

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.”

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.

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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.

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### 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).

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(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.

(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.

(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).

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(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

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.

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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.

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.

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.

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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.”

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.

**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. Irrecoverable commitments of resources should be evaluated to assure that such current consumption is justified.”

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

“8.3 - Irreversible and Irrecoverable 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.”

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.

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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.

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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 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....”

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(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.”

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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.

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.

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.

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(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.

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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.”

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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.”

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.”

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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”

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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.

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#### **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 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.

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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:

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.

### 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.

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### 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.

#### 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 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.

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.

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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.

- (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

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to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.”

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.

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.

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#### **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. Participate in the acquisition of one (1) 55-acre high school site to be located south of Highway 8 to relieve the demand for the use of school capacity at Southwest High School and Central Union High School serve the impacts of project located north of Highway 8.
2. Provide for the "fair share" of the financing of interim facilities and District-wide support facilities as may be required to serve the Project.
3. 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.
4. 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

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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.

5. 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.
6. 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.
7. 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.

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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.

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

#### “Educational Facilities

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.

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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.

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.

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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.

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.

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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.”

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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.”

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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”.

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.

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

“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.

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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.”

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.)
- (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)

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- (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

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.

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### **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.

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".

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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:

- 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.

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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.

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.

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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...”

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...”

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 crated 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

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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.

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.

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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.

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 I*); *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.

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

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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 preparers 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.

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.

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

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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.

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.

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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.

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.

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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.

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.

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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:

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“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:

“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)

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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.

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.
- 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)

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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.

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 Policies 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..."

CUSD-45

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.

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)

CUSD-45

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 Policies 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);
- 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)

CUSD-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 policy statements are complied with.

The Policies 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.”

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.”

CUSD-45

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)

CUSD-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 Polices 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:
  - 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)

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 Policies 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)

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)



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)

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.

CUSD-45

The Policies 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.
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)

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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.

The Polices 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;
  - (2) Annexation to an existing district, which has an independent governing body (an independent district);
  - (3) Annexation to an existing service area or district of which the Board of Supervisors is the governing body (a dependent district);
  - (4) Formation of a County Service Area or dependent district, which provides multiple services;
  - (5) Formation of a County Service Area or dependent district, which provides a single service;
  - (6) Formation of a new independent (Community Service) district, which provides multiple services;
  - (7) Formation of a new independent single service district; and
  - (8) Incorporation of a new city.
11. The approval of proposals by LAFCO must be conditioned to mitigate the following adverse impacts to a level considered less than significant:
    - a. Any threat to the public health and safety;

- b. Any reduced or eliminated service availability;
- c. Any unacceptable reduction of service quality;
- d. Any loss of economics of scale;
- e. Any duplication of service capacity or facilities;
- f. Any proposal that exceeds the service provision capability as outlined in the Service Area Plan; and
- g. Any double taxation for provision of a service” (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 provisions of LAFCO are complied with. The District would suggest that the current Draft EIR does not provide this information. The Draft EIR should provide evidence that the Project results in the provision of urban services in densely developed and populated areas rather than in uninhabited or sparsely inhabited territories. Further, the Draft EIR should show how the Project protects agricultural and open space lands from premature conversion as required under State Law. Further, the Draft EIR should show how the Project will provide urban services in areas with high growth potential, rather than in areas with limited potential for future growth. Further, the Draft EIR should show a complete analysis of the environmental consequences associated with the approval of the Project and all actions to avoid or minimize projects significant adverse environmental impacts. Finally, the Draft EIR should show how the Project a) is not a threat to the public health and safety of the District; b) does not reduced or eliminated service availability offered by the District; c) causes an unacceptable reduction of service quality of the District; or d) creates a loss of economics of scale to the District.

CUSD-45

The Polices further state:

“The Imperial Local Agency Formation Commission has adopted specific standards for its actions to ensure that it renders fair and consistent decisions in accordance with State law. The LAFCO will use these specific standards, as well as the applicable policies and general standards, during its decision-making process.

#### A. ANNEXATIONS TO CI TIES AND DISTRICTS

1. The State Legislature has provided the LAFCO with a tool, in the form of Spheres of Influence, to use in shaping logical and orderly development and coordination

of local government agencies. The LAFCO will apply this tool by adhering to the following standards:

- a. The LAFCO may approve an application for annexation only if the proposal conforms to and lies wholly within the approved Sphere of Influence boundary for the affected agency;
  - b. The LAFCO will encourage proposals and actions that are a part of an orderly, phased annexation program by an agency for territory within its Sphere of Influence Plan; and
  - c. An annexation must be consistent with a City or District's "Service Area Plan" of its Sphere of Influence Plan; and
  - d. The LAFCO encourages the annexation to each City of all islands of unincorporated areas located within the City's boundaries.
2. The LAFCO will not permit proposals in which boundaries are not contiguous with the existing boundaries of the City to which the territory will be annexed, unless the area meets all of the following requirements:
- a. Does not exceed 300 acres;
  - b. Is owned by a City;
  - c. Is used for municipal purposes; and
  - d. Is located within the same County as the City.
3. The LAFCO encourages Cities to annex streets where adjacent municipal lands will generate additional traffic and where there are isolated sections of county road that will result from an annexation proposal.
4. An annexation may not result in islands, corridors or peninsulas of incorporated or unincorporated territory or otherwise cause or further the distortion of existing boundaries unless findings are made that annexation as proposed is necessary for orderly growth." (emphasis added)

CUSD-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. In particular, the Draft EIR should show how the Project is a part of an orderly, phased annexation program the City for territory within its Sphere of

Influence Plan, and that the Project is consistent with a City's "Service Area Plan" of its Sphere of Influence Plan. In addition, the Draft EIR should show how the Project does not result in islands, corridors or peninsulas of incorporated or unincorporated territory or otherwise cause or further the distortion of existing boundaries or that there can be provided evidence that the Project is necessary for orderly growth of the City. The District would suggest that this analysis is not included in the Draft EIR.

It is the District's finding that the Project does not meet the Objectives and Policies of the Imperial County LAFCO Policies for the same reasons that the Proposal does not comply with the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and is not in compliance with the City's and County's General Plan with regards to public services and facilities. Further, the District finds that the impacts and consequences of the Project are not mitigated or adequately addressed.

The District again restates that the provision of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires a "plan of services" and requests that this plan of services be provided in the Draft EIR:

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"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."

In addition the District wants to identify that LAFCO is required to consider specific information that should be contained in the Draft EIR or as an appendix to the Draft EIR to fulfill the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000:



“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.

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- 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.
- 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.”

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The Draft EIR should be revised to address the flaws in the environmental analysis, the General Plan conformity analysis, and the compliance of the Project with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and the LAFCO polices.



### Central Union High School District, October 28, 2007

*Note to the reader: Due to the volume of comments contained in the letter from the McCabe Union Elementary School District, each comment has been summarized then followed by the City's response to the comment.*

*Comment CUSD 1. The cover letter of the package of comments submitted by the Central Union High School District (CUSD) was prepared to set the stage for the argument that the Draft EIR and Revised Draft EIR (together comprising the Draft EIR) are inadequate and must be revised and recirculated for public review. It consisted of a description of the proposed project, citation of various sections of CEQA or the CEQA Guidelines that point to the District's position that Draft EIR must be revised and recirculated. Embedded in the cover letter are three specific points that are addressed in response to comment CUSD-1.*

*Comment. The District pointed out a discrepancy (page 4 of 153) between the Notice of Availability (NOA) of the Revised DEIR and the content of Section 1.3 of the Revised DEIR as to whether the reviewer can comment on both the Draft EIR (November 2006) and the Revised DEIR (September 2007) or if comments are limited to the Revised Draft EIR. Therefore, the District chose to comment on both documents.*

*Response. Because the District has provided comments on both the Draft EIR and Revised Draft EIR in this letter, the City will assume that any previous letters from the District with regard to either document have been superceded and will only provide responses to comments contained in the District's letter dated October 28, 2007.*

*Comment. The District pointed out (page 4 of 153) that Appendix A of the Draft EIR does not include a copy of the District's October 9, 2006 comments on the revised Notice of Preparation.*

*Response. The October 9, 2006 letter will be included in Appendix A of the Final EIR.*

*Comment. The District wants the City to understand its formal position with regard to the project and other development proposals within the District, particularly with regard to the collaboration and negotiation of implementation and financing agreements with developers to address the school facilities, interim facilities, District-wide support facilities, and student transportation requirements ... The District is open to all creative financing and implementation tools that developers or their consultants offer (page 7 of 153)*

*Response. The City acknowledges that the District has issued a letter prepared by CSA which, in summary, states that the project would have significant cumulative impacts on the District that would not be fully mitigated by development impact fees authorized by SB 50, thus requiring the*

preparation of a Revised and Recirculated Draft EIR. The letter states that SB 50 and its provisions are inadequate to fully mitigate school district impacts. The letter goes on to state that the City has options which are not in violation of SB 50 and that by not exercising those options, the City of El Centro City Council has failed to fulfill its responsibilities to protect the constituents of the City of El Centro, including the District and the other school districts within the City, by relinquishing their discretionary responsibilities with regards to land use decisions in the City to the State of California.

Although the project is not of a scale to require the construction of new facilities which could have an environmental impact, the City recognizes that the project would result in additional students attending school in the District; however, the increase in student population would be mitigated by school facilities fees paid pursuant to SB 50. The intent of SB 50 was to impose limitations on the power of cities and counties to require mitigation of impacts on school facilities as a condition of approving new development and suspends or repeals the series of cases known as *Mira/Hart/Murrieta*. However, it also authorizes school districts to levy statutory developer fees at levels which may be significantly higher than those previously permitted, although school districts must follow a new set of rules to do so.

The provisions of SB 50 prohibit local agencies from denying either legislative or adjudicative land use approvals on the basis that school facilities are inadequate; and reinstates the school facility fee cap for legislative actions (e.g., general plan amendments, specific plan adoption, zoning plan amendments) which was previously put into place by the 1986 School Facilities Law, but which were nullified by the *Mira/Hart/Murrieta* court cases. According to Government Code Section 65996, the development fees authorized by SB 50 are deemed to be "full and complete school facilities mitigation."

Further, SB 50 indicates that developer fees are not intended to be the sole source of funding for new school facilities, but are intended to supplement state and local bond funding for school facilities. SB 50 also permits school districts to impose higher fees (level 2 and level 3), if higher fees are justified on the basis of an adequate facilities needs analysis (nexus study) or the lack of availability of school bond revenues. The City is not aware of the District having imposed additional school fees over the base-level allowed under SB 50, and justifying such an increase through a nexus study. CEQA does not require the environmental document to provide an analysis of the District's fiscal health, or additional funding sources because they are not environmental issues associated with the project.

The City recognizes that the project would cumulatively contribute to additional enrollment impacts to the District along with all other cumulative development projects within the District's boundaries. All new development in the City is required to pay school facility impact fees as required by SB 50.

This would provide full and complete mitigation pursuant to the statute for impacts from cumulative development affecting District schools. CEQA Guidelines Section 15130(a)(3) states that a project's cumulative contribution is less than considerable if the project is required to implement or fund its fair share of a mitigation measure designed to alleviate the cumulative impact (i.e., payment of SB 50 fees).

In summary, the City acknowledges the intent of CSA's letter written on behalf of the District to convey the District's belief that SB 50 is not adequate to fully mitigate the impact of development upon school facilities. However, the school facility impact fee schedule is based on current state law and Government Code 65996 which states that the "development impact fees authorized by SB 50 are deemed to be 'full and complete school facilities mitigation' for the impact caused by new development on school facilities," SB 50 indicates that developer fees are not intended to be the source of funding for new school facilities. Developer fees are intended to supplement state and local bond funding for school facilities. If the District determines that additional funding is necessary, this must be accomplished through separate funding mechanisms, but the formation of such funding mechanisms is beyond the scope of this CEQA document.

Because impacts to school facilities are considered by state law to be fully mitigated by the payment of fees pursuant to SB 50, the City is not required to again recirculate a Revised Draft EIR.

*Comment CUSD-2. This comment (pp. 9 through 20 of 153) provides a summary of the applicable provisions of the CEQA Guidelines with regard to the District's right to comment on the whole of the document not just potential impacts to the District facilities, because "any person or entity other than a Responsible Agency may submit comments to a Lead Agency concerning any environmental effects of a project being considered by the Lead Agency (CEQA Guidelines Section 10544)." Further, the District is a public agency that does not have "discretionary approval power over the Project" but does have an obligation to its constituents, so that commenting on the whole of the Draft EIR and Revised Draft EIR is justifiable.*

*Response:* The City acknowledges receipt of the comments and has made a good faith effort to provide responses that address the District's concern for its constituents. However, the District is advised that under Public Resources Code 21153(c), and CEQA Guidelines sections 15086(c) and 15096(d), as a public agency, the District should only be making substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or which are required to be carried out or approved by a responsible agency. The District's letter strays from school issues.

*Comment CUSD-3: This comment (pp. 20 through 23 of 153) provides a summary of Section 2 of the Draft EIR which in turn, is a summary of the Draft EIR and the findings reached on the*

*environmental impacts associated with the implementation of the proposed project and concludes by agreeing with these findings. That is, that the project will generate an increased demand for and extension of public services to the project site, particularly with regard to the District's ability to provide educational services and operations.*

*Response.* The City agrees with the District's conclusion that the Draft EIR addresses the increased demand for Public Services.

*Comment CUSD-4: This comment (pp. 23 through 27 of 153) summarizes the Introduction to the Revised (Recirculated) Draft EIR and notes that the "Recirculated Draft EIR does not address project-specific or cumulative impacts and mitigation measures which address the availability of school facilities and ability of the District to provide school educational and operations provided by the District to serve the project (see last paragraph on page 24 of 153).*

*Response.* The analysis of Public Services in Section 5.8 of the Draft EIR concluded that impacts associated with the implementation of the proposed project were either less than significant or could be reduced to less than significant levels through the payment of Development Impact Fees, or in the case of parks, the development of a park on-site. In the case of solid waste disposal, the mitigation is to recycle construction materials. Because impacts to school facilities are considered by state law to be fully mitigated by the payment of fees pursuant to SB 50, the project will not result in a significant and unavoidable impact; the Draft EIR complies with applicable CEQA requirements. (CEQA Guidelines Section 15130(a)(3).

The City recognizes that as new residential subdivisions are developed, impacts to school districts will occur through the increase in the school aged population and has worked with the applicants to have them to set aside a site for an elementary school, because the proposed project could generate approximately 252 new K through 6 students, or approximately fifty-six percent of a 450 student elementary school. However, because the proposed project would only generate approximately 172 (.354 multiplied by 485 single family units) high school students, a much smaller percentage of the student population of a typical high school, no similar set aside for purchase by the CUSD was proposed. As discussed in Response to Comment CUSD-1, the City acknowledges the intent of CSA's letter written on behalf of the District to convey the District's belief that SB 50 is not adequate to fully mitigate the impact of development upon its school facilities. However, the school facility impact fee schedule is based on current state law and Government Code 65996 which states that the "development impact fees authorized by SB 50 are deemed to be 'full and complete school facilities mitigation' for the impact caused by new development on school facilities," SB 50 indicates that developer fees are not intended to be the source of funding for new school facilities. Developer fees are intended to supplement state and local bond funding for school facilities. If the District determines that additional funding is necessary, this must be accomplished through separate funding

mechanisms, but the formation of such funding mechanisms is beyond the scope of this CEQA document.

*Comment CUSD-5: This comment (pp. 27 and 28 of 153) states that the Draft EIR does not provide quantitative and qualitative analysis that supports the conclusion that the project can meet the objectives identified in Section 3.3 of the Draft EIR.*

*Response.* Each of the five objectives is discussed here to show that the Draft EIR has adequately addressed that the project can meet the stated objectives.

- *Supply single-family housing that is contiguous with the similar development and within the City's Sphere of Influence.* The project site is adjacent to the City of El Centro westerly corporate boundary. It is contiguous to existing residential uses on the north and east. See exhibits 3-2 and 4-1 to see the relationship between the project site and surrounding uses. Exhibit 4-1 is an aerial photograph showing that existing urban uses, including a high school are located immediately to the east and northeast. The analysis that supports this conclusion can be limited to the interpretation of the Thomas Guide exhibit and the aerial photograph. No further quantitative or qualitative analysis is required.
- *Supply single-family housing the meet the growth projections of the City of El Centro* The City adopted its Housing Element update in March 2008, so the response to this comment relies on the most current information. The City has concluded that an average of 289 new housing units are constructed each year in El Centro, based on the number of building permits issued between 2000 and 2007. The average over the past seven years would not be sufficient to meet the new RHNA numbers established by SCAG of 390 units per year for the next 5 years. The average number of units permitted between 2004 and 2007 equals approximately 382 per year. The City believes that there is sufficient zoned and vacant land to meet, or exceed the RHNA numbers at all income levels in the future. Therefore, the project's objective to supply single-family housing to meet the City's growth projections is consistent with the City's Housing Element.
- *Locating development to meet anticipated growth in the areas of relatively lesser environmental sensitivity.* The project site is currently zoned General Agriculture/Urban Overlay (A2U). The County has designated farmland adjacent to urban uses as A2U to indicate that it is likely that in the future, these areas would convert to urban uses. The conversion of farmland to urban uses is an integral part of the project description evaluated in the Draft EIR, particularly in sections 5.1 – Agricultural Resources, and 5.3 – Biological Resources. The findings of the Draft EIR have been revised in response to comments from the City, County and LAFCO. After further review, the City finds that although the project would result in the conversion of 2.3 acres of Prime Farmland and 152 acres of Farmland of



Statewide Importance to urban uses, the project would have a less than significant impact on agricultural resources because the site is within the City's Sphere of Influence where the land use designation is *Low Density Residential* and the impact associated with the loss of agricultural land to urban uses, as the City grows, has been adequately analyzed in the General Plan. Furthermore, the Imperial County agricultural lands replacement policy only applies to projects that convert 40 or more acres of Prime Farmland, so the 2.3 acres affected by the project does not constitute a significant loss of Prime Farmland and therefore does not require mitigation.

- *Provide public infrastructure improvements for the orderly expansion of urban development.* Access to the project would be via an extension of Ocotillo Drive east of the project site, and Ross Avenue along the north as described in the Project Description and as evaluated in Section 5.9 Transportation and Traffic. The conclusion of the Traffic Engineer based on quantitative analysis is that all studied intersections and segments will operate at acceptable levels of service with the project. Payment of Development Impact Fees will allow the City to continue to upgrade roads and intersections as growth occurs. Water supply is adequately addressed in Section 5.10 – Utilities and in the WSA included in Appendix J of the Draft EIR. The WSA concluded, based on quantitative analysis that no impacts to water supply would occur. The Initial Study prepared for the project concluded that the project would not have a significant impact on sewer and wastewater treatment facilities with the payment of Development Impact Fees. Likewise storm drains will be provided on site and the project will drain into an on-site retention basin so no impacts to storm drains would occur. Storm water drainage will be provided through a series of storm drains that are directed to the 15.49-acres of retention basins. The storm drain system and basin will be sized to meet the approval of the City's Public Works Department. Therefore, no significant impact would occur.
- *Locate housing adjacent to a major highway arterial (I-8) to better promote efficient traffic flows and minimize traffic demands on local and collective streets.* The project site is located immediately north of the I-8 corridor with access to the freeway via Forrester Road or Highway 86. The analysis that supports the conclusion that the project meets this objective can be limited to the interpretation of the Thomas Guide or AAA map where locations of freeway ramps are identified. No further quantitative or qualitative analysis is required.

*Comment CUSD-6: This comment (p. 29 of 153) refers to CEQA Guidelines Section 15124(c) which states that a project description should include "A general description of the project's technical, economic and environmental characteristics, considering the principal engineering proposals, if any and supporting public facilities."*

*Response:* The proposed project is a typical residential subdivision that includes retention basins, parks and an elementary school site as its proposed uses. The site is located adjacent to the City of El Centro and to an existing residential neighborhood. It is also adjacent to other sites that are in various stages of project approval for similar developments. The Project Description describes the project including the need to extend and/or upgrade public services and utilities. This is typical of any project of this type and does not represent site specific or project specific technical, economic or environmental issues that would require a more detailed explanation than what has been provided. Also see comment CUSD-2 where the District acknowledges that it is not a Responsible Agency.

*Comment CUSD-7:* This comment (pp. 29 and 30 of 153) refers to Section 3.4 of the Project Description -- Intended Use of this EIR, Responsible Agencies, and Approvals Needed and that the District has not been cited as a Responsible Agency that is expected to use the Draft EIR in its decision making.

*Response.* The District is referred to Public Resources Code Section 21069 and CEQA Guidelines Section 15381 for the definition of a Responsible Agency. CUSD is not a responsible agency for the proposed project because it does not have any discretionary approval authority over the project.

*Comment CUSD-8:* This comment (pp. 30 through 41 of 153) provides a reiteration of the discussion in the Draft EIR of public schools, and states that the discussion is inadequate, incomplete and factually inaccurate. The comment also provides more current information for the City to use in its review of the proposed project.

*Response.* The City thanks the District for updating the information provided in the Draft EIR. It should be noted that the Draft EIR was circulated in 2006 and the comments received on the document are from 2007. It should also be noted that the information contained in the Draft EIR is based on consultation with the CUSD Superintendent and the District's Needs Analysis provided to the EIR preparer in response to the inquiry submitted during the preparation of the Draft EIR (see correspondence attached at the end of the responses to CUSD comments). What this shows is that as the population of the City of El Centro and environs grows, so does the student population.

As the District is aware, the provisions of SB 50 prohibit local agencies from denying either legislative or adjudicative land use approvals on the basis that school facilities are inadequate; and reinstates the school facility fee cap for legislative actions (e.g., general plan amendments, specific plan adoption, zoning plan amendments) which was previously put into place by the 1986 School Facilities Law, but which were nullified by the *Mira/Hart/Murrieta* court cases. According to Government Code Section 65996, the development fees authorized by SB 50 are deemed to be "full and complete school facilities mitigation."

Further, SB 50 indicates that developer fees are not intended to be the sole source of funding for new school facilities, but are intended to supplement state and local bond funding for school facilities. SB 50 also permits school districts to impose higher fees (level 2 and level 3), if higher fees are justified on the basis of an adequate facilities needs analysis (nexus study) or the lack of availability of school bond revenues. The City is not aware of the District having imposed additional school fees over the base-level allowed under SB 50, and justifying such an increase through a nexus study. CEQA does not require the environmental document to provide an analysis of the District's fiscal health, or additional funding sources because they are not an environmental issue associated with the project.

*Comment CUSD-9: This comment (p. 42 of 153) states that the Draft EIR does not provide an accurate understanding of the provisions, limitations and authorizations contained in the legislation and which apply to school districts.*

*Response.* Please see responses to comments CUSD-1 and CUSD-7.

*Comment CUSD-10: This comment (p. 43 of 153) states that the Draft EIR needs to acknowledge that the project is located north of I-8, but schools are located south of I-8 so students would need to be bussed and that the bussing impact needs to be addressed in the Draft EIR. Also the information contained in the District's comment letter needs to be used to update the Draft EIR.*

*Response.* This comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District as clearly stated in the comment. The District is referred to responses to comments provided by the MUSD.

*Comment CUSD-11: This comment (pp. 43 through 45 of 153) states that the MUSD and the State have specific requirements for an elementary school site and that the site identified on the project's site plan may not be adequate. The comment states further that the Draft EIR is incomplete because the environmental issues associated with the actual development of a school at that site have not been considered.*

*Response.* This comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District. The CUSD is referred back to responses to MUSD's comments.

*Comment CUSD-12. This comment (p.45 of 153) refers to elementary student safety if they would have to walk along McCabe Road and Austin Road to get to the existing school.*

*Response.* It is unclear in this comment whether the CUSD is suggesting that the students would walk to school, or that they would walk to a nearby bus stop. If it is the former, the CUSD is referred back to Comment MUSD-10 in which the MUSD states that the Draft EIR needs to acknowledge that the project is located north of I-8, but schools are located south of I-8 so students would need to be bussed and that the bussing impact needs to be addressed in the Draft EIR. If it is the latter, then this issue can be resolved by the District identifying the optimum location or locations for a new school bus stop to be located that takes into consideration the students safety. Also, this comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District.

*Comment CUSD-13:* This comment (pp.45 through 47 of 153) provides an update to information contained in the Draft EIR analysis of impacts to the Central Union High School.

*Response.* The District is referred to response to comment CUSD-8.

*Comment CUSD-14:* This comment (p. 48 of 153) states that the discussion of the student generation rates for elementary school students needs to be updated based on current student generation rates.

*Response.* This comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District. The CUSD is referred back to responses to MUSD's comments.

*Comment CUSD-15:* This comment (p. 48 of 153) states that the Draft EIR needs to be updated to identify how the District will handle new middle school students.

*Response.* This comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District. The CUSD is referred back to responses to MUSD's comments.

*Comment CUSD-16:* This comment (pp. 48 and 49 of 153) states that the MUSD's requirement for the size of an elementary school is 15 net acres and that the proposed school site is 11.77 acres. An additional 3.23 net acres would be required. The comment also states that elementary school students would go to the school within the project but that middle school students would not attend school within the project.

*Response:* This comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District. The CUSD is referred back to responses to MUSD's comments. Additionally, it should be noted that revisions to the site plan resized the school site to

9.98-acres, and the MUSD agreed that it is sufficient for their needs as it would accommodate approximately 450 students.

*Comment CUSD-17: This comment (pp. 49 and 50 of 153) states that the Draft EIR does not adequately address the development of an elementary school site in terms of the site plan, design, construction and operation. The comment also identifies the cost to develop a school and the need for interim facilities prior to development of a permanent school. The Draft EIR should be revised.*

*Response:* This comment strays from the CUSD's area of expertise since the comment applies to the McCabe Union Elementary School District. The CUSD is referred back to responses to MUSD's comments.

*Comment CUSD-18: This comment (pp. 50 and 51 of 153) states that the Draft EIR needs to be updated to identify how the District will handle new high school students.*

*Response.* The District is referred to response to comment CUSD-1.

*Comment CUSD-19: This comment (pp. 51 through 53 of 153) states that the project cannot be mitigated by the payment of school impact fees and suggest additional measures including, but not limited to, dedication of a 15-acre site, participation in construction financing of the elementary school, and participation in construction financing of a new high school.*

*Response:* Please see responses to comments CUSD-1.

*Comment CUSD-20: This comment (pp. 54 and 55 of 153) states that Areas of Controversy identified in Section 2.2 of the Draft EIR have not been addressed and discussed in detail in the Draft EIR.*

*Response:* Areas of Controversy identified in Section 2.2 of the Draft EIR are discussed in within the Draft EIR's sections as indicated in parentheses at the end of each bulleted issue.

*Comment CUSD-21: This comment (pp. 55 through 58 of 153) states that the Draft EIR fails to adequately evaluate direct, indirect and cumulative impacts on the environment, particularly schools. The comment states that impacts to the District would remain significant.*

*Response:* See response to comment CUSD-1. For impacts to schools specifically, see Section 5.8 of the Draft EIR.

*Comment CUSD-22: This comment (pp. 58 through 64 of 153) provides a list of additional topics that should be discussed in the Draft EIR.*

*Response:* Responses will follow the numerical sequence of the comment.

1. *The Draft EIR should address direct, indirect and cumulative impacts on the District*  
The Draft EIR evaluated the potential environmental impacts of the development of a school site within the larger project site at a level of detail appropriate for the project. The District did not provide any site plans, design drawings, construction schedule, or an opening year for the new school. Therefore, further analysis was not feasible at this time. At such time as the District decides to purchase the property, it will make the decision as the lead agency whether additional environmental review is required.
2. *The Draft EIR should address direct, indirect and cumulative impacts on circulation and traffic patterns.* The impacts to the circulation system were adequately addressed in the Draft EIR and updated in the Revised Draft EIR for cumulative projects. Also see response 1 above.
3. *The Draft EIR should address direct, indirect and cumulative impacts on routes and safety of students traveling to schools.* High school students would ride a bus, drive themselves, coordinate carpools, or ride a bicycle as they choose. How high school students choose to travel to school each day is speculative and beyond the scope of the EIR.
4. *The Draft EIR should address how the District would accommodate additional students. Overcrowding would have physical, social, financial and psychological effects on students, etc. Mitigation measures must be provided for these effects.* The District is referred to response to comment CUSD-1.
5. *The Draft EIR should address the potential for overcrowding that may have physical, social, financial, and psychological effects on students.* The District is referred to response to comment CUSD-1.
6. *Revise the Draft EIR to address the potential for need for additional schools and related facilities.* The District is referred to response to comment CUSD-1.
7. *Revise the Draft EIR to address the deficiencies in the fees paid versus the revenues required to fund the permanent and interim school facilities.* The District is referred to response to comment CUSD-1.
8. *The Draft EIR should address additional alternatives including, but not limited to an alternative that has land uses that do not generate students.* These other alternatives were not considered because the project's potential impacts are due to construction and operation

of urban-type land uses, which would occur because the site was being developed and not because the site was being developed as a residential subdivision with an elementary school. In any case, all impacts can be mitigated to less than significant levels.

9. *The Draft EIR should address growth inducing impacts.* The Draft EIR addresses growth inducing impacts in Section 8 – Other CEQA Considerations and concludes that the project would be growth inducing directly by the construction of new residential units that would require the expansion of public services and utilities. As stated in that section “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 facilitation 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.”
10. *The Draft EIR should address the increased traffic and how it would affect the District’s busing and transportation timing and routes.* The Draft EIR addresses impacts to transportation and traffic in Section 5.0. This analysis was based on the findings of the project’s Traffic Impact Analysis which concluded that with the proposed project and cumulative projects, one intersection (Imperial Avenue/Ocotillo Drive) and one road segment (Imperial Avenue between Ross Avenue and Ocotillo Drive) would operate at LOS E or worse. However, with improvements to the intersection and road segment (mitigation measures TT6-1 and TT6-2), all road segments and intersections would operate at acceptable levels of service. Therefore, the District’s busing and transportation timing and routes should not be adversely affected.
11. *The Draft EIR should identify the significant environmental effects on public services and utilities.* The Draft EIR addresses impacts to public services and utilities in sections 5.8 and 5.10 respectively. The Initial Study prepared for the project concluded that the proposed project would not have an adverse impact to sewer/wastewater treatment because existing facilities that the project would connect to are adequate to serve the new project once the project’s internal sewer conveyance system is constructed. Storm drainage is addressed by the use of on-site storm drain facilities including on-site retention basins. A WSA (Appendix J) was prepared for the project that showed that there was adequate water

available to support the new project. Other environmental issues such as traffic circulation (Appendix I) and noise (Appendix H) are also adequately addressed in the Draft EIR. Without a more specific comment, a response cannot be any more focused.

12. *The Draft EIR should identify the significant irreversible environmental changes on public services and utilities. Please see response to comment CUSD-22 (11).*
13. *The Draft EIR should address how the project is consistent with the land use map, and the ALL goals (sic)... of the City and County general plans. As described in the Initial Study prepared for the proposed project: ... jurisdictionally, the project site is bordered by County lands that are zoned for agricultural uses to the south and west. In addition, the site is bordered to the north and east by City lands that are zoned for single-family residential. Specifically, the current land uses surrounding the project site include the Desert Village and Wildflower single-family subdivisions to the north, Interstate 8 and farmland to the south, the Lotus single-family subdivision to the east, and farmland to the west. In general, urban development is approaching the subject site from the north and east; whereas, west and south of the project site, the region predominantly consists of agricultural lands and associated rural residences. The Initial Study goes on further to say that the site is within the City of El Centro's Sphere-of-Influence. The project will require annexation and a zone change from County zoning Agricultural/Urban Overlay to the current City zoning of Single Family Residential. The project is consistent with the City's General Plan current land use designation of Low Density Residential and will not require a General Plan Amendment.*

The Initial Study stops at this point, however the County has designated farmland adjacent to urban uses as General Agriculture/Urban Overlay (A2U) to indicate that it is likely that in the future, these areas would convert to urban uses. Therefore, with the proposed zone change to Low Density Residential, the project would be consistent with the intent of both general plans.

14. *The Draft EIR needs to identify the deficiencies and inadequacies between the legal provisions of SB 50 and the actual implementation of the provisions regard to the project. The District is referred to response to comment CUSD-1.*
15. *The Draft EIR needs to address cumulative impact of the project based on the buildout of the City and County general plans identify the deficiencies and inadequacies between the legal provisions of SB 50 and the actual implementation of the provisions regard to the project. The District is referred to response to comment CUSD-1.*



16. *The Draft EIR should identify all agencies, organizations or private individual consulted during the preparation of the Draft EIR as well as the persons preparing the Draft EIR. This information is contained in the Draft EIR sections 9 through 11 and has been updated in the Final EIR to reflect that the EIR preparer consulted with the CUSD Superintendent in December 2005 and that the District provided the EIR preparer with responses to questions asked, and attached a copy of the District's Needs Analysis to use in the evaluation of project impacts on District facilities.*
17. *The Draft EIR should identify and describe all entitlements required for approval and development of the project. This information is contained in the Draft EIR 3.4 and is limited to those entitlements that would lead to the recordation of the Final Tract Map and annexation of the site into the City. Future activities under the proposed project related to the actual development of the site would consist of grading and building permits. Should the District choose to develop the school site with an elementary school, as the lead agency for the school project, the District would identify and notify other responsible agencies or organizations who would have input or permitting authority over the construction and operation of the school. Therefore, these permits were not specifically addressed in the Draft EIR.*
18. *The Draft EIR should identify economic and social information relative to the impacts of the project, tracing the chain of cause and effect from a proposed decision on a project through anticipated economic and social changes resulting from the project to physical changes caused in turn by the economic or social changes as they relate to the District. The District is referred to response to comment CUSD-1.*
19. *The Draft EIR should identify how the City and County general plans and program EIRs address the project specific and cumulative impacts of the proposed project. It is not the function of a general plan or its related program EIR to evaluate environmental impacts of a proposed development project but instead to evaluate the overall impact of a City or County buildout scenario at a specific time in the future. The proposed project was evaluated at a project specific level (to the extent feasible with existing information) and cumulatively for other reasonably foreseeable projects in the Draft and Revised Draft EIRs.*
20. *The Draft EIR should identify the inadequacies contained in the City and County general plans 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. The District is referred to responses to comments CUSD-22 (13), (19) and (20).*

21. *The Draft EIR update, the general plans and general plan EIRs to address current conditions. Asking the City to undertake a comprehensive update to both its and the County's general plans is beyond the scope of this EIR.*
22. *The Draft EIR should identify the operational, administrative, financial and legal impacts of the project on the District. The District is referred to response to comment CUSD-1.*
23. *The Draft EIR should describe how the current City and County 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. This comment is too vague and general for the City to be able to provide any meaningful response. It appears that the District is uncertain whether general plans are internally consistent. Moreover, this comment is beyond the appropriate scope of a comment by a school district as it does not relate to an area of expertise of the commenting agency. Also see response to comment CUSD-2.*
24. *If the developer is proposing to School Facilities Impact Mitigation Agreement between the developer and the District, such an agreement must be a part of the project description. At this time the developer is not proposing such an agreement.*
25. *The Draft EIR should address the legal constitutionality of the provisions of SB 50 as applicable to the mitigation of project impacts, the limits on cities and school districts to impose additional mitigation measures in excess of the limits of SB 50... or the refusal of the applicant to pay development fees in excess of statutory provisions. The District is referred to response to comment CUSD-1.*
26. *The Draft EIR should identify how the project is in compliance with LAFCO requirements applicable to annexations. The applicant must do a number of things subsequent to the City taking action on the project and certifying the Draft EIR. One is to apply for annexation with LAFCO who will then review the proposed project along with the certified EIR and other documents such as the Plan for Services, to determine whether it has enough information to adequately review the merits of the project in terms of having adequate services.*
27. *The Draft EIR should evaluate the interim facility requirements of the District to accommodate student enrollment that will be generated by the project and prior to permanent facilities being available for students generated by the project. The District is referred to response to comment CUSD-1.*

28. *The Draft EIR should accurately identify the projected student enrollment to be generated by the project by grade level, the specific schools that are intended to serve the project...* The District is referred to responses to comments CUSD-1 and CUSD-8.

*Comment CUSD-23: This comment (pp. 64 through 65 of 153) states that the District finds that the City failed to adequately address all mitigation measures available to mitigate the impacts to the District and provides a list of mitigation measures that should be considered in the Draft EIR.*

*Response:* The District is referred to responses to comment CUSD-1.

*Comment CUSD-24: This comment (pp. 65 and 67 of 153) states 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 full and complete disclosure of the data and analysis that leads to the conclusions, findings and mitigation measures in the Draft EIR.*

*Response:* The District is referred to responses to comments CUSD-7 and CUSD-8.

*Comment CUSD-25: This comment (pp. 67 through 68 of 153) states that the Draft EIR fails to provide detailed analysis of the following topics: Aesthetics, Hydrology/Water Quality, Land use and Planning, Mineral Resources, Population and Housing.*

*Response:* The Initial Study prepared for the Draft EIR and circulated with the NOP in 2006 addresses these issues and concludes the following:

- **Aesthetics:**
  - **Scenic Views.** Project implementation will result in transforming the site from primarily agricultural and undeveloped land to single-family residential land uses. The project area is not designated within the City of El Centro General Plan as visually important or scenic, and no scenic vistas will be impacted by construction of this project. The project does not include the destruction of rock outcroppings or degradation of any historic buildings. The project is not adjacent to a state highway which is designated as scenic. Thus, impacts to scenic vistas or scenic resources within a state scenic highway will not occur.
  - **Visual Character.** The project will result in the transformation of the project site from primarily agricultural and undeveloped land uses to single-family residential land uses. Urban development is approaching the subject site from the north and east. Located within 500 feet east and northeast of the project site are newly constructed single-family subdivisions. Project implementation will result in a continuation of the pattern of residential development in the project area. Therefore,

while the project will result in altering the visual characteristics of the site, project implementation is consistent and compatible with the existing pattern of development in the project area and therefore, it is not considered to substantially degrade the visual character or the quality of the site and its surroundings.

- Light and Glare. Project implementation will result in introducing street and security lighting, residential lighting, as well as light emanating from vehicles traveling on project area roadways. All stationary lighting will be in compliance with the El Centro Municipal Code to ensure that the height and intensity of lighting does not create substantial spillover outside the project boundary. Although the project includes lighting systems, these systems are not expected to result in significant lighting effects on the existing surrounding land uses.
- Hydrology/Water Quality:
  - Violate any water quality standards or waste discharge requirements. The proposed project will be implemented in accordance with all applicable water quality standards and waste discharge requirements, which will ensure that the quality and quantity of surface water flowing from the site would not be substantially affected.
  - Substantially deplete groundwater supplies or interfere substantially with groundwater recharge. El Centro's water supply comes from the Colorado River, and the City owns and operates a water treatment plant that provides clarification, filtration, and disinfection. According to the City's Water Master Plan Update, the existing raw water storage and treatment facilities have adequate capacity to meet the demands of the existing service area as well as several years of future development. Therefore, the groundwater supplies would not be substantially affected.
  - Substantially alter the existing drainage pattern of the site or area by increasing surface runoff or create or contribute runoff water that would exceed capacity of an existing or planned storm drain system or provide substantial additional sources of polluted runoff. There are no streams or rivers on the project site. However, the proposed project will alter the drainage pattern of the project site by introducing impervious surfaces. A Master Drainage Study was prepared for the proposed project to document the existing hydrology and drainage conditions, perform hydrologic and hydraulic calculations, and determine the appropriate size of the retention basin. Project implementation involves the construction of two (retention basins (totaling 15.63-acres), which will be designed to retain project 100 percent of project runoff from a 100 year/24-hour storm event. The retention basins will discharge into the Imperial Irrigation District Lotus Drain via a 12" pipe located along Ocotillo Street. Nuisance water from the proposed project will be pumped to the discharge pipe. Moreover, substantial improvements to the stormwater and

drainage collection system are under construction in the southern portion of the City in order to modernize the system and create additional capacity to handle existing flows. The proposed project will be implemented in accordance with all applicable drainage requirements, which will ensure that the quantity of surface water flowing from the site would not be substantially affected resulting in a less than significant impact.

- Land Use and Planning: This issue is addressed in response to comment CUSD-22(13).
- Mineral Resources: According to the El Centro General Plan, no mineral or oil extraction is currently occurring on the project site, nor has any such activity or operation historically occurred. Thus, there would result in no loss of availability of mineral resources.
- Population and Housing:
  - Induce substantial population growth in an area, either directly or indirectly. Project implementation will result in the construction of 485 single-family residential units, which will result in direct growth by introducing approximately 1,698 persons into the project area, based upon a generation rate of 3.5 persons per household as identified in the City of El Centro General Plan, February 2004. Additionally, implementation of the proposed project will indirectly induce growth through the extension of public and private services, including 2 city parks and a public school, and other support infrastructure, including new and extended roadways. However, the proposed residential development is an extension of the existing pattern of development in western El Centro and is consistent with the planned development and anticipated population outlined in the City's General Plan. Therefore, implementation of the project would result in a less than significant impact on the City's planned population projections. Also see response to comment CUSD-5 for a discussion of the project's objective for meeting the City's need for single-family residences to keep up with population growth that is occurring without the proposed project.

The Initial Study is included in Appendix A of the Draft EIR and should be reviewed in conjunction with the Draft EIR to provide a comprehensive review of the project without creating redundancy. The entire EIR from the Initial Study through the Final EIR makes up the Administrative Record for the project.

*Comment CUSD-26: This comment (pp. 68 through 70 of 153) states that the City does not have adopted CEQA Guidelines and that the significance criteria in the Draft EIR does not offer an identifiable quantitative, qualitative or performance level of a particular environmental effect.*

*Response:* The City Council adopted its *Environmental Policy Guidelines* by resolution (06-90) in July 2006. A copy of the guidelines can be obtained from the City's web site. The guidelines are consistent with and intended to supplement the State CEQA Guidelines and rely on the State's CEQA Checklist (Appendix G) for significance criteria. In addition, where other agencies have established significance criteria beyond those set forth in the CEQA Checklist, the City would defer to those as is demonstrated in the Draft EIR.

For example, the Draft EIR used the Imperial County APCD's CEQA Air Quality Handbook, which contains specific significance thresholds for emissions of criteria pollutants, to evaluate the project's impacts on air quality. With regard to Noise, the City has established interior and exterior noise level standards that were used to evaluate the project's potential noise impacts. For Traffic, the traffic engineer used level of service and intersection capacity criteria to determine the project's trips that would be contributed to the local road network.

For Public Services, the significance criteria are not quantified because they are different for each jurisdiction depending on a number of factors. Therefore, the general rule of thumb is whether the proposed project would result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services. These are the criteria used to evaluate the proposed project in the Draft EIR.

*Comment CUSD-27:* This comment (p. 71 of 153) states that an additional objective to provide 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 service providers.

*Response:* It is inherent in the project description that the project would construct all internal roads and utilities in conjunction with the development of the residential lots. The City would not issue Certificates of Occupancy without the project being able to provide the necessary infrastructure. With regard to other public facilities and services, the City's responsible departments have indicated that the project can be served and the applicant has "Will Serve" letters from utility providers. For schools in particular, the applicant has provided a 9.98-acre elementary school site but will leave it to the discretion of the District to determine the timing of the purchase of the site and subsequent development of the site. Also see response to CUSC-I.

*Comment CUSD-28:* This comment (pp. 71 through 76 of 153) states that the Draft EIR does not adequately address the impacts the project will have on the District's facilities. The comment also

*states that the EIR does not indicate where the information for the preparation of the discussion of schools came from.*

*Response:* The District is referred to response to comment CUSD-1 for a discussion of school mitigation requirements and CUSD-26 for a discussion of significance thresholds. With regard to the sources of information used to prepare the schools section of the Public Services section, the sources included the District's web site and the CUSD *School Facilities Needs Analysis*, 2005 provided by the District in response to a list of questions submitted by the EIR preparer. Although these documents do not show up in Section 11 – References, they are cited as sources in the tables in Section 5.8 of the Public Services section. These references will be added to Section 11 in the Final EIR.

*Comment CUSD-29: This comment (pp. 76 through 87 of 153) states that the Draft EIR does not adequately address cumulative impacts because it did not take into consideration the geographic area of all projects that can in conjunction with the project, have cumulative impacts, including the cumulative impacts of buildout of the general plan land uses..*

*Response:* The District seeks a cumulative impacts analysis that goes beyond the level of detail CEQA requires. With regard to whether the Draft EIR is required to address the cumulative impacts of buildout of the general plan land uses: 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. The Draft and Recirculated Draft documents use the list approach rather than the general plan buildout approach.

With regard to not adequately addressing cumulative impacts to any of the 10 environmental topics evaluated. On the contrary, the Draft EIR and Recirculated Portion of the Draft EIR provided the analysis of cumulative impacts to each of these topics, including schools and other public services. CEQA Guidelines Section 15130 states that “an EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable...” As discussed in this section, “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. With the exception the cumulatively significant impact to Agricultural Resources, the applicant would either fund outright improvements necessary to support the project without causing a significant impact, will pay a fair share of the costs for improvements at a rate commensurate with the size of the impact (traffic for example), or will pay Developer Impact Fees that go toward the upgrade or increase in services as required as growth occurs in the region. For other topics such as Biological Resources and Cultural

Resources, mitigation measures on a project by project basis would ensure that cumulative impacts would not occur since each project would be responsible for ensuring that impacts remained less than significant.

*Comment CUSD-30: This comment (pp. 87 through 89 of 153) states that the Draft EIR discussion of Growth Inducement is based on the assumption that the growth inducing effects of the project are beneficial resulting in an unsupported statement of consequences and impacts and 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*

*Response:* Section 8.2 of the Draft EIR addresses the Growth Inducing potential of the proposed project. The District is mistaken in its assumption that this discussion leads to a conclusion that the project would be beneficial, or that it would not result in project specific or cumulative impacts. On the contrary, the discussion concludes that the project would induce growth by providing for the extension of urban services further out into areas where farming is still common on adjacent sites. However, both the City and County have planned for this growth by the County designating the site and vicinity as General Agriculture/Urban Overlay (A2U) in anticipation of growth in the City of El Centro where the area is within the Tier II annexation area which anticipates development and annexation. Such growth is in concurrence with the planned growth pattern established by the City in its general plan process.

*Comment CUSD-31: This comment (pp. 89 through 96 of 153) states that the Draft EIR only evaluated two alternatives to the proposed project and did not evaluate an alternative location. The District suggested additional alternatives that should be considered. Finally, the District suggests that the project objectives are incomplete because they don't include objectives that address the economic viability of the project or the availability of infrastructure, or the economic return and profit to the applicant.*

*Response:* These comments on Project Alternatives go beyond the District's area of special expertise (see response to comment MUSD-2). Nevertheless, the City will respond to the comment on project alternatives as discussed in Section 7 of the Draft EIR.

The two alternatives evaluated in the Draft EIR were the No-Project Alternative and Development Under the Existing General Plan, which under General Agriculture would be 1 dwelling unit per 40 acres or a total of 4 dwelling units. An alternative location was not evaluated because the proposed project represents a progression of residential land uses into the area from the east and north, and this site represents an adjacent site to existing single-family residential neighborhoods. Other land uses such as commercial or industrial uses were not evaluated as alternatives because given the location, adjacent to existing residential uses, this land use would not be appropriate. A



commercial project was not considered as an alternative because a) the applicant is a residential developer, and b) the site is located in close proximity to commercial uses in El Centro, particularly along Highway 86. Additionally, a reduced density alternative could have been evaluated, but the level of impact associated with the proposed project would not necessarily be less under a reduced density alternative because the impacts identified in the EIR that can be reduced to less than significant levels with mitigation, are related to the development of the site itself.

The economic viability of the project or the economic return and profit to the applicant are not environmental issues that would be addressed in an EIR. If the project is not economical for the applicant, the project would not be built. The availability of infrastructure was adequately addressed in the Draft EIR and the applicant will be responsible for a) constructing the infrastructure and utilities on-site and connecting to existing off-site infrastructure and b) paying Development Impact Fees as required by the City for such a development.

Lastly, it should be noted that because school impacts will be fully mitigated through compliance with SB 50, there is no need to consider the alternatives suggested by the District. CEQA Guidelines Section 15126.6(b) states that an analysis of alternatives should focus on ways to avoid or minimize significant environmental effects.

*Comment CUSD-32: This comment (pp. 96 through 99 of 153) states that there is no data or quantitative and qualitative analysis to evaluate the Irreversible Environmental Changes. The District also states that the stated Irreversible changes appear to be superficial and should be addressed in detail in the Draft EIR. Finally, the District lists other irreversible changes to be evaluated.*

*Response:* The District refers to this topic as Irreversible Environmental Changes; the Draft EIR refers to this topic as Irreversible and Irretrievable Environmental Commitment of Resources. The actual topic to be discussed in this section is *Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented*. The purpose of this section (CEQA Guidelines Section 15126.2(c)) is to evaluate whether the project's use of non-renewable resources during the initial and continued phases of the project would be irreversible. An example would be the construction of highway improvements that would provide public access to previously inaccessible areas such as roadless areas of forests. Another example would be the use of non-renewable resources such as fossil fuels and aggregate materials. Both are examples of the loss of the resource due to the project's use of the resource.

The list provided by the District on pp. 98 and 99, do not constitute nonrenewable resources but rather potential impacts associated with a development project, all of which have been evaluated in Section 5 of the Draft EIR.

*Comment CUSD-33: This comment (pp. 99 through 102 of 153) states that the issue of Significant Unavoidable Impacts are not adequately addressed and provides a number of other comments.*

*Response:* Each comment embedded in CUSD-33 will be summarized herein, as follows:

- *Conclusions stated in this section need to be supported by data, and quantitative and qualitative analysis.* This section is intended to be a summary of the findings of the environmental impact analysis of the project that there are significant unavoidable impacts. The analysis of impacts identified one significant and unavoidable impact -Agricultural Resources, due to the loss of farmland. The loss of farmland was supported by data in the LESA Report prepared for the project. Upon further consideration by the City, and in consultation with the County and LAFCO, the City determined that the impact to farmland was not significant when measured against the conservation policies that are applicable to the project.
- *The District has provided adequate evidence that impacts to schools will be significant.* The District is referred to response to comment CUSD-1.
- *There is no data, or quantitative or qualitative analysis that identifies the magnitude of these impacts.* Again, this section is intended to be a summary of the findings of the environmental impact analysis of the project that there are significant unavoidable impacts. The analysis of impacts identified one significant and unavoidable impact, Agricultural Resources. After further review in response to comments by the City, the County and LAFCO, potential impacts to Agricultural Resources by the project were downgraded to less than significant.
- *Many of the impacts listed in the Draft EIR are not mitigated to a level of insignificance and that data do not support the conclusions, therefore these should be added to the list of significant unavoidable impacts.* The Draft EIR evaluated each of the environmental topics to an adequate level of detail to make a reasoned determination that either a) the project would not have a significant impact, or b) that mitigation through the avoidance of a resource, payment of Developer Impact Fees, or a fair share of the cost of infrastructure improvements, would reduce the impact to less than significant levels.
- *The CEQA Guidelines require more than simply a short list of the unavoidable adverse impacts and that in any case, the list is short and incomplete. Also that impacts that cannot be alleviated without imposing an alternative design.* The list of significant unavoidable impacts identified in the EIR contains one impact, the loss of farmland. After further review, the City concluded that although the project would result in the conversion of 2.3 acres of Prime Farmland and 152 acres of Farmland of Statewide Importance to urban uses, the project would have a less than significant impact on agricultural resources because the site is within the City's Sphere of Influence where the land use designation is Low Density Residential and

the impact associated with the loss of agricultural land to urban uses, as the City grows, has been adequately analyzed in the General Plan. Furthermore, the Imperial County agricultural lands replacement policy only applies to projects that convert 40 or more acres of Prime Farmland, so the 2.3 acres affected by the project does not constitute a significant loss of Prime Farmland and therefore does not require mitigation. An additional alternative that would reduce the impact of the loss of farmland was not considered because the No Project Alternative or the Development Under the Existing General Plan accomplish the same goal, since development of the site with land uses other than those existing or possible with buildout under the existing land use designation (40-acre residential lots) would result in the permanent loss of farmland. Project objectives are addressed in response to comment CUSD-5.

- *The draft appears to contemplate that the stated unavoidable adverse impacts will be addressed in a Statement of Overriding Considerations. The Statement of Overriding Considerations, if required, is prepared as part of the Findings of the EIR for the City Council to consider when considering the merits of the project and whether to certify the EIR and approve the project. It is not a part of the Draft EIR but relies on the contents of the Draft EIR and the Final EIR to make the Findings and justify the Statement of Overriding Considerations, if necessary. For this project, because there are no significant unavoidable impacts, the Statement of Overriding Considerations is not necessary and the Findings have clearly noted that determination.*

*Comment CUSD-34: This comment (pp. 102 and 103 of 153) states that the District was not consulted to provide comments except through the NOP process and would have provided its comments at an earlier opportunity which may have resolved the District's need to provide lengthy commentary on the whole of the document and not just how the project would affect the District's facilities.*

*Response:* The District provided comments to the City through its responses on the August 2006 NOP and the October 2006 Revised NOP. The District also provided comments and its Needs Analysis in December 2005, in response to a request for information submitted by the EIR preparer. In addition, the District has commented on numerous other projects that are in the planning process in the City of El Centro. So the City is well aware of the District's concerns expressed in this comment letter, and has responded in detail to the comments presented in the District's letter dated October 28, 2007.

*Comment CUSD-35: This comment (pp. 104 and 105 of 153) states that conclusory statements made in the Initial Study are not supported by data and quantitative and qualitative analysis.*

*Response:* The purpose of an Initial Study is to evaluate a proposed project and identify those impacts that have the potential to cause a significant impact on the environment. Those impacts are then

evaluated, in greater detail, in the Draft EIR. The District is referred to response to comment CUSD-25 for a discussion of Aesthetics, Hydrology/Water Quality, Land Use and Planning, Mineral Resources and Population and Housing.

*Comment CUSD-36: This comment (pp. 104 through 111 of 153) provides a summary of the District's opinion as to the adequacy of each section of the Draft EIR.*

*Response:* Responses will follow in the order of the comments.

Land Use. See response to Comment CUSD 25.

Traffic. There were a number of comments on the Traffic Section and Traffic Impact Analysis (TIA)

1. The Traffic Impact Analysis does a comprehensive study of the area including an analysis of existing conditions, existing conditions with project traffic, near term conditions (existing with project and cumulative projects) and Horizon Year conditions (year 2025) This captures both project related traffic and traffic associated with cumulative projects. Therefore, the analysis of traffic is not done in a piecemeal fashion.
2. With regard to the trip generation rates, the District is referred to Table 5.9-9 of the Draft EIR and Table 1-1 of the TIA where the elementary school and the trips generated are clearly identified.
3. With regard to cumulative projects, the list used to prepare the TIA and Draft EIR represents a snapshot in time. In this case, the cumulative project list used to evaluate the project in the Draft EIR consisted of 10 projects. In response to comments received on the Draft EIR, the Draft EIR and TIA were revised and recirculated with an updated cumulative project list consisting of 22 projects. The findings of both the Draft EIR and Revised/Recirculated Draft EIR were that impacts could be mitigated to less than significant levels with a combination of developer funded improvements (project connection to existing roads) and payment of Development Impact Fees.
4. The District states that the TIA does not consider the District's bussing and transportation which will be required external to the project. The District's bussing and transportation is part of the existing conditions used in the TIA to evaluate future traffic conditions with and without the proposed project.
5. Financing of traffic improvements. The Draft EIR is not the place to discuss the financing of intersection and road segment improvements because the applicant is being assigned a fair share of the proposed improvements that would be paid in the future at such time as the project is under development. The costs to construct such improvements may change between current and future conditions. Therefore, the project is assigned a fair share percentage rather than a dollar amount.

6. For the first paragraph of this comment see CUSD-36(1) above since comments are identical. For the second part of this comment, the City Traffic Engineer is the appropriate person to determine the adequacy of the TIA and recommended mitigation measures.
7. Concluding paragraph. See responses 1-6 above.

Air Quality. The TIA has not been found to be inadequate, therefore, the assertion that the Air Quality Assessment is inadequate because it is based on the TIA is incorrect.

Public Transit and Alternative Transportation. This comment is related to the District's ability to determine the adequacy of the public transit system and how that would impact the District's ability to transport students to and from school facilities. In previous comments, the District has indicated that it would be responsible for transporting school aged children to schools. In the future, the District will develop a bussing schedule for these students independent of the project developer. If there is an option for students to take public transit instead of the District's transportation, that would be worked out between the two agencies, independent of the project.

Imperial Valley Transit bus schedules can be found on the internet at [http://www.ivtransit.com/sub.php?page=iv\\_transit&subs=route](http://www.ivtransit.com/sub.php?page=iv_transit&subs=route). Additionally, IVAG posts the Coordinated Public Transit – Human Services Transportation Plan, Existing Conditions Report and the Imperial Valley 2007 Transportation Plan, among others, on their website at <http://www.co.imperial.ca.us/IVAG/Default.htm>. This information is universally available and shows that the project area is reasonably accessible by public transportation. Inclusion of this information in the DEIR is incidental and does not constitute significant new information that would trigger a recirculation of the DEIR.

Utilities. The Draft EIR does not address telephone, electricity, gas and cable utility services required for the project. The Initial Study indicated that these utilities are available in the area and extension of services can be provided. Therefore, additional analysis in the Draft EIR was not required.

Safety. Please see responses to comments CUSD-1 and CUSD-7 for a discussion of economic impacts to school districts. Also, as necessary, the District would be responsible for developing traffic control/safety plans at its high schools.

Law Enforcement. Please see responses to comment CUSD-1 for a discussion of economic impacts to school districts.

Fire Protection. Please see responses to comment CUSD-1 for a discussion of economic impacts to school districts.

Emergency Medical Services. Please see responses to comment CUSD-1 for a discussion of economic impacts to school districts.

Other City-wide and County-wide Services. The District has failed to provide a link between its ability to provide educational facilities and services and impacts to City-wide and County-wide services.

*Comment CUSD-37: This comment (pp. 113 through 114 of 153) provides a summary of the District's opinion on the financial impact of the project on the District.*

*Response:* Please see responses to comment CUSD-1 for a discussion of economic impacts to school districts.

*Comment CUSD-38: This comment (pp. 114 through 117 of 153) provides a summary of the mitigation measures to be considered in the Draft EIR.*

*Response:* This comment is identical to CUSD-19. Please see responses to comment CUSD-1 for a discussion of economic impacts to school districts.

*Comment CUSD-39: This comment (pp. 115 through 119 of 153) provides a summary of the general plan goals and policies District's opinion on the financial impact of the project on the District.*

*Response:* A summary of issues follows:

Public Facilities Element of the City's general plan. The District cites policies 2.1 and 2.2 which state that the City will work with the local school districts to investigate potential locations and funding sources for new schools, and that it will encourage the joint use of school facilities to provide a range of recreational and educational opportunities. The City has in fact worked with school districts in this regard however, for this particular project, there is no high school site proposed so there is no need for the applicant to provide joint high school./park site. With regard to the issues of financing, the City directs the District to response to comment CUSD-1 for a discussion of SB-50.

Land Use Element of the City's general plan. This comment cites a number of goals and policies related to the project development and the provision/expansion of public facilities and states that the Draft EIR provides no analysis or evidence to show that the project is in compliance. On the contrary, the project site plan shows that the project site is contiguous to residential development where utilities can be extended into the project site. Also, the County has designated this site as being within the A2U indicating that it is likely that in the future, these areas would convert to urban uses. For further discussion of these issues, the District is referred to response to comment CUSD-5. Also

as a requirement of LAFCO approval, the applicant must submit a Plan for Services showing how the project's needs for public services and utilities would be met.

*Comment CUSD-40: This comment (pp. 117 through 120 of 153) provides a summary of the District's opinion on general plan compliance for agricultural resources.*

*Response:* The District is referred to response to comments CUSD-5, CUSD-22(13), and CUSD-30, for a discussion of the project's impacts on agriculture.

*Comment CUSD-41: This comment (pp. 121 through 122 of 153) provides a summary of the District's opinion on the Draft EIR's compliance with CEQA policies.*

*Response:* This comment contains opinion only and is not a comment that requires a response.

*Comment CUSD-42: This comment (pp. 122 through 128 of 153) provides a summary of the District's opinion on the inadequacies of SB-50.*

*Response:* The District is referred to response to comment CUSD-1.

*Comment CUSD-43: This comment (pp. 128 and 129 of 153) states that the preparer of the Draft EIR had a lack of objectivity.*

*Response:* The City will exercise its independent judgment with regard to the document as set forth in CEQA Guidelines Section 15084(e).

*Comment CUSD-44: This comment (pp. 29 through 131 of 153) states that the Draft EIR should be revised to address the inadequacies identified in the comment letter and recirculated.*

*Response:* In response to comments received on the Draft EIR, the City caused the revision to certain sections of the Draft EIR and recirculation of relevant portions of the document. Nothing in the District's comment letter or the responses to the comments has triggered the need to recirculate the document again (CEQA Guidelines Section 15088.5).

*Comment CUSD-45: This comment (pp. 131 through 153 of 153) states that the Draft EIR should be revised and recirculated to address the inadequacies identified in the comment letter and with regard to annexation and LAFCO requirements.*

*Response:* The applicant must do a number of things subsequent to the City taking action on the project and certifying the Draft EIR. One is to apply for annexation with LAFCO who will then

review the proposed project along with the Draft EIR and other documents such as the Plan for Services, to determine whether it has enough information to adequately review the merits of the project in terms of having adequate services.





## SECTION 5: REVISIONS TO THE DRAFT EIR AFTER CIRCULATION

### 5.1 Summary of Revisions Made to the Draft EIR in Response to Comments

The Draft EIR circulated for public review between November 28, 2006 and January 11, 2007. Responses to comments on the Draft EIR resulted in new information that was substantial enough to require the recirculation of portions of the Draft EIR. The new information, along with the development of some new mitigation measures, and further review of existing conditions substantially changed the information presented in the Draft EIR for traffic, noise, air quality and biological resources (see Final EIR Section 6).

The City determined that responding to the comments on the Draft EIR would be done after the public review on the recirculated Draft EIR was completed. Subsequently, the applicant made revisions to the site plan to increase the amount of area to be set aside for retention basins, separated the park and elementary school site, increased the size of the park site, and reduced the number of residential lots. The reduction in the size of the elementary school site was a direct response to the McCabe Union School District's decision on the size of the student body. The following table summarizes the revisions to the project description. None of the proposed revisions to the project represent new significant information that required recirculation of the Draft EIR. The revised Tentative Map is presented in Exhibit 1-1, *Revised Site Map*. Any changes to sections that were not recirculated do not constitute new significant information.

**Revisions to the Proposed Project Since the Circulation  
 of the Draft EIR and Recirculated Draft EIR**

	Site Plan Evaluated in the Draft and Recirculated Draft EIRs	Revised Site Plan
Residential Lots	494	485
Elementary School Site Public Parks	<ul style="list-style-type: none"> <li>• 11.77 acre joint elementary school/park site</li> <li>• 600 students</li> </ul>	<ul style="list-style-type: none"> <li>• 9.96 acre elementary school site</li> <li>• 450 students</li> <li>• 4.18 acre neighborhood park and 0.44-acre pocket park</li> </ul>

Basins	<ul style="list-style-type: none"> <li>• 8.78-acre detention basin</li> </ul>	<ul style="list-style-type: none"> <li>• 13.07-acre retention basin</li> <li>• 2.42 –acre retention basin</li> </ul>
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**Changes to Section 2 - Executive Summary**

*Section 2.1, Paragraph 1:*

Project implementation includes annexation, a zone change from County zoning, General Agriculture/Urban Overlay (A2U) to City zoning Single Family Residential (R-1). Project implementation will result in the subdivision of approximately 160 acres of farmland into 496 ~~494~~ lots, which will allow for the development of 494 ~~485~~ single-family residences ~~on an average lot size of 7,200 square foot lots, an 8.78~~ 15.49-acres of detention-retention basins, 4.62-acres of parks and dedication of approximately ~~11.77~~ 10.07 gross acres (9.96 net acres) for a future elementary school (Exhibit ~~3-3~~ 1-1, Revised Site Plan, in Section 1 of the Final EIR).

*Paragraph 3:*

Exhibit 3-4, Proposed Annexation, of the Draft EIR

*Section 2.2, bullet point 1:*

Additionally, the project site is zoned A2U General Agricultural/Urban as County land ~~for agricultural land uses.~~

*Section 2.3, paragraph 2:*

Section 5, Environmental Setting, Project Impacts, Mitigation Measures, and Level of Significance After Mitigation and Section 6, Cumulative Impacts, of this EIR, provides an evaluation of the potential environmental impacts of the proposed project and recommends mitigation measures to reduce impacts to a less than significant level where feasible. These sections were all affected by revisions. With the recirculation of those sections included in the subsequent Recirculated Draft EIR, in combination with responses to comments to both the Draft EIR and Recirculated DEIR, and further review by the City, the following finding has been made: With the implementation of the mitigation measures proposed, no significant unavoidable impacts will result with the implementation of the proposed project, with the exception of impacts to agricultural resources and air quality as discussed below:

- ~~• The project site contains Prime Soils and Soils of Statewide Importance, thus, the project site is considered to contain Prime Farmland and Farmland of Statewide Importance. Accordingly, the conversion of agricultural land to urban uses would constitute a significant loss of Prime~~

Farmland and Farmland of Statewide Importance. There are no feasible measures available for the project applicant to reduce this impact to a level less than significant.

- In the long term, after implementation of the feasible mitigation measures, the project will generate emissions of ROG, NOx, and CO that exceed the established thresholds. Therefore, in accordance with the Imperial County Air Pollution Control District's criteria (see Section 5.2, Air Quality and Section 6, Cumulative Impacts of this EIR), the proposed project will result in a significant and unavoidable project related and cumulative impact in relation to emissions of ROG, NOx, and CO. In addition, the proposed project is not consistent with the adopted Air Quality Management Plan (AQMP). There are no feasible mitigation measures available for the project applicant to reduce this impact to less than significant. Thus, in accordance with the Imperial County Air Pollution Control District's criteria (see Section 5.2, Air Quality and Section 6, Cumulative Impacts of this EIR), impacts in this regard are individually and cumulatively significant and unavoidable.

Table 2-1:

Section 5.1 - Agricultural Resources		
Project implementation will result in the conversion of agricultural land to urban uses and would constitute a significant loss of Prime Farmland and Farmland of Statewide Importance. This is considered a significant impact.	There are no available mitigation measures to reduce impacts to Prime Farmland and Farmlands of Statewide Importance.	<u>Less than</u> Significant and unavoidable.

<p><i>Parks and Recreation</i></p> <p>The proposed project will result in introducing approximately 4,729 <u>1,567</u> persons into the project area, which will generate a greater demand for recreational services. It is the position of the City of El Centro, that new development is required to develop parkland in accordance with the Quimby Act at the time of development and that joint use is not acceptable. The project proponent has proposed a joint use park with the future school site and thus is in violation of City policy. This is considered a significant impact. <u>In response to the City standards, the project proponent changed the tentative map after public review to include 4.62-acres of parks (based on a new</u></p>	<p><b>PS 5.8-3.</b> The project applicant shall provide <del>5-19</del> <u>4.70 acres or a ratio of 3 acres per 1,000 residents</u> of parkland onsite to be developed as parkland per the City of El Centro standards.</p>	Less than significant.
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<p>residential lot count of 485 DU) that is separate from the school site (see Exhibit 1-1, <i>Revised Site Plan</i>, in the Final EIR). The mitigation has been retained to ensure conformance and prevent future inconsistencies with the City standards.</p>		
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Section 6.0 - Cumulative Impacts		
<p><i>Agricultural Resources</i> The proposed project will result in the conversion of Prime Farmland and Farmlands of Statewide Importance. Similar projects will result in the conversion of designated farmlands and/or lands zoned for agricultural land uses. <del>This is considered a significant and unavoidable cumulative impact.</del></p>	<p>No mitigation is <u>required</u> available.</p>	<p>Less than Significant and unavoidable.</p>

### Changes to Section 3 - Project Description

*Section 3.2, paragraph 1:*

Project implementation will result in the subdivision of approximately 160 acres of farmland into ~~496~~ 494 lots, which will allow for the development of 494 ~~485~~ single-family residences ~~on an average lot size of 7,200 square foot lots, an 8.78-15.49-acres of detention retention~~ basin, and dedication of approximately ~~11.77-10.07 gross acres (9.96 net acres)~~ for a future elementary school ~~with a proposed joint use school/park~~ (Exhibit ~~3-3~~ 1-1, *Revised Site Plan*, in Section 1 of the Final EIR).

*Section 3.2, paragraph 3:*

Exhibit 3-4, *Proposed Annexation*, of the Draft EIR,

*Section 3.3, 3<sup>rd</sup> bullet:*

- Locating development ~~out~~ to meet anticipated growth in areas of relatively lesser environmental sensitivity;

*Section 3.4, clarification on the Intended Use of the EIR.*

*2<sup>nd</sup> bullet:*

- **Annexation** - The project applicant is requesting that the ~~182~~ 202-acre project site (160-acre development site plus the adjacent 42-acre site in Tract 74 that is to remain in its current state) within the City of El Centro's Sphere-of-Influence be annexed into the City's jurisdictional boundaries.

The following agencies were added to this section:

Local Agency Formation Commission (LAFCO)

- Review of the proposed project and EIR for the consideration of the request for annexation into the City of El Centro for both the project site and the additional 42-acre area adjacent to the site, to prevent the creation of a County island.

Imperial Irrigation District

- Review of infrastructure plans for the proposed project.

**Changes to Section 5.1 Agricultural Resources**

After the public review of the Recirculated Draft EIR and in response to comments from the County Planning and Development Services and LAFCO, the City determined that development of the project site did not result in a significant impact on agricultural resources because the site is within an area designated for future urban uses by the County with a Zoning Designation of General Agriculture/Urban Overlay (A2U). This designation assumes that the site would eventually convert to urban uses due to close proximity to the City of El Centro and the availability of urban infrastructure. The use of the site for agricultural purposes is noted as an interim use. Therefore, the following changes were made to the second to the last paragraph on page 5.1-7:

The LESA threshold criteria indicates that this score is considered significant unless either the Land Evaluation or the Site Assessment score is less than 20 points. In this instance, neither score is less than 20 points. Therefore, if development of the site had not already been taken into consideration during previous analyses, the conversion of this agricultural land to urban uses would constitute a significant loss of Prime Farmland or Farmland of Statewide Importance. ~~Potential impacts in this regard would be significant and unavoidable under CEQA. No mitigation is available to reduce this potential impact to a level. However,~~ as the site has already been evaluated as an urban part of the Sphere of Influence for the City of El Centro, the proposed projects impacts are considered ~~of~~ less than significant.

The following changes were made to the text on page 5.1-10:

*Section 5.1-3 - Mitigation Measures*

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

*Section 5.1-4 - Level of Significance After Mitigation*

Project implementation will result in less than significant and ~~unavoidable~~ impacts to agricultural resources.

**Changes to Section 5.6 Hazards and Hazardous Materials**

*Page 5.6-2, paragraph 2:*

In addition, while project implementation does not involve the construction of a school, the project applicant is dedicating ~~11.77~~ 10.07 gross acres (9.98 net acres) of the project site to the McCabe Elementary School District for the development of a future elementary school campus; therefore, California Education Code Sections 17213 and 17215 are applicable to project implementation.

*Page 5.6-13, paragraphs 1 and 2:*

.... The proposed residential and park uses would not generate toxic air emissions and would not involve the handling of hazardous or acutely hazardous, materials, or substances; therefore, no objections to use of the proposed ~~11.77~~ 10.07 gross acres (9.98 net acres) site as a public elementary school are expected from DTSC. There are no public or private airports within several miles of this site; therefore, aircraft noise and crash hazards will not affect a future public school that may be built within the project site.

Assuming that an elementary school is developed on the ~~11.77~~ 10.07 gross acres (9.98 net acres) site, the transport, storage, usage, or disposal of hazardous materials will be minimal....

**Changes to Section 5.7 Noise**

*Page 5.7-5, paragraph 5:*

.... Examples of internal sources include construction, traffic from the on-site roadway system, activities at the future elementary school, and activities at the proposed public parks ~~and~~ retention basins. However, in relation to residential projects, long-term noise impacts are generally associated with an increase in vehicle traffic in a project area.

**Changes to Section 5.8 Public Services**

*Page 5.8-14, starting at paragraph 4:*

**Impacts**

Based on 485 dwelling units and a population rate of 3.5 persons per single-family dwelling as cited in the City's General Plan (2004), the proposed project would add an estimated ~~1,729~~ 1,698 new

residents to the City of El Centro, using the population generation rate of 3.23 residents per dwelling unit from the City's recent Park and Recreation Mitigation Fee Study (September 2008), 1,567 residents would be added. Table 5.8-14 summarizes the additional parkland the proposed project would need to provide to maintain the General Plan established standard of 3.0 acres per 1,000 residents under each generation rate.

**Table 5.8-14: Parkland Required**

Project Population	Population Generation Rate	General Plan Parkland/ Resident Ratio	Calculation	Parkland Required
<del>4,729</del> 1,698	3.5	3.0 acres of parkland / 1,000 residents	<del>(4,729</del> 1,698) x (3 acres of parkland / 1,000 residents)	<del>5.19</del> 5.09 acres
1,567	3.32	<u>3.0 acres of parkland / 1,000 residents</u>	<u>1,567 x (3 acres of parkland / 1,000 residents)</u>	<u>4.70</u>

Source: Michael Brandman Associates, ~~October 3, 2006~~ November 2008.

Using the original population generation rate, ~~the~~ proposed project would be required to dedicate a minimum of ~~5.19~~ 5.09 acres of parkland ~~or make in lieu of payments to acquire a similar acreage of parkland~~ to the City of El Centro. Using the revised residential generation rate of 3.23 residents per dwelling unit from the City's Park and Recreation Mitigation Fee Study (September 2008), required park space is 4.70-acres. ~~In this case,~~ The proposed project would include a dedication of ~~5.19~~ 4.62 acres of parkland on the project site to the City of El Centro (see Exhibit 1-1, Revised Site Plan, in the Final EIR). Any additional acreage required by the City in excess of 4.62-acres will be mitigated through fees as allowed by the General Plan as amended.

As outlined in the City's General Plan, new developments are required to provide for recreational facilities to the extent required by law. The proposed project will result in introducing approximately ~~4,729~~ 1,567 persons into the project area, which will generate a greater demand for recreational services. It is the position of the City of El Centro, that new development is required to develop parkland in accordance with the Quimby Act at the time of development and that joint use is not acceptable. As stated in the City's General Plan, "new development shall be conditioned to provide all the land and improvements to achieve the parkland standard of three acres per 1,000 residents generated by the proposed project in order to meet park acreage needs." The project proponent ~~has~~ proposed a joint use park with the future school site and thus is in violation of City policy. This is considered a significant impact. In response to the City standards, the project proponent changed the tentative map after public review to include 4.62-acres of parks (based on a new residential lot count of 485 DU) that is separate from the school site (see Exhibit 1-1, Revised Site Plan, in the Final EIR).



The shortage of approximately 0.08 acre of parkland onsite will be mitigated through the payment of park fees as allowed by the City of El Centro. The mitigation has been retained to prevent future inconsistencies with the City standards.

Page 5.8-15, Mitigation Measures:

**PS 5.8-3** The project applicant shall provide ~~5.19~~ 4.70 acres or a minimum ratio of 3 acres per 1,000 residents of parkland onsite to be developed as parkland per the City of El Centro standards.

**Changes to Section 5.10 Utilities**

Page 5.10-9:

**Project Water Demand**

Water demand for the proposed project, shown in Table 5.10-3, was calculated by multiplying the unit water demands in Table 5.10-3 by the number of dwelling units or the area of each land use.

**Table 5.10-3: Water Demand by Land Use Type**

Land Use	Unit Demand Factor	Unit	Water Demand (afa)
Single-family Residential	0.60 af/connection	<del>494485</del> <u>494485</u> connections	<del>296291</del> <u>296291</u>
Elementary School	0.02 af/student	<del>600450</del> <u>450</u> students <sup>1</sup>	<del>129</del> <u>9</u>
Public Park	5.60 af/acre	<del>5.76462</del> <u>15.49</u> acres <sup>2</sup>	<del>3226</del> <u>87</u>
Retention Basin	5.60 af/acre	<del>3.02</del> <u>15.49</u> acres	<del>1787</del> <u>87</u>
<b>Total</b>	—	—	<b><del>357413</del> <u>413</u></b>

<sup>1</sup> Number of students estimated from acreage from the Guide to School Site Analysis and Development 2000 Edition.  
<sup>2</sup> This is a conservative worst case scenario, mitigation requires a 5.19 acre park.  
 af = acre-feet, afa = acre-feet annually.  
 Source: El Centro Water and Wastewater Master Plan Amendment DD&E Revised Site Plan, November 2008.

Single-family residential land uses are estimated to use 0.60 acre-feet per connection. With the proposed 494485 dwelling units, there will be 494485 connections, and an approximate water demand of 296291 acre-feet annually will be required to supply all residential demand.

The school site is approximately ~~11.77~~ 10.07 gross acres (9.98 net acres). According to the McCabe Elementary School District, the school will be designed to accommodate about ~~600450~~ 450 students. With a unit water demand of 0.02 acre-feet per student, the school is anticipated to use approximately 9 acre-feet annually.

A worst case scenario was assumed that a ~~5.76~~4.62-acre public park is to be dedicated to the City of El Centro. A unit water demand for open space was used to estimate water demand for the park. With a unit water demand of 5.60 acre-feet per acre, the park is anticipated to use approximately ~~3226~~26 acre-feet annually.

The City of El Centro has made a policy decision to landscape retention basins. The primary purpose of a retention basin is to reduce the maximum flow rate and load on the storm water drainage collection system and to incorporate pollution control and groundwater recharge concepts. A supplementary benefit is to provide open space for the community. A unit water demand for open space was used to conservatively estimate the water demand of the proposed retention basin. With a unit water demand of 5.60 acre-feet per acre, the retention basin is anticipated to use approximately ~~1787~~13 acre-feet annually.

Total water demand for the proposed project is estimated to be ~~3574~~13 acre-feet annually. When compared to a residential development of 500 units having a demand of 300 acre-feet, the proposed development qualifies as a "Project" pursuant to the Water Code.

*Page 5.10-11:*

#### **Supply and Demand Comparison for the Proposed Project**

The proposed project is not anticipated to have any water demands in the year 2006, because construction is anticipated to begin in 2007 and completion of the first tract is not anticipated until mid-2008. Therefore, water demands for the City remain unchanged for the year 2006. Based on the information contained in the 2005 UWMP, there should be sufficient water supply available for construction of the proposed project in the year 2007 for normal, single and multiple dry years.

Water demand for the City of El Centro is anticipated to be roughly 9,720 acre-feet by year 2012; demands will be closer to 11,070 acre-feet by 2025. Water demand for the proposed project is ~~3574~~13 acre-feet-annually, which represents ~~8092~~2% of anticipated increases in water demand between the years 2007 and 2012 of 449 acre-feet.

Supplies in the year 2012 are projected to be near 33,600 acre-feet, which is considerably greater than anticipated demand at that time. Water supplies appear to be sufficient to meet the projected demands of the proposed project into the year 2025, as shown in Table 5.10-6 below.

**Table 5.10-6: Current and Projected Supply and Demand for the City of El Centro**

	2005	2010	2015	2020	2025
Supply (afa)	15,841	33,600	33,600	33,600	33,600
Demand (afa)	9,089	9,544	9,985	10,509	11,070
Demand of Proposed Project (afa)	0	<u>357413</u>	<u>357413</u>	<u>357413</u>	<u>357413</u>
Difference Without Proposed Project (afa)	6,752	24,056	23,615	23,091	22,530
Difference Including Proposed Project (afa)	6,752	<u>23,699</u> <u>23,755</u>	<u>23,258</u> <u>23,314</u>	<u>22,734</u> <u>22,790</u>	<u>22,173</u> <u>22,229</u>

afa = acre-feet annually.  
Source: City of El Centro 2005 Urban Water Management Plan.

Page 5.10-12, 2<sup>nd</sup> to the last bullet point:

- The project buildout water demand of 357413 acre-feet annually represents ~~8092%~~ of the projected increase in water demand from the year 2007 to 2012.

Page 5.10-12, 1<sup>st</sup> paragraph:

.... There will be an increased water demand on the City's supply and distribution system of approximately 357413 acre-feet annually....

### Changes to Section 6 Cumulative Impacts

#### Section 6-3, Agricultural Resources:

The proposed project will result in the conversion of Prime Farmland and Farmlands of Statewide Importance to urban uses. Additionally, the proposed project will result in the conversion of lands zoned for agricultural land uses to non-agricultural land uses. Similar to the proposed project, those projects listed in Table 6-1 have or will result in the conversion of designated farmlands and/or lands zoned for agricultural land uses. This is considered a less than significant and ~~unavoidable~~ cumulative impact.

#### Mitigation Measures

No mitigation is ~~available~~necessary.

#### Level of Significance After Mitigation

The conversion of designated farmland and lands zoned for agricultural land uses to non-agricultural land uses would be ~~less than significant and unavoidable after mitigation. This significant and unavoidable impact would require the adoption of a Statement of Overriding Considerations.~~

*Section 6-4, Conclusions:*

With the inclusion of the mitigation measures identified in this EIR, with the exception of ~~cumulative agricultural resources and~~ air quality impacts, all cumulative impacts will be reduced to less than significant. The project will require the adoption of a Statement of Overriding Considerations for impacts to ~~agricultural resources and~~ air quality.

**Changes to Section 7 Alternatives**

*Section 7.1.1, 1<sup>st</sup> paragraph:*

Historically, the project site supported agricultural land uses. Presently, the site does not support agricultural land uses; however, the site remains undeveloped. As discussed in Section 5.1, Agricultural Resources, of this EIR, the project site contains soils that are associated lands designated as Prime Farmland and Farmland of Statewide Importance. Project implementation will result in the conversion of the site from undeveloped land to a residential subdivision. This conversion will preclude the use of the site for future agricultural land uses and therefore, result in the loss of Prime Farmland and Farmland of Statewide Importance, ~~which is considered a significant unavoidable impact.~~ The No Project Alternative would not result in any development onsite and thus it would not result in the loss of Prime Farmland or Farmland of Statewide Importance and would not preclude future agricultural land uses at the project site. Therefore, the No Project Alternative is considered to have less agricultural resources impacts in relation to the proposed project.

*Section 7.2.1, 1<sup>st</sup> paragraph:*

Under this alternative, the project site would be utilized for agricultural land uses. As discussed in Section 5.1, Agricultural Resources, of this EIR, the project site contains soils that are associated lands designated as Prime Farmland and Farmland of Statewide Importance. Project implementation will result in the conversion of the site from undeveloped land to a residential subdivision. This conversion will preclude the use of the site for future agricultural land uses and therefore, result in the loss of Prime Farmland and Farmland of Statewide Importance, ~~which is considered a significant unavoidable impact.~~ The Zoning Alternative would not preclude agricultural activities onsite and thus it would not result in the loss of Prime Farmland or Farmland of Statewide Importance. However, it should be noted, given the site's proximity to encroaching urban development, agricultural activities may be limited. However, the Zoning Alternative would not result in the conversion of designated farmlands; therefore, the Zoning Alternative is considered to have less agricultural resources impacts in relation to the proposed project.

## Changes to Section 8 – Other CEQA Sections

### Section 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. These sections were all affected by revisions. With the recirculation of those sections included in the subsequent Recirculated Draft EIR, in combination with responses to comments to both the Draft EIR and Recirculated DEIR, and further review by the City, the following finding has been made: 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 project site contains Prime Soils and Soils of Statewide Importance, and accordingly, the project site is considered to contain Prime Farmland and Farmland of Statewide Importance. Accordingly, the conversion of agricultural land to urban uses would constitute a significant loss of Prime Farmland and Farmland of Statewide Importance. There are no feasible measures available for the project applicant to reduce this impact to a level less than significant.~~
- ~~• In the long term, after implementation of the feasible mitigation measures, the project will generate emissions of ROG, NO<sub>x</sub>, and CO that exceed the established thresholds. Therefore, in accordance with the Imperial County Air Pollution Control District's criteria (see Section 5.2, Air Quality and Section 6, Cumulative Impacts of this EIR), the proposed project will result in a significant and unavoidable project-related and cumulative impact in relation to emissions of ROG, NO<sub>x</sub>, and CO. In addition, the proposed project is not consistent with the adopted Air Quality Management Plan (AQMP). There are no feasible mitigation measures available for the project applicant to reduce this impact to less than significant. Thus, in accordance with the Imperial County Air Pollution Control District's criteria (see Section 5.2, Air Quality and Section 6, Cumulative Impacts of this EIR), impacts in this regard are individually and cumulatively significant and unavoidable.~~

## SECTION 6: REVISIONS TO THE RECIRCULATED DRAFT EIR

Responses to comments on the Draft Environmental Impact Report (EIR) resulted in new information that was substantial enough to require the recirculation of portions of the Draft EIR. The new information, along with the development of some new mitigation measures, and further review of existing conditions affected the analysis of the following issues: traffic, noise, air quality, biological resources and cumulative impacts. This new information changed the findings for air quality impacts from significant and unavoidable to less than significant with mitigation incorporated and added new mitigation measures for air quality, biological resources and traffic impacts. Information presented in the Recirculated Draft EIR takes precedence over that in the Draft EIR. However, most sections of the Draft EIR remained unchanged and did not require recirculation. The recirculated portions of the Draft EIR were available for public review between September 14, 2007 and October 29, 2007.

In addition, because of the recent opinion by the State Attorney General on Global Warming and Greenhouse Gas Emissions, the City has included a discussion of the project's potential to contribute to global warming.

### Changes to Section 2 – Executive Summary

*Section 2.1 – Proposed Project, 2nd paragraph:*

Project implementation will result in the subdivision of approximately 160 acres of farmland into 496 494 lots, which will allow for the development of 494 485 single-family residences ~~on an average lot size of 7,200 square foot lots~~, an ~~8.78~~15.49-~~acres of detention retention~~ basins, 4.62-acres of parks and dedication of approximately ~~11.77~~10.07 ~~gross acres~~ (9.96 net acres) for a future elementary school (Exhibit ~~3-3~~ 1-1, Revised Site Plan, in Section I of the Final EIR).

*Table 2.1 under Agricultural Resources:*

Section 5.1 - Agricultural Resources		
Project implementation will result in the conversion of agricultural land to urban uses and would constitute a significant loss of Prime Farmland and Farmland of Statewide Importance. <del>This is considered a significant impact.</del>	There are no available mitigation measures <u>required to reduce impacts to Prime Farmland and Farmlands of Statewide Importance.</u>	<u>Less than Significant and unavoidable.</u>

*Table 2.1 under Biological Resources:*

The proposed project contains suitable nesting bird habitat.	Please see Mitigation Measures <b>BR 5.3-3</b> and <b>BR.5.3-49</b> .	Less than significant.
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Table 2.1 under Public Services:

<p><i>Parks and Recreation</i></p> <p>The proposed project will result in introducing approximately 4,729 <u>1,567</u> persons into the project area, which will generate a greater demand for recreational services. It is the position of the City of El Centro that new development be required to develop parkland in accordance with the Quimby Act at the time of development and that joint use is not acceptable. The project proponent has proposed a joint use park with the future school site and thus is in violation of City policy. This is considered a significant impact. <u>In response to the City standards, the project proponent changed the tentative map after public review to include 4.62-acres of parks (based on a new residential lot count of 485 DU) that is separate from the school site (see Exhibit 1-1, Revised Site Plan, in the Final EIR). The mitigation has been retained to prevent future inconsistencies with the City standards.</u></p>	<p><b>PS 5.8-3.</b> The project applicant shall provide <del>5.19</del> <u>4.70</u> acres <u>or a ratio of 3 acres per 1,000 residents</u> of parkland onsite to be developed as parkland, according to the City of El Centro standards.</p>	<p>Less than significant.</p>
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Table 2.1 under Cumulative Impacts:

<p><b>Section 6.0 - Cumulative Impacts</b></p>		
<p><i>Agricultural Resources</i></p> <p>The proposed project will result in the conversion of Prime Farmland and Farmlands of Statewide Importance. Similar projects will result in the conversion of designated farmlands and/or lands zoned for agricultural land uses. <del>This is considered a significant and unavoidable cumulative impact.</del></p>	<p>No mitigation is <u>required</u> available.</p>	<p><u>Less than</u> Significant and <u>unavoidable</u>.</p>

Section 2.3, 2.3 - Significant Unavoidable Adverse Environmental Effects, 2<sup>nd</sup> paragraph:

Section 5, Environmental Setting, Project Impacts, Mitigation Measures, and Level of Significance After Mitigation, and Section 6, Cumulative Impacts of the Draft EIR (November 28, 2006) evaluated

the potential environmental impacts of the proposed project and recommend mitigation measures to reduce impacts to a less than significant level where feasible. As discussed in the Draft EIR (November 28, 2006) with the implementation of the mitigation measures proposed, no significant unavoidable impacts will result with the implementation of the proposed project, ~~with the exception of impacts to agricultural resources and air quality as discussed below:~~

~~The project site contains Prime Soils and Soils of Statewide Importance; thus, the project site is considered to contain Prime Farmland and Farmland of Statewide Importance. Accordingly, the conversion of agricultural land to urban uses would constitute a significant loss of Prime Farmland and Farmland of Statewide Importance. The project will result in significant unavoidable project-related and cumulative impacts to agricultural resources. There are no feasible measures available for the project applicant to reduce these project-related or cumulative impacts to a level of less than significant.~~

#### **Changes to Section 4 – Cumulative Impacts**

*Page 4-17, Section 4.4 – Conclusions, last sentence:*

With the implementation of the revised mitigation measures identified in this Recirculated Draft EIR, the proposed project will result in less than significant project and cumulative air quality impacts. This less than significant air quality impact finding is different than the significant and unavoidable air quality impact finding that was presented in the Draft EIR (November 28, 2006). In addition, the revised biological resources and transportation and traffic mitigation measures identified in this Recirculated Draft EIR would result in a less than significant biological resources and transportation and traffic impacts after mitigation. This less than significant biological resources and transportation and traffic impact finding is consistent with the finding that was presented in the Draft EIR. Lastly, the less than significant noise impact finding in this Recirculated Draft EIR is consistent with the noise impact finding in the Draft EIR. The noise mitigation measure included in this Recirculated Draft EIR is the same mitigation measure as presented in the Draft EIR.

~~Finally, as noted in the Draft EIR (November 28, 2006), although not discussed in the Recirculated Draft EIR per CEQA Guidelines § 15088.5, the project will include a Statement of Overriding Impacts for agricultural resources (project-related and cumulative).~~

#### **Changes to Section 5 Significant Unavoidable Impacts**

*Page 5-1, 2nd paragraph:*

After implementation of the Miller Burson project and the project-related mitigation measures, it has been determined that ~~with the exception of agricultural resources, as summarized below,~~ all project-related impacts can be feasibly mitigated to a level that is considered less than significant.



- ~~The project site contains Prime Soils and Soils of Statewide Importance, and accordingly, the project site is considered to contain Prime Farmland and Farmland of Statewide Importance. Accordingly, the conversion of agricultural land to urban uses would constitute a significant loss of Prime Farmland and Farmland of Statewide Importance. There are no feasible measures available for the project applicant to reduce this impact to a level less than significant.~~

### Global Climate Change

Global climate change is a change in the average weather of the earth that can be measured by wind patterns, storms, precipitation, and temperature. Climate change is caused by an accumulation of greenhouse gases (GHG). GHGs do occur naturally, but human activities increase emissions of such gases through industrial activities, combustion, agricultural activities, and decomposition of waste. The most prevalent GHGs are carbon dioxide (CO<sub>2</sub>), oxides of nitrogen (such as N<sub>2</sub>O), and methane (CH<sub>4</sub>). According to the California Energy Commission (2006), sources of GHG in California include;

- transportation (41 percent);
- the industrial sector (23 percent);
- electricity generation (20 percent);
- agriculture and forestry (8 percent); and
- other sources (8 percent).

Global climate change has been established as an issue of paramount importance to the world regionally, nationally, and globally. Government agencies and the environmental planning industry are compelled to address the issue. The discussion of global climate change has not been added to the CEQA list of topics required in an EIR; however, the California State legislature has confirmed, with the ratification of AB 32, that because global climate change poses a potentially significant adverse effect, its discussion shall be a high priority in environmental review. Case law (? Vs. County of San Bernardino) has already supported this.

The California State Legislature adopted AB 32, the *California Global Warming Solutions Act of 2006*, which focuses on reducing GHG emissions in California. Greenhouse gases, as defined under AB 32, include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. AB 32 requires the California Air Resources Board (CARB) to adopt rules and regulations that would achieve greenhouse gas emissions equivalent to statewide levels in 1990 by 2020. As required, CARB made available a list of early action GHG emission reduction measures. According to code, regulations to implement these measures shall be adopted before January 1, 2010, and the finalized emissions reduction measures will become operative and enforceable January 1, 2012.

In reference to the proposed project here are two categories of climate change impacts:

- The project's *contribution to climate change* through emissions of GHG; and
- The potential *impact to the project* through the environmental effects of climate change.

### **Discussion of the Project's Contribution to Global Climate Change**

Because of the recent opinion by the State Attorney General on Global Warming and GHG Emissions, the City has included a discussion of the project's potential to contribute to global warming. Every development project contributes incrementally to the GHG emissions responsible for affecting global climate.

There are currently no published thresholds of significance for determining the project's contribution to climate change. The project would emit greenhouse gases such as carbon dioxide, methane, and nitrous oxide from the exhaust of equipment used during construction. Emissions of methane and nitrous oxide are negligible. Mitigation that reduces the amount of time that construction equipment would idle would reduce greenhouse gas emissions from the exhaust.

The project will use electricity for lighting, appliances, indoor climate control and other common uses. Certain types of electricity generation such as electricity generated by coal power plants produce greenhouse gas emissions. Therefore, the project would "indirectly" emit greenhouse gas emissions from electricity generation.

The primary strategy for addressing Global Climate Change is to reduce GHG emissions. With the following project design features and mitigation, the project will directly and indirectly increase its energy efficiency and thus reduce its GHG emissions. The environmental analysis of the project includes mitigation measures that would reduce environmental impacts to less than significant levels at the project level and cumulatively. Mitigation identified for the project includes measures to reduce GHG emissions both during construction and operation. Therefore, the project's contribution to Global Climate Change would be less than significant.



Project Design Feature / Mitigation measure	How Project Design Feature or Mitigation Measure Impacts Global Climate Change
An elementary school and parks are located in proximity to residences.	Location of an elementary school and a community park within proximity to dwelling units will provide opportunities to residents. This would reduce the number and length of vehicle trips required by residents, thereby reducing vehicle emissions of GHGs. Shorter, less frequent trips would reduce the amount of vehicle emissions of GHGs.
Parks, retention basins and landscaping are incorporated into the project design.	The addition of landscaped parks, open space, retention basins, school play grounds, and landscaped medians would act as a carbon sink and would, therefore, lower the amount of CO <sub>2</sub> , a GHG, in the immediate vicinity of these areas. This would lower the net amount of operational emissions.
<b>AQ 5.2-1.</b> During construction of the proposed improvements, all construction equipment shall be properly maintained at an offsite location and includes proper tuning and timing of engines. Equipment maintenance records and equipment design specification data sheets shall be kept onsite during construction.	Directly reduces emissions of GHG during construction
<b>AQ 5.2-2.</b> During construction of the proposed improvements, all construction equipment shall be fueled with CARB certified motor vehicle diesel fuel (non-taxed version suitable for use in off-road equipment).	Directly reduces emissions of GHG during construction
<b>AQ 5.2-3.</b> All grading and construction off-road diesel equipment shall be equipped with lean NO <sub>x</sub> catalysts. This will reduce NO <sub>x</sub> emissions from these sources by approximately 20 percent.	Directly reduces emissions of GHG during construction
<b>AQ 5.2-5.</b> During construction of the proposed improvements, construction equipment shall not idle onsite for more than 10 minutes.	Directly reduces emissions of GHG during construction
<b>AQ 5.2-6.</b> During construction of the proposed improvements, the Construction Superintendent shall arrange for a lunch wagon to visit the construction site during work breaks including the lunch break.	Directly reduces emissions of GHG during construction
<b>AQ 5.2-10.</b> Prior to final map approval the project proponent shall demonstrate through site plans that, wherever it is feasible and the location is desirable for efficient motor-less travel, cul-de-sacs or dead-end streets will be linked to encourage pedestrian and bicycle travel.	Encouraging non-motorized travel indirectly reduces GHG associated with travel trips during operation.

Project Design Feature / Mitigation measure	How Project Design Feature or Mitigation Measure Impacts Global Climate Change
<p><b>AQ 5.2-11.</b> Prior to final map approval the project proponent shall demonstrate through site plans that continuous sidewalks, separated from the roadway by landscaping, will be included on all roadways within the project site. In order to encourage pedestrian travel, adequate sidewalk lighting and crosswalks at intersections shall be included.</p>	<p>Encouraging pedestrian travel indirectly reduces GHG associated with travel trips during operation.</p>
<p><b>AQ 5.2-16.</b> Prior to the issuance of building permits the project proponent shall demonstrate the following:</p> <p>The building energy efficiency rate shall exceed 2005 Title 24 requirements by 20 percent or meet the 2008 Title 24 requirements (note: The California Energy Commission is in the process of adopting 2008 Title 24 requirements, which go into effect January 2009. The 2008 standards reduce electricity use in low-rise single-family detached residential homes by 22.7 percent compared with 2005 standards, peak demand is reduced by 10 percent and gas is reduced by 10 percent (CEC 2007) ;</p> <p>All residences will be constructed with roofing material having a solar reflectance value meeting the EPA/DEO Energy Star® rating to reduce summer cooling needs;</p> <p>All residences will include high-efficiency gas or solar water heaters;</p> <p>All residences will have double-paned windows; and</p> <p>All street lighting will use low energy sodium lighting.</p>	<p>Energy conservation and efficiency directly reduces dependence on traditional energy sources, thereby reducing GHG emissions.</p>
<p><b>AQ 5.2-17</b> In agreement with the Air District, the City of El Centro will impose Rule 310 which was recently adopted by the Air Pollution Control District. Prior to the issuance of a building permit, the applicant shall comply with the Air District's Rule 310 by either implementing a project specific Alternative Emission Reduction Plan to reduce emissions by 100%, pay the Air District's Operational Development Fee, or a combination of the two. The total amount of the Operational Development Fee will be determined by the Air District's fee schedule, and will be reduced proportionately to whatever reduction is achieved by the measures set forth in the Alternative Emission Reduction</p>	<p>The Alternative Emission Reduction Plan provides an incentive to reduce project emissions by 100%, thereby increasing</p>

## **SECTION 7: MITIGATION MONITORING AND REPORTING PROGRAM**

### **7.1 - Introduction**

Section 21081.6(a)(1) of the Public Resources Code (CEQA) requires public agencies, as part of the adoption of Findings associated with an Environmental Impact Report (EIR), to prepare and approve a reporting or monitoring program. This program should be structured to ensure that changes to the project that the lead agency has adopted to mitigate or avoid significant environmental impacts are carried out during project implementation.

The Mitigation Monitoring and Reporting Program (MMRP) is intended to satisfy the requirements of CEQA as they relate to the Final EIR and Findings for the EIR (SCH No. 2006081078) for the Miller Burson project consisting of Change of Zone 05-02, Tentative Subdivision Map, and Annexation EC-8-04 in the City of El Centro (City). This MMRP is intended to be used by City staff to ensure compliance with mitigation measures during project implementation. Mitigation measures identified in this MMRP were developed as part of the environmental review process for the project.

The intent of the MMRP is to ensure the effective implementation and enforcement of adopted mitigation measures and permit conditions. The MMRP will provide for monitoring of construction activities as necessary, in-the-field identification and resolution of environmental concerns, monitoring of daily operation of components of the project, and proper reporting to the City and responsible agencies.

#### **7.1.1 - Compliance Checklist**

The MMRP contains a compliance monitoring checklist that provides a synopsis of all adopted mitigation measures, the entity responsible for their implementation, the entity responsible for monitoring, and the timing of implementation.

#### **Implementation and Monitoring of Mitigation Measures**

Since the mitigation measures will be incorporated into the project either during construction or long term operation, implementation and monitoring of mitigation measures will occur at various stages of the project, which may include, but are not limited to, the following:

- Implementation of development and design standards, guidelines, and programs for the project.
- Grading, site preparation; and construction of the project.
- On-site, day-to-day monitoring of construction activities.
- On-going operation of the project.
- Reviewing construction plans and equipment staging/access plans to ensure conformance with adopted mitigation measures.

- Ensuring contractor knowledge of and compliance with all appropriate permit conditions and the MMRP.
- Verifying the accuracy and adequacy of contract wording.
- Having the authority to require correction of activities that violate project permit conditions or mitigation measures. The inspector shall have the ability and authority to secure compliance with the MMRP through the City's Officials, if necessary.
- Acting in the role of contact for property owners or any other affected persons who wish to register observations of violations of project permit conditions or mitigation. Upon receiving any complaints, the inspector shall immediately contact the construction representative. The inspector shall be responsible for verifying any such observations and for developing any necessary corrective actions in consultation with the construction representative and the City.
- Obtaining assistance as necessary from technical experts, such as archaeologists, paleontologists, biologists, engineers and geologists in order to develop site-specific procedures for implementing the mitigation measures.
- Maintaining a log of all significant interactions, violations of permit conditions or mitigation measures, and necessary corrective measures.

Responsibility of implementation and monitoring of mitigation measures will typically reside with the City staff as described in the MMRP table.

**Table 7-1: Mitigation Monitoring and Reporting Program (MMRP) for Change of Zone 05-02 Tentative Subdivision Map (Miller Burson), and Annexation EC-8-04, City of El Centro**

Mitigation Measures	Schedule for Implementation	Monitoring Responsibilities	Compliance Monitoring and Reporting					
			Shown on Plans		Installed on Site		Frequency of:	
			Req'd	Verified Date/Init	Req'd	Verified Date/Init	Monitor <sup>1</sup>	Report <sup>2</sup>
<b>AIR QUALITY</b>								
<b>AQ 5.2-1.</b> During construction of the proposed improvements, all construction equipment shall be properly maintained at an offsite location and includes proper tuning and timing of engines. Equipment maintenance records and equipment design specification data sheets shall be kept onsite during construction.	During construction	Construction Superintendent						
<b>AQ 5.2-2.</b> During construction of the proposed improvements, all construction equipment shall be fueled with CARB certified motor vehicle diesel fuel (non-taxed version suitable for use in off-road equipment).	During construction	Construction Superintendent						
<b>AQ 5.2-3.</b> All grading and construction off-road diesel equipment shall be equipped with lean NO <sub>x</sub> catalysts. This will reduce NO <sub>x</sub> emissions from these sources by approximately 20 percent.	During construction	Construction Superintendent						
<b>AQ 5.2-4.</b> Prior to construction of the proposed improvements, the project proponent shall provide a traffic control plan that will describe in detail safe detours around the project construction site and provide temporary traffic control (i.e. flag person) during demolition debris transport and other construction related truck hauling activities.	Prior to issuance of a grading permit and during construction	Public Works Director/City Engineer or designee						
<b>AQ 5.2-5.</b> During construction of the proposed improvements, construction equipment shall not idle onsite for more than 10 minutes.	During construction	Construction Superintendent						



Mitigation Monitoring and Reporting Program

Mitigation Measures	Schedule for Implementation	Monitoring Responsibilities	Compliance Monitoring and Reporting						
			Shown on Plans		Installed on Site		Frequency of:		
			Req'd	Verified Date/Init	Req'd	Verified Date/Init	Monitor <sup>1</sup>	Report <sup>2</sup>	
<b>AQ 5.2-6.</b> During construction of the proposed improvements, the Construction Superintendent shall arrange for a lunch wagon to visit the construction site during work breaks including the lunch break.	During construction	Construction Superintendent							
<b>AQ 5.2-7.</b> During construction of the proposed improvements, the project applicant shall provide onsite electrical hook ups for electric construction tools, such as saws, drills and compressors; to eliminate the need for diesel powered electric generators.	During construction	Construction Superintendent							
<b>AQ 5.2-8.</b> Prior to construction of the proposed improvements, the project proponent shall provide to the City of El Centro for review and approval a Dust Control Plan that will describe the application of standard and discretionary fugitive PM <sub>10</sub> control measures as defined in the Imperial County APCD CEQA Air Quality Handbook. Standard and discretionary fugitive PM <sub>10</sub> control measures shall include but are not limited to application of water on disturbed soils a minimum of two times per day, covering haul vehicles, replanting disturbed areas as soon as practical, restricting vehicle speeds on unpaved roads to 15 mph, sweeping street access points at the end of each day, and other measures, as deemed appropriate to the site, to control fugitive dust.	Prior to issuance of a grading permit and during construction	Public Works Director/City Engineer or designee							
<b>AQ 5.2-9.</b> During construction of the proposed improvements, only low volatility paints and coatings as defined in Imperial County APCD Rule 424 shall be used. All paints shall be applied using either high volume, low-pressure (HVLP) spray equipment or manual application.	During construction	Construction Superintendent							
<b>AQ 5.2-10.</b> Prior to final map approval the project proponent shall demonstrate through site plans that, wherever it is feasible	Prior to final map approval	Public Works Director/City							

**Table 7 1: Mitigation Monitoring and Reporting Program (MMRP) for Change of Zone 05-02 Tentative Subdivision Map (Miller Burson), and Annexation EC-8-04, City of El Centro (Cont.)**

Mitigation Measures	Schedule for Implementation	Monitoring Responsibilities	Compliance Monitoring and Reporting						
			Shown on Plans		Installed on Site		Frequency of:		
			Req'd	Verified Date/Init	Req'd	Verified Date/Init	Monitor <sup>1</sup>	Report <sup>2</sup>	
and the location is desirable for efficient motor-less travel, cul-de-sacs or dead-end streets will be linked to encourage pedestrian and bicycle travel.		Engineer or designee							
<b>AQ 5.2-11.</b> Prior to final map approval the project proponent shall demonstrate through site plans that continuous sidewalks, separated from the roadway by landscaping, will be included on all roadways within the project site. In order to encourage pedestrian travel, adequate sidewalk lighting and crosswalks at intersections shall be included.	Prior to final map approval	Public Works Director/City Engineer or designee							
<b>AQ 5.2-12.</b> The project proponent shall supply adequate bicycle parking (bicycle rack) at the proposed park and the proposed school site in order to promote bicycle use and reduce vehicle miles traveled.	During construction	Public Works Director/City Engineer or designee							
<b>AQ 5.2-13.</b> Prior to final map approval the project proponent shall demonstrate through site plans that all roadways will include adequate right-of-way for bicycle travel to promote bicycle use within the project site.	Prior to final map approval	Public Works Director/City Engineer or designee							
<b>AQ 5.2-14.</b> If signalized intersections will be included in the project, the proposed project shall include pedestrian signalization and signage to improve pedestrian safety and promote pedestrian travel.	During construction	Public Works Director/City Engineer or designee							
<b>AQ 5.2-15.</b> Residential units within the proposed project shall include outdoor electrical outlets to encourage the use of electric appliances and tools instead of gasoline-powered equipment.	During construction	Public Works Director/City Engineer or designee							

**Mitigation Monitoring and Reporting Program**

Mitigation Measures	Schedule for Implementation	Monitoring Responsibilities	Compliance Monitoring and Reporting					
			Shown on Plans		Installed on Site		Frequency of:	
			Req'd	Verified Date/Init	Req'd	Verified Date/Init	Monitor <sup>1</sup>	Report <sup>2</sup>
<p><b>AQ 5.2-16.</b> Prior to the issuance of building permits the project proponent shall demonstrate the following:                      The building energy efficiency rate shall exceed 2005 Title 24 requirements by 20 percent or meet the 2008 Title 24 requirements (note: The California Energy Commission is in the process of adopting 2008 Title 24 requirements, which go into effect January 2009. The 2008 standards reduce electricity use in low-rise single-family detached residential homes by 22.7 percent compared with 2005 standards, peak demand is reduced by 10 percent and gas is reduced by 10 percent (CEC 2007) ;                      All residences will be constructed with roofing material having a solar reflectance value meeting the EPA/DEO Energy Star® rating to reduce summer cooling needs;                      All residences will include high-efficiency gas or solar water heaters;                      All residences will have double-paned windows; and                      All street lighting will use low energy sodium lighting.</p>	<p>Prior to issuance of a building permits</p>	<p>Public Works Director/City Engineer or designee</p>						
<p><b>AQ 5.2-17</b> In agreement with the Air District, the City of El Centro will impose Rule 310 which was recently adopted by the Air Pollution Control District. Prior to the issuance of a building permit, the applicant shall comply with the Air District's Rule 310 by either implementing a project specific Alternative Emission Reduction Plan to reduce emissions by 100%, pay the Air District's Operational Development Fee, or a combination of the two. The total amount of the Operational Development Fee will be determined by the Air District's fee schedule, and will be reduced proportionately to whatever reduction is achieved by the measures set forth in the Alternative Emission Reduction</p>	<p>Prior to issuance of a building permits</p>	<p>Public Works Director/City Engineer or construction superintendent and ICAPCD.</p>						