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October 11, 2007

VIA OVERNIGHT MAIL & FACSIMILE

Mr. Wayne Alves
63D Regional Readiness Command
U.S. Army Reserve
ATTN: ARRC-CCA-ENV
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Los Alamitos, CA 90720-5002
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RE: Comments on Scope of Environmental Impact Statement to be Prepared for the Proposed Real Property Exchange in West Los Angeles, California

Dear Mr. Alves:

The Attorney General of the State of California submits these comments to the United States Army Reserve ("Army") in response to its Notice of Preparation of a Real Property Exchange Environmental Impact Statement (EIS), West Los Angeles, CA. The Attorney General submits these comments in furtherance of the public interest and pursuant to his responsibility to protect the natural resources of the State from pollution, impairment, or destruction. *See* Cal. Const. art. V., § 13; CAL. GOV'T CODE, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Exam'rs*, 11 Cal. 3d 1, 14-15 (1974). These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

The Army is preparing a draft EIS ("DEIS") pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), and is seeking comments on the environmental and other issues to address in the DEIS, including other alternatives and mitigation measures. We write to stress that NEPA requires the DEIS to include, among other things, the impacts of the proposed project on air quality and greenhouse gas emissions, and to analyze reasonable and feasible alternatives.

The proposed project will be built in a highly congested area of West Los Angeles. According to the notice and scoping materials, the project proposes transferring 10 acres of land and three buildings owned by the Army in West Los Angeles (the "parcel") to a private developer. The developer plans to demolish these buildings and construct either (1) a 1,500,000 square foot hospital/clinic with 7,500 parking spaces, or (2) hundreds of high-rise residential

units and/or a hotel, in either case with hundreds of parking spaces. In exchange for the transfer, the developer will build and/or improve Army facilities in Bell, California; Miramar Marine Corps Air Station, in San Diego; and March USAR Center, in Riverside. The 18-month project includes demolition, environmental remediation, and construction phases, and likely will increase traffic levels in all four communities affected.

The project raises serious issues of traffic congestion and air pollution that must be addressed in the DEIS. According to the Texas Transportation Institute's most recent Urban Mobility Report, the Los Angeles area continues to experience the worst traffic congestion in the country. West Los Angeles is particularly notorious for its traffic jams during peak morning and afternoon hours, which can extend to three or more hours each: according to the City of Los Angeles, the Wilshire and Sepulveda intersection near the parcel is the most heavily trafficked intersection in the City. In addition, according to a white paper prepared by members of the Coalition for Veterans Land, the nearby Wilshire and Veteran intersection carried nearly 120,000 vehicles a day in 2005, with the capacity of the roadway to handle traffic already at the worst level. The I-405 freeway near the parcel, part of the second most congested freeway segment in the state, carried approximately 290,000 cars a day during the same year between Wilshire and Santa Monica Boulevards. The entire street system in the area is already completely gridlocked on weekdays during morning and afternoon peak hours, with drivers often sitting through several signals before they can cross an intersection. By increasing the number of daily automobile roundtrips to the area, the two development proposals not clearly infeasible at present may exacerbate the very serious existing congestion problem.

Moreover, as we know, Los Angeles – and the entire South Coast Air Basin, one of the most polluted in the nation – presents a special case with respect to air quality and greenhouse gas emissions from cars and trucks. One of the major problems in this polluted urban area is extreme traffic congestion and its resulting impact on air quality. Cars and trucks emit criteria pollutants, reactive organic gases, and nitrogen oxides. As congestion increases, so does the number of cars and trucks idling on freeways and nearby streets, which in turn raises the levels of emissions of criteria pollutants and greenhouse gases. The photochemical smog formed by reactive organic gases and nitrogen oxides reacting in the presence of sunlight is a serious health hazard that is particularly acute in children, the elderly, and the infirm. Toxic emissions from cars and trucks of reactive organic gases like benzene and the ultra-fine particulates that are emitted principally by diesel vehicles cause lung damage, asthma, and cancer.^{1/} The South Coast Air Basin is already so far over the health-based federal air quality standards that it must reduce emissions of reactive organic gases and nitrogen oxides by approximately *eighty percent* by 2010 to meet those federal standards even without taking greenhouse gas emissions into account.

In addition, however, ozone, produced when reactive organic gases and nitrogen oxides “cook” in sunlight, is a greenhouse gas, more potent than CO₂. California has mandated that

1. In 2005, the California Air Resources Board estimated the cancer risk attributable to air toxics in the South Coast Air Basin at approximately 1,000 per million, or 1 in 1,000.

greenhouse gas emissions *be reduced to 1990 levels* by the year 2020. Given these circumstances, development projects affecting greenhouse gas emissions and air quality in the South Coast Air Basin must be closely scrutinized in order to ensure that the state will be able to meet state-law mandated emissions reduction targets and federal air quality standards. With this in mind, we urge the Army to take a close look in the DEIS at *all* the impacts, including anticipated air quality and greenhouse gas emission impacts, of the proposed project.

The area in which the parcel lies has formidable environmental problems. Traffic in this area is at a virtual standstill during peak rush hours on work days, the air is so polluted that the lung functioning of Southern California children has been found to be permanently impaired simply from breathing it,^{2/} and water is already a scarce resource and is becoming more so. The Army's NEPA regulations make clear that all these types of problems must be part of the description of the existing environment in the DEIS. *See* 32 C.F.R. App. E to Part 651 § (b)(6); *see also* 40 C.F.R. § 1508.8. The DEIS must show, based on substantial evidence in the record, that it has discussed all reasonably foreseeable environmental effects of the project, and that "stubborn problems or serious criticism" have not been "swept . . . under the rug." *Or. Natural Res. Council v. Lowe*, 109 F.3d 521, 526-27 (9th Cir. 1997) (citations and internal quotation marks omitted).

Here, the comments the Army already has received have raised serious concerns about air quality and its effects on public health; impacts on traffic and on an already vastly overloaded transportation system; and the appropriate use of land in an intensely developed area. Issues of water supply are also critical. Global warming, in turn, threatens to have serious consequences on the State of California, including substantial loss of snowpack, increased risk of large wildfires, reductions in the quality and quantity of agricultural production, exacerbation of California's severe air quality problems,^{3/} adverse impacts on human health from increased heat stress and heat-related deaths, and increases in asthma, respiratory and other health problems. The direct and indirect effects of the proposed project on all these aspects of the existing environment must be discussed in the DEIS, including the resulting increase in greenhouse gas emissions from all sources.^{4/}

2. Thomas H. Maugh II, *FREEWAY AIR DAMAGES YOUNG LUNGS; Children living nearby show signs of lifelong harm, USC study finds*, LOS ANGELES TIMES, January 26, 2007.

3. One of the anticipated adverse effects of global warming on California is that it will cause more ozone formation.

4. The Army must be careful not to underestimate the emissions of the proposed project by limiting its consideration to vehicle emissions and electricity at build-out, omitting greenhouse gas emissions during the demolition and construction phases. Such emissions may result from environmental remediation, equipment operation, and building and road materials, all of which are potentially important emissions sources. We attach to this letter a chart setting forth publicly available modeling tools that may be useful in estimating a project's emissions. We also note that under the Army's NEPA regulations, even incompleteness or unavailability of

The DEIS should evaluate feasible mitigation measures that would avoid or reduce the project's increase in greenhouse gas emissions and air quality, traffic, transportation, and water supply impacts. It is Army policy to incorporate environmental values and goals into its project planning. *See* 32 C.F.R. § 651.5. Moreover, Army regulations require the DEIS to consider mitigation measures, to monitor mitigation measures the Army has committed to, and to explain why mitigation measures considered were not adopted. 32 C.F.R. § 651.15.

NEPA requires that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a). The notice's statement that the three Army projects to be constructed will be covered by separate NEPA documentation (presumably environmental assessments rather than full environmental impact statements) is troubling. This suggests a need for close scrutiny “to prevent the policies of NEPA from being nibbled away by multiple increments, no one of which may in and of itself be important enough to compel preparation of a full EIS.” *Alpine Lakes Protection Soc’y v. Schlapfer*, 518 F.2d 1089, 1090 (9th Cir. 1975); *see also* 40 C.F.R. § 1508.25.

Because the developer's agreement to construct Army facilities in San Diego, Bell, and Riverside is the principal form of payment for the exchange – and because such agreement is necessary for the exchange to proceed – all four construction projects represent a single course of action (or, at a minimum, connected actions⁵) that must be analyzed in a single DEIS. By failing to analyze the proposed impact of the project as a whole, including the details of the three new Army facilities to be constructed, the proposed DEIS violates NEPA's directive and Army regulations, *see* 32 C.F.R. § 651.5(d)(3), and will substantially underestimate the project's environmental impacts. Because the proposed real property exchange involves four separate components – transfer and development of the parcel in West Los Angeles, plus construction of new Army facilities in San Diego, Bell, and Riverside – the DEIS the Army prepares must address all four projects.

We also note that the DEIS should include discussion of the cumulative impacts of greenhouse gas emissions, the anticipated direct and indirect effects of the project in conjunction with the anticipated effects of the other pending or recently approved construction projects in the immediate area, as detailed in the City's comments, and the potential effects of any proposed commercial development of the immediately adjacent 388-acre VA parcel.

information does not excuse the Army from addressing it in the DEIS. *See* 32 C.F.R. § 651.44.

5. NEPA also requires the Army to analyze in a single EIS “connected actions” that “[a]utomatically trigger other actions which may require environmental impact statements [c]annot or will not proceed unless other actions are taken previously or simultaneously [a]re interdependent parts of a larger action and depend on the larger action for their justification” 40 C.F.R. § 1508.25(a); *see also* 32 C.F.R. § 651.51(a)(1)(i). The Army is bound by the Council on Environmental Quality regulations interpreting NEPA as well as by its own regulations. 40 C.F.R. § 1500.3.

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Finally, the DEIS should include evaluation of “the range of *reasonable* alternatives to accomplish the purpose and need for the proposed action or project” 32 C.F.R. § 651.9(c) (emphasis added). The alternatives the Army examines “must be bounded by some notion of feasibility.” *Vt. Yankee Nuclear Power Corp. v Natural Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978). The range should include the no-project alternative, alternatives to the proposed development scenarios for the parcel, and alternatives such as expanding or remodeling current facilities at Bell, Riverside, and Miramar rather than constructing new facilities.

We appreciate the opportunity to comment at this stage, and would be happy to meet with you to discuss our comments. Please do not hesitate to call if we can be of assistance.

Sincerely,

A handwritten signature in cursive script, reading "Laura J. Zuckerman", with a long horizontal flourish extending to the right.

LAURA J. ZUCKERMAN
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General of the State of California

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Modeling Tools to Estimate Climate Change Emissions Impacts of Projects/Plans

Tool	Availability	Scope Local/Regional	Scope Transp/Buildings	Data Input Requirements	Data Output
URBEMIS	<ul style="list-style-type: none"> Download Public domain (free) 	<ul style="list-style-type: none"> Local project level 	<ul style="list-style-type: none"> Transportation Some building (area source) outputs Construction 	<ul style="list-style-type: none"> Land use information Construction, area source, and transportation assumptions 	<ul style="list-style-type: none"> VMT per day (convert to CO₂ and methane) Mitigation impacts
Clean Air and Climate Protection (CACP) Software	<ul style="list-style-type: none"> Download Available to public agencies (free) 	<ul style="list-style-type: none"> Local project level 	<ul style="list-style-type: none"> Buildings Communities Governments 	<ul style="list-style-type: none"> Energy usage Waste generation and disposal Transportation usage 	<ul style="list-style-type: none"> eCO₂ (tons per year)
Sustainable Communities Model (SCM)	<ul style="list-style-type: none"> Custom model 	<ul style="list-style-type: none"> Regional, scalable 	<ul style="list-style-type: none"> Transportation Master planned communities 	<ul style="list-style-type: none"> Location and site specific information Transportation assumptions On-site energy usage 	<ul style="list-style-type: none"> eCO₂ (tons per year)
I-PLACE³S	<ul style="list-style-type: none"> Web-based Small access fee Full model now available in eight CA counties 	<ul style="list-style-type: none"> Regional, scalable to site level 	<ul style="list-style-type: none"> Transportation Buildings Infrastructure (wastewater, street lights, etc.) 	<ul style="list-style-type: none"> Parcel level land use data (can work with less data) Project-level data for alternative comparisons 	<ul style="list-style-type: none"> CO₂ (any quantity over any time) Provides for immediate comparison of alternatives
EMFAC	<ul style="list-style-type: none"> Download Public domain (free) 	<ul style="list-style-type: none"> Statewide Regional (air basin level) 	<ul style="list-style-type: none"> Transportation emission factors 	<ul style="list-style-type: none"> Used with travel demand and other models to calculate CO₂ impacts of projects. 	<ul style="list-style-type: none"> CO₂ and methane (grams per mile) emission factors
Climate Action Registry Reporting On-Line Tool (CARROT)	<ul style="list-style-type: none"> Web-based Available to Registry members 	<ul style="list-style-type: none"> Regional, scalable to entity and facility level 	<ul style="list-style-type: none"> General Specific protocols for some sectors 	<ul style="list-style-type: none"> Uses inputs such as fuel and electricity use, VMT to estimate emissions of each GHG 	<ul style="list-style-type: none"> Each GHG and eCO₂ (tons per year)

VMT = Vehicle miles traveled.

Criteria pollutants = Nitrogen oxides (NO_x), reactive organic gases (ROG), carbon dioxide (CO), sulfur dioxide (SO₂), particulate matter (PM)

eCO₂ = Carbon dioxide equivalent emissions

Note: This is not meant to be a definitive list of modeling tools to estimate climate change emissions impacts. Other tools may be available.

Descriptions of Modeling Tools

URBEMIS. The Urban Emissions Model (URBEMIS) is currently being used extensively during the CEQA process by local air districts and consultants to determine criteria pollutant impacts of local projects. URBEMIS uses the ITE Trip Generation Rate Manual and the Air Resources Board's (ARB) motor vehicle emissions model (EMFAC) for transportation calculations. Area source outputs include natural gas use, landscaping equipment, and fireplaces. It also estimates construction impacts and impacts of mitigation options. An updated version with CO2 outputs may be available soon. In the interim, CO2 factors (pounds per mile) provided by ARB could be used to convert VMT per day into CO2 per day. Web site: <http://www.urbemis.com>.

Clean Air and Climate Protection (CACP) Software. This tool is available to state and local governments and members of ICLEI, NACAA, NASEO and NARUC to determine greenhouse gas and criteria pollutant emissions from government operations and communities as a whole. The user must input aggregate information about energy (usage), waste (quantity and type generated, disposal method, and methane recovery rate) and transportation (VMT) for community analyses. More detailed, site-specific information is necessary to calculate emissions from governmental operations. CACP uses emission factors from EPA, DOE, and DOT to translate the energy, waste and transportation inputs into greenhouse gas (in carbon dioxide equivalents) and criteria air pollutant emissions. If associated energy, waste and transportation reduction are provided, the model can also calculate emission reductions and money saved from policy alternatives. Web site: <http://cacpsoftware.org>.

Sustainable Communities Model (SCM). This model quantifies total eCO2 emissions allowing communities the ability to optimize planning decisions that result in the greatest environmental benefit for the least cost. SCM has been used by a number of master planned communities, but it could also be used for neighborhoods and smaller developments. Total eCO2 emissions are based on emissions from energy usage, water consumption and transportation. SCM uses published data sets for data input such as ARB's EMFAC for transportation calculations. The model provides a comparison of various scenarios to provide environmental performance, economic performance, and cost benefit analysis. Web site: http://www.ctg-net.com/energetics/News/News_SCM.html

I-PLACE³S is an internet-accessed land use and transportation model designed specifically for regional and local governments to help understand how their growth and development decisions can contribute to improved sustainability. It estimates CO2, criteria pollutant and energy impacts on a neighborhood or regional level for existing, long-term baseline and alternative land use plans. I-PLACE3S is currently being used in San Diego, San Luis Obispo, and the six-county Sacramento region to assist both the public participation process and technical analyses efforts for regional planning. The data input requirements are extensive and require a fiscal commitment from local government. The benefits include a tool that can provide immediate outputs to compare various alternatives during public meetings, as well as provide access for local development project CEQA analyses. Possible future modifications could include a stand-alone tool that would allow project-level analyses of land uses (buildings) without extensive regional data input requirements. Web site: <http://www.energy.ca.gov/places/> ; <http://places.energy.ca.gov/places>

EMFAC. The Air Resources Board's Emission FACTors (EMFAC) model is used to calculate emission rates from all motor vehicles (passenger cars to heavy-duty trucks) in California. The model includes emission factors for CO2, methane, and criteria pollutants. The emission factors are combined with data on vehicle activity (miles traveled and average speeds) to assess emission impacts. California local governments use EMFAC in concert with their travel demand models to assess impacts of transportation plans. The URBEMIS model described above uses EMFAC to calculate the transportation emission impacts of local projects. Web site: <http://www.arb.ca.gov/msei/onroad/onroad.htm>

Climate Action Registry Reporting On-Line Tool (CARROT). The California Climate Action Registry uses the Climate Action Registry Reporting On-Line Tool (CARROT) for registry members to report their greenhouse gas emissions. It calculates GHG emissions from energy, fuel use, and travel estimates made by the user. While use of the tool is only available to members, the Registry makes its protocols available to the public. The general reporting protocol is available at <http://www.climateregistry.org/docs/PROTOCOLS/GRP%20V2.1.pdf>. Specific reporting protocols are also available for reporting by the cement, forestry, and power/utility sectors and are being developed for additional sectors. Website: <http://www.climateregistry.org/CARROT/>