides no data, and quantitative or qualitative analysis to substantiate these conclusions.

Traffic

One of the most significant project-specific and cumulative impacts of the Project is on traffic and the circulation outside of the Project. The Draft EIR and supplemental documents provide a great deal of discussion of traffic issues and mitigation measures. However, the District is concerned that the traffic analysis is incomplete and not in compliance with the CEQA Guidelines. The District believes that there are inadequacies in the process of evaluation of the impacts, as well as in the drafting of the Draft EIR. Some of these inadequacies are summarized as follows:

1. The City and the County have failed to develop a comprehensive traffic and circulation plan to address the development and growth that is occurring in a “piece-meal” fashion without comprehensive consideration of the impacts and the consequences of the overall development of the area. In conjunction with the lack of comprehensive planning of the area, the piece-meal fashion of proposals being considered by the City and the County, and an environmental document that is project-specific and cumulatively inadequate, it is unreasonable for the City to be considering any project with this level of uncertainty in the planning process, particularly as it relates to traffic and circulation issues.
2. The discussion of traffic and circulation impacts is based on the Traffic Study that is contained in the appendix of the Draft EIR. The project impacts are based on San Diego Association of Government (SANDAG) trip generation rates. However, the kinds of trips or the purposes of trips are not identified. The District would suggest that the trip generation rates do not include to-and-from school rates or school transportation bus trip rates to transport students to-and-from the Project to the school where they will be assigned. Because this information is not presented and because the schools where students will be assigned are not known at this time, the traffic analysis is incomplete and inaccurate. This is further complicated in the cumulative analysis.
3. The Traffic Study suggests that the cumulative projects are described in Traffic Study. The District notes that the cumulative projects list contained therein is not consistent with the list of cumulative projects that is currently

MUSD-36

being processed by the City and the County. This needs to be addressed in the Draft EIR.

4. The Draft EIR acknowledges that Highway 86 and the surrounding arterial and collector streets will have increased traffic as a result of the Project. This increased traffic has both project-specific and cumulative impacts on the road segments. The Traffic Study does not consider the District's bussing and transportation which will be required externally from the Project. It also does not address the bussing and transportation needs of the District in terms of interim accommodations of students. The numbers of project-specific and cumulative busses were not considered in the data of the traffic analysis. In addition, the designation of bus pick-up and routing was not evaluated in the Draft EIR to determine the impacts that the District's bussing program would have on the Project and the surround area, or the impacts that the Project would have on the District's bussing operations and fleet of vehicles. In addition, the cumulative impacts of the Project and other approved and proposed projects in the area were not evaluated based on the District's bussing operational needs and requirements.
5. The Traffic Study assumes a variety of traffic and circulation improvements. There is nothing in the Draft EIR which states that these are financially, environmentally, physically, or politically viable or realistic. With the LOS exceeding acceptable levels, these increased traffic impacts will have significant implications on the District's bussing and routing program to the District's schools. This adverse traffic LOS will affect the timing, routing, and services offered by the District to transport students to the school sites where students will be assigned. This needs to be addressed in the Draft EIR.
6. The most serious deficiency of the Traffic Study is the inadequacy of the cumulative effects of the Project in conjunction with other approved and planned projects. The most serious inadequacy of the traffic analysis is that the City has not developed a comprehensive traffic model to determine the potential impacts of the development of land uses set forth in the General Plan within the City and within the sphere of influence area. Therefore, the piecemeal traffic analysis on each individual project does not provide a comprehensive evaluation of the inadequacy of the circulation network that will serve the area. This needs to be address in the Draft EIR.
7. The proposed school within the Project has been sited planned to be bounded by street on all four sides of the school site. The Traffic Study did not evaluate the volumes of traffic that would be generated by vehicles coming and going from the school from units within the Project and units outside the Project and the impacts of the traffic on these streets on the school site to in

MUSD-36

order to determine the conflict between vehicles and pedestrians. This needs to be addressed in the Draft EIR.

The above District comments relating to traffic is only an example of the deficiencies in the Traffic Study and the Draft EIR. Based on these comments, the District has no confidence in the traffic analysis, the conclusions reached, and the mitigation measures offered. More importantly, it is clear that the traffic impact of the Project are not fully mitigated and that these unmitigated impacts will have an adverse significant impact on the District's bussing and transportation operations. With traffic being such a major issue facing the City and the County, the Draft EIR and the Traffic Study should be rejected and the Applicant should be directed to complete a new traffic analysis that addresses these and all of the other inadequacies in the Traffic Study.

Air Quality

A component of the analysis of air quality is based on the Traffic Study and the analysis of vehicle emissions. The District believes that there are inadequacies in the air quality analysis and the Draft EIR. The District further suggests that the air quality analysis as contained in the Air Quality Analysis as set forth in the Appendix of the Draft EIR is not in compliance with the CEQA Guidelines for several reasons. Some of these inadequacies are summarized as follows:

MUSD-36

1. Much of the analysis of air quality impacts is based on the Traffic Study. As previously noted, the Traffic Study is not in compliance with the CEQA Guidelines. Based on those inadequacies, the Air Quality Assessment is also not in compliance with the CEQA Guidelines.
2. The cumulative impacts are also based on the inadequacies in the Traffic Study. Based on those inadequacies, the Air Quality Assessment of cumulative impacts is also not in compliance with the CEQA Guidelines.

Public Transit and Alternative Transportation

The Draft EIR does not address public transit. The District believes that the Draft EIR should address public transit and that the impacts on these services and facilities should be considered in the Draft EIR. Some of the inadequacies that should be addressed in the Draft EIR include:

1. The Draft EIR does not provide any data, and quantitative or qualitative analysis of the project-specific and cumulative impacts that Project would have on transit services. There is no analysis of the required and necessary services and routes, number of fleet vehicles required, impact on

administrative and maintenance facilities that would be required of these providers of these services, and the financial consequences of the expanded requirements of the Project. There are no mitigation measures offered in the Draft EIR to reduce the impacts to a level of insignificance.

2. As previously noted, the Draft EIR does not set forth the actual location where students will be assigned to schools. Public transit will be a necessary component of the District's ability to transport students to and from school facilities. Because of this lack of information, the District is unable to determine the adequacy of the public transit system for the Project and cannot identify the impacts that the Project would have on the District's facilities and operations of the schools. This is an inadequacy in the database offered in the Draft EIR.

Utilities

The Draft EIR fails to address telephone, electricity, gas, and cable utility services which will be required for the Project. The Draft EIR is therefore further not in compliance with the CEQA Guidelines.

MUSD-36

Safety

The Draft EIR fails to provide an analysis of the impacts of the Project on pedestrian and bicycle movement throughout the Project to schools outside the Project. The District is concerned that the Draft EIR did not address this important safety concerns or address how the Project complies with the General Plan with regards to pedestrians and bicycles. As noted, the Draft EIR attempts to identify the location and designation of schools where students will be attending. However, this may not be accurate due to the overcrowding conditions of the District. The District is concerned that school sites will be located where pedestrian and bicycle movement will be unsafe for student, thereby requiring the District to expand its bussing and transportation requirements for the Project. In addition, due to safety concerns and hazardous conditions directly relate to the circulation system and the traffic control devices, the District may be required to provide crossing-guard services that will have a financial and operation impact on the District. The Draft EIR has failed to analyze these conditions and impacts, and does not provide the required mitigation that would be necessary to reduce these to a less than significant level. The Draft EIR is therefore further not in compliance with the CEQA Guidelines.

The proposed school within the Project has been sited planned to be bounded by street on all four sides of the school site. The Traffic Study did not evaluate the volumes of traffic that would be generated by vehicles coming and going from the school from units within the Project and units outside the Project and the impacts of the traffic on these streets on the school site to in order to determine the conflict

between vehicles and pedestrians and the impacts on the safety of the students at the school. This needs to be addressed in the Draft EIR.

Law Enforcement

The Draft EIR addresses the impacts on law enforcement and indicates that with the payment of development impact fees to the City that the impacts on the City's law enforcement will be mitigated to a level of less than significant. However, the Draft EIR fails to acknowledge the additional law enforcement that may be required as a result of additional traffic enforcement in and around the Project, or at the District's schools in conjunction with the increased enrollments that will further exacerbate the overcrowded conditions at the District's schools. The Draft EIR is therefore further not in compliance with the CEQA Guidelines.

Fire Protection

The Draft EIR addresses the impacts on fire protection and indicates that with the payment of development impact fees to the City that the impacts on the City's fire protection services will be mitigated to a level of less than significant. However, the Draft EIR fails to acknowledge the additional fire protection that may be required at the District's schools in conjunction with the increased enrollments that will further exacerbate the overcrowded conditions at the District's schools. The Draft EIR is therefore further not in compliance with the CEQA Guidelines.

MUSD-36

Emergency Medical Services

The Draft EIR fails to address the impacts on emergency services such as ambulances and medical emergencies. The Draft EIR fails to acknowledge the additional emergency services that may be required at the District's schools in conjunction with the increased enrollments that will further exacerbate the overcrowded conditions at the District schools. The Draft EIR is therefore further not in compliance with the CEQA Guidelines.

Other City-wide and County-wide Services

The Draft EIR fails to adequately address the impacts on other City-wide and County-wide services and facilities or offer any mitigation measures. These impacts include, but are not limited to a) increases in the use of facilities; b) additional costs to these entities for operations, maintenance, and personnel; c) the need to expand or construct new facilities; d) the need to acquire additional vehicles, equipment and other items to operate expanded operations, etc. Some examples of these are provided herein. These are only a few of the examples of the entities that would be impacted by the Project:

1. The County of Imperial Office of Education provides a wide range of service and facilities that would be used by the residents of the Project, and which are not provide by the District. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.
2. The County of Imperial Public Library provides a wide range of service and facilities that would be used by the residents of the Project. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.
3. The County of Imperial Sheriff and Coroner provides a wide range of service and facilities that would be impacted by increased law enforcement in the Project and the development and growth areas in the County. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.
4. The County of Imperial Public Health Department provides a wide range of service and facilities that would be impacted by increased services required by the Project and the development and growth areas in the County. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.
5. The County of Imperial Public Works and Maintenance Department provides a wide range of service and facilities that would be impacted by increased maintenance in the Project and the development and growth areas in the County. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.
6. The County of Imperial Social Services Department provide a wide range of service and facilities that would be impacted by increased services in the Project and the development and growth areas in the County. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.
7. The County of Imperial Superior Court provides a wide range of service and facilities that would be impacted by legal issues resulting from the increased

MUSD-36

population in the Project and the development and growth areas in the County. The project-specific and cumulative impacts on these services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.

8. Similar impacts would affect City governmental services and facilities. Except for police and fire departments services of the City, the project-specific and cumulative impacts on these other City services, facilities, and costs have not been identified and the impacts have not been addressed. These need to be addressed in the Draft EIR.

MUSD-36

Based on only this discussion of other public service and without any data, and quantitative or qualitative analysis, the Draft EIR concludes that the impacts would be less than significant and that no mitigation is required. These statements in the Draft EIR are conclusions that are not support factually. The District would suggest that the Draft EIR needs to include the analysis of the physical and financial consequences and impacts the Project would have on these other public services and facilities. At a minimum, the City should require as an addendum to the Draft EIR, a fiscal impact analysis and a fiscal impact mitigation agreement which provides an adequate financial program to expand facilities and service required by the Project. The Draft EIR is not in compliance with the CEQA Guidelines in that it does not address the project-specific and cumulative impacts that the Project will have on these and other entities which provide services and facilities to the Project.

Financial Impact of the Project on the District

The CEQA Guidelines states:

“15131. Economic and Social Effects

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

MUSD-37

- (a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

- (b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.
- (c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.”

MUSD-37

This Project has serious short-and long-term financial and economic consequences on the public agencies and districts that serve the Project and the facilities and improvement to be developed within the Project. In addition, the Project has serious short-and long-term financial and economic consequences on the infrastructure (i.e. circulation systems, wastewater treatment facilities, sanitary sewer system, water system, etc.) that will serve the Project. These financial and economic consequences can affect the provision of facilities, services, personnel, and other financial responsibilities associated with service providers and can affect the ability to provide the facilities within the Project that are necessary to mitigate impacts to a level of less than significant.

For example, the financial and economic consequences will have one-time capital costs, on-going financing costs, and annual operation costs which will require significant financing and revenue sources. Many of the mitigation measures are specifically subject to a) the type and timing of the financing mechanism that are put in place by the Applicant and the facility and service providers; b) the results of speculative general and/or special elections and voting of the Project property owners or the general populist of the County or the District; c) the timing, value, and economics of the Project at any particular point in time.

The District believes that many of the mitigation measures only mitigate the impacts of the Project to a level of insignificance if the financing and economics of the mitigation measures are viable. Without this level of viability, the impacts are not mitigated and there will be a physical "cause and effect" on the environment and the services and facilities offered by service providers.

The CEQA Guidelines required that the Draft EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

In order to trace this chain of cause and effect, the District believes that the Draft EIR should contain a fiscal and economic discussion of the Project, supported by a Fiscal Impact Analysis and a Financing Plan which address the economics of all mitigation measures offered in the Draft EIR and provides a feasibility analysis of the financing plan and the mitigation measures. This Fiscal Impact Analysis and Financing Plan should provide the terms and conditions associated with financing a) the public and private components of the Project; b) the services and facilities offered by all public agencies as required by the Project; and c) mitigation measures required to reduce the significant impacts to a level of less than significant. This analysis should be weighed against a similar fiscal impact analysis of the alternatives to the Project as set forth in the Draft EIR.

MUSD-37

In addition, in the event the Fiscal Impact Analysis and Financing Plan concludes that the financing of these components are not feasible, the resulting physical consequences and impacts need to be identified and further mitigation measures need to be provided.

Even more important is the financial consequences of the mitigation measures or the unmitigated impacts as set forth in the Draft EIR. The financial impacts of the Project in terms of the lack of financing of the mitigation measures or the inability of the Project to bear the cost of the mitigation measures will place the financial burden on the property owners, residents, and constituents of the other areas of the City and on the public agencies that provide the services and facilities required by the Project. Without this level of fiscal analysis and accountability, the Draft EIR is incomplete and fails to provide a full disclosure of the consequences of the Project in accordance with the CEQA Guidelines.

Mitigation Measures to be Considered

The District would suggest that the following mitigation measures be considered to reduce the impacts of the Project on the District to a level of insignificance:

1. Dedicate a one (1) 15-net acres site with the Project as a K-6 elementary school.
2. Participate in the financing of the construction of the one (1) 15-acre elementary school site within the Project based on a “fair share” of the enrollment of the school generated by the Project
3. Participate in the financing of acquisition and construction of one (1) 25-acre middle school site to be located south of Highway 8 to serve the Project based on a “fair share” of the enrollment of the school generated by the Project.
4. Provide for the “fair share” of the financing of interim facilities and District-wide support facilities as may be required to serve the Project.
5. A Growth Management Program which provides for the annual phasing of development of the residential uses within the Project concurrent with the availability of permanent and interim facilities, District-wide support facilities, and transportation facilities and services to accommodate the students generated by the Project.
6. Impose a Mello-Roos Community Facilities District on all properties within the Project to generate revenue equal to the difference between the cost of permanent and interim facilities, District-wide support facilities, and transportation service and facilities, less a) the revenues generated by statutory development fees as provided for pursuant to SB 50; and b) revenues allocated to the District per the State School Facilities Financing Program.
7. The entering into a School Facilities Mitigation Agreement with the District to generate revenue equal to the difference between the cost of permanent and interim facilities, District-wide support facilities, and transportation service and facilities, less a) the revenues generated by statutory development fees as provided for pursuant to SB 50; and b) revenues allocated to the District per the State School Facilities Financing Program.
8. The reduction of the number of units to be developed in the Project to a level that is equal to the number of students that can be accommodated by the District based on the revenues generated by statutory development fees plus revenues of the State School Facilities Financing Program.

MUSD-38

9. Issuance of the State of California Department of Real Estate Subdivision Report (“White Paper”) including the disclosure of inadequate school facilities to serve the Project to potential homebuyers and the requirement for realtor disclosures prior to the sale of residential units.

MUSD-38

The District notes that the Draft EIR did not consider these mitigation measures. These should be considered and evaluated in the Draft EIR, and not simply left unaddressed.

General Plan Goals and Policies Consistency

In accordance with State law, the Project is required to be found to be in conformance with the City’s and County’s General Plan. The City and County cannot pick and choose what goals and objectives of the General Plan that it chooses to comply with. The Project is required to be in compliance with all goals and policies.

The District acknowledges that the Project is located within the City’s sphere of influence, the southern boundary of which is Heber Road. The sphere of influence area is the probable future physical boundaries and service area of the City as stated in the Draft EIR. As such, the Project needs to conform to the City General Plan.

The Public Facilities Element of the City’s General Plan states the following with regards to educational facilities:

“Educational Facilities

MUSD-39

El Centro residents are primarily served by the El Centro Elementary School District and Central Union High School District. Additionally, a small portion of the Planning Area is served by the McCabe Union Elementary School District. Future school enrollment will be affected by current and future birth rates and the extent of migration (both in and out) of families with school aged children. While the El Centro Elementary School District is experiencing declining enrollment and does not anticipate the need to site a new elementary school facility, current facilities are in need of rehabilitation. The Central Union High School District includes two high schools in El Centro and the District has identified the need for a new high school in the City.

Public Facilities Goal 2: Support the local school districts by working with them to determine the most appropriate location and distribution for school facilities to serve the educational needs of the community.

Policy 2.1: Work with the local school districts in investigating potential locations and funding sources for new schools.

Policy 2.2: Encourage the joint use of school facilities to provide a range of recreational and educational opportunities for all segments of the community.”

The District suggests that the Draft EIR has not provided evidence that this Goal and these Policies have been complied with in terms of the Project.

The City General Plan states the following Goal and Policies:

“Land Use Goal 1: Provide planning and strategies for physical land use to create a healthy and aesthetically pleasing environment that balances the social and economic needs of the community.

Policy 1.12: Ensure that facilities and services of public agencies are coordinated with City growth in their timing, location, and levels of service.

Policy 1.13: Develop and expand public facilities in a manner that is compatible with existing and planned development.”

The Draft EIR provides no analysis or evidence to show that the Project ensures that facilities and services of public agencies, including District are coordinated with City growth in their timing, location, and levels of service and that measures have been provided to develop and expand public facilities (schools) in a manner that is compatible with existing and planned development.

MUSD-39

The City General Plan states the following Goal and Policies:

“Land Use Goal 2: Control and direct growth so that new development is compatible with existing development and occurs in appropriate locations when adequate public services and facilities are available.

Policy 2.2: Ensure that development corresponds with the provision of public facilities and services.

Policy 2.3: Coordinate with the County and LAFCO during review and development of projects within the City’s sphere of influence to ensure that compatible development occurs and adequate public facilities are provided.

Policy 2.5: Encourage infill development to occur within the urbanized community before expanding new development onto agricultural lands surrounding El Centro.”

The Draft EIR provides no analysis or evidence to show that the Project is in compliance with this Goal and these Policies with regards to the public service and facilities of the

District. Further, this is not an infill Project, but rather urbanization of a portion of the sphere of influence area onto agricultural lands surrounding El Centro. The District suggests that because development would be allowed to occur in a non-urban area of the City without adequate school facilities and services, the Project cannot be found to comply with this Goal and Policies.

The Land Use Plan as contained in the General Plan sets forth the following:

“Understanding that growth will occur in the future, directing how and where growth will occur is important, as it will have a great impact on the quality of life and economic well-being of the community as a whole. To prepare for population increases in the next 20 years, El Centro will continue to direct and control growth in the City and sphere of influence through the application of the City’s Urban Development Program, as described below, to create a community that is compact and pedestrian and transit-oriented, avoids removing from production more valuable agricultural land than necessary, and is able to meet the public service and infrastructure needs of existing and future residents. The City will control and direct growth so that new development is compatible with existing development and occurs in appropriate locations where adequate public services and facilities are available. Additionally, future development in areas impacted by aircraft operation is consistent with the applicable airport land use plans.”

The Draft EIR provides no analysis or evidence to show that the Project will be developed in an appropriate location where adequate public services and facilities are available, particularly school facilities and services.

MUSD-39

The Land Use Plan as contained in the General Plan sets forth the following:

“El Centro has adopted an Urban Development Program to facilitate residential, industrial, and business growth in those areas where public services are available and to provide a variety of growth locations so that an adequate supply of developable land will maintain reasonable housing costs and promote economic development. Specific geographic areas have been delineated for new development (as shown in Figure LU-4) based on existing or planned public facilities, existing land use, and transportation corridors or other physical barriers. Within these geographic areas, the coordinated efforts of City government, other public agencies and districts, private developers, landowners, and existing residents will be needed to ensure that adequate public service and quality of life standards are maintained. Specific locations for needed public facilities, such as future schools and parks, have not been identified in the Land Use Policy Map since the best location for these facilities is not known at this time. The Community Facilities Study, described below, ensures that these facilities will be planned for as future development occurs.”

The Draft EIR provide no analysis or evidence to show that the Project is located within a geographic area and coordinated with the District to ensure that adequate District public service and quality of life standards are maintained. The District acknowledges that the specific locations for needed future schools have not been identified in the Land Use Policy Map since the best location for these facilities were not know at the time of the preparation of the General Plan. However, this is to be addressed through the preparation of a Community Facilities Study to ensure that these facilities will be planned for as future development occurs.

The Land Use Plan as contained in the General Plan sets forth the following:

“To identify those areas that will require more extensive planning, ensuring the provision of adequate levels of public services and facilities, the undeveloped portion of the Planning Area has been divided into three development tier areas, as described below. Designation of an area in one of the three tiers does not determine the sequence of development within the Planning Area, but rather, delineates those areas that, due to a lack of public facilities, may require more detailed planning prior to development. For example, development in Development Tier II and III may require a greater cost for infrastructure improvements than would the same development if located within the Development Tier I area since Tier I has greater access to existing public services and facilities. Tier II and III areas may also require that facilities be sized, at developer expense, to accommodate additional development within an entire Tier Subarea (described below), or such larger area as may be required by the City. Reimbursement agreements, improvement districts, and other public finance strategies may be used to cost-effectively provide needed public infrastructure, as deemed necessary by the City Council.”

MUSD-39

The Draft EIR acknowledges that the Project is within a Tier II Planned Urban Service Area. The Draft EIR provides no analysis or evidence to show that the Project has complied with these provisions as it relates to school facilities.

The Land Use Plan as contained in the General Plan sets forth the following:

“Development Tier II - Planned Urban Service Area: Development Tier II includes land both within and adjacent to the City limits, but differs from Development Tier I in that public infrastructure to serve new development is more limited. Essential required improvements may include sewer and water pump stations, water storage reservoirs, and sewer trunk lines or force mains. New schools, parks, roadway improvements, and fire stations may also be required to adequately serve development of Development Tier II areas. As with Development Tier I areas, additional service capacity for police, library, medical, and other City services may also be needed to accommodate new development. Preparation of a Community Facilities Study shall be required for most development projects within Development

Tier II areas, including residential subdivisions, multi-family projects, and commercial or industrial development, unless as otherwise exempted as described in the Community Facilities Study Requirements and Exemptions.”

The Land Use Plan as contained in the General Plan sets forth the following:

“Community Facilities Study Requirements and Exemptions: Unless otherwise exempted, subdivision of land and commercial or industrial development within Development Tiers II and III would require that a Community Facilities Study be prepared. Typically, Community Facilities Studies are prepared at the expense of a project applicant. The Study shall address existing conditions and needs for City sewer, water, drainage/flood control, and Circulation Element roadways affected by new development, including circulation improvements such as traffic signals. Public facility financing plans for new development would also need to be evaluated. A Community Facilities Study shall not be required when: 1) an Environmental Impact Report (EIR) or Initial Study leading to a Mitigated Negative Declaration will be prepared for the project and the EIR or Mitigated Negative Declaration will incorporate all applicable elements of the Community Facilities Study; 2) the project is a subdivision of five or fewer lots or a commercial or industrial development of five acres or less and the owner or sub-divider does not own or control other contiguous property within the same Development Tier Subarea; and 3) the Initial Study for the project does not conclude that the project may have a significant impact of public services and facilities or the project does not require sewer or water facilities”.

MUSD-40

The Draft EIR provides no analysis or evidence to show that a Community Facilities Study has been prepared on the Project. The Project is not exempt. The District would suggest that a Community Facilities Study should be prepared. The Study should identify existing conditions and needs for City sewer, water, drainage/flood control, and Circulation Element roadways affected by new development, including circulation improvements such as traffic signals. It should also include the other public facilities and serviced that would be required for the Project, including school facilities and services. It should also include a public facility financing plan for the Project. The District notes that the Draft EIR does not incorporate all applicable elements of the Community Facilities Study. Therefore the Draft EIR needs to be revised and the Community Facilities Study needs to be prepared.

The District finds that the Project is not in compliance with the Goals and Policies of the General Plan and the General Plan Implementation Plans. Therefore, the Draft EIR should be revised to incorporate the discussion which shows that the Project can be found to be in compliance with these documents.

Agricultural Resources – General Plan Compliance

Section 5 attempts to provide the justification for allowing the Project to proceed in consideration of the Goals and Objectives of the County General Plan, and the Goals and Policies of the City General Plan with regards to agricultural resources. However, even with all of the discussion provide in the Draft EIR, the Draft EIR fails to acknowledge three important conclusions:

- 1) The Project is part of the continuing “leap-frogging” of urban growth into agricultural areas which is sought by the development community and which the City continues to consider and approve in violation of the Goals, Policies and Objectives of the applicable General Plans;
- 2) There is no study that supports that there are a lack of alternative sites for the same type of land uses proposed by the Project; and
- 3) Continued approvals of the Project which absorbs agricultural lands are depleting the County of these resources in violation of the City and County General Plans.

The Draft EIR describes the criteria for determining the significant impact, as follows:

MUSD-40

“5.1.2 - Project Impacts

Thresholds of Significance

- Appendix G of the CEQA Guidelines indicates that a project would result in a significant impact on agricultural resources if it would:
- Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use;
- Conflict with existing zoning for agricultural use, or a Williamson Act contract; or
- Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of farmland, to non-agricultural use.”

There are no “thresholds” established within this criterion. As such, the criterion is not adequate for evaluating the significance of agricultural resources impacts. Specific thresholds should be established within the Draft EIR.

The Draft EIR concludes the following:

“5.1.3 - Mitigation Measures

There are no available mitigation measures to reduce impacts to Prime Farmland and Farmlands of Statewide Importance.

5.1.4 - Level of Significance After Mitigation

Project implementation will result in significant and unavoidable impacts to agricultural resources.”

MUSD-40

Although there is considerable discussion in the Draft EIR which attempts to justify that the Project is in compliance with the requirements of LAFCO, there is no data, and quantitative and qualitative analysis which supports the conclusions stated in the Draft EIR. Based on this conclusion, the Project should not be approved.

The Draft EIR provides no data, and quantitative or qualitative analysis to support the conclusions reached in the Draft EIR. The Draft EIR needs to provide further detailed information that supports the conclusions set forth in the Draft EIR supported by factual information. The determination of the impacts is not supported by factual information based on a measurement of thresholds. Therefore, the conclusions are not in compliance with the CEQA Guidelines.

CEQA Policies

Section 15003 of the CEQA Guidelines states:

“In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

- (a) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)
- (b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)
- (c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68.)

MUSD-41

- (d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.)
- (e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People v. County of Kern*, 39 Cal. App. 3d 830.)
- (f) CEQA was intended to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.)
- (g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)
- (h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151)
- (i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. A court does not pass upon the correctness

MUSD-41

The District believes that the policies of CEQA and the CEQA Guidelines provide an adequate foundation to support the District's requests and comments as contained in this letter, and offers further support of the need to prepare adequate environmental documentation on the Proposal.

SB 50 Analysis

The District acknowledges that SB 50 may constrain the ability of the City to address the District's objections. However, the City has a responsibility to serve the community and the City in a way that protects their interests. One way is to attain this is to insure that all applications, all projects, all proposals, and all applicants fully and completely comply with any and all provisions of local and State laws. The second is to consider those areas within and outside of SB 50 that permits the City to take a more proactive and assertive roles in addressing public facilities and services.

MUSD-42

SB 50 was adopted in August 1998 by the California State Legislature as a result of lobbying efforts of the California Building Industry Association ("CBIA") to limit and constrain school districts from taking their previous actions to seek full mitigation of school impacts pursuant to applicable laws and to deny the right of local decision-makers to not approve certain projects due to the impacts that they might cause. This was "eleventh-hour" legislation that came as a result of compromises between the CBIA and a limited number of Districts which were then suggested to represent the State-wide school community interests. It was also a compromise by those school districts to get what they wanted, which was a significant State-wide bond issue. Many of the Districts affected by growth today were not even a part of this so called "State-wide school community".

The legislation was an attempt to create a theoretical "three-legged stool" of financing with the State through State Bond fund grants providing one-third, the development community through statutory development fees providing one-third, and the local community through local financing techniques providing one-third. Although this was not stated in the legislation, this was the apparent intent of the legislation. Today, school districts know that the intent did not come to fruition.

The system was and is inadequate. Some of these inadequacies include following:

MUSD-42

- a. SB 50 anticipated that local communities could and would approve ballot measures or funding from other local revenue sources to finance their portion of the one-third. Because of bonding capacity limitations, lack of voter approvals to support existing communities subsidizing new residential developments, and the overall lack of voter approval of local bond measures, the one-third financing has not materialized in many school districts and communities.
- b. The statutory development fees provided for in SB 50 were based on a theoretical cost of school facilities which was equal in all school districts and jurisdictions throughout the State. It did not acknowledge 1) the differences in costs of school construction from one location to another; 2) the differences in the cost of land or the increasing value of land in one location over another; and 3) the differences in design and development standards from school district to school district. In essence, it established a consistent and constant statutory development fee without considering the differences from community to community.
- c. SB 50 did not contemplate that school districts with unprecedented growth would have different needs than areas that were growing at much slower rates, or the socio-economic difference of communities and the implications that this would have as communities transformed as a result of new development and growth reaching out to them.

- d. Although an adjustment in statutory development fees is contemplated under SB 50, this adjustment occurs in January of even number years. Therefore, during the two year period prior to the adjustments and during which costs are increasing, the fees are level and do not adequately provide for these increasing costs.
- e. The adjustment formula for statutory development fees is based on a "construction cost index" and does not include indexing related to the increases in land costs. As a result, the actual cost of facilities (i.e. land and improvements) is increasing at a greater rate than the adjustment that the State Allocation Board approves.
- f. SB 50 did not contemplate the need for interim facilities and District-wide support facilities that would be required as a result of increasing student enrollments.

As time has run its course since 1998, these inadequacies have created wider gaps in the funding of schools. The State's share, except for inflationary adjustments has generally remained constant. The statutory development fee share, except for inflationary adjustments has generally remained constant. So, the gap has increased in the local share portion. The burden has become greater at the local share level. And, the Districts with the greatest consequences are the Districts that have the least resources to address the gap.

MUSD-42

So regardless of the theoretical financial model and legal statutes of SB 50, the actual implementation and the real world financial parameters have proven that SB 50 has failed. Even the State of California Legislative Analyst Office has acknowledged this situation. But even with this failure and it being knowledge by the development community and local legislative decision-makers, SB 50 continues to be the position that developers and local decision-makers fall back on.

The development community suggests that the issues school districts raise with regards to the limitation of SB 50 needs to be addressed in the State legislature and through the Governor's Office. Local decision-makers within cities and counties suggest the same. However, it is the same development community and CBIA representatives who suggest that SB 50 is sacred and that they will lobby against such changes. This has been seen in the political arena for many years and is continuing today. And, it is the same local decision-makers who do not want to get in the middle between the development community and the school districts for fear of the political consequences that may be brought upon them by the development community.

So, the District acknowledges the following which sets forth applicable provisions of SB 50. And, the District suggests that SB 50 does not serve the District or the Community, and that the City needs to take the initiative to look at what it can do legally to address the consequences of unprecedented growth without adequate measures to address the

school district and student enrollment consequences. Failure to do so would fly in the face of the responsibilities and obligations of the City to protect the public services and facilities of the City. One such measure would be to establish growth management and development phasing policies and requirements with regards to the approval of the transformation of sphere of influence, agricultural and urban reserve properties into residential land uses.

Specifically, Section 65995 (a) of the Government Code specifically states as follows:

“Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.”

Section 65995 (b) further states:

“Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following...”

MUSD-42

In addition, Section 65995 (h) of the Government Codes specifically states as follows:

“The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.”

Additionally, Section 65995 (i) of the Government Code specifically states as follows:

“A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.”

Section 65996 of the Government Code also states:

“(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate...”

MUSD-42

The District suggest that local government agencies do have options that are not in violation of SB 50, which include and are not limited to the following:

- 1) They can require the applicant or proponent to comply with the information disclosure requirements of the California Environmental Quality Act and the CEQA Guidelines
- 2) They can require that the applicant and proponent to comply with all other provisions of the City’s General Plan which are not limited by the provisions of SB 50.
- 3) They can impose annual growth management limitation on the number of development permits that would be issued concurrent with the availability of public services and facilities.
- 4) They can restrict the use of public agency available financing (i.e. Mello-Roos Community Facilities Districts) for developments unless the applicant and proponent addresses school facility needs.

- 5) They can require full and complete disclosure of impacts and consequences that would result from those project consequences that are not addressed by the limitation of SB 50.
- 6) They can provide incentives such as a development priority system which acknowledges applicants and proponents who make voluntary efforts to address school facilities needs created by their projects.
- 7) They can provide procedural steps and establish policies that insure that development proceeds only current with the availability of all public facilities and services, and infrastructure, particularly those that are impacted by the Proposal and are unmitigated

Although local agency legislative bodies cannot refuse to approve a project on the grounds that applicants and/or proponents refuse to provide additional mitigation in excess of the statutory development fees, and cannot require additional development fees in excess as those stated in SB 50, the legislative bodies can choose to cooperate and work with the school districts to provide the incentives that would result in additional cooperation on the part of the applicants and/or proponents. It is the legislative body's obligation to equally represent the constituents of the community so as to protect the quality of life of its constituents, as it is to comply with the requirements of the law. The District would suggest that the role of the local Board of Supervisors is both.

MUSD-42

The provisions of SB 50 and the California Environmental Quality Act do not prevent the City from offering a transparent presentation of the specific school facility and financing impacts on the District, or the cumulative impacts the Proposal along with other development within the District would have on the District's school facilities.

In the District's previous comments, the District has presented a detail explanation of the provisions of SB 50 and its inadequacies. This should be discussed in detail in the Draft EIR.

The District also alleges that the provisions of SB 50 are in violation of the State of California Constitution for a variety of reasons.

First, the California Constitution, Article XI, Section 7 provides that "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

In essence, cities and counties have the discretionary right to approve, deny, or conditionally approve land use decisions through their "police power" authority. The District is of the belief that SB 50 denied this right to the City with regards to school issues and the adequate mitigation of impacts, thereby denying a right granted to the

cities and counties throughout the State under the State's Constitution. In doing so, it denied the City the right to protect its constituents from the impacts and consequences of land use and development contrary to the intent and purpose of the Constitution, and creating a conflict between the intent and purpose of the Constitution and the provisions of SB 50.

Second, the California Environmental Quality Act and the CEQA Guidelines provides for the mitigation of impacts, and through this process of environmental analysis, thereby enabling cities and counties to be assure themselves that the impacts of land use decisions are mitigated to a level of insignificance in order to protect the constituents of the City, including the District. The States adoption of SB 50 is in direct contradiction of the purpose and intent of CEQA and the CEQA Guidelines and does not provide the protection to the constituents of the City.

Third, California Constitution Article I, Section 7 provides that "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws..." The District suggest that the method of financing school facilities throughout the State produces substantial disparities among school districts which results in inequities in terms of the quality, quantity, and availability of school facilities that are necessary in order to provide for the educational opportunities for all students throughout the State as provided for in the Constitution. Because of the inequities contained within the provisions of SB 50 and the inequities of the provisions related to Level I and Level II development fees, the constituents of the City are not provided the same level of school facilities as are provide else ware in the State. The scheme of financing school facilities results in socio-economic deficient school districts within the State having inferior school facilities in comparison to more affluent socio-economic school districts. These inferior school facilities directly and adversely affect the educational opportunities and the quality of education in these socio-economic areas. The result is that socio-economic deficient school districts face unconstitutional discrimination because the more affluent school districts have other resources that enable them to fund the quality, quantity, and available school facilities that are required. This inequity directly flies in the face of the State's Constitution concerning equal protection of all of the constituents of the State.

MUSD-42

Fourth, the formula for the allocation of State grants, and the formula for determining the amount and the nexus for Level I and Level II development fees does not take into account the differing situation of school districts throughout the State. The result is that there are inequities in the implementation of the provisions of SB 50.

Finally, the District believes that similar arguments could be made concerning the State school facilities financing program and the provisions of SB 50 as was embraced in the *Serrano v. Priest decisions*, which spanned three California Supreme Court opinions between 1971 and 1977, trial court rulings in 1974 and 1983, Proposition 13 and numerous legislative enactments. *Serrano v. Priest*, 5 Cal.3d 584 (1971) (*Serrano D*);

Serrano v. Priest, 18 Cal.3d 728 (1976) (*Serrano II*); *Serrano v. Priest*, 20 Cal.3d 25 (1977) (*Serrano III*).

The City Council of the City of El Centro has failed to fulfill their fiduciary responsibilities to protect the constituents of the City of El Centro, including the District and the other school districts within the City, by not challenging the constitutionality of the provisions of SB 50 and instead abdicating their discretionary responsibilities with regards to land use decisions in the City to the State of California. In doing so, the City has caused damage and harm to the District, students of the District, and the constituents of the City.

MUSD-42

Therefore, the District believes that the City should defer their action on all land use decisions until the City, in conjunction with the District, seeks to remedy the constitutional issues concerning the provisions of SB 50.

Lack of Objectivity of the Environmental Consultant

Based on the contents of the Draft EIR, the inadequacies contained therein, and the District's comments contained herein, including but not limited to a) the reliance on information that is out-of-date or inaccurate; b) the failure to consider the comments offered in the response to the Notice of Preparation; c) the lack of addressing the controversial areas of concern; d) the incompleteness of the analysis by failing to offer data, and quantitative and qualitative analysis; e) the failure to address cumulative impacts; f) the use of conclusions without substantial supportive data and analysis; g) the failure to consult with individuals and agencies that would best serve to address the issues and impacts; h) the failure to address the General Plan and zoning issues of controversy; and i) the lack of detail and full disclosure regarding the impacts of the Project on the District, is clear evidence that the prepares of the Draft EIR did not provide a fair and reasoned analysis of the Project and in the writing of the Draft EIR in compliance with the CEQA Guidelines.

MUSD-43

The District would suggest that the Draft EIR be submitted to a third party independent consultant for the sole purpose of detail review and evaluation to determine any and all deficiencies with regards to the contents of the Draft EIR and that the Project's consideration be deferred until such analysis is completed.

Section 15142 of the CEQA Guidelines states:

“An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.”

The CEQA Guidelines acknowledge that this interdisciplinary approach shall be conducted by "competent individuals". The District is concerned that the discussion of the school issues was not completed by competent individuals who understand and have the first hand knowledge of the administration and operation of school districts, the State statutes with regards to school financing and operational regulations, and the socio-economic, physical, and financial impact that development and growth of a community can have on the ability of school districts to accommodate students and provide educational curriculums. As previously noted the preparers of the Draft EIR did not even contact the District to obtain information and data.

MUSD-43

The failure of the preparers of the Draft EIR to utilize competent individuals to address the school issues and the failure of the preparers of the Draft EIR to contact the District is clear evidence of the failure of the Draft EIR to comply with the provisions of the CEQA Guidelines.

Recirculation of the Draft EIR

Pursuant to Section 15088 of the CEQA Guidelines the City shall evaluate the comments received by the City from the District and others on environmental issues and shall prepare a written response. The City shall respond to all comments received during the noticed comment period and any extensions and may respond to late comments. The City is required to provide a written proposed response on all such at least 10 days prior to certifying an environmental impact report.

CEQA requires that the written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the environmental issues raised when the City's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

MUSD-44

It is noted by the District that the response to comments may take the form of a revision to the Draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the City should either a) revise the text in the body of the Draft EIR; or b) include marginal notes showing that the information is revised in the response to comments.

The District requests that all of the comments contained in this correspondence be responded to by the City. In addition, the District requests that the Draft EIR be re-circulated after the document has been revised and comments responded to. Section 15088.5 of the CEQA Guidelines requires the City to re-circulate the Draft EIR when

significant new information is added to the Draft EIR after public notice is given of the availability of the Draft EIR for public review, but before certification. The District notes that CEQA defines the term "information" to include changes in the project or environmental setting, as well as additional data or other information. The District also notes that new information added to the Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the Project's proponents have declined to implement.

The District suggests that the City's response to the District's comments will result in "significant new information" requiring re-circulation and will disclose that a) new significant environmental impacts will result from the Project or from new mitigation measure proposed to be implemented; b) substantial increases in the severity of the environmental impacts will result unless mitigation measures are adopted that reduce the impacts to a level of insignificance; c) feasible Project alternatives or mitigation measures considerably different from others previously analyzed in the Draft EIR would clearly lessen the environmental impacts of the Project, but the Project's proponents have declined to adopt them; and d) the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comments were precluded.

MUSD-44

The District recommends that the Draft EIR as revised be re-circulation, that notice be given pursuant to Section 15087 of the CEQA Guidelines, and that consultation with the District be pursued pursuant to Section 15086 of the CEQA Guidelines. In addition, the District recommends that as part of providing notice of recirculation as required by Public Resources Code Section 21092.1, the City send a notice of re-circulation to every agency, person, or organization that commented on the Draft EIR.

The City's decision to not to re-circulate the Draft EIR following receipt of this correspondence is required by the CEQA Guidelines to be supported by substantial evidence in the administrative record. The District request that this "substantial evidence" be provided to the District in the event the City chooses to not re-circulate the Draft EIR.

Annexation Considerations

The Project includes the annexation of the Property to the City. As such, the Draft EIR needs to address the projects compliance to the procedures and requirements that are applicable to the annexation.

MUSD-45

The District understands that the Proposal has been proposed pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Section 56001 of the Government Code states:

“56001. The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing such development with sometimes competing state interests of discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services. The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.

MUSD-45

The Legislature recognizes that urban population densities and intensive residential, commercial, and industrial development necessitate a broad spectrum and high level of community services and controls. The Legislature also recognizes that when areas become urbanized to the extent that they need the full range of community services, priorities are required to be established regarding the type and levels of services that the residents of an urban community need and desire; that community service priorities be established by weighing the total community service needs against the total financial resources available for securing community services; and that those community service priorities are required to reflect local circumstances, conditions, and limited financial resources.

The Legislature finds and declares that a single multi-purpose governmental agency is accountable for community service needs and financial resources and, therefore, may be the best mechanism for establishing community service priorities, especially in urban areas. Notwithstanding, the Legislature recognizes the critical role of many limited purpose agencies, especially in rural communities. The Legislature also finds that, whether governmental services are proposed to be provided by a single purpose agency, several agencies, or a multi-purpose agency, responsibility should be given to the agency or agencies that can best provide government services.” (emphasis added)

The District is a public agency as defined by Section 56070 of the Government Code, which states as follows:

“56070. ‘Public agency’ means the state or any state agency, board, or commission, any city, county, city and county, special district, or other political subdivision, or any agency, board, or commission of the city, county, city and county, special district, or other political subdivision.” (emphasis added)

The District is also an affected local agency as defined by Section 56014 of the Government Code, which states:

“56014. ‘Affected local agency’ means any agency which contains, or would contain, or whose sphere of influence contains, any territory within any proposal or study to be reviewed by the commission.”

An application that is filed by a local agency or a school district is required to submit a plan for providing services within the affected territory, as follows:

MUSD-45

“56653. (a) Whenever a local agency or school district submits a resolution of application for a change of organization or reorganization pursuant to this part, the local agency shall submit with the resolution of application a plan for providing services within the affected territory.

(b) The plan for providing services shall include all of the following information and any additional information required by the commission or the executive officer:

- 1) An enumeration and description of the services to be extended to the affected territory.
- 2) The level and range of those services.
- 3) An indication of when those services can feasibly be extended to the affected territory.
- 4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- 5) Information with respect to how those services will be financed.”
(emphasis added)

The District would suggest that the Draft EIR provide an analysis of these provisions and provide the information that would be included in the Plan of Services. Section 56653 specifically requires that the Plan for Services shall set forth the following with regards to ALL governmental services within the affected territory:

- 1) An enumeration and description of the services to be extended to the affected territory;
- 2) The level and range of those services;
- 3) An indication of when those services can feasibly be extended to the affected territory;
- 4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed; and
- 5) Information with respect to how those services will be financed.

MUSD-45

The District would request that the Plan of Services provides a complete and detailed response to all of these inquires for ALL governmental services and facilities, including but not limited to the services and facilities of the District.

There are no provisions in the Act which exempt the consideration of school facilities and school services. As such, Plan for Services to be offered with regards to the Proposal is required to address school facilities and school services. The Draft EIR fails to provide for such a plan for the provision and financing of school services and facilities with the exception of stating the provision and limitation of SB50, which the District has shown to be inadequate to fund facilities.

In considering the Project, Section 56668 of the Government Code provides the minimum factors that are to be considered in the review of a proposed annexation, as follows:

“56668 Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

- a) Population, population density; land area and land use; per capital assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years. Local Government Reorganization Act of 2000.

- b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.
- c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.
- d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.
- e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- g) Consistency with city or county general and specific plans.
- h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.
- i) The comments of any affected local agency.
- j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for such services following the proposed boundary change.

MUSD-45

- k) Timely availability of water supplies adequate for projected needs including, but not limited to, the projected needs as specified in section 65352.5.
- l) The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.
- m) Any information or comments from the land owner or owners.
- n) Any information relating to existing land use designations.” (emphasis added)

It is clear that the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 contemplates and addresses the need to evaluate public facilities and services in conjunction with the review and approval of an annexation. Further, the annexations shall be consistent with the applicable general plans of the City and the County. School facilities and services are a component of public facilities and services as set forth in the Act and in the General Plans of the City and the County.

MUSD-45

Pursuant to Section 56300 of the Act, the Imperial County LAFCO “established written policies and procedures that incorporate the Legislature’s intent to encourage and provide for planned, well-ordered, efficient urban development pattern which discourages urban sprawl, preserves open space and prime agricultural lands, provides housing for person and families of all incomes, and addresses the efficient extension of governmental services”. (emphasis added). These policies (“Policies”) are stated in the Imperial County “Guide to the Policies, Standards, and Procedures to the Implement the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“Guide).

The Polices state:

“The Guide is adopted by the Imperial LAFCO pursuant to the requirements of AB2838 (Hertzberg). This 2000 law revises the Cortese-Knox Reorganization Act of 1985.

The purpose of this Guide is to establish clear PROCEDURES and POLICIES by which Imperial Local Agency Formation Commission (LAFCO) conducts business. Furthermore it also serves as a general guide for the public, and the various governmental agencies. While it is also intended to comply with state law, this document does not supersede the Cortese-Knox-Hertzberg Reorganization Act, CEQA, or any other law.

The summaries of applicable statutes set forth in this guide are intended to serve as general information only. For exact citations, please refer to the referenced sections of the applicable State of California Government Code(s). Definitions of terms used may be found in the Guide to the Cortese-Knox-Hertzberg Local Government Reorganization Act commencing with Government Code Section 56000 et. seq. These documents are available at the Imperial LAFCO Office and most local public libraries...”

The Policies further state:

“A. PURPOSE OF THESE POLICIES, STANDARDS AND PROCEDURES

The Imperial LAFCO has adopted these policies, standards and procedures GUIDE, hereinafter “Guide”, to ensure that the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Cortese-Knox-Hertzberg Act) is implemented consistently and effectively in Imperial County; to provide guidance to applicants for changes in organization and reorganization; to assist staff in the formulation of recommendations to the LAFCO; and to assist members of the Commission in making their determinations.

MUSD-45

This revision to the Guide is to fully implement the requirements of AB 2838 (Hertzberg) as signed into law by the Governor on September 26, 2000. In the event of a conflict between the government code and this guide, the government code shall take precedence. However this Guide shall be the official “rules” under which projects are processed and under which the Commission shall operate.

The LAFCO is required to apply the policies and provisions of the Cortese-Knox-Hertzberg Reorganization Act of 2000 to its decisions regarding annexations, incorporations, reorganizations, and other changes of government organization. These policies, standards and procedures have been adopted pursuant to the authority contained in the Cortese-Knox-Hertzberg Act (Government Code Section 56375) to assist in the implementation of its provisions. Specifically, these standards are designed to:

- Provide applicants for changes of organization guidance as to the information the LAFCO needs in order to make appropriate determinations concerning their applications.
- Provide applicants for changes of organization with explicit guidance as to the criteria the LAFCO will utilize in approving, disapproving, amending, or conditionally-approving applications for changes in organizations;
- Ensure consistency in the LAFCO's decision-making process;

- Facilitate better and more effective communication among local agencies in the region;
- Provide elected officials, governmental staff, and members of the general public information and notice as to the standards and procedures that the LAFCO will utilize in evaluating applications; and
- Provide for more coordination in the preparation of the environmental reviews through a policy whereby LAFCO is a "co-lead" agency which enhances the review process.
- Minimize any adverse social, economic and environmental impact of growth.
- Provide for more effective and efficient government and governmental services." (emphasis added)

These provisions justify the need for the Draft EIR to address the items that would be required to be considered by LAFCO in their consideration of the Project. As such, the District would suggest that the Draft EIR be revised to include all of the information that would be required for the LAFCO decision-making process including the Project's Plan for Services.

The Polices further state:

"D. THE LEGISLATURE'S POLICY DIRECTION TO LAFCO

The Legislature has charged the LAFCO with carrying out changes in governmental organization to promote specified legislative policies now codified in the Cortese-Knox Local-Hertzberg Government Reorganization Act of 2000. The Cortese-Knox Act commences with Section 56000 of the State of California Government Code. Some of the major policy statements are as follows:

- The LAFCO is to encourage orderly growth and development essential to the social, fiscal, and economic well being of the State (Government Code Section 56001);
- The LAFCO is responsible for encouraging the logical formation and determination of boundaries while discouraging and eliminating "islands". This also requires influencing land use decisions by requiring for the "pre-zoning" of land prior to annexations. (Government Code Section 56375);

MUSD-45

- The LAFCO must exercise its authority as an independent agency, to ensure that affected populations receive efficient and quality governmental services (Government Code Section 56668); and
- The LAFCO is required to exercise its authority to guide development away from open space and prime agricultural land uses unless such actions would not promote planned, orderly and efficient development (Government Code Section 56377).” (emphasis added)

The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these policy statements are complied with.

The Polices further state:

“If the "Lead Agency" for the preparation of CEQA documentation is other than LAFCO, the application may be accepted for processing purposes, but shall not be deemed complete and a Certificate of Filing shall not be issued until the appropriate environmental documents have been prepared, and submitted in a manner acceptable to the Executive Officer. The Executive Officer may file a “conditional” Certificate of Filing to acknowledge the start of a project, however this shall not be considered for purpose of limiting the time within which to provide notice or within which to complete a project. After all of the conditions applied in a “conditional” Certificate have been met, a final Certificate of Filing will be filed by the Executive Officer.”

MUSD-45

It appears that the City is the lead agency on the Project. It also appears that the Draft EIR will be used as the environmental document to be submitted to the LAFCO. As such, the Draft EIR should be drafted to address all of the LAFCO issues. The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that the policies of LAFCO can be complied with. The District would suggest that the current Draft EIR does not provide this information.

The Polices further state:

“Technical Studies/Information from Other Agencies

In order to fully analyze a project and comply with the intent of Government Code 56000 et. seq., the Executive Officer shall have the authority to request technical as well as statistical information from any local agency. The local agency shall provide this information to the Executive Officer in a timely manner and at no cost to LAFCO. In the event such information is not made available to the Executive Officer, the Executive Officer shall be authorized to request same under the “freedom

of information act” if necessary, or any other means reasonably at the disposal of the Executive Officer.”

The District would suggest that the Draft EIR be submitted to the Executive District of LAFCO and that the Executive District shall determine if the document is adequate in providing the information that is required for the LAFCO decision-making process. If the Draft EIR is found to not be adequate, then it should be revised and recirculated accordingly.

The Polices further state:

“B. CONFORMANCE WITH APPLICABLE GENERAL & SPECIFIC PLANS

1. LAFCO may approve changes in organization only if the proposal is consistent with the General Plan and any Specific Plans of the local planning jurisdiction.
2. For purpose of this standard, the applicable planning jurisdiction is as follows:
 - a. For annexations to a City, the applicable jurisdiction is the City to which annexation is proposed;
 - b. For applications for annexation to or detachment from a district all of whose territory lies within the City Limits, the General Plans of the City;
 - c. For an application for annexation to a special district for lands outside City Limits, the Imperial County General Plan or an adopted Area Plan;
 - d. For an application for annexation or detachment from a district whose territory lies in both the City and County, the General Plan applicable to the subject land; and
3. For purposes of this standard, the proposal shall be deemed consistent if the proposed use is consistent with the applicable General Plan designation, the applicable General Plan is legally adequate and internally consistent and the anticipated types of services to be provided are appropriate to the land use designated for the area.
4. The initial determination of consistency shall be the responsibility of the governing body of the applicable planning jurisdiction. LAFCO shall retain discretion to determine the consistency issue with respect to its jurisdiction to approve, disapprove or condition changes in organization and may require additional information if necessary. The LAFCO will not approve a proposal in the absence of such certification by the jurisdiction.” (emphasis added)

MUSD-45

Based on the District's comments on the Draft EIR, it appears that the Project is not consistent City's and County's General Plan, that the General Plan's are not legally adequate and internally consistent, and that there are inadequate services provided which are appropriate for the Project. The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these provisions of LAFCO can be complied with.

The Policies further state:

"D. AGRICULTURAL LAND CONSERVATION

LAFCO shall exercise its power to conserve and preserve agricultural land pursuant to the following standards:

1. LAFCO may approve a change in organization which will result in the conversion of prime agricultural land in open space use to other uses only if the Commission finds that the proposal will lead to the planned, orderly and efficient development of an area. For purposes of this standard, a proposal lends to the planned, orderly and efficient development of an area only if the Commission finds that all of the following criteria are met:

MUSD-45

- a. The land subject to the change in organization is contiguous to either existing developed lands or lands, which have received all General Plan, zoning and subdivision map or use, permit approvals for such development.
- b. The proposed development of the subject lands is consistent with the Sphere of Influence Plan, including the "Service Area Plan" of the affected agency or agencies.
- c. Development of all or a substantial portion of the subject land will occur within five (5) years. In the case of very large developments, it may approve annexation if all or a substantial portion of the subject land is likely to develop within 10 years, and appropriate assurance is made to LAFCO.
- d. Insufficient vacant non-prime lands exist within the applicable Sphere of Influence plan, accessible and developable for the same general type of use.

2. Note: The County of Imperial has recently (September 2000) adopted the Williamson Act, which provides for the protection of agricultural lands. The

Cortese-Knox-Hertzberg Reorganization Act also has added language to the conversion of Williamson Act land. Therefore the LAFCO will adhere to the standards of the government codes sections that are applicable.

3. LAFCO may approve a change in organization, which would result in the conversion of prime agricultural land in open space use to non-open space use(s) only if the Commission finds the proposal will have no significant adverse effect on the physical and economic integrity of other agricultural lands. In making this determination, LAFCO will consider the following factors:
 - a. The agricultural significance of the subject and adjacent areas relative to other agricultural lands in the region.
 - b. The use of the subject and the adjacent areas.
 - c. Whether public facilities related to the proposal would be sized or situated so as to facilitate the conversion of adjacent or nearby agricultural lands, or will be extended through or adjacent to, any other agricultural lands, which lie between the project site and existing facilities.
 - d. Whether natural or man-made barriers serve to buffer adjacent or nearby agricultural land from the effects of the proposed development.
 - e. Applicable provisions of the General Plan open space and land use elements, applicable growth-management policies, or other statutory provisions designed to protect agriculture...
4. LAFCO will discourage the conversion, (particularly the premature conversion) of agricultural lands to non-agricultural (urban) planned uses in or around areas that are not planned for urban uses by the County General Plan. LAFCO will also evaluate and discourage the conversion of "prime agricultural land" or land of "state wide significance" if the City or District has other lesser "quality" agricultural lands available that would be compatible with urban uses, and that could just as equally be serviced by the City or District." (emphasis added)

MUSD-45

The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these provisions of LAFCO are complied with. The District would suggest that the current Draft EIR does not provide this information.

The Polices further state:

"E. APPLICATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) requires that LAFCO assess the environmental consequences of its determinations and exercise its authority in such a manner as to avoid or minimize adverse environmental impacts. The following standards will apply to the compliance with CEQA in reviewing requests for changes in organization...

LAFCO will not act upon any proposal for a change in organization until environmental documentation has been completed, which adequately addresses the statutory requirements of CEQA and the applicable requirements in LAFCO's "Policies and Standards".

If the Lead Agency fails to prepare environmental documentation, which adequately addresses the environmental issues relevant to LAFCO jurisdiction, LAFCO will undertake one of the following courses of action pursuant to the provisions of CEQA:

- a. Assume the Lead Agency role and correct the deficiencies of the environmental documentation; or
- b. Prepare a subsequent EIR;
- c. File suit challenging the adequacy of the environmental documentation prepared by the Lead Agency;
- d. Waive objections if it determines that none of the above courses of action are practicable and that LAFCO possesses substantially all of the environmental information necessary to render a decision.
- e. If the LAFCO Executive Officer, after consultation with legal counsel, determines that the CEQA documents prepared by the LEAD AGENCY is inadequate for use by LAFCO, the Executive Officer shall so notify the LEAD AGENCY. Unless LAFCO then receives or it prepares corrected or adequate documents, the Executive Officer shall recommend that LAFCO deny the project." (emphasis added)

MUSD-45

The District would suggest that it would serve the Project and the decision-making process of the City and LAFCO and the District, if the Draft EIR was revised to address the District concerns and comments contained herein. The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these provisions of LAFCO are complied with. The District would suggest that the current Draft EIR does not provide this information.

The Polices further state:

“F. NEED FOR SERVICES

The LAFCO may determine that a need for service exists or any of the following situations are present:

1. The growth rate and density pattern indicates that the subject area will be developed for urban use within five years.
2. The subject territory has been pre-zoned, or is designed for urban uses in the appropriate land use authority's General Plan.
3. Other evidence of impending urbanization is presented, including the following:
 - a. Tentative or final land use entitlement has been granted;
 - b. Building permits have been issued;
 - c. Service assessment districts have been created; or
 - d. Other evidence of impending urbanized development exists.” (emphasis added)

MUSD-45

The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these provisions of LAFCO are complied with. The District would suggest that the current Draft EIR does not provide this information and that there is a need for service exists in order for the Project to be properly served.

The Polices further state:

“G. STANDARDS FOR ANNEXATION TO AND DETACHMENT FROM AGENCIES

These standards govern LAFCO determination regarding annexations and detachments.

1. An application to LAFCO for an annexation or detachment requires the submittal of an application form, supporting documentation, and fees, as set forth in Chapter II of LAFCO's policies, standards and procedures. In addition, the application shall be accompanied by a response to the applicable standards set forth in this section. On or after May 1, 1991, no application for an annexation

shall be accepted as complete by LAFCO in the absence of a Sphere of Influence Service Area Plan approved by LAFCO as provided in these LAFCO standards.

2. The annexation or detachment must be consistent with LAFCO's adopted policies and standards applicable to all changes of organizations.
3. The annexation or detachment must be consistent with the Sphere of Influence boundary. The land subject to annexation shall lie within the existing Sphere of Influence boundary of the annexing city or district.
4. The annexation must be consistent with the applicable Service Area Plan. An annexation shall be approved only if the Service Area Plan of the affected agency demonstrates that adequate services will be provided within the time frame needed by the inhabitants of the annexed area. Proposed annexations for land areas that lie outside of the current and next five-year increments of projected service delivery in the Services Area Plan are presumed not to comply with this standard unless the applicant clearly establishes that special and unique circumstances exist which ensure the provision of quality services during the applicable time frame for the affected area consistent with the other standards.
5. Applications to annex unincorporated islands may be approved by the LAFCO Commission. Annexations to annex lands mostly surrounded or within a Sphere of Influence which otherwise correct illogical distortion of boundaries, maybe approved unless they would violate another provision of these standards.
6. Annexation of Cities shall reflect logical allocations of existing roads and rights-of-way. Boundaries of annexations shall be set as follows:
 - a. Annexations to Cities shall include the full road width and right-of-way of any/all roads, railroads, canals, and similar, adjacent to the parcel(s) proposed for annexation. Streets shall be annexed where there are isolated sections of County roads, which will result from an annexation.
 - b. Annexation boundaries must be drawn so that city limits do not fall within the road or right-of-way, road islands are not made from county-maintained roads, islands of road are not caused by annexation on both sides of the road, nor is a road annexed as a strip.” (emphasis added)

MUSD-45

The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these provisions of LAFCO are complied with. In particular, the Service Area Plan should be discussed and

included in the Draft EIR. The District would suggest that the current Draft EIR does not provide this information.

The Polices further state:

“H. DETERMINATION OF COSTS

1. Service cost identification and measurement for purpose of determining revenue impacts and for purposes of assessing financial feasibility should be based on the actual cost of service provided. If actual costs cannot reasonably be identified and measured, costs should be allocated based upon the measure which most accurately reflects the level of service received. The LAFCO will rely upon current service providers to estimate service costs, so long as costs are estimated in compliance with these standards.
2. When calculating property tax revenues to be transferred in the case of incorporation or the formation of a district, the LAFCO must identify the proportion of County Property Tax Revenue to County General Purpose Revenue, as well as the portion of the cost of services which is funded through general purpose revenue.
3. The information provided by the State Board of Equalization will determine the amount of sales tax revenue and state subventions generated within the subject territory as part of the determination of financial impact.
4. The LAFCO will, pursuant to the Cortese-Knox-Hertzberg Act, mitigate with the intent of neutralizing financial impacts by any of the following means:
 - a. Waiver of detachment from an existing service provider, or alternatively, a fund exchange agreement in compensation for the potential adverse impact caused by such detachment;
 - b. Agreement between agencies to annex the subject territory to a different service provider;
 - c. Agreement to enter a Joint Powers Agreement with another service provider;
 - d. Modification of the proposal (e.g., changed boundaries) which eliminated the harmful impact, or reduces the harmful impact to an acceptable level;
or
 - e. Tax sharing, lump sum payments, or payments over a fixed period of time.

MUSD-45

5. The LAFCO may at its discretion, determine and consider the various measures of costs when reviewing a proposal.
 - a. Fixed or capital costs such as hookup;
 - b. Charges for service, such as rates;
 - c. Costs of potential environmental damage; and
 - d. Any other project specific costs." (emphasis added)

The District suggests that the cost of the environmental damage that is caused to the District requires LAFCO to address these financial consequences. The Draft EIR should identify these environmental damages, the associated costs, and the financial consequences on the District. The Draft EIR should be revised to include the data, and quantitative and qualitative analysis to provide the information that is needed to insure that these provisions of LAFCO are complied with. The District would suggest that the current Draft EIR does not provide this information.

MUSD-45

The Policies further state:

"This chapter presents the general policies that will apply to all LAFCO considerations of any application for changes in organization and Sphere of Influence determinations. These policies are general in nature. In certain situations, the application of one policy may conflict with the application of another; in that case, the LAFCO will exercise its discretion to balance policies in a manner consistent with the Cortese-Knox-Hertzberg Act and the standards contained in this document.

The Imperial Local Agency Formation Commission has adopted the following General Policies, which apply to all proposals.

1. The LAFCO will encourage participation in the decision-making process. To do this, the LAFCO shall publish notice, and mail notice to landowners of a project site, and may provide mailed notice to surrounding landowners within 300 feet, or to landowners beyond 300 feet if determined necessary by Executive Officer.
2. The LAFCO will coordinate and facilitate, to the maximum extent feasible, communication on actions among the County, Cities and Special Districts.
3. The LAFCO encourages projects that result in the provision of urban services in densely developed and populated areas rather than in uninhabited or sparsely inhabited territories.

4. The LAFCO will protect agricultural and open space lands from premature conversion as required under State Law.
5. The LAFCO encourages projects that will provide urban services in areas with high growth potential rather than in areas with limited potential for future growth.
6. CEQA requires that LAFCO assess the environmental consequences of its decisions, and actions to avoid or minimize projects significant adverse environmental impacts. To comply with CEQA, the LAFCO will take one of the following actions:
 - a. At its discretion, approve a project without changes if environmental impacts are insignificant;
 - b. Require an applicant to modify a project;
 - c. Establish mitigating measures as a condition of its approval of the proposal; or
 - d. Deny the proposal because of unacceptable, significant adverse environmental impacts.
7. The LAFCO encourages those applications that do not shift the cost for services and infrastructure benefits to other service areas.
8. The LAFCO will discourage proposals that have potential for significant adverse social, economic or other impacts that cannot be mitigated.
9. The LAFCO encourages the use of service providers, which are governed by officials elected by the citizens.
10. The LAFCO policy is, that community needs are met most efficiently and effectively by governmental agencies which are already in existence, by agencies which are capable of coordinating service delivery over a relatively large area, and by agencies which provide more than one type of service to the territory which they serve.

The LAFCO encourages, in descending order, the following forms of organizational change:

- (1) Annexation to an existing city;

MUSD-45