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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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AIRPORT WORKING GROUP OF ORANGE
COUNTY, INC., a non-profit corporation,

Petitioners and Plaintiffs,

vs.

CITY OF IRVINE, CALIFORNIA, a municipal
corporation; CITY COUNCIL OF THE CITY
OF IRVINE; LARRY AGRAN, Mayor, City of
Irvine; and DOES 1 through 100, inclusive,,

Respondents and Defendants.

Case No. 03CC08461

Judge C. Robert Jameson
Dept. CX-101

**REPLY BRIEF IN SUPPORT OF
RESPONDENTS/DEFENDANTS' MOTION
FOR JUDGMENT ON PETITION FOR
WRIT OF MANDATE**

Hearing

Date: December 17, 2003
Time: 10:00 a.m.
Dept: CX 101

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Rule 403

1 **I. INTRODUCTION.**

2 AWG's Opposition Brief repeatedly ignores the substantial evidence in the Record of
3 Proceedings ("Record") that supports the City's environmental conclusions. For example:

- 4 ➤ AWG claims the City did not factor the County's proposed uses for Planning Area Zone
5 23 ("PAZ 23") into the land use assumptions for the EIR's traffic analysis. But the
6 Record shows that the City's assumptions are based upon the *very same information* that
7 AWG *concedes* includes the "relevant land uses" for PAZ 23. 10 AR Tab 4 at 3993.
- 8 ➤ AWG claims it is "unclear" which traffic projections the City used to support its analysis
9 of traffic and air quality conditions for PAZ 23 in 2025, but the EIR unambiguously states
10 that the "figure of 9,732 trips [for PAZ 23 in the 2025 traffic scenario] was *correctly*
11 *utilized* in both the air quality analysis and traffic impact analysis." 10 AR Tab 4 at 4145.
- 12 ➤ AWG claims the traffic analysis does not account for hauling of demolition debris. The
13 Record, however, shows truck hauling impacts were both *considered* and *mitigated*. 10
14 AR Tab 4 at 4158; 1 AR Tab 1 at 285.
- 15 ➤ AWG claims the Musick Jail expansion project will result in additional unanalyzed
16 cumulative traffic impacts. However, the Record demonstrates that the Musick Jail
17 project *fully mitigates* its own impacts which are, in any event, *insignificant* in the
18 cumulative traffic analysis. 10 AR Tab 4 at 3960.
- 19 ➤ AWG claims the EIR does not consider mitigation measures for freeways and tollways,
20 but the Record shows that such measures were not just "*considered*"; rather, a
21 comprehensive battery of measures recommended by the City's expert were in fact
22 *imposed*. 1 AR Tab 1 at 225.
- 23 ➤ AWG claims the North Irvine Transportation Mitigation program ("NITM") is the City's
24 primary traffic mitigation measure, when in reality NITM it is not a mitigation measure at
25 all. Rather, it is a program that *implements* one of the multitude of traffic mitigation
26 measures spelled out in the EIR, which measures AWG does not challenge. 98 AR Tab
27 183 at 48045; 1 AR Tab 1 at 222-25.
- 28 ➤ AWG claims air quality impacts from demolition activities were not adequately analyzed
and disclosed, but the Record includes the *data, computer modeling results, and*
environmental conclusions from an analysis that includes demolition activities. 10 AR
Tab 4 at 4077, 4260-61.

22 Indeed, the Record contains more than substantial evidence to address all of AWG's traffic and air
23 quality arguments, even though many of those arguments are barred because they were not first
24 raised at the administrative level.¹ Pub. Res. Code § 21177(a).

25 AWG's non-substantive challenges to the content of the Record are likewise doomed, as
26 the City faithfully compiled all materials required by CEQA into a complete and legally adequate

27
28 ¹ For the Court's convenience, Exhibit "A" to this brief is an Index of Evidence in the Record
identifying each legal issue in this brief, AWG's contentions, and the evidence in the Record
addressing AWG's contentions.

1 Record. Because the EIR is adequate, complete, and demonstrates the City's good faith effort at
2 full disclosure (Guidelines §§ 15003(a), 15151), the City's Motion should be granted.

3 **II. TRAFFIC**

4 **A. The City Properly Defined and Analyzed the Land Uses Proposed for**
5 **Planning Area Zone 23.**

6 PAZ 23 is a 100 acre portion of the Great Park site that will ultimately be dedicated to the
7 County. Although the County has yet to propose any specific development plan for PAZ 23, a
8 narrative description of its allowable uses appears in the "Property Tax Transfer and Pre-
9 Annexation Agreement" between the City and the County ("County Agreement"). 98 AR Tab 185
10 at 48338. The City and its consultants found the uses identified in the County Agreement
11 consistent with the Project's "6.1 Institutional" zoning for PAZ 23. 10 AR Tab 4 at 3993.

12 While AWG accuses the City of omitting discussion of traffic impacts arising from what
13 AWG improperly characterizes as the "proposed uses" in PAZ 23, it concedes that (i) the "relevant
14 land uses" for that area are furnished in the County Agreement (Opposition Brief ["O.B."] 6:8-13),
15 and (ii) the City "assumed development intensities 'consistent with the list of uses provided in the
16 [County Agreement]'" (O.B. 7:2-3, *citing* 11-13 AR Tab 5 at 5005). That is, *AWG's own briefing*
17 confirms (as does the EIR) that the City utilized *the very same data* that AWG and the County (10
18 AR Tab 4 at 3978-79) claim contains the proper development assumptions for PAZ 23. As AWG
19 implicitly admits, the City's reliance on the uses described in the County Agreement meets
20 CEQA's requirements.² Guidelines § 15152 [level of analysis should be appropriate to for the
21 level of detail for the program being approved].³

22
23 ² AWG's claim that PAZ 23 will create 11,500 average daily trips as early as 2007 appears to be
24 derived from a 1996 EIR for the proposed airport reuse of the Great Park property. 10 AR Tab 4
at 3978-79. The City expressly found, however, that the 1996 EIR was "not consistent with the
current intentions of the landowner (DON) or the City." *Id.* at 3993.

25 ³ In a related argument, AWG discusses a typographical error that was corrected in response to a
26 comment letter from the Orange County Transportation Authority which noted that data for PAZ
27 23 reflected 9,398 average daily trips ("ADTs") in one table, but 9,732 ADTs in another. 10 AR
Tab 4 at 4141. The City corrected the typographical error and indicated that the higher "figure of
9,732 trips was correctly utilized in both the air quality analysis and the actual traffic impact
analysis." *Id.* at 4145. Despite this statement, AWG mystifyingly maintains that "it remains
28 unclear which number if either, was used in the EIR's analyses of traffic or air quality." O.B.
6:27-28.

1 For the same reason, AWG's accusation of deferred analysis of PAZ 23's traffic impacts
2 rings hollow. At this time, there is simply nothing further to analyze. 10 AR Tab 4 at 3993
3 [County has provided no specific plans for PAZ 23]. Consistent with applicable authority, if and
4 when the County actually proposes a specific project for that property, the County will be required
5 to conduct a more detailed environmental analysis of its project. 10 AR Tab 4 at 3994; *Koster v.*
6 *County of San Joaquin* (1996) 47 Cal.App.4th 29 at 37 [local agencies may defer a more detailed
7 analysis to later environmental documents prepared for specific projects as they arise].⁴

8 **B. AWG Ignores Evidence in the Record Showing that the City's Experts**
9 **Considered Traffic Impacts From Demolition Debris Hauling.**

10 AWG's claim that the EIR does not address the purported traffic impacts from hauling
11 truck debris is misplaced for multiple reasons.⁵ First, the City's traffic expert expressly confirmed
12 that "the anticipated quantity of traffic resulting from material hauling . . . is expected to be less
13 than the volume of traffic resulting from the project itself." 10 AR Tab 4 at 4158. Since
14 identification of impacts and related mitigation measures are formulated using a worst-case traffic
15 scenario, the less-than-worst-case conditions created by truck traffic resulting from construction
16 and demolition activities do not yield additional traffic impacts or mitigation measures. *Id.*

17 Second, the City's traffic expert determined that trucks carrying demolition debris would,
18 in any event, not generate additional truck trips. *Id.* This is because the EIR requires that, to the
19 maximum extent feasible, demolition debris will be recycled for on-site construction. *Id.*; 2 AR
20 Tab 1 at 522-23 [mitigation measure SW-3 requiring a written plan for recycling of waste
21 materials generated by demolition activities]. Further, any materials not recycled on site will be

22 ⁴ AWG cites no case involving a Program EIR for a general plan or zone change project in
23 which the court invalidated an EIR based on a claim of improper deferral of analysis or mitigation.
24 In contrast, many cases have upheld EIRs against such claims. *See e.g., Sacramento Old City*
25 *Ass'n v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29; *Rio Vista Farm*
26 *Bureau v. County of Solano* (1992) 5 Cal.App.4th 351, 376-77; *Al Larson Boat Shop, Inc. v. Bd. of*
27 *Harbor Commissioners* (1993) 19 Cal.App.4th 729; *National Parks and Conservation Ass'n v.*
28 *County of Riverside* (1996) 42 Cal.App.4th 1505; *Riverwatch v. County of San Diego* (2002) 76
Cal.App.4th 1478.

⁵ Although the EIR adequately addresses *all* truck traffic concerns, AWG is nevertheless barred
from challenging the City's analysis of *regional* truck hauling activities because that precise issue
was not raised during the City's administrative proceedings on the EIR. 10 AR Tab 4 at 3917-
4321; Pub. Res. Code § 21177(a); *Temecula Band of Luiseño Mission Indians v. Rancho Cal.*
Water Dist. (1996) 43 Cal.App.4th 425, 439.

1 utilized within the region, thereby displacing truck hauling from more distant locations and
2 resulting in no anticipated net increase in materials hauling. 10 AR Tab 4 at 4158. The City is
3 entitled to rely on its expert consultants' conclusions in this regard. *Laurel Heights Homeowners*
4 *Improvements Ass'n v. Regents of Univ. of Cal.* (1988), 47 Cal. 3d 376, 408 [agency may defer to
5 the environmental conclusions reached by the experts that prepared the EIR]. Moreover, the
6 conclusion makes sense; for example, there is little point in trucking construction materials from
7 Irwindale to a project in Aliso Viejo, when materials from the Project site, with lower
8 transportation costs, are readily available.⁶

9 Finally, AWG fails to recognize that the EIR requires the City to approve a plan prior to
10 the commencement of construction that includes: (i) provision of temporary traffic controls
11 during all phases of construction (including demolition), (ii) scheduling of construction activities
12 at off-peak traffic hours, (iii) rerouting of construction trucks away from congested streets, and
13 (iv) provision of dedicated turn lanes for movement of construction trucks. 1 AR Tab 1 at 285.
14 Thus, the EIR *does* provide mitigation for construction and demolition materials hauling.

15 C. **The Incremental Traffic Contributed by the Musick Jail Expansion Does Not**
16 **Alter the Impacts Identified or Mitigation Recommended in the EIR.**

17 AWG accuses the City of failing to consider the impacts arising from the approximately
18 4000 average daily trips that will result from the long-range expansion of the James A. Musick Jail
19 facility. The EIR shows, however, that the traffic expert considered the traffic trips to be
20 generated by Musick Jail expansion, and found that addition of those trips to the traffic model was
21 insignificant in the context of the other known development projects, which total over 500,000
22 trips each day. 10 AR Tab 4 at 3960. Equally important, the City's traffic experts correctly noted
23 that "*the Musick Jail expansion project is also required to mitigate any significant traffic*
24 *impacts it may cause or contribute to.*" *Id.* (emphasis added); 46 AR Tab 39 at 22749 [Musick
25

26 ⁶ AWG strangely suggests an inconsistency in the City's statements that (i) demolition activity
27 will generate landfill materials, (ii) runway materials will, to the maximum extent feasible be
28 recycled on site, and (iii) other materials will be recycled in projects throughout the region. Those
statements are entirely consistent. Materials that can be recycled on site will be recycled. Other
materials will be recycled off-site. Remaining materials that cannot be recycled will be disposed
of at local landfills.

1 Jail EIR finding “the project will not result in any unmitigated significant transportation,
2 circulation, or parking impacts”]. Thus, the record contains substantial evidence to support the
3 EIR’s conclusions concerning Musick Jail traffic. *Citizens to Preserve Ojai v. County of Ventura*
4 (1985) 176 Cal.App.3d 421, 429 [EIR need only briefly indicate why a cumulative impact was
5 found to be insignificant].

6 **D. The EIR Addresses Impacts to Freeway and Tollway Ramps and Mainlines.**

7 Challenging the City’s mitigation measures for freeway and tollway mainline and ramp
8 impacts (“freeway impacts”), AWG accuses the City of refusing “to consider a mitigation measure
9 simply because another agency with subsequent permitting responsibility may also have the power
10 to address certain significant impacts.” O.B. 9:28-10:2. In reality, the City did far more than
11 “consider” mitigation for freeways and tollways; through Mitigation Measure Tran 5 it *required*
12 the landowner to establish the method and timing of payment of its fair share of the needed
13 improvements to mitigate the freeway impacts prior to the approval of each final subdivision map.
14 1 AR Tab 1 at 225. In short, the City not only “considered” mitigation measures for freeways and
15 tollways, it imposed them.

16 AWG’s attempt to characterize the City’s recognition of CalTrans’ and the Transportation
17 Corridor Agency’s (“TCA”) jurisdiction over the freeways and tollways as an instance of
18 “deferred mitigation” simply finds no support in the law. The City has no legal right to make any
19 change to freeways or tollways. Because CalTrans and TCA have exclusive jurisdiction over
20 mitigation of freeway impacts, Tran 5 was the most specific mitigation that the City could
21 provide.⁷ 98 AR Tab 183 at 48127; 1 AR Tab 1 at 226. Moreover, courts have repeatedly upheld
22 mitigation plans, such as that specified in Tran 5, which impose the current obligation to craft
23 mitigation based upon the conclusions of a future study, so long as the agency provides specific,
24 articulated standards for the future study.⁸ *Sacramento Old City Ass’n*, 229 Cal.App.3d at 1021;

25 ⁷ AWG’s reliance on *Citizens for Quality Growth v. City of Mt Shasta* (1988) 198 Cal.App.3d
26 433, 443, n.8, which considered deferral of mitigation to an agency with *subsequent* permitting
27 authority is inapposite to the instant case. Here, the regional transportation authorities have
28 *exclusive* permitting authority over freeway and tollway improvements. The City can neither
compel nor prevent those agencies from installing freeway or tollway improvements
⁸ Tran 5 requires a subsequent analysis utilizing the use of the very same thresholds of
significance, performance standards, and methodologies used in the EIR. 1 AR Tab 1 at 225.

1 *National Parks & Conserv. Ass'n v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1366.

2 E. **AWG Mischaracterizes NITM and Ignores the Nature and Scope of the City's**
3 **Traffic Mitigation Measures.**

4 Contrary to AWG's claims, NITM is not the "EIR's primary proposed mitigation
5 measure." (O.B. 10:8-9.) Indeed, NITM is not a mitigation measure at all; rather, it is program
6 adopted by the City that partially implements the mitigation measures that *do* appear in the EIR.

7 98 AR Tab 183 at 48045. *Those measures* require, *inter alia*, that:

- 8 > Before the issuance of a building permit, the City shall establish and *the landowner shall*
9 *commit to participate in a transportation infrastructure fee program* to fund the 90+
10 improvements identified in the EIR.
11 > Before the issuance of any building permits, the landowner must contribute its percentage
12 funding responsibility to traffic improvements identified in the project traffic study,
13 *which will maintain satisfactory levels of service as identified in the General Plan,*
14 *based upon thresholds of significance, performance standards, and methodologies used*
15 *in the EIR and other regional traffic analysis tools.*
16 > Updated Traffic Studies will be performed that *identify additional necessary*
17 improvements, and that provide a *phasing plan* for traffic improvements.

18 1 AR Tab 1 at 222-25 (emphasis added). Leaving no room for ambiguity, Mitigation Measure
19 Tran 6 requires "*the project shall mitigate to insignificant levels all project impacts at*
20 *significantly impacted study area intersections.*" *Id.* at 225. Together, these traffic mitigation
21 measures provide a comprehensive mitigation strategy that, in the opinion of the traffic expert,
22 reduce all impacts (except those that the City cannot ultimately control because they lie within the
23 jurisdiction of CalTrans and TCA) to less than significant levels. *Id.* at 226-27.

24 AWG offers no critique of the above-described mitigation measures. Instead it stubbornly
25 focuses on NITM, which again merely serves to *implement* one of the EIR's many mitigation
26 measures.⁹ 98 AR Tab 183 at 48045 [Finding of Fact noting that "NITM is consistent with and
27 implements Mitigation Measure Tran 2"]. NITM is designed to ensure the availability of funding

28 ⁹ AWG's NITM-based argument is premised on the *allegations* appearing in a separate
complaint from a now-settled lawsuit with CalTrans. As detailed in the accompanying objections
to AWG's Request for Judicial Notice, the *truth* of any of AWG's *allegations* is not a judicially
noticeable fact. More fundamentally, the opinion of CalTrans' litigation attorneys in drafting a
complaint cannot override the expert analysis of the City's traffic consultant. *Laurel Heights*, 47
Cal.3d at 376.

1 for the timely construction of necessary traffic and transportation improvements. 99 AR Tab 192
2 at 48669. To achieve this purpose it imposes nexus development fees that will be used to finance
3 those improvements. *Id.* Contrary to AWG's assertions, NITM and the EIR also provide phasing
4 information – indicating the funding of certain improvements by 2007 to support the expected
5 development by that year, while also specifying additional improvements for 2025 and “post
6 2025” (*i.e.* buildout) scenarios – based upon the best available information, including information
7 “obtained directly from the agency responsible for [each] improvement.” 1 AR Tab 1 at 228-31;
8 10 AR Tab 4 at 4090; 93 AR Tab 140 at 46169-72, 46224. Because the traffic analysis occurs at a
9 General Plan and Zoning level of detail, more specific phasing information is not appropriate.
10 Guidelines § 15146. Nevertheless, Mitigation Measure Tran 4 explicitly requires an updated
11 traffic study prior to the approval of each Master Tentative Map or equivalent that includes a
12 phasing plan for the improvements associated with that master subdivision. 1 AR Tab 1 at 224. If
13 at that time “additional traffic improvements are necessary based on updated traffic forecasts,”
14 those improvements will be programmed into the landowners mitigation requirements. *Id.* Thus,
15 the EIR provides for the very phasing and linkage data that AWG claims does not exist.¹⁰

16 **III. AIR QUALITY**

17 **A. The EIR Provides Adequate Substantiation for its Conclusions concerning** 18 **Demolition-Related Emissions.**

19 AWG mistakenly claims that the EIR concludes “. . . that the air quality impacts of runway
20 demolition and removal will be ‘insignificant’.” O.B. 12:3-4. In reality, the City reached
21 precisely the *opposite* conclusion, finding that both construction emissions and operational
22 emissions for PM10 will exceed the established significance thresholds (tons/day) and will result
23 in significant and unmitigable impacts. 10 AR Tab 4 at 4080-81, 4260-61 [EIR]; 98 AR Tab 183
24 at 48126 [Findings of Fact]. Indeed, the Record demonstrates that the City performed *two*
25 comprehensive analyses of air quality impacts. In the first analysis, the experts used the

26 ¹⁰ AWG's statement that the City “disclaims any specific knowledge of the means by which
27 funds will be obtained to implement the project's alleged traffic mitigation measures or the timing
28 of receipt” (O.B. 11:11-13) is also patently false. The mitigation measures require that property
owners perform a study that includes phasing information, provide funding for the improvements,
and ultimately ensure that all project impacts at study area intersections are mitigated. 1 AR Tab 1
at 222-25.

1 “URBEMIS 2001” model with the “demolition” option disabled because, in the air quality
2 experts’ view, emissions from demolition activities were adequately reflected in that model by
3 factoring in construction activities on site. 10 AR Tab 4 at 4077. Nevertheless, in response to a
4 comment received from AWG, a second analysis was performed to verify the air quality experts’
5 conclusions, this time with the demolition option enabled. *Id.* at 4077, 4260-61. Confirming the
6 air quality experts’ conclusions, the second analysis revealed a *statistically insignificant* increase
7 in PM10 emissions. *Id.*

8 AWG does not challenge the conclusions of the air quality analysis. Rather, it shifts its
9 focus away from the EIR’s substantive conclusions and onto the procedural complaint that the
10 data supporting the “demolition enabled” analysis was not sufficiently disclosed.¹¹ The
11 “demolition enabled” analysis, however, was based upon the *same information* (*i.e.* the project
12 description and traffic analysis results) and data modeling that formed the basis for the initial air
13 quality analysis, which modeling is fully disclosed in the EIR. 2 AR Tab 2 at 1355 *et seq.* The
14 only changes were (i) enabling of the “demolition” option, and (ii) indicating the time frame and
15 volume of material for demolition. *Id.* at 4260-61 [detailing assumptions for the “demolition
16 enabled” analysis]. The City disclosed these changes and provided the specific results of the
17 “demolition enabled” analysis in the Response to Comments, and relied upon its expert to
18 formulate a conclusion based upon those results. *Ibid.* In short, the EIR contains the data, the
19 results, and the conclusions for the “demolition enabled” confirming analysis.

20 **B. AWG is Barred from Raising Its Remaining Air Quality Challenges Because**
21 **Those Issues Were Not First Presented to the City at the Administrative Level.**

22 In its final substantive arguments, AWG criticizes the EIR’s alleged failure to (i) analyze
23 “the air quality impacts of . . . a recycling facility” and other activities associated with the use of
24 that recycling facility, and (ii) require compliance with South Coast Air Quality Management
25 District (“SCAQMD”) Rule 403. Neither of these issues, however, were raised at the
26 administrative level. *See* 10 AR Tab 4 at 3917-4321. AWG is therefore precluded from raising its
27

28 ¹¹ AWG’s assumption that the City or the professionals at Black & Veatch somehow falsified the
data appearing in attachments to the response to comments is as baseless as it is inflammatory.

1 alleged concerns for the first time in this litigation. Pub. Res. Code § 21177(a); *Temecula Band of*
2 *Luiseno Mission Indians*, 43 Cal.App.4th at 439.

3 Further, even if AWG were allowed to raise these issues for the first time during litigation
4 (and it is not), its arguments would yield nothing. The EIR explains, for example, that the
5 emissions factor used in the URBEMIS model specifically accounts for “*drilling, blasting,*
6 *compaction, and trucking* of excavated and fill material.” 10 AR Tab 4 at 4077. Thus, the
7 recycling-related activities identified by AWG are in fact built into the air quality analysis.
8 Moreover, mitigation measure AQ-2 requires formulation of a comprehensive 18-point air quality
9 mitigation plan to address those impacts. 1 AR Tab 1 at 285; *Sacramento Old City Ass’n*, 229
10 Cal.App.3d at 1021.

11 AWG’s arguments concerning SCAQMD Rule 403 are equally flawed. As AWG itself
12 asserts, the obligation to comply with Rule 403 is *already imposed* by SCAQMD. O.B. 13:5-10.
13 It is therefore part of a separate, independent regulatory backdrop against which impacts are
14 evaluated and *additional* mitigation is imposed. This is precisely why such “mitigation measures”
15 as requiring that motorists use unleaded fuel, that residents not dump antifreeze into the sewer
16 system, and that electricians use covered wire when wiring homes and businesses, are not included
17 in the EIR. Ultimately, the “mitigation” imposed by Rule 403 will occur because that is what
18 SCAQMD requires. *In addition to that requirement*, the City’s expert recommended and the EIR
19 imposed the comprehensive mitigation requirements set forth Mitigation Measures AQ-1 through
20 AQ-5. 1 AR Tab 1 at 284-287. AWG does not challenge the sufficiency of those requirements.
21 Nor could it; the City properly relied on the expert’s analysis and suggested mitigation in reaching
22 its environmental conclusions. *Laurel Heights*, 47 Cal. 3d at 376.

23 IV. PROCEDURAL ISSUES

24 Attempting to create confusion where none exists, AWG suggests that the “Final EIR” for
25 the Project was somehow unavailable and/or incomplete. The confusion is solved by simply
26 reading the City’s resolution certifying the EIR, which follows Guideline 15132, in stating that the
27 Final EIR is comprised of (i) the Draft EIR, (ii) the Technical Appendices to the Draft EIR, (iii)
28 Public Comments and Responses thereto, and (iv) the Mitigation Monitoring Program. 98 AR

1 Tab 183 at 48019. These documents have at all relevant times been available for public review.
2 98 AR Tab 186 at 48374-75.

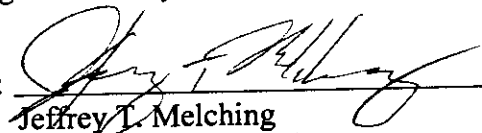
3 To be sure, the City generated an administrative "Final EIR" which integrates alterations,
4 additions, and deletions identified in the Responses to Comments into the text of the Draft EIR.
5 11-13 AR Tab 5. This administrative document is prepared for the convenience of City staff in
6 order to simplify review of the EIR, but it does not displace the City Council's certification of the
7 items listed above. Although AWG's counsel was advised of the role of the administrative Final
8 EIR on October 22, 2003, it nevertheless now claims that certain information – having no relation
9 to the traffic and air quality issues raised in AWG's opposition – was improperly added to the
10 administrative Final EIR. AWG's argument is not only irrelevant, it is factually wrong. The
11 material identified by AWG *all appears in the Responses to Comments volume of the EIR.*¹²

12 Finally, AWG's conjecture that the administrative record has somehow been "scrubbed
13 clean" is based on rank speculation. The City's files were thoroughly searched in an effort to
14 identify the information required by CEQA. AR Tab 205 [Clerk's Certification]. While that
15 search did not yield any e-mails, the absence of such correspondence is largely explained by the
16 City's adopted records retention policy, which provides for the automatic deletion of all e-mail
17 messages 30 days after receipt, whether deleted by the user or not. For the same reason, the e-mail
18 that AWG obtained from the Orange County Local Agency Formation Commission is irrelevant.
19 The e-mail – which merely attempts to *schedule a meeting*, but otherwise has no relevance to any
20 *environmental* or project-related issue – had long since been deleted from City computers by the
21 time AWG requested that the City Prepare Record.

22 **V. CONCLUSION.**

23 The City respectfully requests that the court grant the City's Motion.

24 Dated: December 3, 2003

25 By: 
26 Jeffrey T. Melching
27 Attorneys for Respondents

28 ¹² The revisions identified by AWG at pages 5.5-10, 5.5-14, and 5.5-29 of the administrative
Final EIR (11 AR Tab 5 at 4657, 4661, and 4676) are derived from Responses to Comments found
at 10 AR Tab 4 at 4008-9, 4081, 4085-86, 4212-13.

INDEX OF EVIDENCE IN THE RECORD

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention *
<p>Traffic Analysis of Planning Area Zone 23 ("PAZ 23").</p>	<p>"[T]he EIR entirely omits discussion of the traffic impacts of potential development to be carried out by the County of Orange ("County") in PAZ23, a 100 acre site to be dedicated to the County [citation omitted], for which the relevant land uses are described in the Property Tax Transfer and Pre-Annexation Agreement Among the City of Irvine, the Irvine Redevelopment Agency and the County of Orange regarding the annexation and reuse of the former MCAS El Toro ("Property Tax Transfer Agreement")." (O.B. 6:8-13.)</p>	<ul style="list-style-type: none"> • 10 AR Tab 4 at 3978-79 [County comment letter indicating allowable land uses for PAZ 23 are described in the Property Tax Transfer Agreement] • 98 AR Tab 185 at 48338-39 [Provision from March 4, 2003 Property Tax Transfer Agreement describing County's allowable uses for PAZ 23] • 10 AR Tab 4 at 3993 [Response to Comment H2 stating "[T]he EIR also assumes development intensities for the 100-acres that may be dedicated to the County, consistent with the list of uses provided in the Property Tax Transfer and Pre-Annexation Agreement in Section 2.2.4"] • 10 AR Tab 4 at 3993 [Response to Comment H2 stating "No specific development plans for the site by the County have been provided to the City"] • 10 AR Tab 4 at 3994 [Response to Comment H2 stating "[T]he City recognizes that, as the County defines its project and proposed uses for the 100-acres, the County will analyze traffic and other impacts from the project as required by law"] • 3 AR Tab 2 at 977-981 [Tables showing trip generation calculations for PAZ 23] • 10 AR Tab 4 at 4141 [Comment from Orange County Transportation Authority ("OCTA") noting
<p>Traffic Trip Counts for PAZ 23.</p>	<p>"It remains unclear which [trip count] . . . was used in the EIR's analysis of traffic or</p>	<ul style="list-style-type: none"> • 10 AR Tab 4 at 4141 [Comment from Orange County Transportation Authority ("OCTA") noting

* All materials referenced in this matrix are included in the Excerpts of Record submitted concurrent with Respondents' Reply Brief, except those voluminous items noted with an asterisk, which can be found in the Record of Proceedings that will be lodged with the Court on December 4, 2003.

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention *
<p>Traffic Impacts From Truck Hauling of Demolition Debris.</p>	<p>"The EIR fails to mention, let alone analyze, the potential traffic impacts of the trucks that will be used to haul some or all of the debris from the demolition of 31.2 million cubic feet of concrete from existing runways and other paved areas to off site locations for recycling." (O.B. 7:20-23.)</p>	<p>Evidence Responding to Petitioner's Contention *</p> <p>County Transportation Authority ("OCTA") noting inconsistency with traffic trip projections for PAZ 23]</p> <ul style="list-style-type: none"> 10 AR Tab 4 at 4145 [Response to OCTA Comment correcting inconsistency and stating "The figure of 9732 trips was correctly utilized in both the air quality analysis and the actual traffic impact analysis"] 10 AR Tab 4 at 4158 [Response to Comment W25 stating "A substantial portion of the runway materials are proposed to be recycled on-site to the maximum extent feasible. It is anticipated that the remainder will be recycled in the development projects located within the region. As a result, the truck hauling from the former MCAS El Toro will displace other truck hauling that would occur with no anticipated net increase in materials hauling."] 10 AR Tab 4 at 4158 [Response to Comment W26 stating "The anticipated quantity of traffic resulting from material hauling, which would only occur for materials not used on-site, is expected to be less than the volume of traffic resulting from the project itself."] 2 AR Tab 1 at 522-23 [EIR mitigation measure SW-3 requiring a written plan for recycling of waste materials generated by demolition activities] 1 AR Tab 1 at 285 [Mitigation measure AQ2 requiring an 18-point plan that (i) "provide[s] temporary traffic controls (e.g., flag persons) during

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention*
<p>Cumulative Traffic Analysis of Musick Jail Expansion.</p>	<p>"Irvine Omits Analysis of the Project's Cumulative Traffic Impacts [by not factoring in traffic trips generated by the Musick Jail facility]." (O.B. 8:12.)</p>	<p>Evidence Responding to Petitioner's Contention*</p> <p>all phases of construction to ensure minimum disruption of traffic," (ii) "schedule[s] construction activities that affect traffic flow on adjoining streets to off-peak hours to the extent possible," (iii) "reroute[s] construction trucks away from congested streets, wherever feasible," and (iv) "provide[s] turn lanes for movement of construction trucks and equipment on- and off-site, whenever feasible."]</p> <ul style="list-style-type: none"> 10 AR Tab 4 at 3917-4321* [EIR Volume IV -- comments and responses on Draft EIR -- demonstrating that issues relating to <i>regional</i> traffic impacts from demolition debris hauling were not raised at the administrative level.] 10 AR Tab 4 at 3960 [Response to Comment F8 stating "The additional 4,253 trips [from the Musick Jail expansion project] represent an increase of less than one percent compared to the other known development projects . . . that were explicitly included in the traffic analysis. . . . Therefore, these additional trips are not considered significant."] 10 AR Tab 4 at 3960 [Response to Comment F8 stating "In addition, the Musick Jail expansion project is also required to mitigate any significant traffic impacts it may cause or contribute to."] 46 AR Tab 39 at 22749 [Musick Jail EIR finding "the project will not result in any unmitigated significant transportation, circulation, or parking impacts."]
<p>Analysis of Mitigation for</p>	<p>"The EIR fails to provide any enforceable</p>	<ul style="list-style-type: none"> 1 AR Tab 1 at 225 [Mitigation Measure Tran 5

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention *
<p>Freeway and Tollway Ramps and Mainlines.</p>	<p>mitigation for the cumulative impacts of those collective projects. Instead it lays off the responsibility on other agencies." (O.B. 9:16-17.)</p>	<p>requiring the landowner to establish the method and timing of payment of its fair share of the needed improvements to mitigate the freeway impacts prior to the approval of each final subdivision map]</p> <ul style="list-style-type: none"> 98 AR Tab 183 at 48127 [Findings of Fact noting that "it has been assumed in the traffic analysis that the cumulative impact of project traffic along with other regional growth at the identified ramp and freeway locations will be mitigated through a combination of regional programs that are the responsibility of other agencies. If these programs are not implemented by the agencies with the responsibility to do so, the cumulative freeway/tollway ramp impacts would remain significant and unavoidable."] 1 AR Tab 1 at 226 [EIR recognizes that regional transportation agencies will implement ramp mitigation measures, and that if those measures are not mitigated, impacts will be significant and unavoidable.]]
<p>The North Irvine Transportation Mitigation ("NITM") Program.</p>	<p>"[T]he EIR's primary proposed mitigation measure, the North Irvine Transportation Improvement Program ("NITM") fails to fill the existing void in mitigation." (O.B. 10:8-9.)</p>	<ul style="list-style-type: none"> 1 AR Tab 1 at 222-25 [NITM not identified as a mitigation measure] 98 AR Tab 183 at 48045 [Findings of Fact noting "[t]he NITM program is consistent with and implements Mitigation Measure Tran 2."] 1 AR Tab 1 at 222-25 [Traffic mitigation measures that require, among other things, that (i) before the issuance of a building permit, the City shall establish and the landowner shall commit to participate in a

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention *
		<p>Evidence Responding to Petitioner's Contention *</p> <p>transportation infrastructure fee program to fund improvements identified in the EIR, (ii) before the issuance of any building permits, the landowner must contribute its percentage funding responsibility to traffic improvements identified in the project traffic study, which will maintain satisfactory levels of service as identified in the General Plan, based upon thresholds of significance, performance standards, and methodologies used in the EIR and other regional traffic analysis tools, (iii) updated Traffic Studies will be performed that identify additional necessary improvements, and that provide a phasing plan for traffic improvements, and (iv) "the project shall mitigate to insignificant levels all project impacts at significantly impacted study area intersections."]</p> <ul style="list-style-type: none"> • 1 AR Tab 1 at 228-31 [EIR tables indicating 90+ improvements specifically identified for implementation pursuant to mitigation measures.] • 1 AR Tab 1 at 226 [EIR's conclusion that, with mitigation measures, all impacts other than those controlled by CalTrans and the Transportation Corridor Agency, will be reduced to a level of insignificance] • 99 AR Tab 192 at 48669 [NITM is designed to ensure the availability of funding for the timely construction of necessary traffic and transportation improvements. It imposes nexus development fees that will be used to finance those improvements.]
Phasing of Traffic	"[N]either the EIR nor the NITM specifically	<ul style="list-style-type: none"> • 1 AR Tab 1 at 228-31 [EIR tables indicating phasing

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention
Improvements.	address[] phasing." (O.B. 11:5-6.)	<p>Evidence Responding to Petitioner's Contention</p> <p>of mitigation measures over three time horizons: 2007, 2025, and "buildout."]</p> <ul style="list-style-type: none"> 93 AR Tab 140 at 46169-72 [NITM table indicating phasing of NITM improvements for phasing over three time horizons: 2007, 2025, and "Post-2025" (<i>i.e.</i> buildout).] 10 AR Tab 4 at 4090 [Response to AWG Comment M55 stating "The information regarding timing and construction of facilities presented in the referenced tables was obtained directly from the agency responsible for each improvement or the environmental document that required [sic] associated with each improvement. . . The tables referred to in the comment represent the best knowledge available regarding the timing of the future development and anticipated roadway improvements."] 1 AR Tab 1 at 224 [Mitigation Measure Tran 4, requiring (i) that the landowner conduct an updated traffic study prior to the approval of a Master Tentative Map, (ii) that the study include a phasing plan that specifies timing, funding, construction, and responsibilities for all traffic improvements identified in the study, (iii) that the study determine whether any additional or alternative traffic improvements are necessary, and (iv) that the landowner construct, bond for, or enter into a funding agreement for necessary improvements identified in the study] 10 AR Tab 4 at 4077 [Response to AWG Comment
Significance of Air Quality	"The EIR provides no substantiation for its	

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention*
<p>Impacts and Substantiation For the City's Environmental Conclusions.</p>	<p>belated conclusion . . . that the air quality impacts of runway demolition and removal will be 'insignificant.'" (O.B. 12:3-5.)</p>	<p>Evidence Responding to Petitioner's Contention*</p> <p>M17, noting that "demolition enabled" air quality analysis resulted in "an increase of less than seven tons, or 1.4 percent of the total unmitigated PM10 emissions. The difference is statistically insignificant and the additional analysis is provided to confirm that the initial analysis adequately assesses the air quality impacts of runway removal as part of the overall project construction."]</p> <ul style="list-style-type: none"> • 98 AR Tab 183 at 48126 [Air quality impacts during construction and operation cannot be mitigated to a level of less than significant.] • 10 AR Tab 4 at 4077 [Response to AWG Comment M17 noting "URBEMIS 2001 site grading PM10 fugitive emissions calculations are based on the emission factor prepared by CARB for construction activities, that include: . . . drilling, blasting, compaction, and trucking of excavated and fill materials."] • 10 AR Tab 4 at 4260-61 [Tables and narrative explanation of "demolition enabled" air quality modeling, including list of assumptions utilized in "demolition enabled" analysis.] • 2 AR Tab 2 at 1355 <i>et seq</i>* [Air Quality analysis describing URBEMIS model, data inputs, analysis results, and suggested mitigation measures.] • 10 AR Tab 4 at 3917-4321* [EIR Volume IV -- comments and responses on Draft EIR -- demonstrating that issues relating to air quality impacts of recycling facility were not raised at the
<p>Analysis of Demolition Debris Recycling Hauling Activities.</p>	<p>"[T]he EIR contains no analysis of the air quality impacts of [a recycling facility and related truck hauling activities]." (O.B. 12:22-24.)</p>	<ul style="list-style-type: none"> • 10 AR Tab 4 at 3917-4321* [EIR Volume IV -- comments and responses on Draft EIR -- demonstrating that issues relating to air quality impacts of recycling facility were not raised at the

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention *
<p>South Coast Air Quality Management District ("SCAQMD") Rule 403.</p>	<p>"[The EIR] contains five Construction Emissions Mitigation Measures [citations omitted], none of which satisfy [SCAQMD] Rule 403(f)(1)(A)." (O.B. 13:12-14.)</p>	<p>Evidence Responding to Petitioner's Contention * administrative level.]</p> <ul style="list-style-type: none"> • 10 AR Tab 4 at 4077 [Response to AWG Comment M17 noting "URBEMIS 2001 site grading PM10 fugitive emissions calculations are based on the emission factor prepared by CARB for construction activities, that include: . . . drilling, blasting, compaction, and trucking of excavated and fill materials."] • 10 AR Tab 4 at 4260-61 [Description of air quality analyses showing that mobile and stationary equipment emissions were analyzed] • 1 AR Tab 1 at 285 [Mitigation Measure AQ2, requiring formulation of an 18-point air quality mitigation plan to address air quality impacts] • 10 AR Tab 4 at 3917-4321 [EIR Volume IV -- comments and responses on Draft EIR -- demonstrating that issues relating to SCAQMD Rule 403 were not raised at the administrative level.] • 1 AR Tab 1 at 284-287 [EIR's battery of air quality mitigation measures]
<p>Identification and Content of the Final Environmental Impact Report ("FEIR").</p>	<p>"When [the FEIR] became public, it differed substantively from the documents upon which it was purportedly based." (O.B. 14:16-18.)</p>	<ul style="list-style-type: none"> • 98 AR Tab 183 at 48019 [City Council Resolution 03-60 stating "The City Council . . . certifies as complete and adequate the Final Program EIR for . . . the Orange County Great Park, comprised of the following: [] 1. Volume I Draft Environmental Impact Report [] 2. Volume II Technical Appendices [] 3. Volume III Technical Appendices [] 4. Public Comments and Responses Thereto []

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention
		<p>Evidence Responding to Petitioner's Contention</p> <p>5. Mitigation Monitoring Program."]</p> <ul style="list-style-type: none"> • 11 AR Tab 5 at 4657, 4661, and 4676 [Pages of City's administrative Final EIR that integrate material from Responses to Comments] • 10 AR Tab 4 at 3918 [Response to Comments Introduction stating that all changes to the EIR are noted in the Responses to Comments.] • 10 AR Tab 4 at 4008-9 [Response to Comment H74, which is integrated into the administrative Final EIR at 11 AR Tab 5 at 4657; Response to Comment H75 adding mitigation measure HH6, which is integrated into the administrative Final EIR at 11 AR Tab 5 at 4676.] • 10 AR Tab 4 at 4081 [Response to Comment M24, explaining that the April 2003 Draft Final EBS is the most relevant evaluation of continuing remediation efforts, which comment is reflected in alterations appearing in the administrative Final EIR at 11 AR Tab 5 at 4657.] • 10 AR Tab 4 at 4085-86 [Response to Comment M35, indicating a revision to Mitigation Measure HH5, as reflected in the Administrative Final EIR at 11 AR Tab 5 at 4676.] • 10 AR Tab 4 at 4212-13 [Response to Comment DD2, indicating a revision that appears in the Administrative Final EIR at 11 AR Tab 5 at 4661; Response to Comment DD6, indicating a revision that appears in the Administrative Final EIR at 11

Issue	Petitioner's Contention	Evidence Responding to Petitioner's Contention *
Availability of the FEIR for Public Review.	"[T]he FEIR was not, in fact available on the specified date or for an indeterminate period thereafter." (O.B. 14:16-17.)	<ul style="list-style-type: none"> 98 AR Tab 186 [Notice of Determination certifying that "the Final EIR with comments and responses and record of project approval is available to the General public at the Community Development Department, City Hall, One Civic Center Plaza, Irvine."]

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PROOF OF SERVICE BY PERSONAL SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 1001 North Ross Street, Santa Ana, CA 92701.

On December 3, 2003, I served the within:

REPLY BRIEF IN SUPPORT OF RESPONDENTS/DEFENDANTS' MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE

on the interested party(ies) in this action by personally delivering it in sealed envelope(s) to the offices of the person(s) listed below:

Barbara E. Lichman, PhD
Berne Hart
Chevalier, Allen & Lichman, LLP
695 Town Center Drive, Suite 700
Costa Mesa, CA 92626

Executed on December 3, 2003, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Worldwide Network, Inc.

(Type or print name)

(Signature)