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Via Electronic and U.S. Mail

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*Re: Comments on the Draft Program Environmental Impact Report for the
Long Beach Downtown Plan*

Dear Mr. Gerhardt:

Thank you for the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) for the Long Beach Downtown Plan (referred to herein as the Plan, Project, or DTP).¹ We write these comments (this Letter) on behalf of Legal Aid Foundation of Los Angeles (LAFLA), the Natural Resources Defense Council (NRDC), and Housing Long Beach (HLB). LAFLA is the frontline law firm for low-income people in Los Angeles County. It is committed to promoting access to justice, strengthening communities, fighting discrimination, and effecting systemic change through representation, advocacy, and community education. NRDC is nonprofit environmental organization that uses law, science and the support of 1.3 million members and online activists to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things. NRDC has more than 100,000 members in California, including hundreds of members in Long Beach. HLB is a grassroots community organizing group that brings together community based organizations, faith based groups, affordable housing developers, and Long Beach residents to work on legislative and

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¹ We reserve the right to supplement these comments at any hearing or proceeding on the DTP. (See *Galante Vineyards v. Monterey Water District* (1997) 60 Cal. App. 4th 1109.)

policy campaigns. HLB's mission is to preserve and increase the supply of affordable housing for Long Beach residents.

We commend the City of Long Beach (City) on its effort to develop a land use plan that will see Downtown Long Beach develop into a vibrant urban center. While we hope the new design and land use standards under the DTP will stimulate Long Beach's economy and align it with other great American cities, we recognize that the resulting development must occur in a manner consistent with the California Environmental Quality Act (Public Resource Code, sections 21000, *et seq.* (CEQA)) and its implementing regulations (California Code of Regulations, title 14, sections 15000, *et seq.* (CEQA Guidelines)). The "overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal. App. 4th 99, 117 (*Save Our Peninsula Committee*)). Compliance with CEQA helps to ensure that "the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian" remains the "guiding criterion in public decisions." (*See* Pub. Res. Code § 21001, subd. (d).)

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At the heart of CEQA is the environmental impact report (EIR). (*See Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights*)). It is the "primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.'" (*Ibid.* (citing Pub. Res. Code § 21001, subd. (a))). With an EIR, the lead agency is entrusted with the responsibility of "provid[ing] public agencies and the public in general with detailed information about the effects which a proposed project is likely to have on the environment; [listing] ways in which significant effects of such a project might be minimized; and [indicating] alternatives to such a project." (Pub. Res. Code § 21061; *see* CEQA Guidelines, § 15002, subd. (a)). These requirements are real and not mere technicalities:

"As our Supreme Court has recently emphasized, 'The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.'"

(*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, 79 & 80 (*Communities for a Better Environment*) (citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449 & 450).) Importantly, once the impacts are identified:

“Public Resources Code section 21081 requires a public agency to make certain specific findings attesting to its consideration of the need for the mitigation measures identified in the EIR. The findings must be supported by substantial evidence in the record. If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has ‘eliminated or substantially lessens significant effects on the environment where feasible’ and that any unavoidable significant effects on the environment are ‘acceptable due to overriding concerns ...’”

(Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland (2001) 91 Cal. App. 4th 1344, 1354 & 55 (*Berkeley Keep Jets Over the Bay Committee*) (citing Pub. Res. Code § 21081 & CEQA Guidelines, §§ 15091, 15092, subd. (b)(2)(A) & (B)).) When an EIR fails to fully inform both decisions makers and the public of the environmental consequences of, mitigation for, and alternatives to a proposed project, and provide the public with an adequate opportunity to comment on that information, the EIR fails to comply with the letter and spirit of CEQA.

The informational benefit of an EIR is its primary function. Judicial review of an EIR is based on an abuse of discretion standard, which “is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (Pub. Res. Code § 21168.5) Specifically, a “prejudicial abuse of discretion occurs ‘if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.’” (*Berkeley Keep Jets Over the Bay Committee, supra*, 91 Cal. App. 4th at p. 1355.) To reach this conclusion, courts undergo a pragmatic analysis involving “an evaluation of whether the discussion of environmental impacts reasonably sets forth sufficient information to foster informed public participation and to enable decision makers to consider the environmental factors necessary to make a reasoned decision.” (*Id.*, at p. 1356; *see also San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 654 (*San Joaquin Raptor*) (citing *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal. App. 4th 1383, 1390) [“When assessing the legal sufficiency of an EIR, the reviewing court focuses on adequacy, completeness and a good faith effort at full disclosure.”].) If the EIR does not serve as an informational document, it fails to comply with the letter and spirit of CEQA.

As discussed throughout this Letter, the Draft EIR fails to include sufficient information to provide meaningful review of the proposed Project.² The description of the proposed Project,

² While there are many types of EIRs, the type of EIR prepared for the proposed project is a Program EIR. This type of EIR allows for “a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action” and provides the lead agency with the opportunity to “consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.” (See CEQA Guidelines, § 15168, subd. (b)(1) & (4).) Clearly, the Plan will have long-lasting impacts on the surrounding area. Implementation will span decades and allow for the development of approximately “5,000 new residential units,” “1.5 million square feet of new office, civic, cultural, and similar uses,” “384,000 square feet of new retail,” “96,000 square feet of restaurants,” and “800 new hotel rooms,” all within a 719 acre area. (See Draft EIR, Executive Summary, p. 1-1.) Such broad based, far reaching development requires deliberate and thoughtful decision-making. Despite its reliance on a tool that would help the City conduct

discussion of the environmental setting, analysis of environmental impacts, identification of mitigation measures, and analysis of alternatives are “so fundamentally and basically inadequate and conclusory in nature that” they fail to comply with CEQA and its implementing regulations. (See CEQA Guidelines, § 15088.5, subd. (a)(4).) The City must revise and recirculate the Draft EIR to comply with CEQA. (See *Mountain Lion Coalition v. Fish and Game Commission* (1980) 214 Cal. App. 3d 1043, 1052 (*Mountain Lion Coalition*)).

I. The Draft EIR Does Not Accurately Describe the Proposed Project

It has long been the understanding that “[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193.) When a project description is “curtailed, enigmatic, or unstable” it draws a “red herring across the path of public input.” (*Id.*, at p. 198.) It is “**only through** an accurate view of the project” that the “public and interested parties [can] balance the proposed project’s benefits against its environmental costs, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” (*San Joaquin Raptor, supra*, 149 Cal. App. 4th at p. 655 [citations omitted, emphasis supplied].) The project description must include: (1) a detailed map of the project area and the precise location and boundaries of the proposed project; (2) a statement of the project’s objectives; (3) a discussion of the project’s “technical, economic, and environmental characteristics;” and (4) a statement describing the intended uses of the EIR. (CEQA Guidelines, § 15124, subds. (a) – (d).) The Draft EIR for the DTP includes an inaccurate and fluctuating project description, as a result, the Draft EIR must be revised and recirculated. (See *id.*, § 15088.5, subd. (a); *Mountain Lion Coalition, supra*, 214 Cal. App. 3d at p. 1052.)

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Under CEQA, the scope of the Draft EIR is often limited by the significant impacts identified in the Initial Study. (See generally CEQA Guidelines, § 15063.) For the proposed Project, the Initial Study and Notice of Preparation (NOP) described a project with a 631 acre Plan area, in the existing Planned Development (PD) district 30, with: (1) “9,200 new residential units; (2) 1.5 million square feet of new office, civic, cultural, and similar uses; (3) 384,000 square feet of new retail; (4) 96,000 square feet of restaurants; and (5) 3,200 new hotel rooms.” (Draft EIR, Project Description, p. 2-1.) Since the release of the Initial Study and the NOP, the proposed Plan has changed and now describes a 719 acre Plan area, in PD districts 29 and 30, with: (1) “*approximately* 5,000 new residential units; (2) 1.5 million square feet of new office, civic, cultural, and similar uses; (3) 384,000 square feet of new retail; (4) 96,000 square feet of restaurants; and (5) 800 new hotel rooms.” (*Ibid.* [emphasis supplied].) These changes came about following the release of the NOP, and were in response to comments seeking an expanded project area. (*Ibid.*) The Draft EIR never considers whether the lead agency’s assessment of potentially significant environmental impacts changed with the expanded Plan area, and instead only reviews those impacts originally identified in the Initial Study. Although the lead agency may not need to generate a new Initial Study, it does need to analyze the project as proposed, and the proposed Project is a 719 acre expanded area – it must address the impacts of this particular project. (See Draft EIR, Project Description, p. 2-1.)

this broad based planning in a thorough and thoughtful manner, the City has failed to undergo the necessary deliberate analysis.

Still, limiting its review to what was included in the Initial Study, the Draft EIR fails to analyze many of the environmental impacts related to those portions of the Plan area that are part of the expanded project. The project description generally describes the Plan area as: Los Angeles River on the West, Ocean Boulevard on the South, “portions of 7th, Anaheim, and 10th Streets” on the North, and “land on *both sides* of Alamitos Avenue” on the East. (See Draft EIR, Project Description, p. 2-1 [emphasis supplied].) While many of the sections in the Draft EIR explicitly refer to the boundaries of the expanded Plan area or the 719 acres to clarify that the analysis refers to the newly expanded project and not the project in the Initial Study, this is not always consistent or accurate. For example:

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- The environmental setting section refers to the acreage of the expanded project, but then refers to the boundaries of the original project. (Draft EIR, Environmental Setting, p. 3-1 [states the proposed Plan would encompass 719 acres but with a northern boundary of the original project – 7th and 10th streets – instead of the expanded project with a northern boundary of 7th, 10th, and Anaheim Streets].)
- The population and housing section states: “Existing zoning regulations, in particular the [Planned Development (PD) district 30] regulation, implement the General Plan.” (Draft EIR, Population and Housing, p. 4.10-1.) It makes no mention of the PD-29 regulations, which became applicable once the project was expanded, thereby suggesting that the Draft EIR’s analysis is limited to the original project rather than the expanded project.

In addition to having these flaws in the body of the Draft EIR, the studies that the Draft EIR relies upon also analyze the incorrect Plan area. Of particular note are the ICF Jones and Stokes Survey of Historic Properties Within Downtown Long Beach (“Jones and Stokes Survey,” attached to the Draft EIR as Appendix D), and the Iteris Long Beach Downtown Community Plan EIR Traffic Impact Analysis (“Iteris Traffic Study,” attached to the Draft EIR as Appendix F), and AECOM Draft Air Quality Analysis Long Beach Downtown Community Plan (“AQ Analysis” attached to the Draft EIR as Appendix C). Specifically,

- The Jones and Stokes Survey, which is the basis of the cultural resources discussion in the Draft EIR, refers to the original project boundaries. (Draft EIR, Appendix D – Jones and Stokes Survey, Results Map [map of Plan area and referring only to boundaries in the original 631 acre proposed Plan area]). The purpose of the survey was to “assist the City in the preparation of an [EIR] for the downtown community plan concentrating on properties erected through 1964.” (*Id.*, Appendix D – Jones and Stokes Survey, p. 1.) This survey of historic properties within Downtown Long Beach “involved the completion of a reconnaissance-level survey of historic resources located within the Downtown Long Beach Planned Development District.” (*Ibid.*) By failing to include the expanded project area that lies within the PD-29, the survey fails to analyze the impacts to additional potential historic properties.
- The Iteris Traffic Study specifically refers to the original Plan area, stating:

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“The Downtown Community Plan area . . . encompasses the Downtown Core, and residential areas, **totaling 631 acres**, or approximately 1 square mile. The boundaries are roughly the 710 freeway to the west, Ocean Boulevard to the south, Alamitos Avenue to the east. The northern boundary is varied, extending to 10th Street to eastern portion, to 5th Street to the west, and 7th Street or 10th Street at the central portion.”

(*Id.*, Appendix F – Iteris Traffic Study, p. 4 [emphasis supplied]; *see also id.*, Appendix F – Iteris Traffic Study [Figure 1, map of “Project Location” showing original 631 acre plan area].) These acreage and boundaries describe the project discussed in the Initial Study and not the proposed Project that is the subject of the Draft EIR. The body of the Draft EIR’s transportation and traffic section that relies on the Iteris Traffic Study is further misleading and confuses the original and expanded project. (*See* Draft EIR, Transportation and Traffic, p. 4.12-1 [“The Downtown Plan Project area . . . encompasses the Downtown Core, and residential areas, **totaling 719 acres**, or approximately 1 square mile. The boundaries are roughly the 710 freeway to the west, Ocean Boulevard to the south, Alamitos Avenue to the east, and 10th Street on the north.”] [emphasis supplied]; *id.*, Transportation and Traffic, p. 4.12-19 [Figure 4.12-2, map showing location of study intersections, identifying the furthest project boundary as 10th street and not the northern boundary of the expanded project at Anaheim Street].)

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- The AQ Analysis refers to yet another plan size for the project:

“The proposed project is located in the City of Long Beach (City) in Los Angeles County, California. The Community Plan would encompass an area of approximately 667 acres bounded by the Los Angeles River on the west and Ocean Boulevard on the south. The north boundary generally follows portions of 7th and 10th streets, and the east boundary includes land on both sides of Alamitos Avenue.”

(Draft EIR, Appendix C – AQ Analysis, p. 5.) This third acreage used in the air quality analysis conflicts with the 719 acres referenced in the body of the Draft EIR and the other technical analysis such as the traffic analysis, which used 631 acres.

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The description of the proposed Project varies throughout the Draft EIR and throughout the studies supporting that document. These unstable and shifting descriptions of the proposed Project stultify meaningful public participation, in direct contravention to CEQA.³ (*See San Joaquin Raptor, supra*, 149 Cal. App. 4th at p. 656.)

³ Further, although the City fully intends to include the area south of Ocean in the DTP, the Draft EIR fails to analyze the significant environmental impacts of this expansion. When analyzing a project, the EIR must analyze the whole of the action. (*See* CEQA Guidelines, § 15378, subd. (a) [“‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . .”].) Within this, the EIR must analyze future action if it: “(1) is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope of nature of the initial project or its environmental effects.” (*Laurel Heights, supra*, 47 Cal. 3d at p. 396.) At a March 17, 2011, City Planning Commission Study Session on the proposed

Compounding this problem, the Draft EIR fails to include a detailed map with the precise location and boundaries of the proposed Project, as mandated by section 15124, subdivision (a) of the CEQA Guidelines. Instead, the Draft EIR includes maps that fail to include even the minimal level of detail, such as the names of the various streets bounding the Plan area. (See Draft EIR, Project Description, p. 2-1 [Figure 1-1, regional and project area map & Figure 2-2, character areas and surrounding neighborhoods map].) Likewise, the Draft EIR fails to describe the intended uses of the EIR. This statement of intended uses must list the agencies who intend to use the Draft EIR in their decision making, the permits and other approvals required for implementation of the proposed Project, and the other environmental review and consultations required under local, state, and federal laws, regulations, and policies. (CEQA Guidelines, § 15124, subd. (d)(1)(A)-(C).) In addition, if the City “must make more than one decision on [the proposed Project], all its decisions subject to CEQA must be listed.” (*Id.*, § 15124, subd. (d)(2)). The Draft EIR fails to include any of this information, thereby limiting the public’s understanding of the Project, the land use approvals connected with the Project, the future implementation of the Plan, and the agency’s anticipated reliance on the EIR.⁴

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The Draft EIR must be revised and recirculated with a stable and correct project description.⁵

Project, a commissioner asked staff why the shoreline, i.e., the area south of Ocean Avenue, was not included in the DTP. (See Long Beach, Legistar, May 17, 2011, Planning Commission Hearing, Video [discussion starts approximately at 01:33:00] [Available at http://longbeach.granicus.com/MediaPlayer.php?view_id=12&clip_id=4668].) The commissioner observed that the DTP documents included “photos in the shoreline and of the shoreline,” that there need to be connectivity between the design of the Downtown area and the shoreline, but the shoreline area was excluded from the DTP. (*Ibid.*) In response, staff stated that the City “fully intend[s]” to incorporate the shoreline area “as a Phase 2” of the DTP, and “certainly agree[s] that the shoreline area is part of the Downtown area.” (*Ibid.*) Interestingly, according to staff, the shoreline area was not included in the DTP, or analyzed in the Draft EIR, because staff thought work on the DTP would proceed “a lot quicker” without discussing the shoreline area and related coastal plan. (*Ibid.*) But this “Phase 2” comprising the shoreline area will eventually be combined with the proposed Project “into a downtown document.” (*Ibid.*) The understanding of the shoreline area falls squarely within the *Laurel Heights*’ test for assessing whether an EIR should analyze the environmental effects of future expansion. Clearly, incorporating the shoreline area into the DTP is a reasonably foreseeable consequence of approving the DTP, and adding additional streets and a coastal plan area into the DTP will change the scope and environmental effects of the proposed Project. The City may not piecemeal the project to exclude the shoreline area. This future expansion must also be considered in the Draft EIR. (*But cf. Communities for a Better Environment, supra*, 184 Cal. App. 4th at p. 101 [no improper piecemealing when project and other, future action performed “entirely different, unrelated functions”].)

⁴ Rather than include the necessary detail, what the Draft EIR does include is a subsection entitled “Development Approval Process.” (Draft EIR, Project Description, p. 2-11.) This subsection appears to discuss certain future actions that will rely on the analysis in the Draft EIR, but it does not describe whether there are additional approvals needed to implement the Plan or outline the instances in which an individual project in the DTP area would require a new or additional environmental analysis.

⁵ Much like the unstable project description, the Draft EIR bases its impacts analysis an inconsistent reporting of the size of the residential population the proposed Plan will accommodate. To illustrate: In the discussion of greenhouse gas emissions, the Draft EIR states the residential population that will be accommodated by the project is “approximately 14,750 residents.” (Draft EIR, Greenhouse Gas Emissions, pp. 4.5-22 & 4.5-30 [Table 4.5-2].) In the populations and housing section, this number changes from the greenhouse gas emissions number of 14,750 to a new population size of 13,500. (*Id.*, Population and Housing, p. 4.10-3 [“the proposed 5,000 dwelling units would generate a net increase of approximately 13,500 new residents”].) In that same section, however, the equation for calculating this number of new residents, i.e., 2.9 people per unit multiplied by 5,000 new units, is 14,500 and not

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II. The Draft EIR Does Not Accurately Describe the Existing Physical Conditions in the Proposed Project Area

In an EIR, the environmental setting frames the entire environmental analysis by describing the “physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice is published, at the time environmental analysis is commenced.” (CEQA Guidelines, § 15125, subd. (a)). These details “constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (*Ibid.*) “Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project.” (*Save Our Peninsula Committee, supra*, 87 Cal. App. 4th at p. 119.) Unfortunately, the Draft EIR fails to include the necessary information for meaningful public review.

Demonstrating flaws that result from an unstable project description, the environmental setting inaccurately describes the boundaries of the Plan area, referring to the northern Plan area boundary as generally following portions of 7th and 10th streets. (*See* Draft EIR, Environmental Setting, p. 3-1.) Again, these two streets set the northern boundary of the 631 acre project discussed in the Initial Study and not the boundary of the expanded proposed Project that is the subject of the Draft EIR. In addition, the environmental setting improperly covers a five-year time period, starting three years before the NOP was published and the environmental analysis was commenced. (Draft EIR, Appendix A, p. 1 [NOP was published in July 2009].) CEQA is clear that the EIR must describe the conditions “as they exist at the time” the agency commences the environmental review. (CEQA Guidelines, § 15125, subd. (a).) This ensures “the impacts of the project [are measured] against the ‘real conditions on the ground.’” (*See Save Our Peninsula Committee, supra*, 87 Cal. App. 4th at p. 121.) The Draft EIR, however, relies on data ranging from 2006 to 2010. (*See e.g.*, Draft EIR, Public Services, p. 4.11-2 [based on 2006 data, the “LBDP currently maintains 40 sworn officers in the Plan area and approximately 930 sworn officers in the entire City”]; *id.*, Noise, p. 4.9-5 [“[e]xisting noise measurements were conducted on March 4, 2010, and March 5, 2010”].) With such a range of data points, the environmental setting does not describe the “real conditions on the ground” but rather includes isolated conditions from years past. Furthermore, the Draft EIR fails to – in either the main document or its attachments – include the land use plans that the DTP is replacing, or even reference the

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13,500. (*See* Draft EIR, Executive Summary, 1-24; *id.*, Population and Housing, p. 4.10-3.) The number of residents changes again when the Draft EIR addresses public services. (*Id.*, Public Services, pp. 4.11-7 & 4.11-8 [5,000 new units would result in a 13,500 increase of new residents].) In virtually every instance where the City cites to the number of new residents that will result from the proposed Project, it bears no resemblance to what was previously cited in the Draft EIR. The number of new residents generated by the proposed Project is directly related to the number of potentially significant impacts. Based on an inconsistent understanding of the residential population, the Draft EIR has failed to analyze all of the impacts of the proposed Project and failed to include all feasible mitigation measures. The Draft EIR must be recirculated with a consistent assessment of the residential population the proposed Project will accommodate.

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ordinances that describe those land use plans.⁶ Understanding the existing land use plans is vital to understanding the impact that replacing those plans will have on the proposed Plan area.

The City must revise the environmental setting and recirculate the EIR to allow for meaningful environmental review.

III. Environmental Impacts and Mitigation Measures

An EIR must “identify and focus on the significant environmental effects of the proposed project” and “describe feasible measures which could minimize significant adverse impacts.” (See CEQA Guidelines, § 15126.2, subd. (a); *id.*, § 21061, subd. (a)(1).) According to the Draft EIR, the proposed Project will have significant and unavoidable impacts on aesthetics, air quality, cultural resources, greenhouse gas emissions, population and housing, public services, transportation and traffic, and utilities and service systems. (Draft EIR, Executive Summary, pp. 1-7 – 1-27 [Table ES-1, Summary of Environmental Impacts, Mitigation Measures, and Residual Impacts].) Adding to the fundamental flaws in the description and environmental setting, which vitiate the information benefits of the Draft EIR, the Draft EIR fails to properly analyze the environmental impacts of the proposed Project or identify feasible mitigation measures. The City must cure these errors and recirculate the Draft EIR.

A. Air Quality and Greenhouse Gas Emissions

“The purpose of an environmental impact report is ... to list ways in which the significant effects of such a project might be minimized” (Pub. Res. Code § 21061.) The discussion of a proposed project’s environmental impacts and mitigation is at the core of an EIR. (See CEQA Guidelines, § 15126.2, subd. (a) [“An EIR shall identify and focus on the significant environmental effects of the proposed project.”]); (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) The Draft EIR fails to analyze and mitigate the Project’s air quality and greenhouse gas. These deficiencies require revisions to the Draft EIR to provide a complete and accurate analysis of the proposed Project’s significant environmental impacts and feasible mitigation for those impacts, as required by law. (See CEQA Guidelines, § 15002, subd. (a).)

1. Impacts

The Draft EIR Underestimates Air Quality and Greenhouse Gas Emissions. In prior sections of the comments, we reference the changing scope of the Project. This change in project scope impacts the analysis of air quality and greenhouse gas emissions. Accordingly, the Draft EIR underestimates emissions from this Project.

⁶ The existing land use plans are PD-29 (Long Beach Ordinance (2007), ORD 07-0021), and PD-30 (Long Beach Ordinance (2007), ORD-07-0018).

2. Mitigation

a. *The Draft EIR Excludes Feasible Mitigation Measures to Minimize the Significant Air Quality and Greenhouse Gas Impacts from the Proposed Project*

Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal. App. 3d 30, 41.) Under CEQA, feasible mitigation measures must be adopted that will avoid or substantially lessen significant environmental effects. (Pub. Res. Code § 21002.) The Draft EIR clearly denotes that there are significant air quality and greenhouse gas impacts related to this development blueprint. Given these serious issues, the Draft EIR must include all feasible mitigation, and the current document does not do this.

i. *The Draft EIR Must Clarify Construction Mitigation*

Given the long duration of this plan, the City must include construction mitigation that allows for technology advancements. We are pleased that the Draft EIR includes an advisory role for the South Coast Air Quality Management District ("SCAQMD") in mitigating construction-related impacts. However, to provide better guidance to future developers, it is important that the Draft EIR further clarify Mitigation Measures AQ-1(a) and GHG-1(b). AQ-1(a) requires "contractors to implement...whatever mitigation measures are recommended by SCAQMD at the time individual portions of the site undergo construction." (Draft EIR, Air Quality, p. 4.2-14.) GHG-1(b) requires a similar requirement for SCAQMD involvement. (Draft EIR, Greenhouse Gas Emissions, p. 4.5-19). This concept provides a good approach, but the Draft EIR needs to clarify how SCAQMD "recommends" mitigation measures. Specifically, the mitigation should allow SCAQMD to provide input via comments on the specific construction projects, but at a minimum, the project must comply with SCAQMD's mitigation recommendations in SCAQMD's CEQA Handbook or its Mitigation Measures and Control Efficiencies recommendations located at the following url: http://www.aqmd.gov/ceqa/handbook/mitigation/MM_intro.html. This clarity will help future project proponents as they seek to mitigate construction emissions.

ii. *The Draft EIR Must Further Mitigate Health Risk*

The Draft EIR discloses the carcinogenic risk in the project area derived from the Multiple Air Toxics Exposure Study (MATES III). (Draft EIR, Air Quality, p. 4.2-4.) The project area varies widely with some areas having a risk of 1,201 and 2,904. (*Ibid.*) Given that the City of Long Beach wishes to further concentrate housing in this area with toxic air, the City should include mitigation to more fully encourage development in the parts of the project area with lower cancer risks. Also, the Draft EIR should include the recommendations provided below related to buffers between industrial and mobile source operations and sensitive land uses.

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iii. *The Draft EIR Should Utilize Additional LEED Tools To Mitigate Significant Environmental Impacts.*

We are encouraged to see the commitment of the City to implement LEED in its buildings. (Draft EIR, Greenhouse Gas Emissions, p. 4.5-8.) With that said, the Draft EIR should go further to ensure the most sustainable practices. The U.S. Green Building Council has established additional tools for neighborhood development that should be included as a mitigation measure in EIR. The LEED for Neighborhood Development (LEED ND) Rating System integrates the principles of smart growth, urbanism and green building into a system for neighborhood design. LEED certification provides independent, third-party verification that a development's location and design meet accepted high levels of environmentally responsible, sustainable development. Incorporation of LEED ND into the EIR is critical to ensuring this new development minimizes the cities environmental footprint. The resources needed to implement LEED ND into the downtown community plan can be located at the following url: http://www.usgbc.org/DisplayPage.aspx?_CMSPageID=148.

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iv. *The Draft EIR Unlawfully Defers Mitigation for Greenhouse Gas Emissions*

The EIR includes the following mitigation measure:

For each increment of new development, the project applicant shall obtain a list of potentially feasible GHG reduction measures to be considered in the development design from the City. The City's list of potentially feasible GHG reduction measures shall reflect the current state of the regulatory environment, which will continuously evolve under the mandate of AB 32.

(Draft EIR, Greenhouse Gas Emissions, p. 4.5-24.) While we understand the ever-evolving nature of greenhouse gas mitigation, the current Draft EIR does not provide sufficient specificity on what greenhouse gas mitigation measures will be included under this development. The Draft EIR needs to make clear what constitutes the current list of mitigation, and its process for updating the list into the future. Moreover, the Draft EIR fails to explain why some, but not all of the mitigation measures included in Mitigation Measure Summary in Appendix B of the California Air Pollution Control Officer's Association (CAPCOA) white paper, *CEQA & Climate Change* (CAPCOA 2008); CAPCOA's *Model Policies for Greenhouse Gases in General Plans* (CAPCOA 2009); and the California Attorney General's Office publication, *The California Environmental Quality Act: Addressing Global Warming Impacts at the Local Agency Level* (California Attorney General's Office 2010), were included in the Draft EIR. (Draft EIR, Greenhouse Gas Emissions, p. 4.5-25 -27.) The next iteration of the Draft EIR should clearly delineate what measures will form the initial baseline requirements for future projects.

P-3.13

Specifically commenters are concerned about the exclusion from the EIR of Objective LU-2 from CAPCOA 2009. This objective is entitled: "Promote infill, mixed-use, and higher density development, and provide incentives to support the creation of affordable housing in mixed use zones." (CAPCOA 2009, pp. 74-76.) In LU 2.1.8, CAPCOA recommends "Mix[ing]

affordable housing units with market rate units as opposed to building segregated affordable housing developments.” (CAPCOA 2009, p. 76). Affordable housing mitigation proposed by commenters should be included to mitigate the impacts from this project. The section discussing traffic impacts also includes significant discussion of the added benefits of the proposed affordable housing mitigation recommended by the coalition of signatories on this letter.

P-3.13
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v. *The Draft EIR Should Adopt the Measures Outlined in the DRA Study*

We also urge the City to adopt the mitigation measures recommended in the DRA Study. These measures would not only provide critically needed community benefits to existing low-income communities in and around downtown Long Beach, but would also mitigate some of the air quality and greenhouse gas emissions impacts that remain “significant and unavoidable” in the Draft EIR. These measures are described in detail in the population and housing section of this Letter and summarized below:

- *Mixed Income Housing*: A mixed income housing (inclusionary housing) measure would require developers of market-rate residential housing to include a certain percentage of units at below market rents or sales prices. This kind of law is already in effect in 170 California jurisdictions, allowing them to increase the supply of very low, low and/or moderate income housing in their cities. A mixed income housing requirement in the DTP would have the added benefit of reducing vehicle trips by allowing more workers to live close to their jobs.⁷
- *Commercial Linkage Fees*: A commercial linkage or “nexus” fee would be charged to non-residential developers to mitigate the impact of development on the housing market. Essentially, the city would recognize that new non-residential development generates demand for housing, putting strains on existing supply. By charging a fee, revenues would be generated for affordable housing development. A commercial linkage fee would also result in fewer vehicle trips by facilitating the construction of housing in the downtown area for low- and moderate-income workers who support downtown retail, commercial and service sector jobs.
- *Local Hiring Requirements*: Local hiring requirements could be applied to DTP construction (temporary) jobs and DTP permanent (i.e., commercial, retail, service sector) jobs to require developers to hire a percent of Long Beach residents. These local hiring requirements would also have the added benefit of reducing vehicle trips into and out of downtown.

P-3.14

These measures would mitigate the currently unmitigated and significant impacts of the proposed Project, and should be incorporated into the Draft EIR.

⁷ As stated in the population and housing section of this Letter, inclusionary housing requirements for the Downtown Plan’s new rental developments are permissible if the Plan provides that new rental developments are entitled to the Plan’s incentives only if they include a percent of affordable rental units. (*See Palmer, infra*, 175 Cal. App. 4th 1396.)

b. *The Draft EIR Should Adopt a Safe Distance Thresholds for the Long Beach Downtown Plan*

While we appreciate the Draft EIR's health analysis in the air quality section, we think the Draft EIR needs to provide more explicit requirements related to the siting of residential and sensitive land uses. Accordingly, we recommend a safe distance threshold between the Port of Long Beach and any new housing or sensitive site⁸ development encompassing 1,500 feet. The rationale for this safety recommendation is based on the following sources of information regarding serious health impacts with proximity to major diesel pollution sources.

P-3.15

i. *The CARB Air Quality and Land Use Planning Guidelines*

Dozens of studies have shown greatly increased pollutant levels and health impacts in close proximity to freeways, prompting the California Air Resources Board (CARB) to recommend that local governments "Avoid siting new sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day."⁹ The rationale for that caution is summed up as follows: "In traffic-related studies, the additional non-cancer health risk attributable to proximity was seen within 1,000 feet and was strongest within 300 feet. California freeway studies show about a 70% drop off in particulate pollution levels at 500 feet."

Additionally: "we recommend that land use agencies track the current assessment efforts, and consider limitations on the siting of new sensitive land uses in areas immediately downwind of ports."

ii. *LAUSD*

The Los Angeles Unified School District uses a set of health and safety criteria to guide the siting of schools. They do not allow new schools within 500 feet of freeways and major transportation corridors (an "exclusion zone") and require special consideration of potential impacts within 1,500 feet of those transportation facilities.¹⁰

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iii. *Peer Review Journal Articles on Proximity to Diesel Pollution, Air Pollutant Levels and Health*

One recent study in the LA basin measured elevated air pollutants far downwind, up to 2,000 meters and up to 600 meters upwind of a major freeway.¹¹ The study, along the I-10, documented high concentrations of ultra-fine particulates, polycyclic aromatic hydrocarbons and

P-3.17

⁸ Sensitive individuals refer to those segments of the population most susceptible to poor air quality (i.e., children, the elderly, and those with pre-existing serious health problems affected by air quality). Land uses where sensitive individuals are most likely to spend time include schools and schoolyards, parks and playgrounds, daycare centers, nursing homes, hospitals, and residential communities (sensitive sites or sensitive land uses).

⁹ CARB, Air Quality and Land Use Handbook: A Community Health Perspective, April 2005 (Available at <http://www.arb.ca.gov/ch/handbook.pdf>).

¹⁰ Freeways, State highways or designated roadways with more than 100,000 automobile trips per day. Rail lines with high volumes of traffic.

¹¹ Hu, S. et.al., "A wide area of air pollutant impact downwind of a freeway during pre-sunrise hours," Atmospheric Environment 43 (2009) 2541-2549.

nitric oxide at distances of 1,200 meters (roughly 4,000 feet) and farther downwind, especially during pre-sunrise hours when winds were low, humidity was high and there was a surface temperature inversion. Numerous other studies show elevated pollutant concentrations within up to 500 meters (1,600 feet) of freeways and busy roadways. Epidemiologic studies of health effects and mobile source emissions show that particulate matter have a significant impact on health.

iv. *Correlation Between Asthma And Attending School Near A Major Roadway*

In California, over two percent of public schools (K-12) are within 150 meters of high traffic roads and a disproportionately large percentage of students attending these schools are economically disadvantaged and nonwhite.¹² A related study surveying over 1,000 elementary school students in Northern California found higher rates of asthma and bronchitis symptoms in children attending schools near busy roads and freeways.¹³ A study of almost 1500 children in Dutch schools found a positive relationship between school proximity to freeways and asthma occurrence with truck traffic intensity and pollutant levels measured in schools significantly associated with chronic respiratory symptoms.¹⁴

A recent nationwide study of almost 9,000 public schools asserts that children spend significant amount of time at school, making exposure to pollution at school an important consideration; the study found that approximately one third of students were likely to be at increased risk of acute and chronic respiratory disorders due to close proximity of their school to a freeway.¹⁵ Surveys among thousands of junior high school students in Jakarta also revealed a link between traffic levels and respiratory impacts including phlegm, persistent cough and asthma.¹⁶

v. *Correlation Between Respiratory Disease And Living Near A Major Roadway*

Proximity of residences to heavy traffic levels has been associated with respiratory impacts such as cough, wheeze, persistent cough, asthma and hospital admissions for asthma in many studies.¹⁷ The California Children's Health Study, which began in 1992, found an 89

¹² Green, R.S. et. al., (2004) "Proximity of California Public Schools to Busy Roads." Environmental Health Perspectives, Vol. 112, n. 1, p. 61-66.

¹³ Kim, J. et al. "Traffic-related air pollution and respiratory health: East Bay Children's Respiratory Health Study." American Journal of Respiratory and Critical Care Medicine 2004; Vol. 170. pp. 520-526.

¹⁴ Speizer, F. E. and B. G. Ferris, Jr. (1973). Exposure to automobile exhaust. I. Prevalence of respiratory symptoms and disease. Archives of Environmental Health. 26(6): 313-8. van Vliet, P., M. Knape, et al. (1997). Motor vehicle exhaust and chronic respiratory symptoms in children living near freeways. Environmental Research. 74(2): 122-32.

¹⁵ Appatova, A.S., et al. (2008) 'Proximal exposure of public schools and students to major roadways: a nationwide US survey', Journal of Environmental Planning and Management, 51:5,631-646.

¹⁶ Duki, M.I.Z., Sudarmadi, S., Suzuki, S., Kawada, T., & Tri-Tugaswati, A. Effect of Air Pollution on Respiratory Health in Indonesia and its economic cost; Arch Environmental Health 58; 2003; 135-143.

¹⁷ Nicolai, T., Carr, D., Weiland, S.K., Duhme, H., Von Ehrenstein, O., Wagner, C., & Von Mutius; Urban traffic and pollutant exposure related to respiratory outcomes and atopy in a large sample of children; Eur Respir J 2003; 21; 956-963.

P-3.17
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percent increase in the likelihood of being diagnosed with asthma for those children living close to freeways versus those living farther away.¹⁸ Another report from the Children's Health Study showed adverse health impacts of local traffic exposure on children independent of regional air quality, including decreased lung function that is unlikely to be regained and thus predisposes those individuals to cardiovascular illness later in life.¹⁹ A recent review of California Health Interview Survey (CHIS) data revealed a three-fold increase in asthma related hospital visits among children living in high traffic density areas.²⁰ A similar study based on CHIS data attributes a 92 percent increase in asthma symptoms among those living near the highest traffic densities, and suggests that impacts may be disproportionately worse among those in poverty due to heightened vulnerability.²¹

These studies and other report indicate that distance matters. A study of nearly 10,000 children in England found that wheezing illness, including asthma, was more likely with increasing proximity of a child's home to main roads, with the greatest risk being for children living within 90 meters of the road.²² A study in rural New York found that children living in neighborhoods with heavy truck traffic within 200 meters of their homes had increased risks of asthma hospitalization.²³ A Dutch study of over 1,000 children found that asthma, wheeze, cough, and runny nose were significantly more common in children living within 100 meters of freeways; and that increasing density of truck traffic was associated with significantly higher asthma levels.²⁴ A different Dutch study found that traffic-related pollution was associated with

Brunekreef B; Janssen NA; de Hartog J; Harssema H; Knape M; van Vliet P. (1997). "Air pollution from truck traffic and lung function in children living near motor-ways." *Epidemiology*. 8(3):298-303.

Duhme, H., S. K. Weiland, et al. (1996). The association between self-reported symptoms of asthma and allergic rhinitis and self-reported traffic density on street of residence in adolescents. *Epidemiology* 7(6): 578-82.

Edwards, J., S. Walters, et al. (1994). Hospital admissions for asthma in preschool children: relationship to major roads in Birmingham, United Kingdom. *Archives of Environmental Health*. 49(4): 223-7.

¹⁸ Gauderman WJ et al., "Childhood Asthma and Exposure to Traffic and Nitrogen Dioxide." *Epidemiology*, 16:737-743, 2005.

This study was confirmed by a separate Southern CA study finding an 85% higher likelihood for an asthma diagnosis among children living with 75 meters of a major road.

McConnell R, Berhane K, Yao L, Jerrett M, Lurmann F, Gilliland F, et al. 2006. Traffic, susceptibility, and childhood asthma. *Environ Health Perspect* 114(5):766-72.

¹⁹ Gauderman WJ et al., "effect of exposure to traffic on lung development from 10 to 18 years of age: a cohort study." *Lancet*, February 2007; 369 (19561): 571-1.

²⁰ Wilhelm et. al. (2008). Environmental Public Health Tracking of Childhood Asthma Using California Health Interview Survey, Traffic, and Outdoor Air Pollution Data. *Environmental Health Perspectives*, Vol 116, n. 8, p. 1254-1260.

²¹ Meng et. al. (2008). Are Frequent Asthma Symptoms Among Low-Income Individuals Related to Heavy Traffic Near Homes, Vulnerabilities, or Both? *AEP* Vol. 18 No. 5, 343-350.

²² Venn et al. (2001). Living Near A Main Road and the Risk of Wheezing Illness in Children. *American Journal of Respiratory and Critical Care Medicine*. Vol. 164, pp 2177-2180.

²³ Lin, Munsie, Hwang, Fitzgerald, and Cayo. (2002). Childhood Asthma Hospitalization and Residential Exposure to State Route Traffic. *Environmental Research, Section A*, Vol. 88, pp. 73-81.

Similarly, A San Diego study found increased medical visits in children living within 550 feet of heavy traffic. English P., Neutra R., Scaif R. Sullivan M. Waller L. Zhu L. "Examining Associations Between Childhood Asthma and Traffic Flow Using a Geographic Information System." (1999) *Environmental Health Perspectives* 107(9): 761-767.

²⁴ van Vliet et al. (1997). Motor exhaust and chronic respiratory symptoms in children living near freeways. *Environmental Research*. 74:12-132. These findings are widely supported by other studies such as:

increased respiratory infections and some measures of asthma and allergies among four year olds followed from birth.²⁵

vi. *Association Between Cancer And Living Near A Roadway*

A comprehensive Southern California study of urban toxic air pollution shows that motor vehicles and other mobile sources of air pollution are the predominant source of cancer-causing air pollution, accounting for roughly 90% of the cancer risk from toxic air pollution, most of which is from diesel soot (70% of the cancer risk).²⁶ The California Air Resources Board (CARB) estimates an increased cancer risk of 100 in one million within 90 meters downwind of freeways carrying 10,000 trucks per day.²⁷ A study in Denver showed that children living within 250 yards of streets or highways with 20,000 vehicles per day are six times more likely to develop all types of cancer and eight times more likely to get leukemia.²⁸ A Danish study of several thousand children concluded that a doubling of vehicle pollution increased the risk of lymphomas by 25 percent.²⁹ An earlier English study found a cancer corridor within three miles of highways, airports, power plants, and other major polluters, showing greater risk of leukemia or other cancers within a few hundred yards from highways or other major pollution sources and decreasing risk with distance from these roadways and facilities.³⁰

vii. *Association Between Adverse Reproductive Effects And Exposure To Motor Vehicle Pollutants*

Pre- and post-natal impacts on infants born to mothers with heavy traffic exposure have also been well documented. A Los Angeles study found that pregnant woman living near heavy traffic areas with high levels of carbon monoxide were more likely to experience adverse birth outcomes such as low birth weights and preterm births.³¹ Another study found that pregnant women with high traffic exposure were three times as likely to have a child with certain heart defects as women breathing the cleanest air.³²

viii. *Association Between Proximity to Busy Roadways and Other Health Impacts*

²⁵ Brauer, M., et al. (2007). "Air pollution and development of asthma, allergy and infections in a birth cohort." *Eur Respir J* 29: 879-888.

²⁶ South Coast Air Quality Management District. Multiple Air Toxics Exposure Study-II. March 2000.

²⁷ CARB, 2005.

²⁸ Pearson et al. (2000). Distance-weighted traffic density in proximity to a home is a risk factor for leukemia and other childhood cancers. *Journal of Air and Waste Management Association* 50:175-180.

²⁹ Raaschou-Nielsen, O., Hertel, O., Thomsen, B.L., & Olsen, J.H. "Air Pollution from traffic at the residence of children with cancer" *Am J Epidemiol* 2001: 153; 433-443.

³⁰ Knox and Gilman (1997). Hazard proximities of childhood cancers in Great Britain from 1953-1980. *Journal of Epidemiology and Community Health*. 51: 151-159.

³¹ Wilherm M. et al. "Local variations in CO and particulate air pollution and adverse birth outcomes in Los Angeles County, California, USA." *Environ Health Perspect*. 113(9) 212-21, 2005.

³² Ritz B, et al. "Ambient air pollution and risk of birth defects in Southern California." *Am J Epidemiol*, 155: 17-25, 2002.

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A wide body of research also confirms other adverse health outcomes related to close proximity to busy roadways. Dutch researchers evaluating long term exposure to traffic have found that people who lived near a main road were almost twice as likely to die from heart or lung disease and 1.4 times as likely to die from any cause compared with those who lived in less-trafficked areas.³³ A Canadian study of 5,000 people showed that those living within 50 meters of a major road or within 100 meters of a highway had increased risks of mortality, with an “aging effect” (i.e. years of life lost) of roughly 2.5 years, which is similar to the “aging effect” of having chronic heart disease (3.1 year Rate of Advancement for mortality).³⁴

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This significant amount of information indicates that to provide better public health protections to residents in this highly toxic area, the planning should seek to use a 1,500 foot buffer from highways, ports, or other major industrial sources.

B. Cultural Resources

Under CEQA, a proposed project that “may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (Pub. Res. Code § 21084.1; *see* CEQA Guidelines, § 15064.5, subd. (b).) “Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” (CEQA Guidelines, § 15064.5, subd. (b)(1).)

The Draft EIR reviews a number of potentially historic resources in Downtown Long Beach. The review, however, is based on a fluctuating project description resulting in incomplete analysis that fails to review the entire 719 acre project.³⁵ Furthermore, the balance of the discussion fails to accurately describe the historic preservation process, address significant impacts of proposed mitigation on historic resources, analyze the DTP’s impacts on historic districts, or analyze inconsistencies with the Historic Preservation Element of the General Plan. Accordingly, the City must revise and recirculate the EIR.

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1. Impacts

a. The Draft EIR Inaccurately Describes the City’s Historic Preservation Process

The Draft EIR’s cultural resources discussion is inherently flawed. Under this analysis, the City ignores its own laws related to historic properties and their preservation. For example, the Draft EIR states the City cannot impose historic designation on privately held property, and, therefore, “the intent of the Plan is to encourage voluntary designation of these structures, with

³³ Hoek, Brunekreef, Goldbohn, Fischer, van den Brandt. (2002). Association between mortality and indicators of traffic-related air pollution in the Netherlands: a cohort study. *Lancet*, 360 (9341): 1203-9.

³⁴ Finkelstein et.al., (2004). “Traffic Air Pollution and Mortality Rate Advancement Periods.” *Am J Epidemiol* 160: 173-177.

³⁵ *See* Draft EIR, Appendix D – Jones and Stokes Survey, Results Map.

adaptive reuse of them as a secondary option.” (Draft EIR, Cultural Resources, p. 4.3-12.) This interpretation of the City’s historic designation powers is simply inaccurate.³⁶ The Long Beach Municipal Code (LBMC) clearly provides: “The cultural heritage commission may recommend the designation of a landmark or landmark district either upon its own nomination or upon nomination by any interested group or individual including the owner or occupant of property proposed for such designation.” (LBMC § 2.63.060.) This recommendation is considered by the City Planning Commission in public hearings, and then approved by the City Council who enacts an ordinance regarding the historic status. (*Id.*, § 2.63.060, subs. (B) – (E).) This process goes above and beyond merely encouraging and incentivizing voluntary designation, as the owner is only one voice in the process. (*Id.*, § 2.63.060, subd. (A)(1) [the cultural heritage commission shall “[c]onsult with affected property owners”].) The environmental setting does not state that the Plan will adversely impact the historic preservation provisions under the Municipal Code, but this is precisely what the analysis in the Draft EIR envisions, i.e., eliminating the Cultural Heritage Commission, City Planning Commission, and City Council review of historically significant properties in the Plan area.

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The Draft EIR must be revised and recirculated with an analysis of this impact.

b. The Draft EIR Fails to Analyze the Impacts on Historic Districts

In addition to designating individual historic properties, the Long Beach General Plan and Municipal Code designate historic districts. These historic districts are “areas containing groups of older houses that are intact and unaltered. While each building may not be individually worthy of landmark status, collectively they preserve the visual qualities and ambiance of the past. Streetscape features, such as trees or light standards, may contribute to the historic value of the district.” (LB Planning, Historic Districts, Historic Preservation.)³⁷ Two of these districts are impacted by the Plan: the Drake Park/Willmore City Historic Landmark District (*see* Long Beach Ordinance, C-7538 (1998)) and the Brenner Place Historic Landmark District (*see* Long Beach Ordinance, C-7179 (1994)). The Drake/Willmore District is within the Plan area and the Brenner Place District directly abuts the Plan area. (*Compare* Draft EIR, Appendix A – Initial Study, Figure 1 *and id.*, Project Description, p. 2-3, *with* LB 2030 General Plan, Historic Preservation Element, p. 48 [Figure 13].) The CEQA Guidelines state that projects resulting in a “substantial adverse change in the significance of a historic resource” may have a significant effect on the environment, triggering CEQA review. (CEQA Guidelines, § 15064.5, subd. (b).) A “[s]ubstantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource *or its immediate surroundings* such that the significance of an historical resource would be materially impaired.” (*Id.*, § 15064.5, subd. (b)(1) [emphasis supplied].) Clearly the Plan envisions changes to the immediate

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³⁶ The Historic Element of the Long Beach General Plan does discuss a voluntary preservation easement that a land owner can choose to have added to their property, for a tax benefit. But this seems to be outside of what is envisioned by the historic preservation provisions of the Municipal Code or in the cultural resources discussion in the Draft EIR. (LB 2030 General Plan, Historic Preservation Element, pp. 50-51.)

³⁷ Available at http://www.lbds.info/planning/historic_preservation/historic_districts.asp.

surroundings of both the Drake/Willmore Historic District and the Brenner Place Historic District. These impacts must be analyzed.³⁸

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c. The Draft EIR Fails to Analyze the Project's Violations of the General Plan

The Historic Preservation Element of the General Plan identifies various goals that require protection of historic properties. Some key provisions include:

“GOAL 2: Protect historic resources from demolition and inappropriate alterations through the use of the City’s regulatory framework, technical assistance, and incentives...”

“POLICIES:

- P.2.1 The City shall discourage the demolition and inappropriate alteration of historic buildings.
- P.2.2 The City shall encourage and allow for adaptive reuse of historic buildings...
- P.2.4 The City shall ensure compliance of all historic preservation, redevelopment, and new construction projects with the California Environmental Quality Act (CEQA), and Section 106 of the National Historic Preservation Act.
- P.2.5 The City shall enforce historic preservation codes and regulations...”

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“IMPLEMENTATION MEASURES:

- I.M.2.1 The City will continue to discourage the demolition or inappropriate alteration of historic resources through the implementation of the provisions of the City Charter and Municipal Code pertaining to the City’s Historic Preservation Program and Cultural Heritage Commission.
- I.M.2.2 The City will ensure compliance with the California Environmental Quality Act (CEQA) and Section 106 of the National Historic Preservation Act, and will continue to consult with the appropriate organizations and individuals to minimize potential impacts to historic, cultural, and archaeological resources...
- I.M.2.4 The City will use the administrative citation program for code enforcement citywide, including for properties in historic districts, in order to ensure better and timelier compliance with City regulations for the upkeep of historic buildings and sites...”

³⁸ These areas are within or abut the Downtown Neighborhood Overlay. (Draft EIR, Project Description, p. 2-16 [Figure 2-3, Zoning Standards Map].) Although the overlay has identified limited uses and restricted residential density by lot size rather than by building heights and floor area ratio, it is still not clear what impact the proposed Project will have on these historic districts. (*See generally id.*, Project Description, p. 2-7.)

“GOAL 5: Integrate historic preservation policies into City’s community development, economic development, and sustainable-city strategies...”

“POLICIES:

- P.5.1 The City of Long Beach shall use the City Charter, General Plan, and Municipal Code to integrate historic preservation policies into the City’s community development, economic development, and sustainable-city strategies.
- P.5.2 The City shall consider historic preservation as a basis for neighborhood improvement and community development.
- P.5.3 The City shall consider historic preservation goals and policies when making community and economic development decisions and determining sustainable-city strategies...
- P.5.6 The City shall encourage creative and adaptive reuse of historic buildings as a sustainable practice, as well as an opportunity to further cultural tourism, and the economic or community development objectives of the surrounding community.
- P.5.7 The City shall promote historic preservation as a sustainable land use practice...”

“IMPLEMENTATION MEASURES:

- I.M.5.1 The City will continue to use the General Plan (especially this Historic Preservation Element), City Charter, and Municipal Code to integrate historic preservation goals and policies into the City’s community development, economic development, and sustainable-city strategies...
- I.M.5.4 The City will amend the Municipal Code to ensure that prior to any City or Redevelopment Agency-owned property with historic designation potential being sold, traded, altered, or demolished, the City will evaluate the potential of such property to serve as a catalyst for neighborhood economic development or otherwise fulfill a community development role.
- I.M.5.5 The City will encourage historic preservation through adopted provisions for reduced parking and adaptive reuse of historically significant properties, and will uphold such provisions in future updates to the Municipal Code.
- I.M.5.6 The City will develop sustainable guidelines for historic buildings, based on adopted green building standards and water-saving requirements in the Municipal Code, and will continue to consider sustainability issues in future updates to the Municipal Code.
- I.M.5.7 As a sustainable practice, the City will encourage repair rather than replacement of historic materials in accordance with the Secretary of the Interior’s Standards for Rehabilitation...

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- I.M.5.10 The City will encourage the use of compatible sustainable energy systems in historic buildings and water-saving landscapes on historic sites.
- I.M.5.11 The City will encourage developers of historic properties to apply for LEED certification consistent with guidelines for historic properties.”

(*Id.*, Historic Preservation Element, June 22, 2010, pp. 75 – 77.)

Clearly, there are a number of inconsistencies between these goals, policies, and implementation measures and what is included in the Draft EIR for the DTP. (*Contra* Gov. Code § 65454 [“[n]o specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan”].) For example, Goal 2 seeks to protect “historic resources from demolition and inappropriate alterations.” (*Id.*, Historic Preservation Element, p. 67 [Goal 2].) Some of the key policies under this goal state the City shall: “discourage the demolition and inappropriate alteration of historic buildings;” “ensure compliance of all historic preservation, redevelopment, and new construction projects with [CEQA], and Section 106 of the National Historic Preservation Act”; and “enforce historic preservation codes and regulations.” (*Id.*, Historic Preservation Element, p. 67 [Policies P.2.1, P.2.4, & P.2.5].) The impact analysis in the Draft EIR disregards this goal and these policies by allowing demolition and documentation of properties in lieu of designation. (Draft EIR, Cultural Resources, p. 4.3-13.) The Draft EIR must address the impacts associated with the Plan’s General Plan violations.

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In addition to these inconsistencies, the Historic Preservation Element of the General Plan and the Draft EIR cite a different total for the number of historic landmarks throughout the City of Long Beach. The Historic Preservation Element states: “[a]s of 2010, there are 132 locally designated historic landmarks in Long Beach.” (LB 2030 General Plan, Historic Preservation Element, p. 41.) The Draft EIR states, “[c]urrently, 127 properties throughout the City have been designated as Historic Landmarks and are listed in the [Long Beach Municipal Code], Chapter 13.52.” (Draft EIR, Cultural Resources, p. 4.3-8.)³⁹ The impact of this inconsistency can only be determined by cross-referencing the historic landmarks in the Downtown Plan area, and surrounding properties, with what is included in the Draft EIR. This cannot be done, however, because the project description fails to adequately describe the boundaries of the Plan area. Compounding this problem, the Draft EIR fails to state which version of the Plan area it is referring to, if it is the original Plan area or the expanded Plan area. The Jones and Stokes Survey, however, is rather clear that the impacts analysis is referring to the abbreviated, original proposed project and not the expanded 719 acre expanded project.

The Draft EIR must be revised and recirculated with a discussion of these impacts.

³⁹ Chapter 13.52 of the LBMC is under Chapter 13, which is “reserved.” The Draft EIR may be referring to Chapter 16.52 of the LBMC, which covers historic landmarks, but this Chapter does not list every landmark in Long Beach. (*Compare* LBMC, 16.52, with LB Planning, Historic Preservation, Historic Landmarks.) The list of historic landmarks detailed by the Planning Commission is more comprehensive, listing 131 of the 132 landmarks described in the Housing Element of the General Plan. As such, the data included in the Draft EIR is inconsistent with the data in the Historic Preservation Element of the General Plan.

d. The Draft EIR fails to Discuss Why it Distinguishes Between Properties

The Draft EIR makes arbitrary distinctions between the surveyed properties – many of these concerns are discussed in great detail in the mitigation section. In identifying the historical significance of certain properties, for 181 of the 343 surveyed properties their historical quality has been dismissed but they still require special consideration:

“Among the pre-identified and newly identified properties, the current survey identified 240 properties that do not appear to be historically significant and are not eligible for listing at any level—federal, state or local. Of these, 181 were evaluated as having 6L status codes: determined ineligible for local listing or designation through local government review process, but may warrant special consideration in local planning.”

(Draft EIR, Cultural Resources, p. 4.3-10.) The Draft EIR encourages adaptive reuse of at least two of these 6L properties, but there is no further discussion as to which of these other properties warrant special consideration in local planning, what that consideration would be, and when it would occur. The Draft EIR must explain its analysis.

2. Mitigation

The Draft EIR fails to identify feasible mitigation measures that could “minimize significant adverse impacts.” (See CEQA Guidelines, § 15126.4, subd. (a)(1).)

Mitigation Measure CR-1a states: “The City shall encourage the designation as local landmarks of 14 properties identified in Table 4.3-3 with the ‘Desired Outcome’ of ‘Pursue Local Designation.’” (Draft EIR, Cultural Resource, p. 4.3-12.) Table 4.3-3 identifies specific properties that warrant special consideration for historic preservation and analysis. These properties are then placed in roughly two categories: “Pursue Local Designation” or Adaptive Reuse Encouraged.” (*Id.*, Cultural Resources, p. 4.3-19 [Table 4.3-3].) There is no explanation in the body of the Draft EIR or in the survey explaining why certain properties were recommended for local designation and others were not. Specifically, the Draft EIR separates the properties accordingly:

<i>Adaptive Reuse Encouraged</i>		<i>Pursue Local Designation</i>	
<u>Address</u>	<u>Survey Code</u>	<u>Address</u>	<u>Survey Code</u>
255 Atlantic Ave	3CS/5S3	135 Bonito Avenue	3CS/5S3
959 E. 5th Street	3CS/5S3		
961 E. 5th Street	3CS/5S3		
1001 E. 3rd Street	3S/5S3	915 E. Ocean Boulevard	3S/5S3
725 E. 6th Street	3S/5S3		
234 Elm Avenue	5S3	210 The Promenade	5S3
322 Daisy Avenue	5S3	213 East Broadway	5S3
325 Elm Avenue	5S3	230 E. 3rd Street	5S3
328 Elm Avenue	5S3	340 E. 4th Street	5S3
331 Bonito Avenue	5S3	415-417 Olive Avenue	5S3
335 E. 9th Street	5S3	501 E. Broadway	5S3
351 E. 7th Street	5S3	650 Olive Avenue	5S3

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40 Atlantic Avenue	5S3	757 Pacific Avenue	5S3
403 E. 3rd Street	5S3	854 E. 7th Street	5S3
405 W. 3rd Street	5S3	919-927 E. Broadway	5S3
406 E. 7th Street	5S3	920 Atlantic Avenue	5S3
413 E. 5th Street	5S3		
414 Olive Avenue	5S3		
415 Olive Avenue	5S3		
419 Olive Avenue	5S3		
439 Olive Avenue	5S3		
536 Lime Avenue	5S3		
607 E. 3rd Street	5S3		
641 W. 4th Street	5S3		
642 E. 10th Street	5S3		
701 Pacific Avenue	5S3		
711 E. 4th Street	5S3		
715 Long Beach Boulevard	5S3		
727 Locust Avenue	5S3		
732 E. 3rd Street	5S3		
732 E. 5th Street	5S3		
735 Locust Avenue	5S3		
740 E. 5th Street	5S3		
762 Pacific Avenue	5S3		
800 Atlantic Avenue	5S3		
817 Washington Place	5S3		
820 Lime Avenue	5S3		
825 Atlantic Avenue	5S3		
850 Atlantic Avenue	5S3		
87 Lime Avenue	5S3		
9 Bonito Avenue	5S3		
909 Locust Avenue	5S3		
917 E. 1st Street	5S3		
930 Pine Avenue	5S3		
938 E. Appleton Street	5S3		
940 Pine Avenue	5S3		
97 Lime Avenue	5S3		
229 Atlantic Avenue	6L		
724 E. 5th Street	6L		
		1085 Long Beach Boulevard	Not Surveyed

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(See Draft EIR, Cultural Resources, p. 4.3-19 [Table 4.3-3].) According to the Draft EIR:

- Status code 3CS; 5S3 means “Appears eligible for California Register as an individual property through survey evaluation; Appears to be individually eligible for listing as a Long Beach Landmark.” (*Id.*, Cultural Resources, p. 4.3-22 [Table 4.3-4].)
- Status code 3S; 5S3 means “Appears eligible for National Register as an individual property through survey evaluation; Appears to be individually eligible for listing as a Long Beach Landmark.” (*Ibid.*)
- Status code 5S3 means “Appears to be individually eligible as a Long Beach Landmark through survey evaluation.” (*Ibid.*)
- Status code 6L means “Determined ineligible for National Register, California Register, or local designation through survey evaluation.” (*Ibid.*)

Notably, three of the status codes for “Pursue Local Designation” properties are no different from those for the “Adaptive Reuse Encouraged” properties. Neither the Jones and Stokes Survey nor the Cultural Resources section of the Draft EIR describes why specific properties were placed in the Adaptive Reuse or Local Designation Category. Clearly, the lead agency weighed both possibilities. The EIR must indicate why it is choosing one mitigation measure over another. (*See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 731 (*Kings County Farm Bureau*)). These 77 other properties that are on Table 4.3-3 but not listed under the pursue local designation category should also be included under Mitigation CR-1a for “Pursue Local Designation.” This course of action is feasible and necessary.

Furthermore, Mitigation CR-1b expressly allows demolition of significant historic resources, stating:

“If the Cultural Heritage Commission determines that [a] property is eligible for historic listing, the City Development Services shall, in lieu of preservation, require that prior to demolition or alteration a Documentation Program be prepared to the satisfaction of the City Development Services Department . . .”

(Draft EIR, Cultural Resources, p. 4.3-13; *but see* CEQA Guidelines, § 15126.4, subd. (b)(2) [“In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.”].) According to the DTP: “All processes and procedures involving historic resources shall adhere to the standards in Chapter 2.63 of the Long Beach Municipal Code.” (Draft EIR, Appendix B – DTP, p. 113.) These standards include the existing cultural heritage commission process for preservation and specific provisions related to demolition. (*See* LBMC, § 2.63.010 *et seq.*) Circumvention of these standards by allowing demolition of historic resources to “mitigate” the impacts of the proposed Project on historic resources is inconsistent with the goal of preservation or adaptive reuse. This measure will not “minimize significant adverse impacts” as required under CEQA but rather result in significant adverse impacts requiring review.

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In addition to the above comments, we further recommend the following mitigation measure:

- *EIR or Mitigated Negative Declaration*: If based on the Initial Study for the project, a discretionary action may cause a substantial adverse change in one or more of properties designated as a historic landmark or within a historic district, the City shall prepare an EIR or Mitigated Negative Declaration (MND). This EIR or MND shall mitigate the adverse change.

C. Land Use and Planning

The CEQA Guidelines provide that the “EIR shall discuss any inconsistencies between a proposed project and applicable general plans and regional plans.” (CEQA Guidelines, § 15125,

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subd. (d).) The Draft EIR focuses on consistency with the Land Use Element of the General Plan, yet fails to thoroughly analyze this issue or provide adequate mitigation.⁴⁰

1. Impacts

The Draft EIR finds the impact to land use and planning “*less than significant.*” (Draft EIR, Land Use and Planning, p. 4.8-3.) The analysis, however, only focuses on consistency with the Land Use Element of the General Plan and fails to thoroughly analyze that consistency. The Land Use Element of the General Plan designates approximately nine land use districts within the proposed Plan area. The Draft EIR, however, only discusses the impacts related to one: land use district (LUD) No. 7, PD-30.⁴¹ The Draft EIR does not consider the other eight LUDs and the impacts to these districts are never considered. Instead of discussing these plans, the Draft EIR states that the City “has sole land use authority within the proposed Plan area and has the authority to replace existing land use district and zoning regulations.” (Draft EIR, Land Use and Planning, p. 4.8-3.) Although, a “significant Land Use and Planning impact would occur if the proposed Downtown Plan would conflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction over the project adopted for the purposes of avoiding or mitigation and environmental effect,” the Draft EIR concludes there is a less than significant impact from the proposed Plan potentially conflicting with an existing plan, policy, or regulation. (*Id.*, Land Use and Planning, pp. 4.8-2 & 4.8-3.) The Draft EIR makes this finding without analyzing the full scope of the proposed Project’s impacts.

The additional LUDs that comprise the proposed Plan area include:

- 1) LUD No. 4 – high density residential district, encouraging “an intensification or recycling of dwelling units in limited areas of the City where apartment and condominium lifestyles are logically related to transportation and services” (LB General Plan, Land Use Element, p. 60);
- 2) LUD No. 5 – high density residential district “to accommodate highly urbanized lifestyle in which interactions among home, workplace, shopping, and entertainment” (*ibid.*);
- 3) LUD No. 8A –commercial uses, residential use are not appropriate and the focus is on local and neighborhood services (*id.*, Land Use Element, p. 67);
- 4) LUD No. 8M – mix of free standing office and residential with preferred ground floor retail uses on both (*id.*, Land Use Element, p. 69);
- 5) LUD No. 8N – shopping node with neighborhood retail shopping clusters, some specifically designated in area where “the pattern of land use, the traffic flows, and the distribution of residences more or less dictate the locations of the commercial centers” (*id.*, Land Use Element, pp. 70 & 71);
- 6) LUD No. 8R – mix of retail and residential, where “residential uses predominate on the frontages of certain main streets, but in which some retails uses may occupy the ground

⁴⁰ Furthermore, the Draft EIR is inconsistent with both the Historic Preservation and Housing Elements of the General Plan. Inconsistency with these plans is further discussed in the cultural resources and population and housing sections of this Letter.

⁴¹ This is another example of the flaws that result from an inadequate project description and discussion of the environmental setting.

floors of the residential buildings, or may be in free-standing retail buildings” (*id.*, Land Use Element, p. 69);

- 7) LUD No. 10 – institutional and school district (*id.*, Land Use Element, p. 73); and
- 8) LUD No. 11 – open space and park district, all land in this district is “intended to remain in or be redeveloped in the future in (essentially) an open condition” (*ibid.*).

These districts are very different from the one district the Draft EIR evaluated:

LUD No. 7 – mixed use development, which encourages the blending of land uses with development standards contained in a planned development plan or ordinance.

(*Id.*, Land Use Element, pp. 65 & 66.)

The Plan will eliminate the distinctions outlined in LUD Nos. 4, 5, 8A, 8M, 8N, 8R, 10, and 11, and treat each distinct district in the Plan area as if it was originally in LUD No. 7. The Draft EIR “must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Kings County Farm Bureau, supra*, 221 Cal. App. 3d at p. 712 (*citing Laurel Heights, supra*, 47 Cal. 3d at p. 405) [internal quotations omitted].) As such, the Draft EIR must evaluate the inconsistencies between the proposed Plan and the Land Use Element, which inconsistencies may result in a significant environmental impact.

In addition to discussing various LUDs, the Land Use Element of the General Plan also describes neighborhood services, facilities, and amenities within the proposed Plan area and recommended steps for improving service within the East Village, West End, and Willmore City neighborhoods:

East Village: “No parks or recreational facilities exist within the area. Expansion of the cramped Stevenson School site would provide increased open space for school students and for the residential community. Day care facilities should be encouraged.” (General Plan, Land Use Element, p. 125.)

West End: “Creation of a neighborhood park is essential” to facilitate community cohesion and focus. (*Id.*, at p. 183.) “New residential developments are required to provide useable private recreation spaces. Neighborhood retail commercial activities should be provided to residents in the West End. Encouraging the location of a much needed grocery or supermarket in the area is recommended. Day care, including large facilities, should be encouraged.” (*Ibid.*)

Willmore City: “Providing additional park space and recreational opportunities is necessary. Efforts to locate a neighborhood supermarket and grocery store in the area should be supported. Alleviating overcrowding at local schools is recommended as well. Day care should be encouraged.” (*Id.*, at p. 191.)

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One of the key concerns in these areas is park space. Still, the Plan ignores these recommendations, even though the proposed Plan will also result in “significant and unavoidable” impacts to parks and recreation.

The Draft EIR has failed to analyze the land use and planning impacts of the Plan. These impacts must be included in a revised and recirculated EIR.

2. Mitigation

As discussed above, the Draft EIR does not analyze the impacts related to inconsistencies with the Land Use Element and it also does not analyze any mitigation to offset these impacts. (Cf. CEQA Guidelines, § 15002, subd. (f) [An EIR “is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.”].) Again, these impacts must be analyzed and mitigated. Until the public has some understanding of the full impact of the proposed Project, it cannot comment on feasible mitigation measures.

D. Population and Housing

1. Impacts

a. *The Draft EIR Contains Inconsistent Data Regarding the Size of the Project’s Residential Population*

Skewing the impacts of the proposed Project, the Draft EIR contains inconsistent reports on the size of the residential population that the proposed Plan will accommodate. (Compare Draft EIR, Greenhouse Gas Emissions, pp. 4.5-22 & 4.5-30 [Table 4.5-2, residential population accommodated by the Project, approximately 14,750 residents.], with *id.*, Population and Housing, p. 4.10-3 [“the proposed 5,000 dwelling units would generate a net increase of approximately 13,500 new residents”], and *id.*, Public Services, pp. 4.11-7 & 4.11-8 [5,000 new units would result in a 13,500 increase of new residents].) These reports are also inconsistent with the numbers the lead agency relied on to calculate the increase in residents, which were 2.9 people per unit, multiplied by 5,000 units, for a total population of 14,500. (See Draft EIR, Executive Summary, p. 1-24; *id.*, Population and Housing, p. 4.10-3.)

Likewise, the Draft EIR’s reporting of the size of the baseline residential population in the Plan area is inconsistent with the City’s Downtown Market Study, which analyzed the 631 acre project detailed in the Initial Study. The Downtown Market Study states that the residential population of the Plan area is 31,404 residents. (See Downtown Long Beach Market Study, Strategic Economics, April 17, 2009, p. 7 (referred to herein as Downtown Market Study).) The Draft EIR, however, provides that the “Plan area is expected to increase in population to approximately **70,091 residents by 2010** and nearly 80,000 residents by 2035.” (Draft EIR, Population and Housing, p. 4.10-1 [emphasis supplied].) Although the proposed Project’s boundaries have increased by 88 acres, to 719 acres, since the time the Downtown Market Study

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was drafted, this 88 acre increase does not explain the great difference in these population figures (31,404 residents in comparison to 70,091 residents, a difference of 38,687 residents).

The Draft EIR must be revised to include accurate and consistent data regarding the size of the proposed Project's residential population as well as accurate and consistent data concerning the baseline residential population. Once these changes are made, the document must be recirculated for public review.

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b. The Draft EIR Fails to Adequately Analyze the Project's Impacts on Population and Housing

The Draft EIR fails to adequately analyze the proposed Project's impacts on the existing residents of the Plan area. According to the Downtown Market Study, 31,404 residents live in downtown Long Beach and 75% of them are low income.⁴² (See Downtown Long Beach Market Study, pp. 7 & 9.) This means that nearly 24,000 DTP residents are low income. Low income households are at great risk of displacement to make way for the DTP's anticipated market rate development of 5,000 new residential units and millions of square feet of new commercial, retail, and hotel developments. As this new large scale development of the Plan area takes place, low income residents will be displaced outside of the area by rising rents and the demolition and conversion of the older buildings in which they currently reside. (Draft EIR, Population and Housing, pp. 4.10-3 & 4.10-4)⁴³ Importantly, the proposed Project has increased by 88 acres since the time the Downtown Market Study was drafted. Therefore, the number of low income residents is most likely even greater than 24,000, as there are certainly additional low income residents residing in the 88 acres that have been added to the project area. (See City of Long Beach 2005-2010 Consolidated Plan, Housing and Household Needs Assessment, pp. III-19 & III-21 ["The City's low and moderate Income Areas generally fall within Downtown, Central and North Long Beach, and portions of the West Side."]⁴⁴) Other important statistics from the Downtown Market Study include the following: 30% of downtown residents earn less than \$15,000 a year (almost 10,000 residents); 15% of downtown residents earn \$15,000 to \$24,000 a year; 15% of downtown residents earn \$25,000 to \$34,000 a year; and 15% of downtown residents earn \$35,000 to \$49,000 a year. Finally, the Downtown Long Beach median income is \$27,000 (very low income),⁴⁵ yet the city-wide median income is \$45,000. (Downtown Long Beach Market Study, p. 9.) Despite these staggering statistics from the Downtown Market

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⁴² The U.S. Department of Housing and Urban Development (HUD) defines "Low Income" as households that earn up to 80% of area median income (AMI), or up to \$50,400 a year for a family of four living in Long Beach. HUD's 2011 AMI for Long Beach is \$63,000 a year for a family of four.

⁴³ This demolition and conversion is also relevant to the cultural resources section in the Draft EIR, as the mitigation in that section expressly allows the demolition and alteration of older buildings that are "eligible for historic listing," if their historic qualities are documented prior to demolition. (See Draft EIR, Cultural Resources, p. 4.3-13.) This sanctioned demolition causes further significant impacts on the older housing stock occupied by low income individuals. This impact has not been analyzed or mitigated.

⁴⁴ See *id.*, Housing and Household Needs Assessment, p. III-21 for a map of Long Beach's designated Low and Moderate Income Areas, which are defined by HUD as census block groups that contain greater than 50% of households earning below 80% of the County median income.

⁴⁵ HUD defines "Very Low Income" as households that earn up to 50% of AMI, or up to \$31,500 a year for a family of four living in Long Beach.

Study regarding the incomes of existing residents in the Plan area, the Draft EIR fails to adequately analyze or mitigate the proposed Project's significant impacts related to these existing low income residents.

The Draft EIR acknowledges substantial displacement of existing residents:

“[T]he City experienced a 7.5 percent increase in population during the 1990's, a 2.6 percent increase in households, and less than a 1 percent increase in the housing stock.... This imbalance in population and housing growth has resulted in fewer vacancies, upward pressure on housing prices, more people crowded into too few housing units, and ***reduced opportunity for residents displaced during implementation of the Proposed Project to find equivalent housing in the local area...***

Therefore, the proposed Long Beach Downtown Plan would contribute to existing housing deficiencies in the local area...

The associated displacement of existing housing and people during implementation of the proposed project would contribute to a cumulative impact on housing opportunities in Downtown Long Beach and on the adjacent communities as displaced residents search for housing where recent conditions have not provided an adequate supply of new housing for the area's increased population. Therefore, the cumulative impact to population and housing would be significant and unavoidable.”

(Draft EIR, Population and Housing, pp. 4.10-3 & 4.10-4 [emphasis supplied]; *see also id.*, Executive Summary, p. 1-24.) The Draft EIR further provides:

“Implementation of the proposed Downtown Plan ... would result in the ***displacement of existing housing and people, primarily housed in medium density multi-family dwelling units. New development would occur at higher densities and with more modern housing.... While many residents would relocate into different dwelling units either within or outside the Plan area, they would be displaced from their existing dwelling units and may be unable to obtain similar housing with respect to quality, price, and/or location.*** Therefore, the Project would have an adverse effect on the housing supply and may require construction of replacement housing elsewhere.”

(*Id.*, Population and Housing, p. 4.10-3 [emphasis supplied].)

The potential displacement of 24,000 (or more) low income residents from the Plan area, as a result of demolition and conversion of older buildings and the other significant impacts of the proposed Project, would have rippling impacts throughout the City, as displaced Plan area residents move to Central, North, and West Long Beach where rents are more affordable. (See Draft EIR, Population and Housing, pp. 4.10-3 & 4.10-4; *see also* City of Long Beach 2005-2010 Consolidated Plan, Housing and Household Needs Assessment, pp. III-62 & III-63 [“The

Beach area, Belmont Shore, Belmont Heights, Los Altos, and Bixby Knolls are the most expensive rental markets.... The lowest rents are found in Downtown north of 7th Street, in Central Long Beach, the West Side and North Long Beach.”.) However, Central, North, and West Long Beach do not have sufficient housing resources to accommodate 24,000 displaced low income residents. The City has acknowledged that overcrowding is a significant problem through much of Long Beach: “The Needs Assessment documents extremely limited rental vacancies in Long Beach, and vacancies among units with three or more bedrooms in particular. Combined with high levels of renter overcrowding and overpayment, the City has a significant need for affordable rental housing, especially for large family renters.” (City of Long Beach 2005-2010 Consolidated Plan, Strategic Plan, p. V-10.)⁴⁶ “The 2000 Census documents the presence of severe overcrowding in ... 20% of renter households in Long Beach.... [C]ertain neighborhoods in the City demonstrate extreme rates of overcrowding...***[T]he entirety of Downtown and Central Long Beach, as well as parts of the West Side and North Long Beach are characterized by over one-third of renter households living in severely overcrowded housing.***” (*Id.*, Housing and Household Needs Assessment, pp. III-79 & III-80 [emphasis supplied].) “With respect to renter households, 46% were overpaying in 2000.”⁴⁷ (*Id.*, Housing and Household Needs Assessment, at p. III-83.)

Overcrowding itself is regarded by CEQA as a significant environmental effect.⁴⁸ (See CEQA Guidelines, § 15064, subd. (e) [“[I]f a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.”].) With overcrowding in Central, North and West Long Beach, the displacement of 24,000 people would necessitate the construction of well over 8,200 units around and outside the Plan area, if the displaced residents remain within the City of Long Beach. (See e.g., Draft EIR, Executive Summary, p. 1-24; *id.*, Population and Housing, p. 4.10-3 [resident count is based on City average of 2.9 people per household].) The significant impact of constructing these over 8,200 units has not been quantified, fully analyzed, or mitigated within the Draft EIR.

The Draft EIR’s analysis of the Plan’s impacts on population and housing lacks sufficient detail and specificity. Significant impacts are clearly admitted but they are not thoroughly analyzed. Data is not provided regarding the number of residents or housing units that will be impacted by the proposed Project. Data is also not provided regarding the race and ethnicity of residents likely to be displaced,⁴⁹ nor is data provided regarding the number of seniors or

⁴⁶ Available at http://www.longbeach.gov/cd/neighborhood_services/reports/cp.asp.

⁴⁷ Households that spend more than 30% of their incomes on gross housing costs (including rent/mortgage, utilities, taxes, insurance and related costs) are considered to be overpaying for housing costs. (City of Long Beach 2005-2010 Consolidated Plan, Housing and Household Needs Assessment, p. III-83.)

⁴⁸ For a further discussion of the Plan’s unmitigated impacts on population and housing, see Health Impact Assessment of the Long Beach Downtown Plan, Health Impact Partners, April 4, 2011, submitted as a comment on the Draft EIR and incorporated by reference into our comments.

⁴⁹ Minority households are disproportionately represented among lower and moderate income households in Long Beach. (See City of Long Beach 2005-2010 Consolidated Plan, Housing and Household Needs Assessment, p. III-20 & III-21.) The map on page III-21 illustrates that a majority of the City’s low and moderate income households reside in the Downtown area. Therefore, Downtown Plan could have significant and disproportionate impacts on low income communities of color. This raises environmental justice concerns, which have not been considered or analyzed in the Draft EIR.

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disabled who are likely to face displacement. Moreover, not a single mitigation measure is considered in the Draft EIR to offset the proposed Project's significant impacts on population and housing. The Draft EIR must be revised to include this missing analysis and recirculated for public review. Moreover, mitigation measures must be included to offset the Project's significant impacts on population and housing.

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c. The Draft EIR Provides Inaccurate Descriptions of Existing City Housing Policies and Programs

The Draft EIR inaccurately describes the City's current housing policies and programs related to affordable housing and the relocation of displaced residents. These inaccurate descriptions provide misinformation on the full impact of the proposed Project on the housing stock and inevitable displacement of tens of thousands of low income residents.

i. Coastal Zone Units

The Draft EIR inaccurately describes the City's coastal zone replacement housing policy. The Draft EIR states that the City has a "one-for-one" replacement housing requirement for low and moderate income units that are demolished in the coastal zone. (Draft EIR, Population and Housing, p. 4.10-2.) This description of the City's policy, however, is inaccurate. First and foremost, it is unclear how much of the Plan area actually falls within the City's coastal zone. The Draft EIR fails to include overlay maps or geographic descriptions of where the coastal zone intersects with the boundaries of the proposed Project.⁵⁰ Importantly, the requirement to replace affordable units demolished or converted in the coastal zone, on a one-for-one basis, stems from a state law called the Mello Act. (Gov. Code § 65590). The City's local ordinance implementing the Mello Act (LBMC, § 21.61), however, does not result in one-for-one replacement of units. Rather the City's ordinance allows developers to satisfy their replacement housing obligations through payment of an in lieu fee. The City's in lieu fee for replacement of a one bedroom unit is set at \$15,000.⁵¹ This will not result in one-for-one replacement, as per unit development costs for an affordable unit ranges from \$300,000 to \$350,000.00 per unit, depending on the size of the project. Therefore, the City's coastal zone replacement housing program is not accurately described in the Draft EIR and will not offset the proposed Project's significant impacts on population and housing in the Plan area.

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⁵⁰ As discussed elsewhere in this Letter, the City does plan to expand the Plan area to include parcels south of Ocean Avenue, which parcels are clearly within the coastal zone. The failure to include this intended expansion in the Draft EIR is improper piecemealing. (See *Laurel Heights*, *supra*, 47 Cal. 3d at p. 396.) For now, this area is not included in the proposed Project and the requirements applicable to the coastal zone may not alleviate any environmental impacts related to displacement in the current Plan area.

⁵¹ The City of Los Angeles' proposed coastal zone in lieu fees for the Venice-Playa Del Rey coastal zone area are \$260,343 per affordable unit for a project with 10 or more units. For the San Pedro-Harbor coastal zone area, proposed in lieu fees are \$186,159 per affordable unit for a project with 10 or more units. These proposed in lieu fees were developed for the City of Los Angeles by Hamilton, Rabinowitz and Alschuler, Inc. Long Beach's fees are very low in comparison.

The Draft EIR must be revised and recirculated to include an accurate description of the City's coastal zone policies and their applicability to the Project area.

ii. *Relocation Assistance*

The Draft EIR (Population and Housing, p. 4.10-2) also provides inaccurate descriptions of the City's local relocation assistance programs for displaced tenants, which can be found at LBMC sections 21.60 and 21.65. Pursuant to these code sections, low income tenants are entitled to relocation assistance in only two limited circumstances: (1) when a low income tenant household is displaced as a result of code enforcement because the unit is deemed uninhabitable by the City; or (2) when a low income tenant household is displaced as a result of condominium conversion because the unit is converted from an apartment to a condominium. Neither of these circumstances may apply in the Plan area. Moreover, relocation assistance amounts are quite low and typically insufficient for tenant households to find comparable replacement housing, particularly in the same neighborhood. Relocation amounts are currently set at approximately \$4,000 per household and are adjusted annually based on the Consumer Price Index. Therefore, the City's limited Relocation Assistance Programs do not offset the proposed Project's significant impacts on displacement.

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The Draft EIR must be revised to include accurate descriptions of the City's relocation assistance programs and their applicability to Plan area residents, and then recirculated with this revised information.

d. *The Draft EIR Fails to Analyze the Project's Impact on the City's Housing-Jobs Balance*

The Draft EIR fails to analyze the Project's impact on the City's housing-jobs balance. The proposed Project will create significant numbers of both construction (temporary) jobs and permanent (service sector, commercial and retail) jobs. The Draft EIR fails, however, to quantify the number of temporary or permanent jobs that will be created. The only reference in the Draft EIR to the number of jobs that will be created by the Project is as follows: "At full buildout . . . the number of jobs supported by the Project would be approximately 5,200." (Draft EIR, Greenhouse Gas Emissions, p. 4.5-22.) The Draft EIR, however, fails to indicate whether this number (5,200) represents the number of temporary construction jobs, the number of permanent commercial and retail jobs, or a combination of both. Moreover, the Draft EIR fails entirely to analyze the impacts that new workers will have on the City's limited affordable housing stock. There is no analysis in the Draft EIR regarding the housing available to low wage service sector employees who will support the commercial and retail uses anticipated by the proposed Project, including 1.5 million square feet of new office and civic developments; 384,000 square feet of new retail developments; 96,000 square feet of new restaurants; and 800 new hotel rooms. (Draft EIR, Project Description, p. 2-1.)

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According to the City's 2005-2010 Consolidated Plan, "[m]any of the workers who make up the diverse fabric of Long Beach earn very limited incomes, and are faced with overcrowding or overpaying for housing to live in the community. Occupations earning less than \$25,000 annually in Long Beach include people we interact with daily such as: Fast food workers, Retail

salespersons, Security officers, Nurse's aides, Social workers, School aides and janitors." (City of Long Beach 2005-2010 Consolidated Plan, Housing and Household Needs Assessment, p. III-18.) Increasingly, affordable and accessible housing is out of reach for those who work in and support our community, as well as seniors and the disabled. It is critical, therefore, that the Draft EIR be revised and recirculated to include an analysis of the impacts the proposed Project will have on the City's housing-jobs balance.

The Draft EIR, in multiple places, acknowledges that a key component of the proposed Project is job creation: "Project objectives of the proposed Long Beach Downtown Plan include increasing the residential population and promoting *job growth* in downtown." (Draft EIR, Executive Summary, p. 1-24 [emphasis supplied]; *see also id.*, Population and Housing, p. 4.10-3.) In fact, one of the Project's Objectives and Guiding Principles is to:

"[s]upport new industries to continue to diversify the economy and *promote job growth* while strengthening the existing backbone of convention, tourism and port businesses. The Downtown Plan encourages a range of uses to support a diverse economy and *a wealth of jobs and housing* in Downtown, while continuing to support the hub of convention, tourist and port activity for which Long Beach is known."

(Draft EIR, Project Description, p. 2-4 [emphasis supplied]; *id.*, Alternatives, p. 6-2.) And "[o]verall, the project would increase building heights throughout Downtown as a means to *increase residential density and employment intensity*." (*Id.*, Land Use and Planning, p. 4.8-3 [emphasis supplied].)

Throughout the Draft EIR, the City emphasizes the proposed Project's job creation aspects and links job creation with housing creation, yet there is no analysis regarding whether the housing that will be created by the Project is suitable for the jobs that will be created. The housing-jobs imbalance that will most likely be created by the proposed Project will also result in increased auto transit, which will have significant impacts on traffic, air quality, and greenhouse gas emissions. As more fully discussed in the transportation and traffic section of this Letter, in response to the Draft EIR Tom Brohard and Associates conducted an independent review of the EIR's traffic and transit analysis (referred to herein as the Brohard Report, attached hereto as Exhibit A and incorporated by reference into our comments) and noted a direct link between housing, jobs, and traffic. The Brohard Report found that significant traffic impacts "appear to be caused by displacement of the existing population and the lack of affordable housing. Significant traffic impacts to the I-710 Freeway and those at most of the City's intersections could be mitigated by modifying the Downtown Plan to reduce peak hour commuter traffic to and from Downtown Long Beach." (Brohard Report, p.7.) The Draft EIR fails to include any of this analysis. Further, as explained in the mitigation section below, the Draft EIR also fails to analyze how targeting a portion of the jobs created by the proposed Project to Long Beach residents would mitigate the Project's significant and unmitigated environmental impacts on population and housing, air quality, greenhouse gas emissions, and traffic. This mitigation is feasible, would mitigate significant unmitigated impacts, and should be included in the Draft EIR.

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The Draft EIR should be revised to include an analysis of the proposed Project's impact on the City's housing-jobs balance and recirculated.

e. The Draft EIR Fails to Analyze the Plan's Impact on the City's Housing Element

The Draft EIR fails to include any analysis of the DTP's impact on the Housing Element of the City's General Plan. Importantly, the Draft EIR fails to even mention the Housing Element in the land use and planning discussion in the Draft EIR. (See Draft EIR, Executive Summary, 1-43 & *id.*, Land Use and Planning, p. 4.8.) The DTP and Housing Element are in direct conflict with one another. (See CEQA Guidelines, § 15125, subd. (d); Gov. Code § 65454 [“[n]o specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan”].) These conflicts must be analyzed in the Draft EIR and mitigated.

As part of the City's most recent Housing Element planning process, the Southern California Association of Governments (SCAG) informed the City that Long Beach must produce 5,440 affordable units by 2014, in order to meet the needs of the City's low and moderate income residents. Specifically, the City must produce 2,321 Very Low Income units, 1,485 Low Income units, and 1,634 Moderate Income units. (Draft EIR, Population and Housing, p. 4.10-5 [Table 4.10-2].) These affordable housing production numbers are referred to as the Regional Housing Needs Assessment numbers, or the RHNA numbers. The City last updated its Housing Element in 2008-2009.⁵² At that time, the City was required to demonstrate in its Housing Element that it had adequate sites available to accommodate these 5,440 affordable units. In its 2009 Housing Element, the City identified 17 sites that were available (and appropriate) to accommodate its affordable unit RHNA numbers. Of these 17 sites, seven are located in PD-30 and eight are located in PD-29. (See City of Long Beach 2008-2014 Housing Element, Housing Resources, pp. IV-7 – IV-11.) Accordingly, 15 of the 17 sites identified in the Housing Element for production of these 5,440 affordable units are located in PD-30 and PD-29.⁵³

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The Draft EIR states in multiple places that the DTP includes a revision and expansion of PD-30 and a revision of parts of PD-29. (See Draft EIR, Project Description, p. 2-11; *id.*, Land Use and Planning, p. 4.8-1.) The City cannot simultaneously identify PD-30 and PD-29 as the location for nearly 5,440 affordable RHNA units (per the Housing Element) and 5,000 market rate units and millions of square feet of commercial, retail and hotel development (per the DTP). The Plan area is simply not large enough to accommodate these conflicting visions for PD-30 and PD-29, particularly in light of the fact that the DTP does not plan for a single unit of affordable housing.

⁵² The 2009 Housing Element remains in effect until 2014.

⁵³ Since the DTP seeks to expand the existing PD-30, it is likely that even more of the sites identified in the Housing Element will fall within the boundaries of the DTP. The remaining two sites identified in the Housing Element for affordable housing development are in West Long Beach

The Draft EIR must be revised and recirculated to analyze the Plan’s significant impacts on the City’s Housing Element. Moreover, these significant impacts must be mitigated.

2. Mitigation

In direct contravention with CEQA, the Draft EIR fails to include a single mitigation measure to offset the significant adverse population displacement and housing impacts of the proposed Project.⁵⁴ (See CEQA Guidelines, § 15126.4, subd. (a)(1) [an EIR must “include feasible measures which could minimize significant adverse impacts”].) These population and housing impacts are also cumulatively significant as the:

“The associated displacement of existing housing and people during implementation of the proposed Project would contribute to a cumulative impact on housing opportunities in Downtown Long Beach and on adjacent communities as displaced residents search for housing where recent conditions have not provided an adequate supply of new housing for the area’s increased population.”

(Draft EIR, Population and Housing, p. 4.10-4.) There is feasible mitigation for these impacts, namely in the form of inclusionary housing (mixed income housing), developer impact fees (commercial linkage fees), and local hiring requirements for DTP construction jobs (temporary jobs) and permanent jobs (retail, commercial, and service sector jobs). The Draft EIR fails to consider the inclusion of affordable housing and local hiring community benefits in order to mitigate not only the proposed Project’s significant and unmitigated impacts on population and housing, but also as discussed elsewhere in this Letter, air quality, greenhouse gas emissions, and traffic. (CEQA Guidelines, § 15130, subd. (a)(3) [“An EIR may determine that a project’s contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project’s contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.”].)

a. *Affordable Housing and Local Hiring Mitigation Measures*

A full analysis of feasible and recommended affordable housing and local hiring mitigation measures is further discussed in the David Rosen & Associates, “Long Beach Downtown Plan Community Benefits Analysis” (DRA Study), dated March 31, 2011, attached hereto as Exhibit B and incorporated by reference.⁵⁵ Based on the DRA Study, we recommend

⁵⁴ It is important to note that the impacts discussed in the population and housing section of the Draft EIR cannot be dismissed as mere social impacts of the project. Rather, these impacts have concrete physical, environmental implications. (See Draft EIR, Population and Housing, pp. 4.10-3 & 4.10-4.)

⁵⁵ For this study, LAFLA obtained a grant from The California Endowment, as part of its 10-year *Building Healthy Communities Initiative in Long Beach*, to hire David Paul Rosen & Associates (DRA) to analyze the potential economic benefits to developers of the DTP. DRA found that developers stand to receive massive economic benefits through the Plan, including: increased density; reduced parking; fast tracked development; and elimination

the following mitigation measures, which would offset the proposed Project's significant and unmitigated impacts on population and housing:⁵⁶

- *Mixed Income Housing Requirement for Construction of New Rental Projects in the DTP:* For the development of new apartment projects in the DTP, the City shall require developers to set aside 10% of those units (on-site) as affordable to Very Low Income households, earning up to 50% of area median income. As an alternative, developers may pay an in lieu fee to the City of \$20.00 per square foot of building area, for the construction of off-site very low income rental units. (See DRA Study, Table 1.)⁵⁷ &⁵⁸
- *Mixed Income Housing Requirement for Construction of New Condominium Projects in the DTP:* For the development of new condominiums projects in the DTP, the City shall require developers to set aside 15% of those units (on-site) as affordable to Moderate Income Households, earning up to 120% of area median income. As an alternative, developers may pay an in lieu fee to the City of \$10.00 per square foot of building area, for the construction of off-site very low income apartments or off-site moderate income condominiums. (See *ibid.*)
- *Linkage Fee on New Office Development in the DTP:* For the development of new office space in the DTP, developers shall pay the City a linkage fee of \$10.00 per square foot for the construction of Very Low Income rental units. (See *ibid.*)⁵⁹
- *Linkage Fee on New Retail Development in the DTP:* For the development of new retail space in the DTP, developers shall pay the City a linkage fee of \$10.00 per square foot for the construction of Very Low Income rental units. (See *ibid.*)
- *Linkage Fee on New Restaurant Development in the DTP:* For the development of new restaurant space in the DTP, developers shall pay the City a linkage fee of \$10.00 per square foot for the development of Very Low Income rental units. (See *ibid.*)
- *Linkage Fee on New Hotel Development in the DTP:* For the development of new hotels in the DTP, developers shall pay the City a linkage fee of \$10.00 per square for the construction of Very Low Income rental units. (See *ibid.*)

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of the need for developers to undertake individual environmental impact reports for the next 25 years, and that impact fees to fund community benefits such as affordable housing and local hiring were both feasible and justified.⁵⁶ These mitigation measures would also offset the proposed Project's significant and unmitigated impacts on air quality, greenhouse gas emissions, and traffic.

⁵⁷ There are 170 jurisdictions in California with inclusionary housing policies. (See *Affordable Housing by Choice: Trends in California Inclusionary Housing Programs*, Non-Profit Housing Association of California, 2007, p. 5 (Available at http://www.nonprophousing.org/pdf_attachments/IHIRReport.pdf.)

⁵⁸ Inclusionary housing requirements for the Downtown Plan's new rental developments are permissible if the Downtown Plan provides that new rental developments are entitled to the Plan's incentives only if they include a percent of affordable rental units. (See *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396 (*Palmer*)).

⁵⁹ There are at least 23 jurisdictions in California that have adopted commercial linkage fees to support the development of affordable housing. They include: Alameda County; City of Berkeley; City of Corte Madera; City of Cupertino; City of Livermore; Marin County; City of Menlo Park; City of Mountain View; Napa County; City of Oakland; City of Palo Alto; City of Petaluma; City of Pleasanton; City of Sacramento; Sacramento County; City of Milpitas; City of San Diego; City/County of San Francisco; City of Santa Monica; City of Sunnyvale; Sonoma County; City of Walnut Creek; and City of West Hollywood. (See Institute for Local Government, *Affordable Housing Trusts In California: Classifications and Best Practices*, Oct. 15, 2005, p. 2.)

- *Right of First Refusal for Displaced Residents*: Extremely Low Income,⁶⁰ Very Low Income, and Low Income households who are displaced from the DTP area as a result of new development shall have priority preference for affordable units built within the DTP area and built outside the DTP area with fees collected from DTP development.
- *Term of Affordability*: Affordable units constructed through DTP mixed income housing requirements, DTP in lieu fees or DTP linkage fees shall remain affordable for the life of the project.
- *Local Hiring for DTP Construction Jobs*⁶¹: The City should adopt the following Local Hiring Requirement for DTP construction jobs (temporary jobs):

The City of Long Beach recognizes that Project Labor Agreements are important to advancing the City's proprietary and policy interests, including the ability to ensure on-time, on-budget completion of projects, target construction job opportunities to Long Beach residents and low-income communities, prompt generation of tax flow and other income to the City, and boost the local economy by generating local construction jobs and job training. As such, all new developments within the Downtown Community Plan Area that are undertaken by the City with a contract value of \$500,000 or more, receive City Investment of more than \$1,000,000, or are located on public land and developed under lease from the City, will operate under Project Labor Agreements that contain targeted hiring provisions ensuring that at least 30% of all construction work hours are performed by Long Beach residents residing in High Unemployment Areas and at least 10% of all construction work hours are performed by Disadvantaged Long Beach residents. Disadvantaged residents are defined as those whose household income falls below 50% of the area median area income. Such Project Labor Agreements should also set goals to provide at least 15% of entries into apprenticeship programs and 30% of total apprentice work hours on a project are performed by Disadvantaged Long Beach residents. Finally, such Project Labor Agreements should ensure that contractors request in writing and unions refer targeted workers prior to referral of any other individuals into journey person or apprentice positions on the project in question.

The City of Long Beach recognizes that construction projects can create opportunities for small, local businesses and therefore promote the economic development of our community. As such, all new developments within the Downtown Community Plan Area that are undertaken by the City, receive City Investment, or are located on public land, will ensure that at least 10% of all construction work, as measured by the dollar value of contracts related to the

⁶⁰ Extremely Low Income Households are defined by HUD as households earning up to 30% of area median income or less, or up to \$18,900 a year for a family of four living in Long Beach.

⁶¹ We understand the City of Long Beach recognizes the importance of economic growth that strengthens our industries, retains and creates good jobs and housing for all residents, increases average income and stimulates economic investment in our communities. Strong economic growth creates the tax base that allows Long Beach to support the public facilities, services and quality of life that residents require. To this end, it is important that Long Beach will support and prioritize the creation of quality jobs.

project in question, be contracted with a Section 3 or city certified local Small Business Enterprise (LSBE).

For purposes of the provisions set forth above, “City Investment” means financial assistance provided by the City to a developer that is expressly articulated or identified in writing by the City and establishes a proprietary interest in the development project in question, and shall include, but not be limited to: grants (requiring repayment where terms not met); rent subsidies or reductions; below-market loans; loan forgiveness; City-approved bond financing (excluding conduit bond financing); a sale or lease of City-assembled land for less than its fair market value; contingent obligations taken on by the City such as any guaranty or pledge of City funds.

For the purposes of the provisions set forth above, “High Unemployment Areas” means Long Beach zip codes containing census tracts in which the unemployment rate exceeds 150% of the L.A. County average.

- *Local Hiring for DTP Permanent Jobs:* The City should adopt the following Local Hiring Requirement for DTP permanent jobs (i.e., commercial, retail and service sector jobs):

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The City of Long Beach recognizes that Local Hiring Requirements for permanent jobs (i.e., non-construction jobs such as retail, food service and clerical jobs) in the Downtown Community Plan Area are important to advancing the City’s propriety interests and the interests of its residents. As such, all Covered Employers within the Downtown Community Plan Area that receive City Assistance will operate under Local Hiring Agreements with the City that contain targeted hiring provisions ensuring that at least 30% of all Covered Work Hours are performed by Long Beach residents and at least 10% of all Covered Work Hours are performed by Disadvantaged Long Beach residents.⁶² Disadvantaged residents are defined as those whose household income falls below 50% of the area median income.

For the purposes of the provisions set forth above, “Covered Employers” is defined as all employers within the Downtown Community Plan Area who are Beneficiaries or who have entered into a lease or contract with a Beneficiary for the performance of work within the Downtown Community Plan Area. “Beneficiary” is defined as an entity located or locating within the Downtown Community Plan Area and receiving financial assistance from the City or entering into a contract with the City for the performance of work within the Downtown Community Plan Area.

For the purposes of the provisions set forth above, “Financial Assistance” is defined as any loan, grant, subsidy or similar participation in the cost of

⁶² Hours worked by out-of-state residents are not included in this calculation.

development of a project within the Downtown Community Plan Area provided by the City, irrespective of source, valued at \$50,000 or more.

For the purposes of the provisions set forth above, “Covered Work Hours” are defined as hours worked by individuals in positions performed predominantly on-site within the Downtown Community Plan Area other than executive, managerial or licensed professional positions.

The City will utilize a Master Local Hiring Agreement that will be utilized for all Covered Employers, to allow for proper monitoring and enforcement of the local hiring provisions set forth above.

The recommended affordable housing mitigation measures, i.e., mixed income housing, in lieu fees, and linkage fees) are appropriate and feasible mitigation measures under CEQA. (See CEQA Guidelines, § 15130, subd. (a)(3); see e.g., *Save Our Peninsula Committee, supra*, 87 Cal. App. 4th at pp. 140 & 141 [fee-based infrastructure mitigation were adequate mitigation measures under CEQA].) Moreover, including affordable housing and local hiring community benefits as recommended by DRA would mitigate the Project’s significant and unmitigated impacts on population and housing, air quality, greenhouse gas emissions, and traffic.⁶³ Importantly, “[w]ith some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.” (See CEQA Guidelines, 15130, subd. (c).) Further, implementation of the proposed DRA community benefits is consistent with the understanding that “a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law.” (Pub. Res. Code § 21004.) Likewise, the state law outside of CEQA permits the inclusion of community benefits, such as affordable housing and

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⁶³ Mitigation of the proposed Project’s population and housing impacts could potentially mitigate some of the other significant and unmitigated impacts of the proposed project. For example, in addressing air quality and traffic impacts, the South Coast Air Quality Management District (SCAQMD) encourages a jobs/housing balance, stating in its guidance documents:

“Residents in urban areas in the South Coast basin have become increasingly concerned with increased traffic congestion and the failure of the region to achieve state and federal clean air standards. The concept of ‘jobs/housing balance’ is based on the premise that the number of vehicle trips and vehicle miles traveled (VMT) can be reduced when sufficient jobs are available locally to balance the employment demands of the community, and when commercial services are convenient to residential areas. . . . The AQMD and the SCAG both embrace jobs/housing balance as a viable tool available to local governments to reduce air pollution.”

(SCAQMD, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning (May 2005), Chapter 2 – Air Quality Issues Regulating Land Use, p. 2-13 [available at <http://www.aqmd.gov/prdas/aqguide/aqguide.html>].) By controlling the degree of displacement resulting from implementation of the Downtown Plan, and including a mix of affordable housing and local hiring, the City could mitigate some of the Project’s significant and unmitigated impacts on population and housing, air quality, greenhouse gas emission, and traffic. This vital discussion of a jobs/housing balance must be included in a recirculated Draft EIR.

local hiring requirements, in specific plans or community plans. (See Gov. Code § 65452 [a “specific plan may address any other subjects which in the judgment of the planning agency are necessary or desirable for implementation of the general plan”].)

Clearly, “it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Res. Code § 21002.) The community benefits proposed by DRA are feasible and would help effectively mitigate the significant and, currently, unmitigated impacts of the proposed Project.

b. Other Specific Plans throughout California

There are a number of specific plans throughout the State that include affordable housing measures, linking this requirement to the city’s land use planning. Of particular note is the City of San Diego, Downtown Community Plan, which has been cited by the preparers of the Draft EIR and City staff throughout the DTP and Draft EIR process:

- *City of San Diego, Downtown Community Plan (2006)* – In its Downtown Community Plan, San Diego found a need for affordable housing, stating:

“The availability of diverse, affordable housing options will encourage people to live and work in the Centre City area, which benefits the entire region by reducing traffic congestion, urban sprawl and air pollution. One of the main goals of downtown’s redevelopment is to expand and preserve the supply of affordable housing. Specifically, the goal is to ensure that downtown provides housing options for all income levels and promotes income diversity within projects and in neighborhoods.”

(City of San Diego, Downtown Community Plan, Chapter 3 – Land Use and Housing, p. 3-30.)⁶⁴

The plan goes on identify five goals and five policies for affordable housing. These guidelines complement the affordable housing requirements adopted in the plan, which are based on the requirements described in the California Community Redevelopment Law and outlined in Health and Safety Code, section 33330 *et seq.* As such, the San Diego Downtown Community Plan includes a 15% affordable housing requirement, with 40% of the units for Very Low Income households. (Centre City Development Corporation, Downtown San Diego A Place for Everyone, 2010 Affordable Housing Update, p. 3.)⁶⁵ As implemented, the city has achieved 19.5% affordable housing in the downtown area, with 60% of units for Very Low Income households. (*Ibid.*)

⁶⁴ Available at http://www.ccdc.com/images/stories/downloads/planning/supplemental-information/03.1_SDCP_Land_Use_update_062909_3-structure_and_land_use_web.pdf.

⁶⁵ Available at http://www.ccdc.com/images/stories/downloads/programs/affordablehousing/affordable_housing_brochure_2010.pdf.

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San Diego is not the only city that has identified the need for affordable housing and included it in its land use planning:

- Creekview Specific Plan and Sierra Vista Specific Plan, City of Roseville (2010) – **Requirement:** For all new housing units, 10% of those units must be affordable to moderate, low, and very low income households. Of this total 10%, the requirement is further broken down to 20% for Moderate Income households, 40% to Low Income households, and 40% to Very Low Income households. The affordable units are allocated to specific medium- and high-density residential parcels within the plan area, thereby facilitating the distribution of affordable units throughout the plan area. **Alternative Implementation:** Subject to the approval of City’s Housing Division director, the number of required affordable units may be transferred among parcels within each specific plan area. Also subject to approval of the director, and to the extent an in lieu fee schedule is adopted on a citywide basis, a portion of the required affordable housing allocation may be satisfied through payment of an in lieu fee. (City of Roseville, Creekview Specific Plan, Chapter 5 – Affordable Housing Plan, pp. 5-1 – 5-7; *id.*, Sierra Vista Specific Plan, Chapter 5 – Affordable Housing Plan, pp. 5-1 – 5-8.)⁶⁶
- Sutter County, Sutter Pointe Specific Plan (2009) – **Requirement:** Of all housing developments, 5% of units must be set aside for Moderate Income, Low Income, and Very Low Income households, including a mix of ownership housing affordable to Moderate Income households, and rental housing affordable to Low Income and Very Low Income households. Within this, it is further broken down. Of the 5% affordable units, 40% are for Moderate Income households, 27% are for Low Income households, and 27% are for Very Low Income households. The specific plan also provides for 3,000 senior housing units, some of which will satisfy a portion of the 5% affordable housing requirement. **Alternative Implementation:** For residential developments in which on-site construction of the required affordable units is not feasible, the project applicant may request approval from the Planning Commission for an alternative means of complying with the requirement. Alternative compliance may include off-site construction of the affordable units, land dedication, partnering with a nonprofit housing developer or the Housing Authority to build the units offsite and the payment of an in lieu fee. An in lieu fee option cannot be exercised until the County adopts an in lieu fee schedule, which schedule shall be “roughly equal to the cost to develop an affordable housing unit, minus any federal or state subsidy that may be attained and applied.” (Sutter County, Sutter Pointe Specific Plan, Chapter 7 – Affordable Housing, pp. 7-1 – 7-9.)⁶⁷
- City of Rohnert Park, University District Specific Plan (2006) – **Requirement:** Under the specific plan, at least 15% of all units developed must be affordable to Moderate

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⁶⁶ Available at http://www.roseville.ca.us/planning/major_development_projects/creekview_specific_plan/default.asp, and http://www.roseville.ca.us/planning/planning_document_library/specific_plans.asp.

⁶⁷ Available at http://www.co.sutter.ca.us/doc/government/depts/cs/ps/cs_sutterpointe_plan.

Income, Low Income, and Very Low Income households. Of this 15%, it is further broken down, with 27% of these units as for-sale units to Moderate Income households, 48% of these units as rental units to Low Income households, and 25% of these units as rental units to Very Low Income households. Each property owner is responsible for satisfying its affordable housing requirement. **Alternative Implementation:** Property owners may satisfy this requirement through on-site construction, on-site land dedication, payment of in lieu fees (for small properties), or the acquisition of off-site affordable housing credits from other property owners. (City of Rohnert Park, University District Specific Plan, Chapter VII – Housing Program, pp. VII-1 & VII-2.)⁶⁸

- City of Woodland, Spring Lake Specific Plan (2001) – **Requirement:** Of newly constructed single family units, 10% must be affordable to Low Income households. An off-site affordable housing fee shall be assessed on all single family market rate units constructed within the plan area.⁶⁹ Of new multi-family units, 20% must be affordable to Very Low Income households and 10% must be affordable to Low Income households or, instead of the 30% breakdown, simply 25% must be affordable to Very Low Income households. **Alternative Implementation:** Required affordable units must be built on-site, unless doing so can be demonstrated to be infeasible, in which case the developer may, with the City’s approval, dedicate land for transfer to another developer to build the required units. Developments with less than 50 units that are determined to be “not suitable” for affordable units can pay an in lieu fee if an Affordable Housing Trust Fund is in place and there is certainty that the required units will be build in a timely fashion in the proximate area. Single family affordable units may be smaller than market rate units. Multifamily affordable units must be the same size and indistinguishable from the market rate units. (City of Woodland, Spring Lake Specific Plan, Section 3 – Housing Element, pp. 3-3, 3-5, 3-8, 3-10 & 3-11.)⁷⁰
- City of Woodland, Southeast Area Specific Plan (1990) – **Requirement:** For single family units, 10% of all ownership units must be affordable to first time homebuyers earning 120% of AMI. If the developer goes beyond this requirement and provides its affordable units to households earning 90% of AMI, there is a density bonus of 15 to 20 units per acre. For multifamily units, 25% of multifamily units must be affordable to Low Income households, with at least 10% of the 25% set aside for Very Low Income households. This requirement is tied to a density bonus, where developers receive a one unit density bonus for every affordable unit provided through construction or land dedication. Within every multi-family project, at least

⁶⁸ Available at <http://www.ci.rohnert-park.ca.us/index.aspx?page=92>.

⁶⁹ The specific plan falls short of the general plan’s requirement that 35% of all housing units that are constructed in the city be multi-family units. Therefore, the specific plan requires that 29% of all units in the plan area be multi-family units, with the equivalent of the remaining 6% constructed outside of the plan area. All of the multi-family units constructed outside of the plan area must be affordable and financed through an off-site affordable housing fee charged to all single family market units within the plan area. (*Ibid.*)

⁷⁰ Available at http://www.cityofwoodland.org/gov/depts/cd/planning/online/spring_lake_specific_plan.asp.

5% of all multi-family units must be accessible to handicapped persons and at least 5% must contain three or more bedrooms. **Alternative Implementation:** For the single family units, developers may dedicate land to meet affordable housing needs in lieu of constructing the required housing. (City of Woodland, Southeast Area Specific Plan, Plan Objectives, Policies, and Standards, pp. 19 – 22.)⁷¹

There have also been similar requirements for *specific developments* that are subject of a specific or development plan:

- City of Chula Vista, Otay Ranch General Development Plan (1993) – Requirement: All developments containing 50 or more units, whether apartments or condominiums, are required to make 10% of their units affordable, with a requirement of 5% Low Income units and 5% Moderate Income units. **Alternative Implementation:** As determined by the city and decided on a case-by case basis, a negotiated in lieu of fee may be paid instead of the provision of affordable units on site. (County of San Diego, Otay Ranch General Development Plan.)⁷²
- City of Los Angeles, Playa Vista Areas B, C, and D Specific Plans (1985) – Requirement: Of the units permitted to be constructed in Areas B and C, 15% must be Low Income and Moderate Income units. At least 225 of the required Low Income and Moderate Income units in Area B must be senior housing units and located on a preapproved, designated site within the plan area. At least 50% of the Low Income and Moderate Income units must be constructed anywhere within Area B and C, or within Area D. **Alternative Implementation:** The remaining Low Income and Moderate Income units that are not constructed within the plan area, which amount shall not amount to more than 50% of the total units, may be constructed outside of the plan area. All of the units constructed outside of the plan area must be provided at a ratio of 1 required to 1.25 off-site units for each Low Income and Moderate Income unit that was required by not built within the plan area. (City of Los Angeles, Playa Vista Area B Specific Plan, Section 5 – Zone Regulations, pp. 5 & 6; *id.*, Playa Vista Area C Specific Plan, Section 5 – Zone Regulations, pp. 5 & 6.)⁷³

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Theses plans represent a small sample of cities that have included affordable housing requirements in land use plans. Including affordable housing requirements in the proposed Plan would help to mitigate the displacement that will result from the proposed Plan and the resulting adverse impacts on population and housing, air quality, green house gas emissions, and traffic.

c. *Jobs Language in Other Plans and Laws*

⁷¹ Available at http://www.cityofwoodland.org/gov/depts/cd/planning/online/southeast_area_specific_plan.asp.

⁷² Available at <http://www.co.san-diego.ca.us/dplu/mscp/or.html>.

⁷³ Available at <http://cityplanning.lacity.org/complan/specplan/pdf/PVISTAB.PDF> & <http://cityplanning.lacity.org/complan/specplan/pdf/PVISTAC.PDF>. Also available at <http://cityplanning.lacity.org/complan/specplan/sparea/playavistapage.htm>.

There are a number of local jurisdictions throughout California that have included jobs and economic development language in land use plans and laws.⁷⁴ For example:

- City of San Diego, General Plan Update, Economic Prosperity Element (2008) –
Objective: To have “[a] city with an increase in the number of quality jobs for local residents, including middle-income employment opportunities and jobs with career ladders.” **Policy/Law:** “Encourage the retention and creation of middle-income employment by . . . [e]ncouraging the development of measures that facilitate expansion of high technology business facilities that have the potential to create middle-income jobs likely to be filled by local residents” and “[s]upporting the creation of higher quality jobs in low-paying industries (such as visitor, entertainment and amusement).” “Support the creation of higher quality jobs with advancement opportunities and self-sufficient wages.” “Support programs to increase the standard of living for lower-income residents.” “Continue to promote job opportunities accessible to residents in low-income neighborhoods.” (City of San Diego, General Plan Update, Economic Prosperity Element, pp. 21, 23 & 24.)⁷⁵ **Objective:** To have “[a] city able to retain, attract, and maintain the type of businesses likely to contribute positively to the local economy. These industries contribute to a diverse economic base, maintain environmental quality, and provide high quality employment opportunities.” **Policy/Law:** Develop and maintain programs and services that address the changing needs of them local business community” by “[r]egularly evaluat[ing] economic conditions to determine the industries, sectors, and locations that are most significant to regional and local economic growth and creation of quality jobs.” (Id., General Plan Update, Economic Prosperity Element, pp. 24 & 25.)

- County of El Dorado, General Plan, Economic Development Element (2004) –
Objective: “The County shall monitor the jobs-housing balance and emphasize employment creation.” **Policy/Law:** The County shall “use appropriate land use, zoning, and permit streamlining strategies, and other financial incentives to provide for and encourage a broad mix of housing types that are compatible with wage structures associated with existing and forecasted employment;” “[e]ncourage specific plans and large planned developments in Community Regions and Rural Centers to include a broad mix of housing types and relate it to local wage structures to achieve balance with existing and forecasted resident household needs;” and “actively promote job generating land uses while de-emphasizing residential development unless it is tied to a strategy that is necessary to attract job generating land uses.” (County of El Dorado, General Plan, Economic Development Element, p. 210.)⁷⁶

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⁷⁴ These examples refute Long Beach city staff’s assertions (i.e., by Amy Bodek at the March 17, 2011 Planning Commission Study Session regarding the DTP) that jobs and economic development language are not appropriate in a land use document such as the DTP.

⁷⁵ Available at <http://www.sandiego.gov/planning/genplan/pdf/generalplan/adoptedepelem.pdf>.

⁷⁶ Available at <http://www.co.el-dorado.ca.us/Economic/>.

- City of Berkeley General Plan, Economic Development and Employment Element (2001) – Objective: Some of the objectives of the economic element are to: “[p]rovide a variety of jobs with varied skill levels for residents of Berkeley;” “[p]romote revitalization in neighborhoods and communities that have historically higher-than-average rates of unemployment;” “[i]ncrease social and economic equity in land use decisions;” and “[p]romote general retail businesses and a variety of cultural, recreational, entertainment, and public sector activities in the Downtown to ensure that the Downtown will remain a vital, attractive, and unifying center for the city.” **Policy/Law:** These are achieved by, *inter alia*, considering the development of “an ordinance that requires that a percentage of Berkeley residents be hired for publicly funded construction jobs,” maintaining “a diverse mix of commercial goods and services in the shopping districts,” and using “needs assessments to determine what basic goods and services are lacking, and establish criteria of appropriateness for neighborhood businesses that address” local ownership, employment “for local residents at living wages,” as well as other issues. (City of Berkeley, Economic Development and Employment Element, Element Objectives & Policy ED-4B.)⁷⁷

- City of Pasadena, General Plan, Economic Development and Employment Element – Objective: “A key element in any comprehensive economic development plan is consideration of total public needs. Some development efforts have failed, for example, to ensure that the jobs created by development projects go to local residents, thus making little headway against unemployment and losing City revenues that could have been collected on resident earnings through increased disposable income.” “To meet the employment needs of both the residents and affected business/industry, a myriad of options are available for local government. These options range from aggressive efforts in negotiating economic development projects where City financial assistance is involved such as first source agreements or local hiring goals to the adoption of policy statements which indicate the interest and preference of government for local hiring in jobs generated by development activities.” **Policy/Law:** “The City shall make use of development agreements and covenants to obtain commitments to hire local residents and utilize local businesses or make good faith efforts by major development projects which are found to have *environmental impacts which cannot be mitigated to insignificant levels.*” (City of Pasadena, General Plan, Economic Development and Employment Element, General Implementation Concepts [emphasis supplied].)⁷⁸ **Objective:** “Sustained reduction in the City’s unemployment rate, particularly among minorities and the disadvantaged.” **Policy/Law:** “Employment opportunities for residents of impacted neighborhoods.” (*Id.*, General Plan, Economic Development and Employment Element, Goals and Objectives.)⁷⁹

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⁷⁷ Available at <http://www.ci.berkeley.ca.us/contentdisplay.aspx?id=476>.

⁷⁸ Available at <http://ww2.cityofpasadena.net/planning/deptorg/commplng/GenPlan/econ3.asp>.

⁷⁹ Available at <http://ww2.cityofpasadena.net/planning/deptorg/commplng/GenPlan/econ2.asp#top%20of%20page>.

These plans and policies are all consistent with the mitigation measures presented in the DRA Study and demonstrate that economic development language is appropriate in land use plans.

d. Downtown Market Study

According to the Downtown Market study:

“Downtown is currently a very diverse place with a mixed-income, mixed-race, and multi-generational population. This is a key asset of Downtown and should be preserved and enhanced. Currently, Downtown functions well for lower-income residents who are served by its retail opportunities, supply of rental housing, and access to transit. While attracting new residents to Downtown will be an important element in attracting new, more upscale retail, ***it should not be done at the expense of existing residents***; there is room in Downtown for a variety of groups to coexist. Long Beach is well-positioned to create a vibrant, diverse district that values equity to all residents, while still offering premium-living options for more affluent ones.”

(Downtown Long Beach Market Study, p. 63 [emphasis supplied].)⁸⁰

This diversity in income, workforce, and housing leads to a population that can support existing and new businesses. Under the proposed Plan, downtown could lose this diversity:

“While many residents would relocate into different dwellings units either within or outside of the Plan area, they would be displaced from their existing dwelling units and may be unable to obtain similar housing with respect to quality, price, and/or location. Therefore, the project would have an adverse effect on the housing supply and may require construction of replacement housing elsewhere. Impacts would be Class I, significant and unavoidable.” (Draft EIR, Population and Housing, p. 4.10-3.)

This impact is significant but avoidable with implementation of the proposed mitigation measures.⁸¹

E. Public Services

A proposed project may have a potentially significant affect on the environment if it would:

⁸⁰ Available at <http://www.dlba.org/uploads/Reports/Final%20Downtown%20Long%20Beach%20Market%20Study%20-%20Compressed.pdf>.

⁸¹ We should note that retail, which is an essential piece of the economic framework in Downtown Long Beach, would be deeply impacted by the displacement of the types of existing residents who represent a range of income brackets. Therefore, any reliance on “overriding economic considerations” for failing to mitigate this impact would be nonsensical.

“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.”

(CEQA Guidelines, Appendix G.) The proposed Project will result in these impacts, yet the Draft EIR improperly finds the Project’s impacts on all public services, except parks and recreational facilities, to be “less than significant.” Hence, the Draft EIR fails to mitigate adverse impacts to public safety services such as fire protection and to public education services, such as libraries. Further, although the Draft EIR states the impact on parks and recreational facilities will be significant, it fails to mitigate any of these impacts, finding these impacts “significant and unavoidable.” The Draft EIR must be revised and recirculated with a corrected impacts’ analysis and the necessary feasible mitigation measures to offset these impacts.

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1. Impacts

a. *Fire Protection Services*

According to the Draft EIR, Long Beach Fire Department has “approximately 1.03 firefighters per 1,000 residents,” with “133 suppression fire fighters on duty at all times.” (Draft EIR, Public Services, p. 4.11-2.) As such:

“Structural fire suppression in the Project area would receive response from four stations and approximately 27 firefighters (LBFD 2006). The standard established by the National Fire Protection Association (NFPA) for response to emergency calls is 4 minutes for the first engine and 8 minutes for all other units. The LBFD currently meets these standards (LBFD 2006).”

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(*Ibid.*) This data on response time is at least four years old and does not reflect the current environmental setting, presenting an inaccurate baseline from which to measure the DTP impacts.⁸² (See CEQA Guidelines, § 15125, subd. (a); see *Save Our Peninsula Committee, supra*, 87 Cal. App. 4th at p. 121 [“[T]he impacts of the project must be measured against the ‘real conditions on the ground.’”].)

More accurately aligned with the current environmental setting, in 2010 the City cut the Fire Department’s budget and eliminated 26 vacant positions, dropping the number of suppression firefighters from 133 to 126. (See generally Press Telegram, “LB Fire Stations Begin Cutbacks,” October 2010.)⁸³ In addition, to further address the budget concerns, the City imposed rolling brownouts of fire stations. (*Ibid.*) These brownouts have increased response

⁸² The Draft EIR also relies on 2006 for its discussion of police protection services. (See Draft EIR, Public Services, pp. 4.11-2 & 4.11-6.) This discussion must also be updated with current information that accurately reflects the environmental setting.

⁸³ Available at http://www.presstelegram.com/news/ci_16221564.

times to as much as 18 minutes. This is a far cry from the 4 minute standard set by the National Fire Protection Association. In addition to not including updated information on staffing and response times, the Draft EIR does not include a discussion of the Long Beach Fire Department's non-fire suppression response times. Importantly, since the data included in the Draft EIR does not describe the capacity at those stations serving the Plan area, there is no way to ascertain if the capacity at the stations serving the Plan area is sufficient to accommodate the population increase between 2006 and today, even outside of the budget limitations that are now causing even further departmental limitations. (See Draft EIR, Public Services, pp. 4.11-5 & 4.11-6.)

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The Draft EIR must be revised and recirculated with this additional information.

b. Parks and Recreational Facilities

The Initial Study for the proposed Project cited potentially significant impacts on parks and recreational facilities, finding the proposed Plan would “increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated,” and “include recreational facilities or require the construction or expansion of recreational facilities which may have an adverse physical effect on the environment.” (CEQA Guidelines, Appendix G; Draft EIR, Appendix A – Initial Study, p. 13 [environmental checklist].) Pursuant to these findings, the City stated it would address two related issues in the Draft EIR, specifically the potential impact resulting from: (1) “the increased demands on neighborhood and regional parks and other recreational facilities” and (2) the expected inclusion of private and public recreational space as part of most residential and mixed-use development in the proposed Project area. (*Ibid.*) Yet, the Draft EIR fails to analyze potential impacts from the inclusion of recreation space in development projects, and fails to mitigate this impact or the impact from increased demand – concluding the impacts on park and recreational facilities from new development would be *significant and unavoidable*. (*Id.*, Public Services, p. 4.11-7.) An Initial Study is prepared for the analysis of potential impacts, and these impacts were committed to be and should be discussed in the EIR for the proposed Project. (See CEQA Guidelines, § 15063; Draft EIR, Appendix A – Initial Study, p. 13.)

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The Draft EIR must be revised and recirculated with this additional information.

c. Libraries

The Draft EIR describes the only library in the proposed Project area in a vacuum. The Draft EIR states

“The Main Library is located within the Downtown Plan area at 101 Pacific Avenue, adjoining the Long Beach City Hall. This 132,000-square-foot branch was constructed in 1977 and serves as the resource library for all of Long Beach and as a State and Federal Depository. It receives selected materials from the state and federal governments including the Code of Federal Regulations, other laws and regulations, and other documents from various governmental departments.

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Library patrons also have access to these resources via the neighborhood libraries.”

“While the Main Library serves the entire City, it is particularly convenient to the local population of approximately 52,000 residents within a one-mile radius of the Library. The Main Library also serves six different schools within the LBUSD, is open to the public 45 hours per week, and is staffed by 50 to 80 employees and volunteers.”

(Draft EIR, Public Services, p. 4.11-3.) Within this there is no discussion of the standards for library service, the library hours of operation, the capacity of the Main Library, or how many and which other city libraries serve the proposed Plan area. Again, the Draft EIR does not establish the baseline from which the Plan area development can be measured. There is no discussion of the “real conditions” on the ground.

The Draft EIR must be revised and recirculated with this additional information.

2. Mitigation

a. *Fire Protection Services*

The Draft EIR does not appropriately discuss the impacts to fire services. Without an understanding of these impacts, feasible mitigation measures cannot be tailored to these impacts. However, with what is included in the Draft EIR, it is clear that the Fire Department “staffing levels will require reassessment as more high rise developments occur in the Downtown Core that increase the density and intensity of Downtown development,” as this “[t]rend would likely require additional personnel and equipment to meet increased demand for fire department services.” (Draft EIR, Public Services, p. 4.11-5.) This increased density and intensity of use is what the DTP outlines and what the Draft EIR is meant to evaluate:

“The [City] has directed the preparation of this Program Environmental Impact Report (PEIR) to address the potential environmental effects that may result from the adoption and implementation of the proposed Long Beach Downtown Plan...”

“The Downtown Plan provides development standards and design guidelines for an expected increase in the density and intensity of existing Downtown land uses by allowing up to: (1) approximately 5,000 new residential units; (2) 1.5 million square feet of new office, civic, cultural, and similar uses; (3) 384,000 square feet of new retail; (4) 96,000 square feet of restaurants; and (5) 800 new hotel rooms.”

(Draft EIR, Executive Summary, p. 1-1.) There is no question that implementation of the proposed Plan will result in increased density and intensity in Downtown development and, therefore, “increased demand for fire department services.” These are significant impacts under CEQA and must be mitigated. (CEQA Guidelines, Appendix G.)

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Still, the Draft EIR holds off on assessing these impacts and feasible mitigation measures, stating “the Fire Prevention Bureau reviews every new development proposal and may suggest additional fire prevention features to be included in project design.” (Draft EIR, Public Services, p. 4.11-6 (*citing* Lbfd 2006).) Delaying assessment until further review by the Fire Prevention Bureau constitutes deferral of the formation of mitigation measures, and is expressly prohibited under CEQA. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) Along with this deferred formation of mitigation measures, the Draft EIR also states “provided additional funding is provided to Lbfd as needed” – pursuant to the Fire Facilities Impact fees, which would be “used to finance the construction of additional fire facilities or improvements to current facilities” – new “fire protection facilities would not be needed.” (Draft EIR, Public Services, p. 4.11-6.) This circular discussion regarding the tentative additional funding for facilities and improvements is unenforceable and is also expressly prohibited by CEQA, which requires that mitigation measures be “fully enforceable.” (CEQA Guidelines, § 15126.4, subd. (a)(2).)

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It is clear that the significant impacts to Fire Protection Services resulting from the expected increased density and intensity of Downtown development have not been mitigated. These impacts must be mitigated in a recirculated EIR. (*See Mountain Lion Coalition, supra*, 214 Cal. App. 3d at p. 1052.)

b. Libraries

The Draft EIR does not appropriately discuss the impacts to libraries. Without an understanding of these impacts, feasible mitigation measures cannot be tailored to these impacts. These impacts must be analyzed and mitigated. Until the public has some understanding of the full impact of the proposed Project, it cannot comment on feasible mitigation measures.

F. Transportation and Traffic

There are a number of important flaws in the transportation and traffic section of the Draft EIR. As such, further study must be undertaken to properly identify, analyze, and mitigate the traffic and transit impacts of the proposed Project. To summarize: the Iteris Traffic Study on which the Draft EIR is based did not analyze the additional areas that were later included in the DTP; potentially significant impacts to the Downtown Long Beach public transit system were not evaluated or analyzed; mitigation measures for significant traffic impacts in the Draft EIR and in the Iteris Traffic Study are inconsistent or insufficiently detailed; the Draft EIR improperly deferred analysis of potentially significant traffic impacts to the I-710; many of the mitigation measures that were proposed are defective and unsupported; and a number of feasible mitigation measures were not properly considered or analyzed.

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CEQA requires that all adverse and significant traffic and transit impacts be properly disclosed, analyzed and, where feasible, mitigated. Until these various issues and concerns are addressed, there is substantial evidence that the proposed Project may have adverse traffic and transit impacts, and these impacts that have not been properly disclosed, analyzed, or mitigated. Accordingly, the Public Review Draft EIR for the DTP must be revised and recirculated.

Most of these concerns are discussed at length in the Review of the Draft Environmental Impact for the Long Beach Downtown Plan – Traffic and Transit Issues, prepared by Mr. Tom Brohard for LAFLA (*see supra*, Brohard Report). Mr. Brohard is a Professional Civil Engineer in both California and Hawaii, and a Professional Traffic Engineer in California. He has over 40 years of engineering experience. His report is attached to this Letter as Exhibit A and incorporated herein by reference. Below are some particularly salient points.

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1. Impacts

a. The Draft EIR Fails to Analyze the Impacts of the Amended Downtown Plan

The Iteris Traffic Study only addresses the original Plan area; the Draft EIR revised and expanded the project boundaries for the DTP to include an added area between 10th and Anaheim Street. The Iteris Traffic Study is therefore inconsistent with the Draft EIR because it fails to analyze any development in the expanded project area. Development in the area between 10th Street and Anaheim Street that is now part of the DTP and will change the distribution of trips, spreading them over a different area than was evaluated in the Iteris Traffic Study.

One likely place for additional impacts not evaluated in the Iteris Traffic Study will be the intersection of Atlantic Avenue and Anaheim Street. According to the Brohard Report:

“With the smaller project area, all trips forecast to be generated by the Downtown Plan were distributed north-south directly across Anaheim Street. With the expanded Downtown Plan area now adjacent to Anaheim Street, some of these trips will likely use Anaheim Street instead. The redistribution of trips to Anaheim Street is likely to cause a significant traffic impact at Atlantic Avenue, an intersection forecast to operate at Level of Service ‘D’ with volume to capacity ratio of 0.90 with the smaller project area (barely below the volume to capacity ratio of 0.91 which would result in Level of Service ‘E’ and an additional significant traffic impact).”

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“Distribution of trips in the Traffic Study corresponding to the areas proposed to be developed is critical to the proper analysis of traffic impacts that will result from the Downtown Plan. Until the development between 10th Street and Anaheim Street is included, the Traffic Study does not properly analyze the traffic impacts of the additional areas now included in the Downtown Plan. The Draft EIR which relies on the flawed Traffic Study does not include a proper traffic analysis of the larger Downtown Plan as currently proposed.”

(Brohard Report, p. 3.)

b. The Draft EIR Fails to Evaluate Potentially Significant Transit Impacts

The Draft EIR anticipates that new vehicle trips generated as a result of the DTP will be reduced by 26 percent because some of them will be diverted to transit. While the Draft EIR describes the relatively good transit services available in Downtown Long Beach, it does not

address the effect that this additional demand will have on the existing transit system and provides no information about current operating conditions. Information about current peak hour capacity, utilization, and frequency is essential to determining the degree to which the additional demand may have negative impacts on transit services.

According to the Draft EIR and the Iteris Traffic Study, cumulative projects already approved as well as completion of the Downtown Plan will result in a significant increase of 1,779 AM peak hour transit trips and 1,913 PM peak hour transit trips. While the Draft EIR and the Iteris Traffic Study used these projected transit trips to reduce projected vehicle trips (and thus traffic impacts) at study intersections, no evaluations or analyses have been made to determine if the transit system in Downtown Long Beach can accommodate the significant additional peak hour transit demand.

The Draft EIR and the accompanying traffic study must evaluate and analyze existing and planned transit service operations to determine if sufficient transit capacity will be available to acceptably accommodate the significant ridership increases at buildout of the DTP. The analyses of the bus and light rail transit services must develop necessary mitigation measures to provide appropriate transit service for the additional 1,779 AM peak hour and 1,913 PM peak hour transit trips that will be generated by cumulative projects and by the DTP, together with funding and financing of the necessary transit mitigation measures and service enhancements that will be needed to meet this significant increase in transit demand.

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c. The Draft EIR Fails to Analyze Significant Impacts to the I-710 Freeway

Although the Iteris Traffic Study concludes that the DTP would add more than 1,000 peak hour trips to the I-710 Freeway, it fails to analyze those impacts, recommending that “detailed mitigation measures be evaluated as and when tangible project information is available”, i.e. “when actual projects come forward for approval.” According to the Brohard Report:

“The Program Draft EIR for the Downtown Plan is required to be the document that analyzes potentially significant traffic impacts to the I-710 Freeway. The two [Congestion Management Plan] intersections in Long Beach, Alamitos Avenue/7th Street and Alamitos Avenue/Shoreline Avenue/Ocean Boulevard, are identified on Pages 4.12-14 and 4.12-15 of the Draft EIR as being significantly impacted by the Proposed Project. The CMP and the California Environmental Quality Act, CEQA, do not allow the analyses of potentially significant traffic impacts created by an additional 998 AM peak hour and by 1,131 PM peak hour trips to be deferred to some future time. The Traffic Study must analyze these impacts and develop necessary mitigation measures. The Program Draft EIR must include these findings, impacts, and necessary mitigation measures in the discussion of CMP locations that are significantly impacted.”

“When the I-710 Freeway analyses are completed in accordance with CMP criteria, there will be significant traffic impacts to this facility. Those impacts, together with most of the other significant traffic impacts identified in the Draft

EIR and the Traffic Study, appear to be created by traffic commuting into and out of Downtown Long Beach. Many of those traffic impacts also appear to be caused by displacement of the existing population and the lack of affordable housing. Significant traffic impacts to the I-710 Freeway and those at most of the City's intersections could be mitigated by modifying the Downtown Plan to reduce peak hour commuter traffic to and from Downtown Long Beach."

(Brohard Report, p. 7.) CEQA does not allow an EIR to defer analyzing reasonably foreseeable potentially significant impacts to a later date. (*Communities for a Better Environment, supra*, 184 Cal. App. 4th at p. 92). The Draft EIR must be revised to include a full consideration of the impacts of the Plan on the I-710 and recirculated.

2. Mitigation

a. *The Draft EIR Fails to Mitigate Significant and Unavoidable Traffic Impacts*

A total of 53 major signalized intersections were analyzed in the Iteris Traffic Study and the results were then carried forward into the Draft EIR. Sixteen of the 53 intersections will be significantly impacted by cumulative traffic growth and by trips to and from the proposed Project. While generalized mitigation measures are proposed, the 16 intersections (including nine intersections significantly impacted by the proposed Project) will fail to meet the City's operational threshold of Level of Service "D" or better in Year 2035 in either one or both peak hours. The Draft EIR states further improvements at the nine intersections significantly impacted by the proposed Project are not feasible, and the Draft EIR concludes the Plan will create "significant and unavoidable" traffic impacts at these intersections. These impacts must be mitigated.

b. *Mitigation Measures in the Draft EIR and Iteris Traffic Study Are Inconsistent*

The Draft EIR and the Iteris Traffic Study both propose five general mitigation measures for the significant traffic impacts caused by the proposed Project, but the Draft EIR fails to properly and correctly discuss additional details that were included in the Traffic Study as mitigation measures. As outlined by the Brohard Report, "[i]n addition to the discrepancies in mitigation measures between the Draft EIR and the Traffic Study, the mitigation measures identified in the Traffic Study are generalized and overly broad." (Brohard Report, p. 7.) Importantly, the Iteris Traffic Study does not include analysis or adequate explanation to support the mitigation measures recommended in the Draft EIR and fails to provide the necessary detail regarding the proposed mitigation measures. Importantly:

"The first component of Mitigation Traf-1(a) proposes to implement an Adaptive Traffic Control System (ATCS) in Downtown. While Table 12 in the Traffic Study identifies 34 of the 53 study intersections in Downtown for ATCS implementation, a closer review of Table 12 indicates this measure by itself will mitigate project traffic impacts at only seven of the 34 signalized intersections. In addition to ATCS, other mitigation is needed at nine study intersections to achieve the City's Level of Service 'D' threshold."

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“The second component of Mitigation Traf-1(a) proposes to improve the Alamitos Avenue corridor via removal of selected parking spaces and the implementation of additional travel lanes plus bike lanes in each direction. The limits and locations of the restriping of Alamitos Avenue are not specified in the Draft EIR. The Traffic Study does not provide any analyses or evaluation of the anticipated benefits of these proposed improvements. Further, removal of on-street parking spaces could result in secondary environmental impacts, and these have not been evaluated. Finally, Table 12 on Page 59 of the Traffic Study indicates that ‘geometric improvements’ are recommended at Alamitos Avenue/3rd Street and at Alamitos Avenue/Broadway together with ATCS but does not describe the additional traffic lanes. Even with the ‘geometric improvements,’ both intersections will fail to meet the City’s Level of Service ‘D’ threshold. It is apparent that further improvements are needed to mitigate the significant traffic impacts of the Proposed Project at these intersections.”

“The third component of Mitigation Traf-1(a) proposes to reconfigure the 6th Street and 7th Street intersections at Martin Luther King Avenue and Alamitos Avenue for safety and traffic flow enhancements. The reconfigurations of these intersections are not specified in the Draft EIR or in the Traffic Study. Even with implementation of ATCS, Table 12 in the Traffic Study indicates the intersections of Martin Luther King Avenue/7th Street and Alamitos Avenue/7th Street will fail to meet the City’s Level of Service ‘D’ threshold. Further improvements at Alamitos Avenue/7th Street to bring the intersection up to Level of Service ‘D’ in both peak hours are briefly discussed on Pages 4.12-14 and 4.12-15 of the Draft EIR. These or other improvements may be part of the ‘recommended plan’ to address poor operating conditions at this Congestion Management Plan intersection. It is apparent that further improvements are needed to mitigate the significant traffic impacts of the Proposed Project at Martin Luther King Avenue/7th Street and Alamitos Avenue/7th Street.”

“The fourth component of Mitigation Traf-1(a) proposes to enhance the I-710 Freeway access to and from Downtown Long Beach. The enhancements to the I-710 Freeway access to and from Downtown Long Beach are not specified in the Draft EIR. The Traffic Study does not provide any analyses or evaluations of the alternatives being considered or the anticipated benefits of the proposed improvements.”

“The fifth component of Mitigation Traf-1(a) proposes to implement transit facilities and programs to encourage public transit usage and Transportation Demand Management (TDM) Policies. The public transit facilities and programs to encourage public transit usage and TDM Policies are not specified in the Draft EIR. The Traffic Study does not provide any detail regarding transit facilities or additional TDM measures beyond the City’s current requirements that should be implemented. The Draft EIR must provide specific recommendations including the various amenities that will be used to encourage transit usage including items

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such as bus benches, bus shelters, transit information kiosks, secured bicycle parking, and bus bays as well as the additional TDM strategies and policies such as transit subsidies that will be used to reduce single occupant vehicle trips.”

(Brohard Report, pp. 7 – 9.) If the Draft EIR is going to set forth mitigation measures, it must discuss in sufficient detail to be meaningful measures that can be implemented. (Pub. Res. Code §§ 21002 & 21003; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449 & 450; *Communities for a Better Environment, supra*, 184 Cal. App. 4th at pp. 79 & 80.) The Draft EIR must be redrafted to include sufficient details about proposed mitigation to be meaningful.

c. The Draft EIR fails to consider all feasible mitigation measures

In addition to the information that is lacking from those mitigation measures that have been included, the Draft EIR fails to include all feasible mitigation measures. Notably, the Draft EIR all together fails to even describe those potential mitigation measures it considered and rejected at the nine intersections that will be significantly impacted by traffic coming to and from the proposed Project. (Brohard Report, p. 9.) These “measures must be disclosed, together with reasons why the improvements are not feasible.” (*Ibid.*)

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i. Brohard Recommendations

Furthermore, the Draft EIR fails to consider additional feasible measures that will mitigate the significant impacts of the Project. As stated by Mr. Brohard:

“In my experience, there may be other potentially feasible transportation planning and traffic engineering mitigation measures at the intersections identified as ‘significant and unavoidable’ that have not been considered. Additional TDM Policies can further reduce significant traffic impacts by lowering the number of vehicle trips by encouraging, requiring, and/or subsidizing alternative transportation. Impacts are also reduced by measures that avoid travel during congested peak hours. In addition to enhancing the current TDM Program to a level being used by other agencies, potential mitigation measures should include consideration of the following:

- Prohibit left turns during peak hours or at all times
- Prohibit vehicle crossing and/or left turning traffic from minor side streets
- Prohibit curb parking during peak hours or at all times to allow striping of additional through/right turn lanes
- Restripe roadways using narrow lanes so more lanes can be striped
- Relocate bus stops to the far side of the intersection to avoid interference with right turns
- Provide right turn green arrows for striped right turn lanes”

(Brohard Report, p. 9.) Mr. Brohard has also proposed longer term measures, including having the City identify “problem intersections” that are predicated to experience significant delay and address that concern with “localized widening strategies,” adding “a lane or lanes in the immediate vicinity of the intersection.” (*Ibid.*)

None of these additional measures are included in the Draft EIR. In fact, according the Draft EIR:

“[I]mplementation of the proposed Project would result in significant impacts at 16 intersections. Implementation of the improvements and programs identified above could improve operations to LOS D or better at seven of the 16 intersections significantly impacted by future traffic. However, there is no program currently in place to implement these improvements and future development of individual projects would not be able fully implement these mitigation measures. Therefore, the impact would remain significant and unavoidable and no other feasible mitigation measures are available to reduce this impact to a less-than-significant level.”

(Draft EIR, Transportation and Traffic, p. 4.12-14.) CEQA requires an analysis of feasible mitigation measures that “could minimize significant adverse impacts.” (CEQA Guidelines, § 15126.4, subd. (a)(1).) As discussed in the Brohard Report, the Draft EIR and Iteris Traffic Study have failed to evaluate the feasible mitigation measures listed above. These measures could reduce or eliminate significant, unmitigated traffic impacts, and would result in few, if any, secondary impacts. (Brohard Report, p. 10.)

ii. *AQMD Guidelines*

As briefly discussed in the population and housing section of this Letter, SCAQMD encourages a jobs/housing balance for addressing air quality and traffic impacts, stating:

“Residents in urban areas in the South Coast basin have become increasingly concerned with increased traffic congestion and the failure of the region to achieve state and federal clean air standards. The concept of ‘jobs/housing balance’ is based on the premise that the number of vehicle trips and vehicle miles traveled (VMT) can be reduced when sufficient jobs are available locally to balance the employment demands of the community, and when commercial services are convenient to residential areas...The AQMD and the SCAG both embrace jobs/housing balance as a viable tool available to local governments to reduce air pollution.”

(SCAQMD, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning (May 2005), Chapter 2 – Air Quality Issues Regulating Land Use, p. 2-13.) This is consistent with both the Brohard Report and the Downtown Market Study. When discussing the proposed Project’s impacts on the 710-freeway, the Brohard Report states that for those impacts that appear to be caused by those commuting in and out of downtown Long Beach, “[m]any of

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those impacts ... appear to be caused by displacement of the existing population and lack of affordable housing.” (Brohard Report, p. 7.)

iii. *DRA Study*

We also urge the City to adopt the mitigation measures recommended in the DRA Study. These measures would not only provide critically needed community benefits to existing low-income communities in and around downtown Long Beach, but would also mitigate some of the transportation and traffic impacts that remain “significant and unavoidable” in the Draft EIR. These measures are described in detail in the population and housing section of this Letter and summarized below:

- *Mixed Income Housing*: A mixed income housing (inclusionary housing) measure would require developers of market-rate residential housing to include a certain percentage of units at below market rents or sales prices. This kind of law is already in effect in 170 California jurisdictions, allowing them to increase the supply of very low, low and/or moderate income housing in their cities. A mixed income housing requirement in the DTP would have the added benefit of reducing vehicle trips by allowing more workers to live close to their jobs.⁸⁴
- *Commercial Linkage Fees*: A commercial linkage or “nexus” fee would be charged to non-residential developers to mitigate the impact of development on the housing market. Essentially, the city would recognize that new non-residential development generates demand for housing, putting strains on existing supply. By charging a fee, revenues would be generated for affordable housing development. A commercial linkage fee would also result in fewer vehicle trips by facilitating the construction of housing in the downtown area for low- and moderate-income workers who support downtown retail, commercial and service sector jobs.
- *Local Hiring Requirements*: Local hiring requirements could be applied to DTP construction (temporary) jobs and DTP permanent (i.e., commercial, retail, service sector) jobs to require developers to hire a percent of Long Beach residents. These local hiring requirements would also have the added benefit of reducing vehicle trips into and out of downtown.

The Brohard Report, AQMD Guidance, and DRA Study all include feasible mitigation measures that have not been included in the Draft EIR. These measures would mitigate the currently unmitigated and significant impacts of the proposed Project, and should be incorporated into the Draft EIR.

In sum, there are a number of flaws in the transportation and traffic section of the Draft EIR. CEQA requires that significant traffic and transit impacts be properly disclosed, analyzed

⁸⁴ As stated in the population and housing section of this Letter, inclusionary housing requirements for the Downtown Plan’s new rental developments are permissible if the Plan provides that new rental developments are entitled to the Plan’s incentives only if they include a percent of affordable rental units. (*See Palmer, supra*, 175 Cal. App. 4th 1396.)

and, where feasible, mitigated. Further study must be undertaken to properly identify, analyze and mitigate the traffic and transit impacts of the proposed Project. Until these various issues and concerns are addressed, there is substantial evidence that the proposed Project may have adverse traffic and transit impacts, and these have not been properly disclosed, analyzed, and mitigated. Accordingly, the Draft EIR for the DTP must be revised and recirculated.

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G. Utilities and Service Systems

The City has failed to analyze the impacts of the Project on the utilities and service systems supplying the Plan area. Notably, these impacts relate to broader city- and state-wide issues around recycling and water availability. The City must accurately analyze the impacts of the proposed Project, in accordance with existing policies and realities, or inform the public in the Draft EIR that it is undertaking an alternative analysis.

1. Impacts

a. Water Availability

The City's discussion of water availability is inaccurate. Critically, this discussion fails to discuss the State's goal of achieving a 20% reduction of water use by 2020. It also fails to explain how Long Beach intends to increase its draw on groundwater supplies and maintain its draw on water from the Delta. Furthermore, it factors in desalinated water as a reliable water resource starting in 2010, even though this technology is still being tested and is not yet economically feasible. All of these flaws result in an inaccurate understanding of water availability and assessment of the potential impacts on existing and projected water resources.

i. 20x2020

The water availability discussion fails to analyze the impact of 20x2020 on the proposed Project and the Plan area. As way of background, in November 2009 the State Legislature, concerned with the state of California's water supplies, enacted Senate Bill (SB) x7-7 to reduce the level of urban per capita water use 20% by December 31, 2020 (20x2020). (California Department of Water Resources, Senate Bill 7.)⁸⁵ In February 2010, the State Water Resources Control Board (SWRCB) outlined a water conservation plan to achieve this goal. (See SWRCB, 20x2020 Water Conservation Plan (February 2010).)⁸⁶ One of key recommendations includes: "[i]nvestigate requiring conservation offsets for water demand generated by new development." (Id., p. xii.) Adhering to the 20x2020 mandate, as further outlined in Water Code section 10608.28, on February 3, 2011, the City of Long Beach Board of Water Commissions held a public hearing discussing implementation of SB x7-7. (See generally, Long Beach 90H20.)⁸⁷ In its implementation of the law, as an urban water retailer, Long Beach Water Department intends to detail "[n]ew requirements for new development." (Ibid. [20x2020 power point, at p. 9].)

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⁸⁵ Available at <http://www.water.ca.gov/wateruseefficiency/sb7/docs/SB7-7-TheLaw.pdf>.

⁸⁶ Available at http://www.swrcb.ca.gov/water_issues/hot_topics/20x2020/docs/20x2020plan.pdf.

⁸⁷ Available at <http://www.lbwater.org/pdf/conservation/public-inspection.pdf> (power point presentation related to implementation of 20x2020).

Although there is great concern about 20x2020, the regulatory setting discussed in the Draft EIR's utilities and service systems section makes no mention of SB x7-7 or 20x2020, even though this law and policy will directly impact the level of water consumption and, therefore, the amount of actual water that can be accessed for the proposed Project. In fact, nowhere in the utilities and service systems section does the lead agency mention the 20x2020 goal or Long Beach's efforts to curb water use, to account for the inevitable reduction of water by urban retailers.⁸⁸ Most importantly, the Draft EIR fails to include data related to whether the City has considered this issue, which would require a per capita analysis of water use, including a calculation of baseline daily per capita water use. A more detailed discussion of the impact of the proposed Plan on water availability and 20x2020 is needed.

The Draft EIR must be revised and recirculated with this discussion.

ii. *Potable Water Supplies Will Not Meet the Needs of the Proposed Project*

According to the Draft EIR, the City gets its water from three major sources: (1) the Metropolitan Water District; (2) groundwater; and (3) desalinated water. (Draft EIR, Utilities and Service Systems, p. 4.13-10 [Table 4.13-1].) The Draft EIR fails to accurately assess the amount of water available from these sources and, therefore, fails to accurately analyze the Plan's impact on water availability. Of particular concern is the City's reliance on desalinated seawater.

In assessing water supplies, the Draft EIR relies on the Long Beach Water Department's 2007 data on projected supplies. Based on this information, the Draft EIR indicates that starting in 2010 the desalinated water will comprise 5,000 Acre Feet per Year (AFY) of the City's potable water supply, or almost 7%. (*Ibid.*) In sharp contrast to this prediction, according to a 2010 statement by the Long Beach Water Department:

"Seawater desalination, which will *eventually* make up a small part of the Department's overall reliability portfolio (*around 10 percent*), is currently being researched by Department scientists and water quality engineers. Currently, seawater desalination is not a cost-effective option for water supply reliability in Long Beach, primarily due to the high cost of energy needed for operations and several abrasive environmental impacts. Simply put, at this time, the costs associated with importing water from northern California and the Colorado River are far less. However, as the costs of imported water increase over time and the costs of desalination, and its environmental impacts, decrease, made possible by advances in technology, seawater desalination will become a more relevant asset in water resources management."

⁸⁸ The Draft EIR does discuss compliance with 20x2020, setting a goal of complying with 20x2020 when summarizing goals of Long Beach's Sustainable City Action Plan. (Draft EIR, Greenhouse Gas Emissions, p. 4.5-11.) However, neither SB x7-7 nor 20x2020 are discussed in the utilities and services systems section of the Draft EIR.

(Long Beach Water, Overview of Long Beach Seawater Desalination Project [emphasis supplied].)⁸⁹ Long Beach Water Department does not anticipate having a reliable source of desalinated water until 2015. (*See ibid.*) Yet, in Table 4.13-1 of the Draft EIR, the City assumes that in 2010 5,000 AFY of potable water will be desalinated seawater, and that this number will increase to 10,000 AFY by 2015, and will continue at that level through 2030. (Draft EIR, Utilities and Service Systems, p. 4.13-10 [Table 4.13 -1].) These numbers are clearly inaccurate based on what we know about current desalinated seawater production, as it is currently infeasible. Further, when this type of water production becomes feasible, Long Beach Water believes this water source will – at best – be 10% of its water resources, not the 12% cited in Table 4.13-1. The Draft EIR does not accurately describe the current environmental setting. (*See Save Our Peninsula Committee, supra*, 87 Cal. App. 4th at p. 121 (*citing County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 955) [an “EIR must focus on the impacts to the existing environment, not hypothetical situations”] [internal quotations omitted].) The City must reassess the impacts to water availability based on more recent data from Long Beach Water Department.

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The EIR must be revised and recirculated with accurate information.

2. Mitigation

a. *Water Availability*

Based on an overestimation of available water supplies, the Draft EIR concludes the impact of the proposed Project on water supply and demand will be “less than significant.” (Draft EIR, Utilities and Service Systems, p. 4.13-7.) The City must reevaluate the impacts and recirculate the EIR based on the information provided. Based on that new information, the public will be able to formulate feasible mitigation measures once there is an understanding of the actual impact.

b. *Refuse Disposal*

The Draft EIR fails to identify feasible mitigation measures to mitigate the significant impact of the proposed Project on solid waste disposal. There are only two mitigation measures related to operational impacts on solid waste disposal, of these two one is recycling by future developments in the Plan area. Contrary to CEQA, this mitigation measure is unenforceable because it does not take into account the existing limitations in the City’s recycling program. (CEQA Guidelines, § 15126.4, subd. (a)(2) [mitigation measures must be “fully enforceable”].) Mitigation Utilities – 3(c) states:

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“All future developments shall include recycling bins at appropriate locations to promote recycling of paper, metal, glass, and all other recyclable materials.

⁸⁹ Available at http://www.lbwater.org/desalination/desal_overview.php.

Materials from these bins shall be *collected on a regular basis consistent with the City's refuse disposal program.*"

(Draft EIR, Utilities and Service Systems, p. 4.13-8 [Mitigation Utilities -3(c)] [emphasis supplied].) The City's current recycling program is limited to residential properties, specifically single-family units and residential buildings with less than ten units. (Long Beach Environmental Services Bureau, Recycling.)⁹⁰ This policy does not include residential properties that exceed this limit and does not include commercial properties. The City's refuse, specifically garbage, program does appear to include larger residential properties and commercial development, but it does not include recycling. (*Id.*, Refuse Collection [refuse collection excludes "items you can recycle"].)⁹¹ This recycling mitigation measure will not mitigate the impacts of the Plan unless the City changes its recycling program, which change has not been identified in the Draft EIR. Under this mitigation measure, as currently written, the City will dispose of separated recyclables into landfills along with other refuse. This mitigation measure is misleading and unenforceable, and must be substituted with a viable mitigation measure. (See CEQA Guidelines, § 15126.4, subd. (a)(2) [mitigation measures must be "fully enforceable"].)

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The other refuse disposal operational mitigation measure for the proposed Plan is educational materials. (Draft EIR, Utilities and Service Systems, p. 4.13-8 [Mitigation Utilities - 3(d)].) These education materials are limited to educating the public on the proper disposal of hazardous waste. In addition to these educational materials, which should be provided on at least an annual basis, the City should also provide educational materials on the proper disposal of electronic waste. It should also provide a yard waste service that accepts compostable materials, to reduce the amount of landfill space needed to accommodate the planned uses in the DTP area.

The following mitigation measure should be incorporated into the Draft EIR to mitigate the operational solids waste impacts of the proposed Project:

- *Recycling Program:* Adopt a recycling program that accepts recyclables from residential developments with more than 10 units and from commercial properties. Require recycling as discussed in Mitigation Utilities-3(c) in the Draft EIR.
- *Educational Materials:* Provide, on an annual basis, educational materials on hazardous waste recycling. Provide, on an annual basis, education materials on electronic waste recycling.
- *Yard Waste Program:* Adopt a yard waste program that also accepts household food items, such as raw fruits and vegetables.

The Draft EIR should incorporate these measures.

H. Alternatives

The Draft EIR presents an inaccurate picture of the alternatives. Under CEQA:

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⁹⁰ Available at <http://www.longbeach-recycles.org/home/recycling/residential.htm>.

⁹¹ Available at http://www.longbeach-recycles.org/home/refuse_collection/automated_collection.htm.

“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...[I]t must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation...”

“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...”

“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...”

“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 decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project...”

“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.”

(CEQA Guidelines, § 15126.6, subs. (a), (c), (d), & (e)(1)-(2).) The Draft EIR alternatives’ analysis only looks at whether certain alternatives will reduce the proposed Project’s average daily trips (ADT), stating:

“Significant and unavoidable impacts associated with the proposed Project are primarily caused by the estimated increase of 91,439 ADT from buildout of the proposed Project. This increase in traffic results in impacts to air quality, greenhouse gas emissions, and noise. The alternatives analysis, therefore, includes alternatives that would reduce the Project’s total ADT.”

(Draft EIR, Alternatives, p. 6-3.) Based on the existing zoning, the Draft EIR found that “the impact analysis of the No Project/Existing Zoning Alternative is not expected to substantially differ from the proposed Project with respect ADT or other impacts related to permitted intensity of residential and commercial development.” (*Id.*, Alternatives, p. 6-4.)

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Contrary to this discussion, however, it is clear the proposed Project will result in increased density and reduced parking, and encourage increased development through incentives not otherwise included in the existing zoning.⁹² “Overall, the project would *increase building heights* throughout Downtown as a means to *increase residential density and employment intensity*.” (Draft EIR, Land Use and Planning, p. 4.8-3 [emphasis supplied].) As stated in the Initial Study:

“The intent of the proposed land use designations within Downtown would be to provide additional housing, employment, shopping, and entertainment opportunities within a very vibrant mixed-use environment.”

(Draft EIR, Appendix A – Initial Study, p. 2.) Likewise, the DTP outlines various development incentives, including reduced parking. (*See e.g., id.*, Appendix B – DTP, p. 16 [the DTP “facilitate[s] the reinvention of historically significant structures and incentivize—through density waivers, parking reductions, and other means— adaptive reuse possibilities”] [emphasis removed].) Clearly and as explicitly stated in the DTP:

“The Guiding Principles described [in the DTP that are also the project objectives] and the development standards and incentives contained in this Downtown Plan aim to create a world-class City center, and a vibrant and energetic Downtown that will be home to a diverse mix of people, businesses, and attractions. The Plan will provide for *more and expanded* urban choices for living, working, and shopping in the Downtown in a true mixed-use City center.”

(*Id.*, Appendix B – DTP, p. 9 [emphasis supplied].)

The Draft EIR must be revised and recirculated with an accurate alternatives’ analysis that considers the increased density and development that will take place as a result of the DTP.

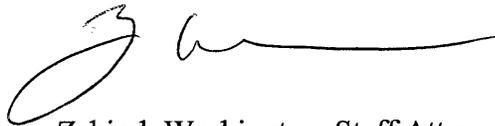
Thank you for the opportunity to submit these comments. We encourage the City to incorporate these comments into its analysis to ensure that the environmental review of the DTP delivers accurate information that furthers public review under CEQA. We further encourage the City to adopt the mitigation measure proposed in this Letter to mitigate the various significant and unmitigated impacts identified in the Draft EIR.

⁹² See DRA Study.

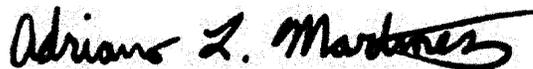
Sincerely,



Susanne Browne, Senior Attorney
Legal Aid Foundation of Los Angeles



Zahirah Washington, Staff Attorney
Legal Aid Foundation of Los Angeles



Adrian Martinez, Attorney
Natural Resources Defense Council



America Aceves, Community Organizer
Housing Long Beach

EXHIBIT A
RTC-182

Tom Brohard and Associates

March 16, 2011

Ms. Zahirah Washington
Legal Aid Foundation of Los Angeles
South Los Angeles Office
7000 S. Broadway
Los Angeles, CA 90003

P-3.A

SUBJECT: Review of the Draft Environmental Impact Report (Draft EIR) for the Long Beach Downtown Plan – Traffic and Transit Issues

Dear Ms. Washington:

Tom Brohard, P.E., has reviewed Section 2.0 (Project Description), Section 4.12 (Transportation and Traffic), and other portions of the December 2010 Public Review Draft Program Environmental Impact Report (Draft EIR) for the City of Long Beach Downtown Plan (Proposed Project) prepared by AECOM. Other documents including Draft EIR Appendix F, the February 4, 2010 Traffic Impact Analysis (Traffic Study) prepared by Iteris, and the November 2010 City of Long Beach Downtown Plan prepared by AECOM have also been reviewed.

P-3.A.1

Further study must be undertaken to properly identify the traffic and transit impacts of the Proposed Project. The expanded area for the Downtown Plan in the Draft EIR has not been properly analyzed in the Traffic Study. Potentially significant transit impacts have not been evaluated or analyzed. Mitigation measures for significant traffic impacts in the Draft EIR and in the Traffic Study are inconsistent. Analyses of potentially significant traffic impacts to the I-710 Freeway have been improperly deferred. Mitigation measures are not supported by analyses and are defective. All feasible transportation planning and traffic engineering measures have not been properly considered or analyzed.

Until the various issues and concerns raised in this letter are addressed, there is “substantial evidence” that the Proposed Project may have adverse traffic and transit impacts that have not been properly disclosed, analyzed, and mitigated. Accordingly, the Public Review Draft EIR for the City of Long Beach Downtown Plan must be revised and recirculated.

Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 40 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the Cities of Big Bear Lake, Mission Viejo, and San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in

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Long Beach Downtown Plan Draft EIR – Traffic and Transit Issues
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both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects. Several recent assignments are highlighted in the enclosed resume.

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Project Description

According to Page 2-1 of the Draft EIR, "The Proposed Project is the adoption and implementation of the Long Beach Downtown Plan that would replace the existing land use, zoning, and planned development districts as the land use and design document for all future development in the proposed Downtown Plan Project area. The Downtown Plan incorporates zoning, development standards, and design guidelines. Full implementation of the Downtown Plan would increase the density and intensity of existing Downtown land uses by allowing up to:

- 1) Approximately 5,000 new residential units;
- 2) 1.5 million square feet of new office, civic, cultural, and similar uses;
- 3) 384,000 square feet of new retail;
- 4) 96,000 square feet of restaurants; and
- 5) 800 new hotel rooms.

The additional development assumed in the Downtown Plan could occur over a 25-year time period."

Page 2-1 of the Draft EIR states the Notice of Preparation (NOP) for the Downtown Plan Draft EIR included an estimate of 9,200 new residential units and 3,200 new hotel rooms. While the number of new residential units and new hotel rooms were reduced after the NOP was issued for the development of 631 acres, the northerly project boundary was expanded from 10th Street to Anaheim Street and the project area expanded to 719 acres. The Project Summary on Page 2-1 of the Draft EIR concludes "The original buildout projections for the proposed Downtown Plan that were estimated in the NOP have been reduced after further study and the additional areas described above have been included in the impact analysis contained in this PEIR."

Traffic/Transit Issues

P-3.A.2

Based on the information provided in the Draft EIR for the City of Long Beach Downtown Plan, my review indicates the following issues and concerns:

- 1) Traffic Analysis Does Not Match Revised Downtown Plan Development – Figure 2-1 on Page 2-13 of the Draft EIR as well as Figure 2-2 on Page 2-15

of the Draft EIR show the revised and expanded project boundaries for the Downtown Plan including the added area between 10th Street and Anaheim Street. Figure 4.12-2 on Page 4.12-19 of the Draft EIR and Figure 2 on Page 10 of the Traffic Study both identify the 28 traffic study zones included in the smaller Downtown Plan south of 10th Street. Table E-2 on Page 8 and Table 4 on Page 25 of the Traffic Study include the assumptions within each of the 26 traffic study zones where development is proposed south of 10th Street. While the totals of new residential units (5,000) and new hotel rooms (800) agree with the Project Description, the Traffic Study fails to include any development in the expanded project area between 10th Street and Anaheim Street.

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The Traffic Study is inconsistent with the Draft EIR. Development in the area between 10th Street and Anaheim Street that is now part of the Downtown Plan will change the distribution of trips, spreading them over a different area than was evaluated in the Traffic Study. With the smaller project area, all trips forecast to be generated by the Downtown Plan were distributed north-south directly across Anaheim Street. With the expanded Downtown Plan area now adjacent to Anaheim Street, some of these trips will likely use Anaheim Street instead. The redistribution of trips to Anaheim Street is likely to cause a significant traffic impact at Atlantic Avenue, an intersection forecast to operate at Level of Service “D” with volume to capacity ratio of 0.90 with the smaller project area (barely below the volume to capacity ratio of 0.91 which would result in Level of Service “E” and an additional significant traffic impact).

Distribution of trips in the Traffic Study corresponding to the areas proposed to be developed is critical to the proper analysis of traffic impacts that will result from the Downtown Plan. Until the development between 10th Street and Anaheim Street is included, the Traffic Study does not properly analyze the traffic impacts of the additional areas now included in the Downtown Plan. The Draft EIR which relies on the flawed Traffic Study does not include a proper traffic analysis of the larger Downtown Plan as currently proposed.

- 2) Potentially Significant Transit Impacts Have Not Been Evaluated or Analyzed – Page 4.12-9 of the Draft EIR states “Downtown has significant transit services that are much more comprehensive than in most of Southern California. The Downtown area is served by many LBT bus routes, Metro bus routes, the Metro Blue Line, DASH services from LADOT, OCTA, and also the Passport shuttle. An analysis was completed of mode share (percent of trips via auto versus transit)... This analysis was used to develop a reduction in personal vehicle trip rates to reflect the trips that will occur via transit. The transit mode share adjustment that was applied is 26 percent. Note that it is applied only to home-to-work trips, which are the most common type of trips to occur on transit. This is a conservative assumption, since some of the commercial trips will also occur on transit, but are not included as part of the transit mode share adjustment for this Project.”

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Beginning on Page 4.12-3, the Draft EIR provides some limited information regarding transit services available in the Downtown Plan area. While bus and light rail services provided by the four transit agencies are generally described, current operating conditions including the frequency, utilization, and capacity of the existing transit services during peak hours are not described, analyzed, or evaluated.

P-3.A.3
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Table 6 in the Traffic Study provides detailed trip generation forecasts for land uses in each of the traffic analysis zones where other cumulative projects have already been approved. For each of the residential and office land uses, both the AM and PM peak hour home-to-work vehicle trips were adjusted downward by 26 percent to reflect trips assumed to be made on transit rather than by personal vehicles. For the cumulative projects shown in Table 6, a total of 595 AM peak hour vehicle trips and 638 PM peak hour vehicle trips have been assumed by the Draft EIR to use transit.

Table 8 in the Traffic Study provides detailed trip generation forecasts for land uses in each of the traffic analysis zones in the Downtown Plan. For each of the residential and office land uses, both the AM and PM peak hour home-to-work vehicle trips were adjusted downward by 26 percent to reflect trips assumed to be made on transit rather than by personal vehicles. For the Downtown Plan shown in Table 8, a total of 1,184 AM peak hour vehicle trips and 1,275 PM peak hour vehicle trips have been assumed by the Draft EIR to use transit.

Cumulative projects already approved and completion of the Downtown Plan will result in a significant increase of 1,779 AM peak hour transit trips and 1,913 PM peak hour transit trips. While the Draft EIR and the Traffic Study used these reductions in vehicle trips to reduce potentially significant traffic impacts at study intersections, no evaluations or analyses have been made to determine if the transit system in Downtown Long Beach can accommodate the significant additional peak hour transit demand.

The Draft EIR and the Traffic Study must evaluate and analyze Year 2035 transit service operations to determine if sufficient transit capacity will be available to acceptably accommodate the significant ridership increases at buildout of the Downtown Plan. The analyses of the bus and light rail transit services must develop necessary mitigation measures to provide appropriate transit service for the additional 1,779 AM peak hour and 1,913 PM peak hour transit trips that will be generated by cumulative projects and by the Downtown Plan, together with funding and financing of the necessary transit mitigation measures and service enhancements that will be needed to meet this significant increase in transit demand.

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P-3.A.4

- 2) Mitigation Measures in the Draft EIR and Traffic Study Are Inconsistent – A total of 53 major signalized intersections were analyzed in the Traffic Study and the results were then carried forward into the Draft EIR for the Proposed Project. As shown in Table 4.12-2 on Page 4.12-32 of the Draft EIR and in Table 12 on Page 59 of the Traffic Study, 16 of the 53 intersections will be significantly impacted by cumulative traffic growth and by trips to and from the Proposed Project. While generalized mitigation measures are proposed, the 16 intersections (including nine intersections significantly impacted by the Proposed Project) will fail to meet the City's operational threshold of Level of Service "D" or better in Year 2035 in either one or both peak hours. The Draft EIR states further improvements at the nine intersections significantly impacted by the Proposed Project are not feasible, and the Draft EIR concludes the Downtown Plan will create "significant and unavoidable" traffic impacts at these intersections.

MitigationTraf-1(a) on Page 4.12-12 of the Draft EIR proposes five general mitigation measures for the significant traffic impacts caused by the Proposed Project. The same five Mitigation Measures are also listed at the top of Page 55 of the Traffic Study. While Pages 55 to 57 of the Traffic Study provide some further information regarding the five general mitigation measures, the Draft EIR fails to properly and correctly include this additional information as mitigation measures. Further, the Draft EIR incorrectly modifies or omits several Traffic Study mitigation measures as follows:

- a) Traffic Control System Improvements – Mitigation Traf-1(b) on Page 4.12-12 of the Draft EIR repeats a portion of the information shown in Section 7.2.1 on Page 55 of the Traffic Study. Page 4.12-13 of the Draft EIR takes other potential traffic signal improvements listed in Section 7.2.1 of the Traffic Study and identifies them as Mitigation Traf-1(c). From the Traffic Study, these traffic signal improvements would be done in conjunction with the Traffic Control System Improvements rather than as a separate project. By themselves, the traffic signal improvements in Mitigation Traf-1(c) such as pedestrian push buttons and bicycle detection do not improve signal operations, add capacity, or mitigate the significant traffic impacts of the Proposed Project.
- b) Traffic Calming and Pedestrian Amenities – Mitigation Traf-1(d) on Page 4.12-14 of the Draft EIR describes certain traffic calming and pedestrian amenities to be provided with development projects. None of these traffic calming features or pedestrian amenities are identified as mitigation measures in the Traffic Study.
- c) Improve Alamitos Avenue Corridor – Section 7.2.2 on Page 56 of the Traffic Study proposes to remove on-street parking on the west side of Alamitos Avenue, restripe the roadway for two through lanes and bike

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lanes in each direction, and to provide exclusive left turn lanes from 7th Street to Ocean Boulevard. The Draft EIR omits this mitigation measure.

- d) Improve the Martin Luther King Avenue/Alamitos Avenue/6th Street/7th Street Area – While Section 7.2.3 on Page 57 of the Traffic Study recommends a plan to improve safety and operations at this location, the Draft EIR omits this mitigation measure.
 - e) Enhance Freeway Access to and from the I-710 Freeway – While Section 7.2.4 on Page 57 of the Traffic Study recommends significant changes and improvements for the access to and from the I-710 Freeway, the Draft EIR omits this mitigation measure.
 - f) Transit Facilities/Programs to Enhance Public Transit Usage and TDM – While Section 7.2.5 on Page 57 of the Traffic Study recommends certain bicycle facilities and trip reduction strategies, the Draft EIR omits this mitigation measure.
- 3) Analyses of Significant Impacts to I-710 Freeway Are Improperly Deferred – Page 6 of the Traffic Study states “North of the study area I-710 is part of the Los Angeles County Congestion Management Program’s regional freeway system.” Table 11 on Page 53 of the Traffic Study indicates the Downtown Plan would add 998 AM peak hour trips and 1,131 PM peak hour trips to I-710 north of Anaheim Street and that a traffic impact analysis of these additional trips is required according to the 2004 Congestion Management Program for Los Angeles. The Traffic Study fails to analyze the impacts to this CMP facility, stating that “...due to the conceptual character of the Downtown Community Plan, measures to mitigate impacts associated with the Downtown Community Plan at the CMP locations are not fully investigated and evaluated. It is recommended that detailed mitigation measures be evaluated as and when specific tangible project information is available. Because this is an area wide plan, no further traffic analysis is required at this time. Such analysis would be when actual projects come forward for approval.”

The Program Draft EIR for the Downtown Plan is required to be the document that analyzes potentially significant traffic impacts to the I-710 Freeway. The two CMP intersections in Long Beach, Alamitos Avenue/7th Street and Alamitos Avenue/Shoreline Avenue/Ocean Boulevard, are identified on Pages 4.12-14 and 4.12-15 of the Draft EIR as being significantly impacted by the Proposed Project. The CMP and the California Environmental Quality Act, CEQA, do not allow the analyses of potentially significant traffic impacts created by an additional 998 AM peak hour and by 1,131 PM peak hour trips to be deferred to some future time. The Traffic Study must analyze these impacts and develop necessary mitigation measures. The Program Draft EIR

P-3.A.4
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P-3.A.5

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must include these findings, impacts, and necessary mitigation measures in the discussion of CMP locations that are significantly impacted.

P-3.A.5
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When the I-710 Freeway analyses are completed in accordance with CMP criteria, there will be significant traffic impacts to this facility. Those impacts, together with most of the other significant traffic impacts identified in the Draft EIR and the Traffic Study, appear to be created by traffic commuting in to and out of Downtown Long Beach. Many of those traffic impacts also appear to be caused by displacement of the existing population and the lack of affordable housing. Significant traffic impacts to the I-710 Freeway and those at most of the City's intersections could be mitigated by modifying the Downtown Plan to reduce peak hour commuter traffic to and from Downtown Long Beach.

- 4) Mitigation Measures for Significant Traffic Impacts Are Defective – In addition to the discrepancies in mitigation measures between the Draft EIR and the Traffic Study, the mitigation measures identified in the Traffic Study are generalized and overly broad. The Traffic Study does not include analyses or explanation in support of the recommended mitigation measures and lacks detail as to the actual mitigation measures being proposed as follows:

P-3.A.6

- a) Implement Traffic Control System (ATCS) – The first component of Mitigation Traf-1(a) proposes to implement an Adaptive Traffic Control System (ATCS) in Downtown. While Table 12 in the Traffic Study identifies 34 of the 53 study intersections in Downtown for ATCS implementation, a closer review of Table 12 indicates this measure by itself will mitigate project traffic impacts at only seven of the 34 signalized intersections. In addition to ATCS, other mitigation is needed at nine study intersections to achieve the City's Level of Service "D" threshold. Finally, it is unclear why ATCS is recommended by the Traffic Study at the other 19 signalized intersections as each of these 19 locations is forecast to operate at Level of Service "D" or better in both peak hours in Year 2035 with project traffic added and without any mitigation.
- b) Improve the Alamitos Avenue Corridor – The second component of Mitigation Traf-1(a) proposes to improve the Alamitos Avenue corridor via removal of selected parking spaces and the implementation of additional travel lanes plus bike lanes in each direction. The limits and locations of the restriping of Alamitos Avenue are not specified in the Draft EIR. The Traffic Study does not provide any analyses or evaluation of the anticipated benefits of these proposed improvements. Further, removal of on-street parking spaces could result in secondary environmental impacts, and these have not been evaluated. Finally, Table 12 on Page 59 of the Traffic Study indicates that "geometric improvements" are recommended at Alamitos Avenue/3rd Street and at Alamitos Avenue/Broadway together with ATCS but does not describe the additional traffic lanes. Even with the

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P-3.A.6

“geometric improvements”, both intersections will fail to meet the City’s Level of Service “D” threshold. It is apparent that further improvements are needed to mitigate the significant traffic impacts of the Proposed Project at these intersections.

- c) Reconfigure 6th Street and 7th Street Intersections with Martin Luther King Avenue and Alamitos Avenue - The third component of Mitigation Traf-1(a) proposes to reconfigure the 6th Street and 7th Street intersections at Martin Luther King Avenue and Alamitos Avenue for safety and traffic flow enhancements. The reconfigurations of these intersections are not specified in the Draft EIR or in the Traffic Study. Even with implementation of ATCS, Table 12 in the Traffic Study indicates the intersections of Martin Luther King Avenue/7th Street and Alamitos Avenue/7th Street will fail to meet the City’s Level of Service “D” threshold.

Further improvements at Alamitos Avenue/7th Street to bring the intersection up to Level of Service “D” in both peak hours are briefly discussed on Pages 4.12-14 and 4.12-15 of the Draft EIR. These or other improvements may be part of the “recommended plan” to address poor operating conditions at this Congestion Management Plan intersection. It is apparent that further improvements are needed to mitigate the significant traffic impacts of the Proposed Project at Martin Luther King Avenue/7th Street and Alamitos Avenue/7th Street.

- d) I-710 Freeway Access to and from Downtown - The fourth component of Mitigation Traf-1(a) proposes to enhance the I-710 Freeway access to and from Downtown Long Beach. The enhancements to the I-710 Freeway access to and from Downtown Long Beach are not specified in the Draft EIR. The Traffic Study does not provide any analyses or evaluations of the alternatives being considered or the anticipated benefits of the proposed improvements.
- e) Encourage Transit Usage and Transportation Demand Management - The fifth component of Mitigation Traf-1(a) proposes to implement transit facilities and programs to encourage public transit usage and Transportation Demand Management (TDM) Policies. The public transit facilities and programs to encourage public transit usage and TDM Policies are not specified in the Draft EIR. The Traffic Study does not provide any detail regarding transit facilities or additional TDM measures beyond the City’s current requirements that should be implemented. The Draft EIR must provide specific recommendations including the various amenities that will be used to encourage transit usage including items such as bus benches, bus shelters, transit information kiosks, secured bicycle parking, and bus bays as well as the additional TDM strategies

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and policies such as transit subsidies that will be used to reduce single occupant vehicle trips.

- 5) All Feasible Mitigation Measures Have Not Been Studied - In addition to the defects in the mitigation measures as discussed above, Page 4.12-14 of the Draft EIR states “However, there is no program currently in place to implement these improvements and future development of individual projects would not be able to fully implement these mitigation measures. Therefore, the impact would remain *significant and unavoidable* and no other feasible mitigation measures are available to reduce the impact to a less-than-significant level.”

P-3.A.7

The Draft EIR and the Traffic Study do not discuss what, if any, potential mitigation measures were considered and rejected at the nine intersections that will be significantly impacted by traffic to and from the Proposed Project. Potential mitigation measures for these significantly impacted locations must be disclosed, together with reasons why the improvements are not feasible.

In my experience, there may be other potentially feasible transportation planning and traffic engineering mitigation measures at the intersections identified as “significant and unavoidable” that have not been considered. Additional TDM Policies can further reduce significant traffic impacts by lowering the number of vehicle trips by encouraging, requiring, and/or subsidizing alternative transportation. Impacts are also reduced by measures that avoid travel during congested peak hours. In addition to enhancing the current TDM Program to a level being used by other agencies, potential mitigation measures should include consideration of the following:

- Prohibit left turns during peak hours or at all times
- Prohibit vehicle crossing and/or left turning traffic from minor side streets
- Prohibit curb parking during peak hours or at all times to allow striping of additional through/right turn lanes
- Restripe roadways using narrow lanes so more lanes can be striped
- Relocate bus stops to the far side of the intersection to avoid interference with right turns
- Provide right turn green arrows for striped right turn lanes

In the longer term, the City could certainly identify “problem intersections” forecast to experience significant delays together with localized widening strategies to add a lane or lanes in the immediate vicinity of the intersection.

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As the property at the intersection redevelops over time, the City would then obtain additional right of way as part of the approval of the development so the localized intersection improvements could be constructed. The Downtown Plan includes property redevelopment, and the City should work toward improvements at these “problem intersections” over time. In addition for the longer term, the potential for grade separated intersections should also be considered.

P-3.A.7
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The California Environmental Quality Act, CEQA, requires that all feasible mitigation measures be studied before concluding that the traffic impacts are “significant and unavoidable.” The Draft EIR and the Traffic Study have failed to evaluate the mitigation measures listed above that are clearly feasible in the near term, that could reduce or eliminate significant traffic impacts, and that would result in few if any secondary impacts. Before concluding that traffic impacts are “significant and unavoidable”, all feasible mitigation measures including additional TDM measures beyond those already required must be analyzed and imposed on development in the Downtown Plan area.

In sum, further study must be undertaken to properly identify the traffic and transit impacts of the Proposed Project. The expanded area for the Downtown Plan in the Draft EIR has not been properly analyzed in the Traffic Study. Potentially significant transit impacts have not been evaluated or analyzed. Mitigation measures for significant traffic impacts in the Draft EIR and in the Traffic Study are inconsistent. Analyses of potentially significant traffic impacts to the I-710 Freeway have been improperly deferred. Mitigation measures are not supported by analyses and are defective. All feasible transportation planning and traffic engineering measures have not been properly considered or analyzed.

P-3.A.8

As discussed in this letter, there is “substantial evidence” that the Proposed Project, the Long Beach Downtown Plan, will have adverse traffic and transit impacts that have not been properly disclosed, analyzed, and mitigated in the Draft EIR. A Recirculated Draft EIR must be prepared to address the issues and concerns raised in this letter and those expressed by others. If you have any questions regarding these comments, please call me at your convenience.

Respectfully submitted,

Tom Brohard and Associates



Tom Brohard, PE
Principal

Enclosure



Tom Brohard, PE

Licenses: 1975 / Professional Engineer / California – Civil, No. 24577
1977 / Professional Engineer / California – Traffic, No. 724
2006 / Professional Engineer / Hawaii – Civil, No. 12321

Education: 1969 / BSE / Civil Engineering / Duke University

Experience: 40 Years

Memberships: 1977 / Institute of Transportation Engineers – Fellow, Life
1978 / Orange County Traffic Engineers Council - Chair 1982-1983
1981 / American Public Works Association - Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served as Consulting City Traffic Engineer three days a week to the City of Indio. He also currently provides “on call” Traffic and Transportation Engineer services to the Cities of Big Bear Lake and San Fernando. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bellflower..... 1997 - 1998
- Bell Gardens..... 1982 - 1995
- Huntington Beach..... 1998 - 2004
- Lawndale..... 1973 - 1978
- Los Alamitos..... 1981 - 1982
- Oceanside..... 1981 - 1982
- Paramount..... 1982 - 1988
- Rancho Palos Verdes..... 1973 - 1978
- Rolling Hills..... 1973 - 1978, 1985 - 1993
- Rolling Hills Estates..... 1973 - 1978, 1984 - 1991
- San Marcos..... 1981
- Santa Ana..... 1978 - 1981
- Westlake Village..... 1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over \$5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

Tom Brohard and Associates

In his service to the City of Indio since May 2005, Tom has accomplished the following:

- ❖ Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints
- ❖ Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street over I-10 as well as justifications for protected-permissive left turn phasing at I-10 on-ramps, the first such installation in Caltrans District 8 in Riverside County; oversaw preparation of plans and provided assistance during construction of a \$1.5 million project to install traffic signals and widen three of four ramps at the I-10/Jackson Street Interchange under a Caltrans encroachment permit issued under the Streamlined Permit Process
- ❖ Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Monroe Street over I-10 as well as striping plans to install left turn lanes on Monroe Street at the I-10 Interchange under a Caltrans encroachment permit
- ❖ Oversaw preparation of traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10/Monroe Street and the I-10/Golf Center Parkway Interchanges
- ❖ Oversaw preparation of plans, specifications, and contract documents and provided assistance during construction of 22 new traffic signal installations
- ❖ Oversaw preparation of plans and provided assistance during construction for the conversion of two traffic signals from fully protected left turn phasing to protected-permissive left turn phasing with flashing yellow arrows
- ❖ Reviewed and approved over 450 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects
- ❖ Oversaw preparation of a City wide traffic safety study of conditions at all schools
- ❖ Prepared over 350 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping
- ❖ Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 125 street segments
- ❖ Reviewed and approved traffic impact studies prepared for more than 16 major development projects

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients.

Tom Brohard and Associates