
From: Lucy Prado <lprado@cityofirvine.org>
Sent: Wednesday, October 11, 2023 4:43 PM
To: OCTA Clerk of the Board
Cc: Darrell Johnson
Subject: Comments & Objections to Draft Initial Study/Mitigated Negative Declaration – 10/12/23 Meeting: Item No. 3:
Attachments: October 2023_City of Irvine Ltr to Transit Committee re_OCTA Facility.pdf; Exhibit A - Irvine to OCTA Letter re Rail Maintenance Facility (June 12, 2022).pdf

Clerk Office,

Please find attached the letter regarding City of Irvine’s Comments & Objections to Draft Initial Study/Mitigated Negative, and its attachment, Exhibit A.

Please confirm Darrell Johnson, Chief Executive Officer received this email.

Thank you,



Lucy Prado
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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Chair and Members of the Transit Committee
Orange County Transportation Authority
550 South Main Street
Orange, California, 92868
Email: ClerkOffice@octa.net

Re: City of Irvine's Comments & Objections to Draft Initial Study/Mitigated Negative Declaration – **October 12, 2023 Meeting: Item No. 3:** Transit Committee's Consideration of Mitigated Negative Declaration Finding for the Orange County Maintenance Facility Project

Dear Honorable Chair and Members of the Transit Committee:

This letter provides comments from the City of Irvine ("City") on the proposed Final Initial Study/Mitigated Negative Declaration ("MND") (dated September 2023) for the proposed Metrolink Orange County Maintenance Facility Project (the "Project"), which is scheduled to be considered by Orange County Transportation Authority's ("OCTA") Transit Committee to provide recommendations to OCTA's Board of Directors ("Board").¹ The City is designated as a responsible agency in the MND.

As an initial matter, the City requests that OCTA pause its consideration of this matter until OCTA staff coordinates with all of the necessary departments of the City to ensure that the City's concerns are adequately addressed. Specifically, it is our understanding that in the Fall of 2022, the Board directed OCTA staff to coordinate with the City on all of the points raised in its letter to see how the City's concerns could be addressed. However, to date, OCTA has failed to coordinate with all of the relevant departments of the City, and perhaps most importantly, the Community Development Department. While OCTA staff may have worked on some issues located nearby and/or tangentially related to this project site with the City Engineer and Public Works & Transportation Department, it has failed to otherwise discuss and address the majority of the City's concerns, as articulated in its June 2022 letter. (A copy of the letter is attached hereto as Exhibit A.)

¹ As a preliminary procedural matter, the Transit Committee's Agenda and Staff Report are phrased as if the item is being considered by the Transit Committee for a final decision. However, it is our understanding that the Transit Committee only acts as a recommending body, and as such will not be issuing a final decision. For that reason, the City suggests that the Transit Committee should clarify its role as the recommending body only.

Accordingly, the City respectfully requests that the Transit Committee table its consideration of the Project (to make a recommendation to the Board), until such time after OCTA staff has met with City staff to discuss and address the City's concerns.

Turning to the sufficiency of the revised MND, OCTA has failed to address the City's concerns. Many of the conclusions in the MND are still not supported by substantial evidence or are otherwise flawed. More to the point, there is ample evidence to support multiple fair arguments that the Project will have unmitigated adverse environmental impacts. Accordingly, again, the City requests that prior to approving the Project, that OCTA address the issues raised herein, and then re-circulate a corrected environmental document for the public's review.

1. The City Incorporates the Comments Found in its June 2022 Letter

As OCTA is aware, on or about June 12, 2022, the City submitted an extensive list of comments and objections to the June 2022 version of the MND that OCTA put forward in the Summer of 2022. (See Exhibit A.)

With the exception of some minor revisions to the air quality section and the tribal resources mitigation measures, the June 2022 draft MND and the current September 2023 MND are largely identical. As such, the City reincorporates the comments of its June 12, 2022 letter (attached here), and objects to OCTA's revised September 2023 MND on those same grounds.

Through a letter dated February 14, 2023, OCTA responded to the City's June 12, 2022 letter, but failed to provide any actual substantive response to the comments raised therein, with the exception to some modifications to the air quality section. Instead, the majority of OCTA's responses are conclusory assertions that are not otherwise supported by any facts. Conclusory statements claiming no potential impact do not constitute substantial evidence to support the necessary finding that the project would not result in any significant impacts to warrant OCTA's reliance on an MND in this case.

As such, the City again requests that OCTA address *all* of the issues raised by the City in its June 12, 2022 letter, and then re-circulate a corrected environmental document for the public's review.

2. The Project May Require a Zone Change and General Plan Amendment

As explained in the City's prior letter, and as acknowledged by the MND, the Project Site's land use designation is "Great Park" under the General Plan, is located within Planning Area 51, and is zoned 6.1 Institutional. (See MND, p. 37.) It is the City's current opinion based on language contained in the draft MND that the Project appears to be inconsistent with both the City's General Plan and Zoning Ordinance.

OCTA seems to admit that the Project is inconsistent with both the General Plan and Zoning Ordinance. For example, OCTA admits that the "land use assumptions are

not consistent with land use assumptions in the General Plan . . .” (MND, p. 45.) Likewise, as recognized by OCTA, the “proposed Project is not an institutional land use.” (Id.)

As such, the MND should address in clear detail how the project conforms to the City’s General Plan and Zoning Ordinance; if this cannot be achieved then the Project could result in significant land use impacts, as a result of the Project’s MND-recognized inconsistency with both the City’s General Plan and Zoning Ordinance.

3. The MND Must Be Updated to Condition the Project on its Acquisition of a Conditional Use Permit and All Necessary Entitlements

In its letter, OCTA admits that the Project would be subject to the approval of the Planning Commission through the conditional use permit (“CUP”) process. However, it also takes issue with the City’s assertion that the Project may require a Zone Change and General Plan Amendment, claiming that such a claim is contrary to “all communications between OCTA and the City to date.”

While the City appreciates that OCTA recognizes that its Project is contingent on acquiring a conditional use permit, that does not preclude OCTA from having to process all other necessary entitlements. (See, e.g. IZO § 2-9-7 [Planning Commission may only issue a CUP if it finds that the project is consistent with the zoning district]; § 1-1-4 [“All actions, approvals and procedures taken with respect to or in accordance with this zoning ordinance shall be consistent with the City of Irvine General Plan.”].) As such, subject to adequate resolution of our immediately-above comment, the City may ultimately require OCTA to process a Zone Change and General Plan Amendment if OCTA wants to have its project approved via a CUP. Otherwise, it is unclear whether the City will be able to make the requisite findings.²

Lastly, City staff’s previous discussions with OCTA do not in any way bind the City’s Planning Commission or City Council in the exercise of their discretion when considering OCTA’s Project. As such, while City staff may suggest ways in which to process OCTA’s Project, or even make recommendations, any such advice or recommendations are purely advisory in nature, and non-binding as to the City.

4. The MND Does Not Adequately Analyze or Mitigate the Project’s Impacts Relating to Hazards and Hazardous Materials.

OCTA now claims that it has conducted both a Phase I *and* Phase II Environmental Assessment (“ESA”) for the Project site and, based on that evidence, there is no evidence that disturbance of the soil on the Project site will result in a significant environmental impact. However, the Phase II report is not provided in the record anywhere, so there is no way to determine if this conclusory statement is in fact true. At a minimum, the Phase

² Additionally, in acquiring the Project site, OCTA agreed per the terms of the Purchase and Sale Agreement that the Project is “subject to and must comply with the requirements of the Irvine Zoning Code and the Irvine Municipal Code . . .” (Purchase & Sale Agreement, § 13.)

II ESA should be attached to the MND, and the MND should be revised to explain the Phase II ESA's conclusions.

As it stands, there is no discussion in the MND regarding this additional assessment work, or otherwise supporting the MND's conclusion that the Project would not disturb hazardous waste that may reside in the soil.

5. The MND Fails to Address the Impacts Resulting from the Demolition of OCTA's Existing Improvements

In its letter, OCTA claims it was not impermissibly piecemealing the development of the site because this Project would require the removal of those previously installed improvements. However, the MND fails to address the impacts of demolishing the existing improvements on the Project site. As such, the MND should be revised to include an accurate discussion of the existing conditions on the site, and any impacts that would result from the demolition of the same.

6. The MND Does Not Consistently Describe the Scope of the Project

When concluding the lack of any potential visual impacts, the MND states that the Project's tallest buildings will not exceed 30 feet in height. (See MND, p. 27.) However, on Page 15, the MND shows that the Maintenance Building will be 48 feet in height. These statements are inconsistent. If the Maintenance Building is supposed to be 48 feet in height, the MND must be revised to accurately assess the impact of adding such a tall building to an area that is previously undeveloped. As it stands, there is a fair argument that including such large buildings in an area in close proximity to residences and the Great Park could result in a significant aesthetic impact.

7. The September 2023 IS/MND Should Explain What Revisions Were Made Since February 2022

Per the September 2023 IS/MND, the MND was revised on multiple occasions since the public comment period ended. Nowhere in the record is there any explanation of these revisions, making it impossible to determine whether or not the MND was required to have been recirculated to the public. The final MND must be revised to explain what changes were made since the circulation of the June 2022 IS/MND so that the public can determine whether the MND must be recirculated.

In summary, at this time, the City finds that the MND is still fundamentally deficient, principally because it relies on conclusory statements with minimal analysis or factual support. A significant amount of additional analysis and corrective work will need to be performed before the document could be legally adequate, and it is possible

(indeed, likely) that the additional work will reveal the need to prepare an Environmental Impact Report, rather than an MND.

Last, we want to express that by providing comments on the MND, the City does not waive or limit, in any way, its discretion to evaluate the Project in its role as a land use regulator. As expressed above, the City continues to have concerns with the compatibility of the Project with surrounding land uses. For that, and many other, reasons the City has reservations as to whether a CUP, Zone Change, or General Plan Amendment for the Project could be recommended **even if** the MND were corrected and legally adequate. The ultimate evaluation of those issues is reserved for the sound discretion of the City's Planning Commission and City Council.

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

Sincerely,

CITY OF IRVINE



Eric Tolles

Interim Director of Community Development

Enclosure: Exhibit A. City of Irvine June 2022 Letter

ec: Darrell E. Johnson, Chief Executive Officer