

RESPONSES TO COMMENTS

THE KOLL CENTER RESIDENCES
ENVIRONMENTAL IMPACT REPORT
SCH NO. 2017011002

Prepared for

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1 INTRODUCTION

1.1 Introduction

The purpose of this document is to present public comments and responses to comments received on the Draft Environmental Impact Report (EIR) (State Clearinghouse Number 2017011002) for the Koll Center Residences Project located in the City of Newport Beach. The Draft EIR was released for public review and comment by the City of Newport Beach on September 13, 2017 for a 45-day review period ending on October 27, 2017. The public review period was extended twice, from October 27, 2017 to November 3, 2017 and then to November 13, 2017.

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Newport Beach, as the Lead Agency, has evaluated all substantive comments received on the Koll Center Residences Draft EIR, and has prepared written responses to these comments. This document has been prepared in accordance with CEQA and represents the independent judgment of the Lead Agency.

Secondly, this document includes information from associated with consultation with Native American tribe, Gabrieleño Band of Mission Indians – Kizh Nation in accordance with Public Resources Code Section 21080.3.1(d), Assembly Bill 52.

1.2 Format

The Final EIR for the Koll Center Residences Project consists of the Draft EIR and its technical appendices; the Responses to Comments included herein; other written documentation prepared during the EIR process; and those documents which may be modified by the City Council at the time of consideration of certification of the Final EIR. The City Council would also consider adoption of a Mitigation Monitoring and Reporting Program (MMRP), a Statement of Findings of Fact, and a Statement of Overriding Considerations as part of the approval process for the Project.

This Response to Comments document is organized as follows:

- Section 1** Provides a brief introduction to this document.
- Section 2** Identifies the Draft EIR commenters.
- Section 3** Provides responses to substantive comments received on the Draft EIR. Responses are provided in the form of individual responses to comment letters received. Comment letters are followed immediately by the responses to each letter.
- Section 4** Summary of the City of Newport Beach's consultation with Native American tribe, Gabrieleño Band of Mission Indians – Kizh Nation in accordance with Public Resources Code Section 21080.3.1(d), Assembly Bill 52.
- Section 5** Presents clarifications to the Draft EIR, identifying revisions to the text of the document.

1.3 CEQA Requirements Regarding Comments and Responses

CEQA Guidelines Section 15204(a) directs persons and public agencies to focus their review of a Draft EIR be “on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. ...CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

CEQA Guidelines Section 15204(c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to CEQA Guidelines Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204(d) states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” CEQA Guidelines Section 15204(e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least ten days prior to certifying the EIR.

2 LIST OF RESPONDENTS

In accordance with the State CEQA Guidelines Section 15132, the following is a list of public agencies, organizations, and individuals and businesses that submitted comments on the Draft EIR received as of close of the public review period on November 13, 2017. Comments have been numbered and responses have been developed with corresponding numbers.

Letter Reference	Commenter	Date of Correspondence	Page No.
Agencies (A)			
A-1	City of Irvine	October 17, 2017	3-17
A-2	Irvine Ranch Water District	October 25, 2017	3-25
A-3	Orange County Transportation Authority	November 1, 2017	3-27
A-4	Office of Planning and Research, State Clearinghouse	November 14, 2017	3-33
A-5	SoCalGas, James Chuang	November 7, 2017	3-36
A-6	Airport Land Use Commission for Orange County	November 10, 2017	3-39
Organizations (B)			
B-1	California Cultural Resource Preservation Alliance, Inc., Patricia Martz, PhD	September 30, 2017	3-45
B-2a	Line In the Sand, Dennis Baker	October 9, 2017	3-47
B-2b	Line In the Sand, Dennis Baker	November 13, 2017	3-50
B-3a	Stop Polluting Our Newport (c/o Chatten-Brown & Carstens, LLP)	October 9, 2017	3-59
B-3b	Stop Polluting Our Newport (c/o Chatten-Brown & Carstens, LLP)	November 13, 2017	3-62
B-4a	SoCal Pilots Association, Joe Finnell	October 11, 2017	3-94
B-4b	SoCal Pilots Association, Joe Finnell	November 13, 2017	3-96
B-5	Aircraft Owners and Pilots Association, Adam Williams	November 13, 2017	3-104
B-6	OC Flight Center, Gary Sequeira	November 13, 2017	3-109
Individuals and Businesses (C)			
C-1a	Bruce Bartram	September 28, 2017	3-113
C-1b	Bruce Bartram	October 6, 2017	3-117
C-1c	Bruce Bartram	October 30, 2017	3-122
C-2	Bryan Perraud	October 3, 2017	3-141
C-3	Don Krotee	October 8, 2017	3-143
C-4	Don Harvey	October 9, 2017	3-148
C-5a	COMAC (c/o Murphy & Evertz Attorneys at Law)	October 9, 2017	3-150
C-5b	COMAC (c/o Murphy & Evertz Attorneys at Law)	November 10, 2017	3-153
C-6	Meyer Properties	October 12, 2017	3-193
C-7a	Olen Properties, Julie Ault	October 13, 2017	3-197
C-7b	Olen Properties, Julie Ault (c/o Shute Mihaly & Weinberger LLP)	November 9, 2017	3-200
C-7c	Olen Properties, Julie Ault	November 10, 2017	3-224
C-7d	Olen Properties, Julie Ault (c/o Buchalter)	November 13, 2017	3-248
C-8a	Bitcentral, Inc., Fred Fourcher	October 13, 2017	3-262

Letter Reference	Commenter	Date of Correspondence	Page No.
C-8b	Bitcentral, Inc., Fred Fourcher	November 13, 2017	3-264
C-9a	Von Karman Corporate Owners Association, Dana Haynes	October 16, 2017	3-297
C-9b	Von Karman Corporate Owners Association, Dana Haynes	November 6, 2017	3-299
C-10	Rick Westberg	October 26, 2017	3-305
C-11	Gregory M. Puccinelli	October 30, 2017	3-306
C-12	Darrin Norton	October 31, 2017	3-307
C-13	Robert Anderson	October 2017	3-308
C-14	Cameron Jackson	November 1, 2017	3-309
C-15	Madison Street Partners, Paul Root	November 1, 2017	3-310
C-16	Scott Watson	November 1, 2017	3-311
C-17	Mark E. Foster	November 2, 2017	3-312
C-18	Ryan Eastman	November 4, 2017	3-313
C-19	Coyne Development, Steve Coyne	November 6, 2017	3-314
C-20	Jack and Robyn Hamilton	November 6, 2017	3-315
C-21	Dean Laws	November 8, 2017	3-316
C-22a	Susan Skinner	November 8, 2017	3-317
C-22b	Susan Skinner	November 12, 2017	3-323
C-23	Jim Mosher	November 13, 2017	3-325

3 RESPONSES TO ENVIRONMENTAL COMMENTS

This section includes responses to all substantive environmental issues raised in comments received on the Koll Center Residences Draft EIR (Draft EIR). Many of the comments received during the public review period were on common issues or concerns. For this reason, topical responses have been prepared. This approach reduces redundancy throughout the responses to comments document and provides the reader with a comprehensive response to the broader issue. No topical response was provided where no comments or only very minimal comments were provided on the Draft EIR.

After the Topical Responses, responses are provided for each of the comments received. This section is formatted so that the respective comment letters are followed immediately by the corresponding responses. Comment letters and specific comments are given letters and numbers, respectively, for reference purposes. Where sections of the Draft EIR are excerpted in this document, the sections are shown indented. Changes to the EIR text are shown in underlined text for additions and ~~strikeout~~ for deletions.

3.1 Topical Responses

3.1.1 TOPICAL RESPONSE: CUMULATIVE PROJECTS

The State CEQA Guidelines Section 15130 identifies two approaches to analyzing cumulative impacts. The first is the “list approach,” which requires a listing of past, present, and reasonably anticipated future projects. The second is the projection approach wherein the relevant projections contained in an adopted General Plan or related planning document that is designed to evaluate regional or area wide conditions are summarized. A reasonable combination of the two approaches may also be used. The Draft EIR used a combination of the list approach and the projections approach.

Section 15355 of the CEQA Guidelines defines cumulative impacts to be “...two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” If it is determined there would be a cumulative impact, then an EIR needs to evaluate whether the project’s contribution is “cumulatively considerable.” Where the incremental effect of a project is not “cumulatively considerable,” a lead agency need not consider that effect to be significant but must briefly describe its basis for concluding that the incremental effect is not cumulatively considerable. The cumulative impacts analyses are included in Sections 4.1 to 4.15 of the Draft EIR.

Commenters have suggested that additional cumulative projects in the cities of Irvine and Newport Beach should have been included and evaluated in the Draft EIR. The Draft EIR evaluated known projects at the time that the Koll Center Residences Project Notice of Preparation (NOP) was published on January 4, 2017, and used information provided by the cities of Irvine and Newport Beach. The following addresses City of Newport Beach projects noted by commenters.

Newport Crossings Mixed Use Project. The NOP for this proposed project was released on November 1, 2017 which was after the Koll Center Residences Draft EIR was distributed for public review. The NOP for the Koll Center Residences Project was released on January 4, 2017 and the Draft EIR was distributed for public review on September 13, 2017.

Newport Banning Ranch. On February 9, 2017, the California Coastal Commission affirmed its denial of the Newport Banning Ranch Project. On December 12, 2017, the Newport Beach City Council Approved Ordinance No. 2017-17, repealing all prior approvals of the project. The City has not received any applications pertaining to the development of the property, and the timing of potential future development or retention of the site in open space is speculative.

Mariners' Mile Revitalization Master Plan. The City is not currently pursuing the adoption of the Master Plan because of significant concerns expressed by the community. Regardless, it is important to note that the draft Master Plan assumed that the land use designations and development standards specified in the General Plan and Zoning Code for Mariners' Mile would be maintained. The draft Master Plan did not assume an increase in residential or non-residential development. No CEQA analysis was prepared.

City of Newport Beach General Plan Update. The City has not initiated the process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process.

Uptown Newport (identified in Table 4-1 of the Draft EIR). The first phase of the Uptown Newport Project is under construction including 462 residential units and a 1-acre public park. The approved Uptown Newport Project will include up to 1,244 residential units, 11,500 sf of neighborhood-serving retail space, and 2 acres of parks. Although the Uptown Newport and Koll Center Residences project sites are proximate, the City received two separate applications for the two projects at two different times, and as such are processed them separately. The Uptown Newport Project was approved in 2013. As such, the Uptown Newport Project is assumed in the cumulative analysis set forth in the Draft EIR.

Newport Business Plaza (identified in Table 4-1 of the Draft EIR). As addressed in the Draft EIR, the project was approved by the City Council in 2011 but has not been constructed.

It has been determined that the cumulative projects list provided by the City of Irvine did not include approved Irvine projects. However, it is important to note that although these approved Irvine projects were not on the City of Irvine's cumulative projects list, the traffic associated with these approved projects are included in the City's Irvine Transportation Analysis Model (ITAM) forecasts. Therefore, these approved projects were already included in the Draft EIR traffic analysis of Irvine intersections.

Where traffic associated with the Irvine approved projects would travel through intersections in the City of Newport Beach, the traffic analysis has been updated to evaluate potential effects associated with City of Irvine approved projects on Newport Beach intersections. As shown on Table 4.14-22, the inclusion of these approved Irvine projects does not change the findings and conclusions of the Project traffic analysis. Consistent with the findings set forth in the Draft EIR, the Project would have no project-specific traffic impacts or contribute to cumulatively significant traffic impacts.

Under CEQA's cumulative impact analysis requirements, the pertinent question is not whether there is a significant cumulative impact but whether the effects of an individual project are cumulatively considerable. Thus, the analysis must assess whether the additional amount of impact resulting from the Proposed Project should be considered significant in the context of the existing cumulative effect. Importantly, this does not mean that any contribution to a cumulative impact should be considered cumulatively considerable. The Draft EIR analysis complies with this directive.

Table 4.14-22. Intersection Operation – CEQA Analysis Year 2022 With Project													
No.	Intersection	Without Project				With Project				Project Impact			
		AM Peak Hour		PM Peak Hour		AM Peak Hour		PM Peak Hour		Change		Significant?	
		ICU/ Delay	LOS	ICU/ Delay	LOS	ICU/ Delay	LOS	ICU/ Delay	LOS	AM	PM	AM	PM
1	MacArthur Blvd. at Campus Dr. ^a	0.610	B	0.832	D	0.614	B	0.832	D	0.004	0.000	No	No
2	MacArthur Blvd. at Birch St.	0.474 <u>0.493</u>	A	0.570 <u>0.589</u>	A	0.485 <u>0.504</u>	A	0.575 <u>0.594</u>	A	0.011	0.005	No	No
3	MacArthur Blvd. at Von Karman Ave.	0.632 <u>0.653</u>	B	0.597 <u>0.635</u>	A	0.637 <u>0.652</u>	B	0.601 <u>0.639</u>	B	0.005 <u>-0.001</u>	0.004	No	No
4	MacArthur Blvd. at Jamboree Rd ^a	0.756 0.806	C	0.821 <u>0.866</u>	D	0.759 <u>0.809</u>	C D	0.827 <u>0.872</u>	D	0.003	0.006	No	No
5	MacArthur Blvd. SB at University Dr.	0.563	A	0.514	A	0.563	A	0.514	A	0.000	0.000	No	No
6	Von Karman Ave. at Michelson Dr. ^a	0.619	B	0.839	D	0.619	B	0.840	D	0.000	0.001	No	No
7	Von Karman Ave. at Campus Dr. ^a	0.650	B	0.742	C	0.652	B	0.744	C	0.002	0.002	No	No
8	Von Karman Ave. at Birch St.	0.365 <u>0.376</u>	A	0.388 <u>0.408</u>	A	0.376 <u>0.386</u>	A	0.396 <u>0.416</u>	A	0.011 <u>0.010</u>	0.008	No	No
9	Teller Ave. at Campus Dr. ^a	0.435	A	0.522	A	0.435	A	0.523	A	0.000	0.001	No	No
10	Teller Ave. at Birch St.	13.4	B	13.2	B	14.2	B	14.8	B	0.8	1.6	No	No
11	Jamboree Rd. at I-405 NB Ramps ^a	0.800	C	0.916	E	0.802	C	0.919	E	0.002	0.003	No	No
12	Jamboree Rd. at I-405 SB Ramps ^a	1.133	F	1.019	F	1.134	F	1.020	F	0.001	0.001	No	No
13	Jamboree Rd. at Michelson Dr. ^a	0.901	D	1.079	F	0.904	D	1.080	F	0.003	0.001	No	No
14	Jamboree Rd. at Dupont Dr. ^a	0.704	B	0.729	C	0.705	C	0.730	C	0.001	0.001	No	No
15	Jamboree Rd. at Campus Dr. ^a	0.677	B	0.762	C	0.679	B	0.764	C	0.002	0.002	No	No
16	Jamboree Rd. at Birch St. ^a	0.643	B	0.610	B	0.653	B	0.613	B	0.010	0.003	No	No
17	Jamboree Rd. at Fairchild Rd. ^a	0.643	B	0.779	C	0.645	B	0.784	C	0.002	0.005	No	No
18	Jamboree Rd. at Bristol St. N	0.408 <u>0.422</u>	A	0.590	A	0.411 <u>0.425</u>	A	0.592	A	0.003	0.002	No	No

Table 4.14-22. Intersection Operation – CEQA Analysis Year 2022 With Project													
No.	Intersection	Without Project				With Project				Project Impact			
		AM Peak Hour		PM Peak Hour		AM Peak Hour		PM Peak Hour		Change		Significant?	
		ICU/ Delay	LOS	ICU/ Delay	LOS	ICU/ Delay	LOS	ICU/ Delay	LOS	AM	PM	AM	PM
19	Jamboree Rd. at Bristol St. S	0.757 <u>0.762</u>	C	0.753 <u>0.780</u>	C	0.758 <u>0.762</u>	C	0.757 <u>0.785</u>	C	0.001 <u>0.000</u>	0.004 <u>0.005</u>	No	No
20	Jamboree Rd. at Bayview Way	0.503 <u>0.508</u>	A	0.525 <u>0.542</u>	A	0.504 <u>0.509</u>	A	0.526 <u>0.544</u>	A	0.001	0.001 <u>0.002</u>	No	No
21	Jamboree Rd. at University Dr.	0.687 <u>0.710</u>	B	0.688 <u>0.711</u>	B	0.689 <u>0.713</u>	E B	0.690	B C	0.002 <u>0.003</u>	0.002	No	No
22	Carlson Ave. at Campus Dr. ^a	0.522	A	0.734	C	0.522	A	0.734	C	0.000	0.000	No	No
23	University Dr. at Campus Dr. ^b	0.841	D	0.869	D	0.841	D	0.869	D	0.000	0.000	No	No
24	Bristol St. N at Campus Dr.	0.598 <u>0.620</u>	A	0.746 <u>0.786</u>	C	0.602 <u>0.624</u>	A	0.748 <u>0.788</u>	C	0.004	0.002	No	No
25	Bristol St. S at Campus Dr./ Irvine Ave.	0.761 <u>0.844</u>	C	0.643 <u>0.718</u>	B	0.762 <u>0.844</u>	E D	0.644 <u>0.719</u>	B C	0.001 <u>0.000</u>	0.001	No	No
26	Irvine Ave. at Mesa Dr.	0.474	A	0.690 <u>0.697</u>	B	0.475	A	0.691 <u>0.697</u>	B	0.001	0.001 <u>0.000</u>	No	No
27	Bristol St. N at Birch St.	0.680 <u>0.687</u>	B	0.642 <u>0.665</u>	B	0.682 <u>0.689</u>	B	0.644 <u>0.668</u>	B	0.002	0.002 <u>0.003</u>	No	No
28	Bristol St. S at Birch St.	0.505 <u>0.528</u>	A	0.593 <u>0.606</u>	A	0.505 <u>0.528</u>	A	0.593 <u>0.607</u>	A B	0.000	0.000 <u>0.001</u>	No	No
29	Bristol St. S at Bayview Pl.	0.443 <u>0.460</u>	A	0.494 <u>0.504</u>	A	0.443 <u>0.461</u>	A	0.497 <u>0.507</u>	A	0.000 <u>0.001</u>	0.003	No	No

Notes:
Bold and shaded values indicate intersections operating at an unacceptable Level of Service.
 Intersection operation is expressed in volume-to-capacity (v/c) ratio for signalized intersections using the ICU Methodology, and average seconds of delay per vehicle during the peak hour for unsignalized intersections using the HCM Methodology.
 a. Level of Service E is acceptable at this intersection.
 b. A 5% capacity credit is applied at this intersection to reflect implementation of the Advanced Transportation Management System (ATMS).
 Source: Kimley-Horn, 2017.

3.1.2 TOPICAL RESPONSE: ALTERNATIVES

The State CEQA Guidelines Section 15126.6(c) sets forth the criteria for the selection of a range of reasonable alternatives for consideration in an EIR. “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.... Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts”. The criteria for selection of alternatives to the Proposed Project are discussed in Section 6.0 of the Draft EIR, and reflect the guidance set forth in the State CEQA Guidelines.

Pursuant to the State CEQA Guidelines, an EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

Comments were submitted to the City regarding the range of alternatives addressed in the Draft EIR, and the need to expand the number of alternatives for the purpose of further reducing potential environmental impacts and/or because of opposition to residential development on the project site.

Project Objectives Limits the Range of Alternatives

Some commenters allege that the Project’s objectives make the Draft EIR’s discussion of project alternatives inadequate. In *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App4th 1, 14, the court ruled that a lead agency has broad discretion to formulate project objectives. CEQA does not restrict an agency’s discretion to identify and pursue a particular project designed to meet a particular set of objectives.

Project objectives are relevant to a lead agency’s consideration and review of a proposed project because they assist with development of a reasonable range of alternatives and aid decision-makers in preparing a statement of overriding consideration, if necessary (CEQA Guidelines §15124(b)). This is how the project objectives were used in the Draft EIR—to develop a reasonable range of alternatives. Moreover, CEQA does not impose any prohibition on the inclusion of project objectives that have any level of subjectivity. In conclusion, the objectives do not preclude the analysis of a reasonable range of alternatives.

Alternative Sites

Commenters suggested that the Draft EIR’s analysis of off-site alternatives is invalid saying it failed to consider off-site locations capable of accommodating the Project. CEQA does not require this analysis. First, CEQA does not contain a categorical imperative requiring the consideration of off-site alternatives. “An EIR shall describe a range of reasonable alternatives to the project, *or to the location of the project (emphasis added)*, 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.” This is consistent with the well-accepted principle that an EIR’s discussion of alternatives is governed by the rule of reason set forth in CEQA Guidelines Section 15126.6(a). A lead agency’s selection of alternatives for study will be upheld as long as there is a reasonable basis for the alternatives included (*City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 414).

It was suggested that the Draft EIR address additional off-site alternatives including potential development sites outside of the Airport Area. The Draft EIR evaluated a reasonable range of alternatives to the Proposed Project, including whether there were reasonable alternative locations. In accordance with Government Code Section 65583(a)(3) and 65583.2, the City of Newport Beach General Plan Housing Element includes an inventory and description of land determined suitable for residential development that can realistically be developed within the planning period (October 2021). The Sites Analysis and Inventory is organized by the key opportunity areas within City (i.e., Banning Ranch, Corona del Mar, West Newport Mesa, Mariner's Mile, Balboa Peninsula, Dover Dr./Westcliff Dr., Newport Center, and the Airport Area). The Housing Element states "To demonstrate the realistic development viability of the sites, the analysis also discusses: 1) whether appropriate zoning is in place; 2) the applicable development limits/densities and their impact on projected development capacity and affordability; 3) existing constraints including any known environmental issues; and 4) the availability of existing and planned public service capacity levels. Since a limited amount of vacant land remains in the community, future housing development would primarily be achieved through infill and reuse of sites with existing, underdeveloped or underutilized land uses. Table H32 summarizes the total residential development capacities identified in Sites Analysis and Inventory for each of the potential housing opportunity areas in the City." Table A summarizes the Sites Analysis and Inventory and identifies why the sites are not considered feasible for development of the Proposed Project.

The use of the Housing Element as a means to identify possible alternative sites is reasonable given the scope of its prior analysis. The Draft EIR was not required to speculate as to the development potential of other sites not identified as a potential site for residential development. Any such analysis would require significant speculation, and would not contribute to informed decision-making. *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 429 [CEQA does not require perfection, but completeness and a good faith effort at disclosure].

Other Alternatives

In addition to the suggestion that the Draft EIR address additional off-site alternatives, other alternatives were suggested and were generally variations to the alternatives already addressed in the Draft EIR. It was also suggested that the EIR needed to address an alternative that is consistent with the maximum square footage allowed in the "Anomaly Area." The City of Newport Beach General Plan Table LU2: Anomaly Locations, identifies development limits for certain sites within the City.

With respect to the consideration of an alternative consistent with the maximum square footage allowed in the Anomaly Area, this is not a feasible alternative. The City of Newport Beach General Plan land use category for the project site is "Mixed Use Horizontal 2 (MU-H2)". The MU-H2 designation specifically applies to some properties located in the Airport Area. It is intended to provide for the development of areas in a horizontally distributed mix of uses which may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. Non-residential uses are permitted according to the limits included in General Plan Table LU2: Anomaly Locations. The project site is within Anomaly Location 2 of Statistical Area L4. Anomaly Location 2 has a development limit of 1,052,880 sf, which is only for non-residential development and is built out. For this reason, the Project proposes a transfer of development rights to transfer 3,019 sf of unbuilt office/retail square footage from Koll Center Planned Community Development Standards (PC 15) Koll Center Site A (Anomaly Location 1) to Site B (Anomaly Location 2) within Statistical Area L4 (Airport Area).

Areas Realistic	General Plan Designation	Zoning Designation	Dwelling Unit Capacity*	Density (du/acre) or Development Limit	Determination
Vacant					
Banning Ranch	RV and OS	Planned Community (PC)	1,375	Maximum development limit of 1,375 du	(1) development on the Banning Ranch site would require the acquisition of a 401-acre property which exceeds the development footprint necessary for the Project; (2) development would result in environmental impacts not associated with development of the Project on the site under consideration. For example, development on the Banning Ranch site would require site remediation including within areas with biological resources. Both site development and remediation would have biological impacts. These impacts could likely be mitigated but would not be caused at the project site. Significant noise impacts during construction could also occur depending on where development occurred on the Banning Ranch site. Infrastructure would have to be extended to this site. On February 9, 2017, the California Coastal Commission affirmed its denial of the Newport Banning Ranch project. On December 12, 2017, the Newport Beach City Council approved Ordinance No. 2017-17, repealing all approvals of the project.
Corona del Mar	RM	RM	6	Development limit of 8 du permitted	The Project could not be accommodated based on dwelling unit capacity.
Infill/ Mixed-Use					
John Wayne Airport Area	MU-H2	Planned Community (PC)	2061	30 du/ac min. and 50 du/ac max. ** Development limit of 2,200 du permitted as replacement of existing uses (550 du permitted as infill)	Please note that the alternative sites in Airport Area must have MU-H2 designation to allow for mixed-use residential. Because these 260 additive units are site specific per Figure LU22 of Land Use Element and identified in the Integrated Conceptual Plan (ICDP) which is an implementation plan per Land Use Policy 6.15.5 for the Airport Area, an amendment to the ICDP and Policy 6.15.5 would be required.
Newport Center	MU-H3 and RM	Planned Community (PC)	608	Development limit of 608 du permitted as infill	Site 1 (San Joaquin Plaza) has been developed. Sites 2 and 3 assume a total of 84 units. Sites 2 and 3 as well as the conversion of any other sites within Newport Center would require both a General Plan Amendment and rezone.

Table A					
Areas Realistic	General Plan Designation	Zoning Designation	Dwelling Unit Capacity*	Density (du/acre) or Development Limit	Determination
Mariners' Mile	MU-W1 and MU-H1	MU-W1 and MU-MM	232	MU-W-1: Mixed-Use FAR: 1.0, with 0.5 for residential Multi-Family Residential: 12 du/acre (50% of site) MU-MM: Mixed-Use: FAR 1.5, with 1.0 for residential	The Housing Element identifies 23 potential sites for residential development. The largest site, Site 13, is 4.37 acres with 113 units. Development potential is less than 50% of Proposed Project.
West Newport Mesa	RM	RM	71	18 du/ac	The Project could not be accommodated based on dwelling unit capacity.
Dover Dr./ Westcliff Dr.	MU-H1	MU-DW	89	MU-DW: FAR 1.5, with 1.0 for residential	The Project could not be accommodated based on dwelling unit capacity.
Balboa Peninsula Area					
Lido Marina Village	MU-W2 and RM (20/ac)	MU-W2 and (RM 2178)	62	MU-W2: FAR 1.5, with 0.8 for residential RM (20 du/acre)	The Project could not be accommodated based on dwelling unit capacity.
Cannery Village	MU-H4 MU-W2	MU-CV/15 th St. and MU- W2	55	MU-CV/15 th : Mixed-Use: FAR 1.5, with 1.0 for residential Multi-Family: 20.1 to 26.7 du/net acre MU-W2: Mixed-Use: FAR 1.25, with 0.75 for residential	The Project could not be accommodated based on dwelling unit capacity.
Balboa Village	MU-V	MU-V	14	MU-V: FAR 1.5, with 1.0 for residential	The Project could not be accommodated based on dwelling unit capacity.
McFadden Square	MU-W2	MU-W2	39	MU-W2: FAR: 1.25, with 0.75 for residential	The Project could not be accommodated based on dwelling unit capacity.
Total			4,612		
<p>SOURCE: City of Newport Beach Planning Division, General Plan, and Sites Analysis and Inventory MU-H1 = Mixed-Use(MU) - Horizontal 1; MU-H2 = MU - Horizontal 2; MU-H3 = MU - Horizontal 3; MU-H4 = MU - Horizontal 4; MU-W1, MU-W2 = MU - Water 1, 2; MU-MM, MU-DW = MU - Mariners Mile, MU- Dover Westcliff; MU-CV/15th St. = MU-Cannery Village/15th St.; MU-V = MU-Vertical; RM = Multiple-Family Residential; RV = Residential Village; OS = Open Space PC = Planned Community</p> <p>* Capacities reflect potential net increase in dwelling units above existing uses. As explained in detail within the Sites Analysis and Inventory, realistic capacities were based on average densities of actual constructed, permitted, or proposed projects within the City and accurately reflect achievable housing units. For example, although mixed-use designations permit densities of up to 26.7 du/ac, realistic capacities were calculated using 16 du/ac, based on actual mixed-use projects constructed within the City.</p> <p>** Pursuant to Government Code Section 65583.2, a minimum density of 30 du/ac shall be deemed appropriate to accommodate housing for lower- income households for urbanized areas.</p>					

With respect to the consideration of an alternative that reduces density through the construction of two rather than three buildings, this suggested alternative could be considered a modification to Alternative D: Modified Site Plan that is evaluated in the Draft EIR. CEQA does not require consideration of multiple variations of different alternatives to a project. What is required is the production of information related to environmental effects sufficient to permit a reasonable choice of alternatives. The alternative suggested by commenters would not substantially deviate from the alternatives addressed. Therefore, under CEQA, it is not required. However, for purposes of full disclosure, the following addresses this suggested alternative.

In summary, Alternative D assumes 260 residential units, 3,000 sf of retail uses, and a 1.17-acre public park. All surface parking removed by construction and operation would be provided in the parking structure for Building 1. The free-standing parking structure would not be constructed and therefore the development footprint for Alternative D would decrease from 13.16 acres to approximately 12.46 acres. Valet and/or shuttle parking to another location(s) within and/or outside Koll Center Newport would be required until all parking spaces are available within the residential buildings' parking structures. Constructed in 3 rather than 4 phases, the estimated duration of construction would decrease from approximately 4.5 years to 3 years. Alternative D would require a larger subsurface building footprint to allow for the construction of additional below-ground parking for Project uses and the removed surface parking used by existing tenants and guests. The same number of below-grade levels of parking would be provided as for the Proposed Project. Alternative D would have a density of approximately 34 dwelling units per net acre based on 7.59 net acres (inclusive of Buildings 1, 2, and 3; access, parking; utilities; landscaping). The Proposed Project have a density of 31 dwelling units per net acre.

For purposes of discussion, the suggested alternative would assume the construction of two buildings (referred to herein as Building 2 and Building 3). As described in the Draft EIR, Buildings 2 and 3 would be constructed with a shared podium. The location of Building 1 would be retained for surface parking. Approximately 1,232 sf of street level retail uses would be provided in the shared ground floor podium for Buildings 2 and 3. The free-standing parking structure would not be constructed and the development footprint would decrease from 13.16 acres to approximately 11.47 acres. The number of dwelling units could be up to 260 if the average square footage substantially decreased. Retaining the size of the dwelling units assumed for the Proposed Project would result in a reduction of units to approximately 173 units. Based on 6.77 net acres, the density could range from approximately 25.5 to 34 units per net acre. General Plan Policy LU 6.15.9 and the Airport Business Area ICDP require a minimum density of 30 dwelling units per net acre and a maximum density of 50 dwelling units per net acre.

By removing Building 1 and the free-standing parking structure, and retaining the public park, the size of the project site would be reduced. With the retention of approximately 348 surface parking spaces, when compared to the Project, the alternative would provide approximately 390 spaces within a shared parking structure for Building 2 and Building 3. Because the free-standing parking structure would not be constructed, valet and/or shuttle parking to another location(s) within and/or outside Koll Center Newport would be required until all of the parking spaces are available within the residential buildings' parking structure.

This alternative would not eliminate the significant impacts of the Project but would reduce the duration of construction-related impacts. Constructed in 3 rather than 4 phases, the estimated duration of

construction is anticipated to decrease from approximately 4.5 years to approximately 3 years. This alternative meets the Project objectives and is consistent with the General Plan and the Airport Business ICDP. While this alternative would cause a greater inconvenience to office tenants and visitors because parking would not be replaced until the project is completed, this factor would need to be weighed against the reduction in time to complete the development.

3.1.3 TOPICAL RESPONSE: AIRPORT NOISE

Several comments focused on potential aircraft noise impacts on Project residences due to airport operations at John Wayne Airport (JWA). General aviation accounts for the majority of JWA's total aircraft operations (takeoffs and landings). In 2016, there were 191,159 general aviation operations, which represent 67 percent of the Airport's total number of operations.¹ As discussed on page 4.10-32 of the Draft EIR, the project site is located outside of the John Wayne Airport's 60 dBA CNEL contour (according to the 2008 Land Use Plan for John Wayne Airport,² and the John Wayne Airport 2016 Annual 60-75 [5 dB intervals] CNEL Noise Contours).³ Existing and future noise impacts from aircraft operations at John Wayne Airport were also analyzed in the Draft Environmental Impact Report No. 617, John Wayne Airport Settlement Agreement Amendment (JWA EIR) (County of Orange, May 2014). The JWA EIR analyzed the environmental impacts (including noise impacts) for an increase in flights and passengers at John Wayne Airport as a result of extending the terms of the John Wayne Airport Settlement Agreement. According to the JWA EIR, the project site is located outside the 60 dB CNEL noise contour under existing and future plus project conditions, and is not located within the arrival or departure flight paths at John Wayne Airport.

Additionally, the General Aviation Noise Ordinance (GANO) has been adopted by the County of Orange to regulate the hours of operation and the maximum permitted noise levels associated with general aviation operations. John Wayne Airport maintains ten permanent noise monitoring stations. The GANO specifies noise limits at each noise monitoring stations that vary by time of day. The GANO also identifies private aircraft that may not meet the noise standards and specifically limits their operations unless the aircraft owner/operator can furnish evidence that the aircraft can operate within acceptable noise levels.

John Wayne Airport noise impacts were also analyzed in the *Environmental Assessment for the Southern California Metroplex Project* (Metroplex EA) (United States Department of Transportation, Federal Aviation Administration, June 2015) for the optimization of Air Traffic Control (ATC) procedures at several airports in Southern California, including John Wayne Airport. This is accomplished by developing procedures that take advantage of technological advances in navigation, such as Area Navigation (RNAV). RNAV uses technology, including Global Positioning System (GPS), to allow an RNAV-equipped aircraft to fly a more efficient route. According to Noise Integrated Routing System (NIRS) grid point modeling in the Metroplex EA, John Wayne Airport airplane noise levels at the closest modeled grid receptor (located approximately 0.19 mile to the north of the project site) with implementation of RNAV ATC procedures would be approximately 52.0 DNL (Day-Night Sound Level). As the project site is 0.19 mile further south

¹ John Wayne Airport, *General Aviation*, <http://www.ocair.com/generalaviation/>.

² Orange County Airport Land Use Commission, *Airport Environs Land Use Plan for John Wayne Airport*, http://www.ocair.com/commissions/aluc/docs/JWA_AELUP-April-17-2008.pdf, April 17, 2008.

³ John Wayne Airport, *John Wayne Airport 2016 Annual 60-75 [5 dB intervals] CNEL Noise Contours*, <http://www.ocair.com/reportspublications/AccessNoise/cnelnoisecontours/2016.pdf>, 2016.

from the modeled grip receptor, aircraft noise levels would be lower than 52.0 DNL and below the City's noise standards for residential uses.

As discussed on page 4.10-27 of the Draft EIR, the combined mobile noise levels (i.e., aircraft noise and off-site traffic noise) at the future on-site residences could exceed the City's 60 dBA daytime exterior noise standards. It should be noted that the potential exceedance is conservatively based on airport noise levels of 60 dBA CNEL. As indicated above, the Project is outside of the 60 dBA CNEL noise contour; therefore, noise levels at the project site would actually be lower than analyzed in the Draft EIR. Nonetheless, the Project would be required to comply with Mitigation Measures (MMs) 4.10-5 and 4.10-6 to reduce on-site mobile noise impacts to a less than significant level. MM 4.10-5 requires interior noise levels to comply with Title 24 of the California Code of Regulations, and MM 4.10-6 requires a detailed acoustical study demonstrating that all residential units would meet the City's 60 dBA exterior noise standard for all patios, balconies, and common outdoor living areas through any necessary noise reduction features (barriers, berms, enclosures, etc.). Compliance with these mitigation measures would ensure that airplane noise at John Wayne Airport would not impact future residents at the project site, and would comply with the City's noise standards, community noise compatibility guidelines, and General Plan Policies N1.1 (to ensure land use compatibility with the noise environment), N2.1, N2.2 (requiring new development to meet the City's interior and exterior noise level thresholds), and N3.2 (requiring residential development in the John Wayne Airport area be located outside of the 65 dBA CNEL contour). Compliance with MMs 4.10-5 and 4.10-6 would result in a less than significant impact.

3.1.4 TOPICAL RESPONSE: ENERGY ACTION PLAN CONSISTENCY

Prepared in July 2013, the City's Energy Action Plan (EAP) has the following primary objectives: (1) reduce the City's carbon footprint and its adverse effect on the environment; (2) conserve energy at the local government facilities; and, (3) raise energy conservation awareness in local community and improve the quality of life. The EAP was created in partnership with Southern California Edison (SCE) and Southern California Gas Company (SCG) and identifies municipal strategies to achieve the City's long-term electricity and natural gas efficiency goals. The EAP focuses on municipal energy consumption, municipal reduction measures, and municipal projects (i.e., LEED and Green Building in new municipal buildings, retrofits for mechanical equipment, lighting retrofits, personal computer power management controls, global temperature adjustment, etc.). The EAP identifies a municipal and community reduction goal of 15 percent below 2004 energy consumption levels by 2020. It should be noted that this reduction goal accounts for projected growth in the City. Although City policies emphasize a decrease in energy use, the policies do not prohibit energy consumption from new development projects in the City.

As noted above, the EAP also identifies a 15 percent reduction goal for community energy use. However, the EAP does not provide specific project-level thresholds or reduction measures. As noted in *Center for Biological Diversity v. California Department of Fish and Wildlife and Newhall Land and Farming* (2015) 224 Cal.App.4th 1105, a qualified GHG reduction plan must be "sufficiently detailed and adequately supported." The EAP is not a qualified GHG reduction plan as it focuses on energy emissions and does not include emissions inventories for all sectors, and was not adopted by the City through a public review process.

Nonetheless, Project consistency with the City's EAP was reviewed in Section 4.6, *Greenhouse Gas Emissions*, and Project energy consumption was assessed in Section 4.15.5, *Energy Consumption*, of the Draft EIR. As described in the Draft EIR, prior to issuance of a building permit, the City of Newport Beach Public Utilities Department would review and verify that the Project plans demonstrate compliance with the current version of the Building and Energy Efficiency Standards. The Project would also be required adhere to the provisions of CALGreen, which establishes planning and design standards for sustainable site development, energy efficiency (in excess of the California Energy Code requirements), water conservation, material conservation, and internal air contaminants.

Project design features include high efficiency wall assemblies and windows to reduce heating and cooling loads; Energy Star appliances; high efficiency heating and cooling systems; high efficiency domestic hot water systems; and high efficiency light-emitting diode (LED) lighting in residential units, common areas, and landscape design. The Applicant would pursue a Leadership in Energy and Environmental Design (LEED) Silver Certification for the Project.

3.1.5 TOPICAL RESPONSE: SENATE BILL 32

As described in Draft EIR Section 4.6, *Greenhouse Gas Emissions*, Senate Bill (SB) 32 codifies the statewide greenhouse gas (GHG) reduction target in Executive Order (EO) B-30-15 and authorizes the State of California to adopt an interim GHG emissions level target. The bill states that the intent is for the legislature and appropriate agencies to adopt complementary policies which ensure that the long-term emissions reductions advance specified criteria.

The Draft EIR used a bright line threshold developed by the South Coast Air Quality Management District (SCAQMD) and supported by substantial evidence in the SCAQMD Draft Guidance Document – Interim CEQA Greenhouse Gas Significance Threshold (October 2008). The bright line threshold was further developed and discussed by the SCAQMD GHG CEQA Significance Threshold Stakeholder Working Group (Working Group). On September 28, 2010, the Working Group recommended an interim screening level numeric bright-line threshold of 3,000 metric tons (MT) of carbon dioxide equivalent (CO₂e) annually (MTCO₂e/yr) and an efficiency-based threshold of 4.8 MT of CO₂e per service population (SP; residents plus employees) per year in 2020 and 3.0 metric tons of CO₂e per service population per year in 2035 for non-industrial projects.

The bright line threshold approach consists of identifying emissions levels below which a project would not have significant GHG emissions, and above which a project would require further evaluation using other thresholds. As discussed in the SCAQMD Guidance and by the Working Group, the 3,000 MT CO₂e threshold was developed to capture 90 percent of the GHG emissions from new residential or commercial projects. A series of sensitivity analyses was performed by SCAQMD staff to assess the likely project size for 3,000 MTCO₂e/yr emissions. The 3,000 MTCO₂e/year value is typically used in defining small projects that are considered less than significant. As analyzed in the Draft EIR, the Project would not exceed the bright line threshold and further analysis and mitigation is not required.

Furthermore, the Project's consistency with the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) goals is analyzed in Section 4.6, *Greenhouse Gas Emissions*, Table 4.6 to address post-2020 GHG emissions reduction goals. As indicated in the Draft EIR, the Project would not conflict with the stated goals of the RTP/SCS and would

not interfere with SCAG's ability to achieve the region's post-2020 mobile source GHG reduction targets outlined in the 2016 RTP/SCS.

In the interest of full disclosure, Project emissions can be compared to a region-specific efficiency metric to further demonstrate the Project would not conflict with the State's post-2020 reduction goals. An efficiency metric is calculated by dividing the allowable GHG emissions inventory in a selected calendar year by the service population (residents plus employees) which then leads to the identification of a quantity of emissions that can be permitted on a per service population basis without significantly impacting the environment. Under the efficiency metric, the Project's GHG emissions are evaluated relative to the emissions level in the Project's buildout year and the buildout year's associated efficiency metric. To that end, an efficiency metric was calculated based on the 2022 emissions level (year of Project buildout) and the Project's service population (sum of the number of anticipated employees and residents provided associated with the Project).

Because there are no emissions data or efficiency metrics available for the Project's buildout year (2022), an efficiency metric was generated by interpolating the Working Group 4.8 MTCO₂e/SP/yr and 3.0 MTCO₂e/SP/yr efficiency metrics⁴ for years 2020 and 2035, respectively. Interpolating for a buildout year of 2022 results in a Project-specific efficiency metric of 4.56 MTCO₂e/SP/yr. As described in Draft EIR Section 4.11, *Population and Housing*, the Project would generate 580 residents assuming 2.23 persons per dwelling unit. The Draft EIR also indicated that seven jobs associated with the proposed commercial use could be created; however, employees are conservatively not included in the service population calculation for the purposes of this discussion. Therefore, with a total of 2,157 MTCO₂e/yr generated by the Project (including amortized construction emissions) and a service population of 580, the Project would result in 4.48 MTCO₂e/SP/yr and would be below the 4.56 MTCO₂e/SP/yr post-2020 efficiency threshold. It should be noted that these emissions conservatively do not include reductions from the Project's proposed LEED design features or reductions from future emissions reductions from the ongoing implementation of various State measures including the Renewable Portfolio Standards and the Pavley II Plus Tire Pressure Regulations. Additionally, the service population conservatively does not include employees associated with the proposed retail uses. Therefore, the Project would not conflict with the State's GHG emission reduction goals.

⁴ South Coast Air Quality Management District GHG CEQA Significance Threshold Stakeholder Working Group, *Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group #15*, September 28, 2010.

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Comment Letters and Responses: Agencies (A)

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Letter A-1 **City of Irvine**
Melissa Chao, Senior Planner
October 17, 2017



Community Development

cityofirvine.org

1 Civic Center Plaza, Irvine, CA 92606-5208

949-724-6000

October 17, 2017

Sent via USPS and
email: Rung@newportbeachca.gov

Ms. Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Subject: First Screencheck Review of the Draft Environmental Impact Report for the Koll Center Residences Project at 4400 Von Karman Avenue within the Koll Center Newport development (SCH No. 2017011002)

Dear Ms. Ung:

City of Irvine staff has received and reviewed the Draft Environmental Impact Report (EIR) for the subject project. The proposed project is a mixed-use infill development on approximately 13.16-acres within Koll Center Newport, a 154-acre mixed-use development area as follows:

- 260 residential condominiums in three 13-story podium buildings with two levels of above-grade and two to three levels of below-grade structured parking with a maximum building height of 160 feet;
- 3,000 square feet of ground-floor retail uses;
- a 1.17-acre public park with active and passive recreational areas located adjacent to Birch Street;
- a freestanding parking structure for office uses;
- lighting, utility, landscaping, and pedestrian improvements; and
- reconfiguration of existing surface parking.

Based on the review of the Draft EIR, City of Irvine staff would like to provide the following comments:

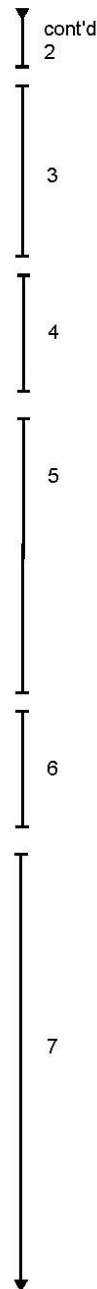
1. Page 1-2: Confirm the square footage associated with the transfer of development rights. Last sentence in 2nd paragraph indicates "up to 3,000 SF of unbuilt office/retail space from Koll Center Site A to Koll Center Site B." Notice of Availability indicates 3,019 SF.
2. Table 3-4, Parking Summary: Under required residential DU parking, revise 552



Ms. Rosalinh Ung
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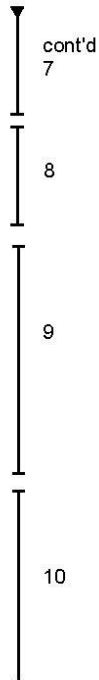
to 555 spaces total. Any fractional parking spaces should be rounded up.

3. Table 3-4, Parking Summary, Table 3-5, Parking Supply by Project Phase and Figure 3-19, Parking Use Allocation: Please indicate the minimum parking requirements for the office (i.e., 4400 Von Karman), retail and public park uses for the project to clarify that the minimum parking requirements will be met through the provided residential building, parking structure, and surface parking for all project phases.
4. Page 4.9-6, General Plan and Zoning Designations and Page 4.9-10, Zoning Consistency: Unable to locate the proposed text for the Zoning Code Amendment for PC-15 Koll Center Site B. Provide strikeout/highlight and proposed clean versions.
5. Expand the study area to provide the following intersections and arterials analysis, within the City of Irvine study area:
 - MacArthur/Douglas
 - MacArthur/Michelson
 - MacArthur/I-405 SB ramp
 - MacArthur/I-405 NB ramp
 - Teller/Michelson
 - Teller/Dupont
 - Von Karman/Dupont
6. Check the following intersections existing and 2022 volumes used to calculate the ICU values:
 - MacArthur/Campus – PM
 - Von Karman/Campus – PM
7. Confirm volumes and V/C values for existing and 2022 data included in the traffic study. City's ITAM traffic volumes are much higher than the ones shown in the study:
 - MacArthur – Main to I-405 NB Ramps
 - MacArthur – I-405 SB Ramps to Michelson
 - Von Karman – North of Main
 - Von Karman – Dupont to Campus
 - Jamboree – North of Main
 - Jamboree – Main to I-405 NB Ramps
 - Jamboree – I-405 SB Ramps to Michelson
 - Jamboree – Michelson to Dupont
 - Main – MacArthur to Von Karman
 - Main – Von Karman to Jamboree



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- Michelson – MacArthur to Von Karman (should be 100% more traffic than shown)
 - Michelson – Von Karman to Jamboree
8. The City is requesting that a build-out analysis (Post-2035) of the intersections and arterials within the City of Irvine study area be provided in the report or as appendix for staff review.
 9. Provide a section in the traffic study to list the status of the intersections and arterials identified to be mitigated as part of the 2006 City of Newport Beach General Plan Update EIR and whether this project triggers the need for any of these improvements. Some of the improvements identified were along the boundary of the study limits at the intersection of Macarthur/Campus, Von Karman/Campus, Jamboree/Campus, Jamboree/Birch, Jamboree/MacArthur, and SR-73 NB ramps/Bonita Canyon, all of which lie partially within the Irvine city limits.
 10. Provide a detailed SB Jamboree right turn and EB Birch left turn lane analysis of the intersection of Jamboree and Birch. One of the accesses off of Birch Road is very close to Jamboree Road and it appears to be a convenient route to I-405 and, as such, detailed analysis of this intersection should be prepared. Use City of Irvine Transportation Design Procedures adopted February 2007 to perform a detailed operation analysis.



Thank you for the opportunity to review and comment on the proposed project. Staff would appreciate the opportunity to review any further information regarding this project as the planning process proceeds. If you have any questions, I can be reached at (949) 724-6395, or by email at mchao@cityofirvine.org.

Sincerely,

MELISSA CHAO
Senior Planner

cc: Kerwin Lau, Manager of Planning Services
Bill Jacobs, Principal Planner
Sun-Sun Murillo, Supervising Transportation Analyst
Farideh Lyons, Senior Transportation Analyst

Response 1

The proposed revisions to the Koll Center Planned Community Development Standards (PC Text) would allow for a maximum of 3,019 gross square feet of commercial uses. The Project proposes 3,000 square feet (sf) of retail uses.

Response 2

With respect to the total required parking spaces, Table 3-4. Parking Summary, has been revised to 555 and incorporated into the Final EIR as follows:

Dwelling Units	Proposed Parking Ratio	Building 1		Building 2		Building 3		Total		
		Total (du)	Required Spaces ^a	Total (du)	Required Spaces ^a	Total (du)	Required Spaces ^a	Total (du)	Required Spaces ^a	Provided Spaces
1 Bedroom	1.8	17	31	16	29	17	30	50	90	-
2 Bedrooms	1.8	60	108	60	108	60	108	180	324	-
3 Bedrooms	2.0	10	20	10	20	10	20	30	60	-
Total Resident Parking		87	159	86	157	87	158	260	474	477
Guest	0.3		27		26	87	27		79	80
Required			186		183		186		552 555 ^b	557
Provided in Buildings 1, 2, 3			426	369						795
Free-Standing Parking Structure (office use) ^c										492
Total: New Structured Parking										1,287
Surface Parking: Retail, Public Park										21
Surface Parking: Office										97
Total: Surface Parking										118
Total New Parking: Structured and Surface										1,405
Total Existing Parking										1,651
Total Demolished Parking										-819
Total New Parking										1,405
Net Change										586
<p>Note: Parking Ratio = number of spaces per bedroom; du = dwelling unit</p> <p>a. "Required" parking ratios are in accordance with the standards adopted for Uptown Newport. Source: <i>Uptown Newport Village Parking Study Guidelines</i>, DKS, 2012, and as proposed for the Project as part of the PC-15 amendment.</p> <p>b. Any differences due to rounding</p> <p>c. Nine levels: three levels of below-ground parking and six levels of above-ground parking including rooftop parking.</p> <p>Source: MVE + Partners, 2017.</p>										

Response 3

The parking supply for the existing Koll Center Newport development was previously approved for the site by the City of Newport Beach. The Project does not change the existing office square footage or the parking requirements for the existing Koll Center Newport development. The existing parking supply (1,651 spaces) and available parking supply by phase must be maintained. The proposed overall site parking plan was designed to provide full replacement of removed parking spaces and distinct parking areas for the existing office uses and adequate parking for the proposed residential uses.

Response 4

The proposed new sections of the Koll Center Newport Planned Community Development Standards that pertain to the Proposed Project are provided following the responses to Comment Letter A-1.

Response 5

The study locations for the Project were discussed and agreed upon with City of Irvine staff at the start of the Project, and confirmed at the release of the Notice of Preparation (NOP). The requested additional study locations are at the fringe of the study area, and the project-related traffic that would pass through those locations would be a nominal amount of traffic.

Response 6

The City of Irvine provided existing peak hour count data for these two intersections. Based on direction from City of Irvine staff, any counts that were prior to 2016 were grown by a factor of 2 percent per year to develop Year 2016 existing volumes. The adjusted (grown) volumes provided by the City have been checked against the volumes used in the Existing ICU worksheets, and the volumes match.

The Year 2022 peak hour forecasts for these two intersections were developed from the 2017 ITAM (Irvine Transportation Analysis Model) forecasts provided by the City of Irvine. For the City of Newport Beach Traffic Phasing Ordinance (TPO) analysis, the required TPO annual growth rates were applied and peak hour volumes from Committed Projects provided by the City of Newport Beach were added. For the CEQA (Cumulative) analysis, the peak hour forecasts consist of the 2017 ITAM forecasts, a 2 percent annual growth per the City of Irvine, and peak hour volumes from committed and cumulative projects in the cities of Newport Beach and Irvine.

Response 7

The City of Irvine provided existing (2016) average daily traffic (ADT) count data for most of the study roadway segments. In some cases, where 2016 data was not available, 2015 data was used. Any ADT counts that were prior to 2016 were grown by a factor of 2 percent per year to develop Year 2016 existing volumes. The existing (grown) ADT count data provided by the City has been checked against the volumes used in the Existing Conditions Roadway Segment Analysis table, and the volumes match.

The City of Irvine also provided Year 2020 ITAM ADT forecasts. Based on direction from City of Irvine staff, the ITAM 2020 forecasts were grown by a factor of 2 percent per year to develop Year 2022 ADT forecasts. The adjusted (grown) forecasts provided by the City have been checked against the volumes used in the Year 2022 Roadway Segment Analysis table, and the volumes match.

Regarding the comment specific to the segment of Michelson Drive from MacArthur Boulevard to Von Karman Avenue, the commenter states that the volume should be 100 percent more than shown. Research into that comment yielded the following findings:

The segment of Michelson Drive from MacArthur Boulevard to Von Karman Avenue is bisected by Dupont Drive. The 2016 ADT data provided by the City contained just one ADT count – between MacArthur Boulevard and Von Karman Avenue – without specifying if the count was taken west of Dupont Drive or east of Dupont Drive.

Based on a review of 2015 ADT count data, it appears that the 2016 ADT count data provided by the City reflects the volume on Michelson Drive east of Dupont Drive (between Dupont Drive and Von Karman Avenue). This conclusion is reached, because the 2015 ADT count data shows that the volume on Michelson Drive west of Dupont Drive (between MacArthur Boulevard and Dupont Drive) is approximately 20,000 ADT, while the volume to the east of Dupont Drive drops to roughly half of that volume.

Since the 2016 ADT data did not provide a roadway volume for the segment west of Dupont Drive, the higher volume from the 2015 count data (west of Dupont Drive) was grown by 2 percent per year to 2016, and evaluated for the Existing Conditions Roadway Segment Analysis, with the following results:

Roadway	Segment	Facility Type	No. of Lanes	LOS E Capacity	Existing ADT	V/C	LOS
Michelson Drive	MacArthur to Von Karman	Secondary	4	28,000	20,276	0.724	C

The level of service (LOS) on the segment west of Dupont Drive would be LOS C for Existing Conditions, which is an acceptable level of service, and the segment would not require additional peak hour link analysis.

The 2020 ITAM ADT forecasts provided by the City did include a forecast volume for both segments of Michelson Drive (west of Dupont and east of Dupont Drive), and the higher volume (west of Dupont Drive) was used in all of the Opening Year 2022 scenarios.

Response 8

The Project is fully consistent with the General Plan, and a buildout analysis would not be required.

Response 9

The results of the analysis in the Draft EIR Traffic Impact Study indicate that the Project would not result in a significant impact, and would not require traffic-related mitigation at any of the locations referenced.

Response 10

The Project does not propose any changes to the intersection of Jamboree Road at Birch Street, and does not propose to move any of the existing driveways for the Koll Center Newport development. The Koll Center Newport driveway closest to the intersection of Jamboree Road at Birch Street is Driveway 3, which aligns with Teller Avenue, approximately 775 feet west of Jamboree Boulevard. (There are other driveways on Birch Street closer to Jamboree Road, but they are for other, existing developments.)

The following analysis of the eastbound left-turn lane on Birch Street and the southbound right-turn lane on Jamboree Road provides an evaluation of the existing configuration conditions, which demonstrates that the conditions would not be altered by the Project.

The eastbound left-turn configuration on Birch Street at Jamboree Road consists of one exclusive left-turn lane and a shared through/left lane. Since the east leg of the intersection is the entrance to a University of California, Irvine (UCI) fleet/service yard, the eastbound through volume is nominal, and the shared through/left lane serves primarily as a second left-turn lane at this intersection.

The exclusive left-turn pocket is 250 feet long, measured from the limit line at Jamboree Road to the end of the left-turn pocket stripe. Behind (to the west of) that, is a 50-foot opening to the left-turn pocket, followed by the two-way left-turn lane in the center of Birch Street that extends back to Teller Avenue. The shared through/left lane is also 250 feet long, based on the pavement striping. Beyond the striping is the #1 through lane. Vehicles intending to turn left at the intersection can approach the intersection by staying in the #1 through lane, which becomes the shared through/left lane, essentially extending the capacity to queue for the left turn in the #1 through lane beyond the left-turn striping designation. The eastbound left-turn storage at this intersection, therefore consists of 500 feet of striped storage with the ability to accommodate additional left-turn storage for both left-turn lanes, if needed, beyond the striped areas.

The peak left-turn demand for the eastbound approach is forecasted to be approximately 365 vehicles in the evening peak hour for the Opening Year 2022 with Project condition. The Project's contribution to this volume would be ten PM peak hour vehicles. Based on the City of Irvine Transportation Design Procedures for Turn Lane Pocket Lengths (TDP-1) for existing signalized locations, the recommended storage length would be 400 to 475 feet for the Minimum (90% probability) condition. The striped left-turn storage in the two left-turn lanes satisfies this requirement.

The southbound right-turn configuration on Jamboree Road at Birch Street consists of one dedicated free-right-turn lane, with a traffic island to separate the right-turn and through movements. Right-turning vehicles are unrestricted by the signal at the intersection; they only need to stop if there is a pedestrian in the short crosswalk between the sidewalk and the traffic island.

The exclusive right-turn pocket is 220 feet long, measured from the start of the right-turn pocket stripe to the crosswalk. There is no taper at the start of the right-turn lane. Beyond the start of the turn lane (to the north), the curb lane continues, essentially as an auxiliary/weave lane, with 10 to 12 feet of unstriped pavement width outside the #3 southbound through lane on Jamboree Road. A distance of over 300 feet is available between the start of the southbound free-right-turn lane and the end of the free-right-turn lane for right-turning vehicles turning from eastbound Campus Drive onto southbound Jamboree Road. Vehicles intending to turn right from southbound Jamboree Road onto Birch Street can merge from the #3 through lane into the curb lane prior to reaching the official striped right-turn lane. The southbound right-turn storage at this intersection, therefore, consists of 220 feet of striped storage, with the ability to accommodate additional right-turn storage, if needed, in the 300-foot curb auxiliary/weave lane beyond the striped area.

Based on the City of Irvine Transportation Design Procedures for Free Right-Turn Lanes at Signalized Intersections (TDP-5) for existing locations, the recommended distance for the right-turn lane would be

one foot per peak hour through vehicle per lane, to allow right-turning vehicles to not be impacted by the queued through movement. The peak hour southbound through movement is currently 1,774 vehicles in the evening peak hour, forecasted to increase to 2,125. The Project would not add any traffic to the southbound through movement. With three southbound through lanes, almost 600 feet of right-turn storage would be needed to satisfy TDP-5 for existing conditions, increasing to over 700 feet for forecasted conditions. The existing 220-foot right-turn lane plus 300 feet of auxiliary/weave area does not satisfy the TDP-5 requirement. This is an existing deficiency, to which the Project would not contribute any traffic, and therefore would not worsen the deficient condition.

Letter A-2 Irvine Ranch Water District (IRWD)
Fiona M. Sanchez, Director of Water Resources
October 19, 2017



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COMMUNITY
DEVELOPMENT
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CITY OF
NEWPORT BEACH

October 19, 2017

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Notice of Availability – Koll Center Residences Draft Environmental Impact Report

Dear Ms. Ung:

Irvine Ranch Water District (IRWD) has reviewed the Notice of Availability (NOA) of the Draft Environmental Impact Report (DEIR) for the Koll Center Residences project in Newport Beach. IRWD offers these comments on the NOA.

The NOA correctly indicates that the Proposed Project will be within IRWD's service area and that IRWD would be responsible for providing potable water to the site. IRWD has checked its records, which indicated that the planned development for the Koll Center has not changed since the Notice of Preparation was issued on January 4, 2017. Therefore, IRWD reiterates its previous comments provided in our February 2, 2017, letter regarding the Notice of Preparation for the Koll Center Residences Project; while the 2008 Irvine Business Complex Sub-Area Master Plan (SAMP) included the City's 2,200 residential units in this general vicinity, this specific development was not identified. Prior to development plan submittal and approval, the developer shall coordinate with IRWD to develop a technical memorandum or SAMP addendum, identifying potential impacts to the potable, recycled, and sewer systems from this project. For questions about the technical memorandum or SAMP addendum, please contact Eric Akiyoshi, Principal Engineer in IRWD's Planning Division at (949) 453-5552.

IRWD appreciates the opportunity to review the NOA for the Koll Center Residences DEIR. If you have any questions or require additional information, please contact the undersigned or Jo Ann Corey, Environmental Compliance Specialist at (949) 453-5326.

Sincerely,

Fiona M. Sanchez
Director of Water Resources

cc: Eric Akiyoshi, IRWD
Jo Ann Corey, IRWD

Response 1

As noted in IRWD's NOP comment letter, the Project is within IRWD's service area and IRWD would be responsible for providing potable water to the site. The project site has a General Plan land use category of Mixed-Use Horizontal-2 (MU-H2), which provides for a horizontal intermixing of uses. The MU-H2 designation applies to a majority of properties in the Airport Area, inclusive of the project site and adjacent uses and permits a maximum of 2,200 residential units as replacement of existing office, retail, and/or industrial uses of which a maximum of 550 units may be developed as infill units. The 2008 Irvine Business Complex Sub-Area Master Plan (SAMP) assumes the 2,200 residential units identified in the City of Newport Beach General Plan. The 2,200 units are within the City of Newport Beach Airport Area. As a part of the Draft EIR, the SAMP Addendum was prepared. The report, dated May 9, 2017, is included as Appendix K to the Koll Center Residences Draft EIR.

Letter A-3 Orange County Transportation Authority
Dan Phu, Manager, Environmental Programs
November 1, 2017



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November 1, 2017

Ms. Rosalinh Ung, Associate Planner
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Koll Center Residences Project (PA2015-024) Draft Environmental Impact Report (State Clearinghouse No. 2017011002)

Dear Ms. Ung:

Thank you for providing the Orange County Transportation Authority (OCTA) with the Draft Environmental Impact Report for the Koll Center Residences Project (Project). The following comments are provided for your consideration:

- In Section 4.14 ('Traffic and Transportation'), subsection 4.14.3 ('Environmental Setting'),:
 - On page 4.14-12, under 'Existing Transportation System', Von Karman Avenue is described as a Major Arterial north of Michelson Drive. Please note that Von Karman Avenue is classified as a Primary Arterial (4-lane divided highway) north of Michelson Drive, per OCTA's Master Plan of Arterial Highways (MPAH) and the City of Irvine's General Plan Circulation Element. OCTA recommends the City of Newport Beach coordinate with the City of Irvine to determine if there is a need to update the traffic assumptions for future conditions.
- On pages 4.14-13 to 4.14-14, under 'Existing Transit Services', please refer to the most recent edition of the OCTA Bus Book (<http://www.octa.net/busbook/>) to reflect the correct time span for the routes described.
 - Please revise the weekday and weekend headways based on headways near the Project site. Additionally, present the weekday headways by Peak and Off-Peak.



Ms. Rosalinh Ung
November 1, 2017
Page 2

- Please revise the following:
 - Route 59: The nearest bus stop to the Project site is Campus-Teller
 - Route 76: Revise to reflect most recent route and schedule
 - Routes 212 and 213 are intracounty express routes
 - Route 472: The nearest bus stop to the Project site is Jamboree-Birch
- Please add information about the iShuttle as this service, provided by the City of Irvine, is within the vicinity.
- Referring to Figure 4.14-3, please revise the map to include the iShuttle routes, the missing OCTA bus routes, and the most recent routing (<http://www.octa.net/Plans-and-Programs/GIS-Data/GIS-Data-Download/>).
- OCTA considers a project site to be served by OCTA bus routes if it is within a ½ mile radius from the project site. On page 4.14-53 under 'Public Transit', please revise text to reflect the amount of routes served to the Project site based on the ½ mile service area.

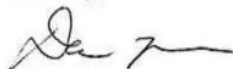
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Throughout the development of this project, we encourage communication with OCTA on any matters discussed herein. If you have any questions or comments, please contact me at (714) 560-5907 or at dphu@octa.net.

Sincerely,



Dan Phu
Manager, Environmental Programs

Response 1

The description of the General Plan classification for Von Karman Avenue north of Michelson Drive is revised from Major (6-lane) Highway to Primary (4-lane) Arterial. The link analysis for Von Karman Avenue north of Michelson Drive assumed a daily capacity of a four-lane roadway, not a six-lane major roadway.

Response 2

The bus route descriptions, including routing, schedules, and headways; were prepared based on the information available on the OCTA website at the time the Draft EIR was under preparation. As requested, the current weekday – peak and off-peak – and weekend headways, based on the current OCTA bus book found at www.octa.net/busbook are as follows:

- Route 59: weekday: peak – 20 min; non-peak – 70 min; weekend – 50-60 min
- Route 76: weekday: peak – 55 min; non-peak – 65 min; weekend – 45-60 min
- Route 178: weekday peak – 35 min; non-peak – 70 min
- Route 212 (Express peak weekday service): 25 – 30 min
- Route 213 (Express peak weekday service): 5 – 30 min
- Route 472 (Metrolink peak weekday feeder): 10 – 35 min

The following revisions to the descriptions of the routes and bus amenities are made:

- The nearest bus stop to the project site for Route 59 is the intersection of Campus Drive and Teller Avenue
- Revised Figure 4.14-3 reflects the most recent Route 76 alignment
- Routes 212 and 213 are Intra-County Express Routes
- The nearest bus stop to the project site for Route 472 is the intersection of Jamboree Road at Birch Drive

The OCTA *i*-Shuttle provides morning and evening peak-hour service along two routes – Routes A and B – connecting the Tustin Metrolink Station with the Irvine Business Complex and John Wayne Airport. The routes currently operate weekdays from 6:09 AM to approximately 8:00 PM, with 7 to 15-minute headways during the peak and 25- to 35-minute headways during the off-peak.

Response 3

The *i*-Shuttle routing within the study area is shown on revised Figure 4.14-3.

Response 4

The bus routes that provide service within a ½-mile radius of the project site are Routes 59, 178, 212, and 472.

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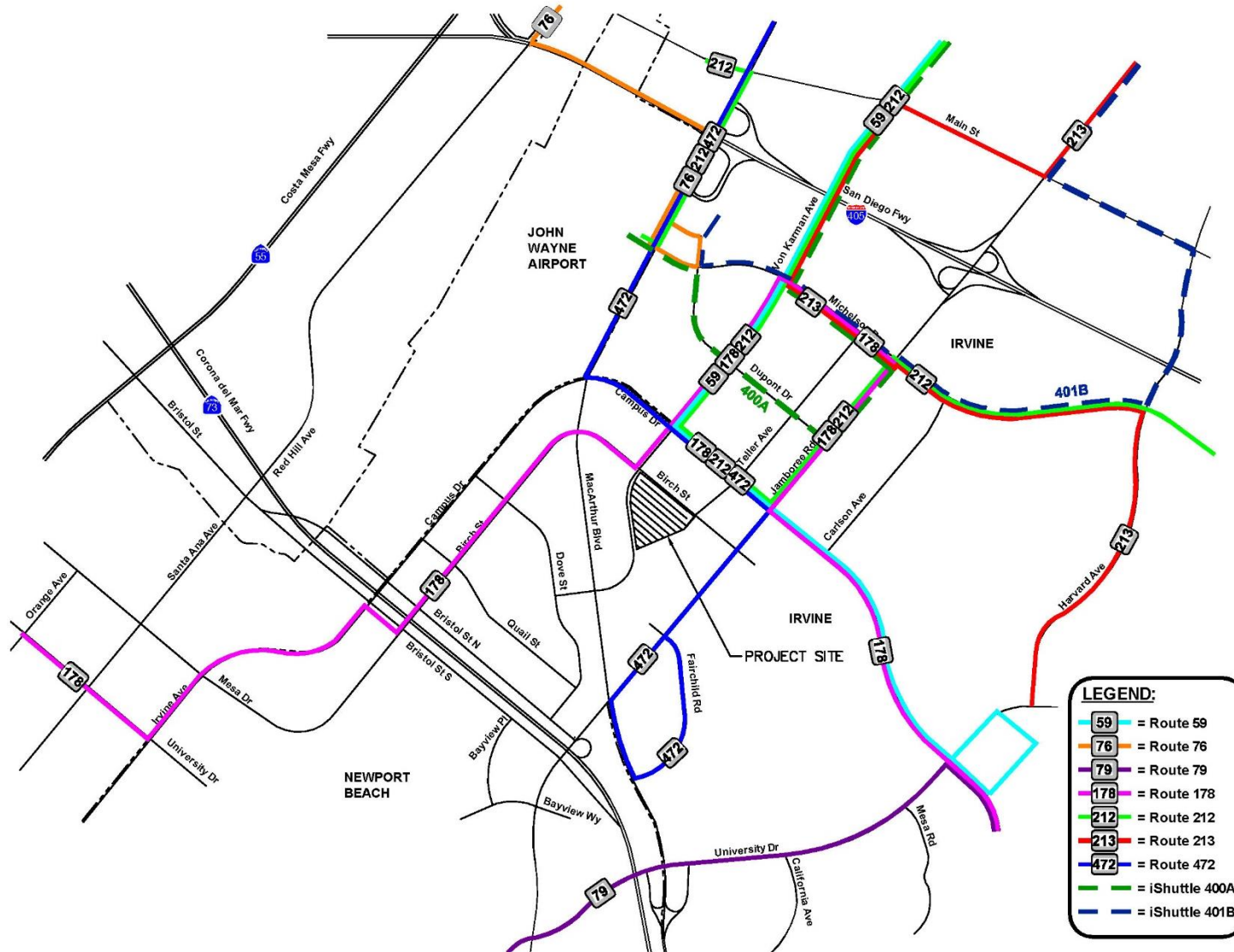


FIGURE 4.14-3: Existing Transit Routes
The Koll Center Residences Project

Not to scale

Kimley»Horn

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Letter A-4 **Governor's Office of Planning and Research, State Clearinghouse and Planning Unit**
Scott Morgan, Director, State Clearinghouse
November 14, 2017



EDMUND G. BROWN JR.
GOVERNOR

November 14, 2017

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

Rosalinh Ung
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: The Koll Center Residences PA
SCH#: 2017011002

Dear Rosalinh Ung:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on November 13, 2017, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

1

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

**Document Details Report
State Clearinghouse Data Base**

SCH# 2017011002
Project Title The Koll Center Residences PA
Lead Agency Newport Beach, City of

Type EIR Draft EIR
Description Note: Extended Review Per Lead

The project would allow for a mixed use infill development with residential condos of ground floor retail uses, a 1.17 acre public park, a free-standing parking structure, and the reconfiguration of existing surface parking areas. The 260 dwelling units would be in three, 13-story buildings with a max building ht of 160 ft. The buildings would have two levels of above-grade and two to three levels of below-grade structured parking. The project would require the demolition of existing surface parking and landscaping within the project site. Office parking removed during construction and by the proposed development would be provided in a new free-standing parking structure, in one of the building parking structure, and surface parking areas.

Lead Agency Contact

Name Rosalinh Ung
Agency City of Newport Beach
Phone 949-644-3208 **Fax**
email
Address 100 Civic Center Drive
City Newport Beach **State** CA **Zip** 92660

Project Location

County Orange
City Newport Beach
Region
Lat / Long 33° 39' 57" N / 117° 51' 35.4" W
Cross Streets Birch Street, Von Karman Ave.
Parcel No. 445-131-04, 29, 30
Township **Range** **Section** **Base**

Proximity to:

Highways I-405, SR-55, SR-73
Airports John Wayne Airport
Railways
Waterways Upper Newport Bay State Marine Conservation Area
Schools UC Irvine
Land Use Surface parking; Koll Center Newport Planned Community Development Plan (PC-15); Mixed Use Horizontal (MU-H2)

Project Issues Aesthetic/Visual; Air Quality; Archaeologic-Historic; Cumulative Effects; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Growth Inducing; Landuse; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Tribal Cultural Resources; Vegetation; Water Quality; Water Supply

Reviewing Agencies Resources Agency; Department of Fish and Wildlife, Region 5; Department of Parks and Recreation; Department of Water Resources; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 12; Regional Water Quality Control Board, Region 8; Native American Heritage Commission; State Lands Commission

Date Received 09/13/2017 **Start of Review** 09/13/2017 **End of Review** 11/13/2017

Note: Blanks in data fields result from insufficient information provided by lead agency.

Response 1

The commenter has noted that the City of Newport Beach has complied with the State Clearinghouse review requirements for environmental documents, consistent with CEQA. Further, the commenter notes that the State Clearinghouse did not receive any comments from State agencies on the Draft EIR. No further response is required.

Letter A-5 Southern California Gas Company (SoCalGas)
James Chuang, Senior Environmental Specialist
November 7, 2017



James Chuang
Senior Environmental Specialist

Southern California Gas Company
Sempra Energy utilities
6T17E2
555 Fifth Street
Los Angeles, Ca. 90013
Tel: 213 244 5817
Fax: 323 518 2324

11/7/2017

Ms. Rosalinh Ung
Associate Planner
City of Newport Beach Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Koll Center Residences Project

Dear Ms. Ung:

Southern California Gas Company (SoCalGas) appreciates the opportunity to review and respond to the Draft Environmental Impact Report (DEIR) for the Koll Center Residences Project. SoCalGas understands that the proposed project is a mixed-use infill development including 260 residential condominium units, 3,000 square feet of ground-floor retail uses, a 1.17-acre public park, a freestanding parking structure, lighting, landscaping and pedestrian improvements, utility improvements, and the reconfiguration of existing surface parking. We respectfully request that the following comments be incorporated in the Final EIR.

- SoCalGas has two 3-inch medium pressure distribution pipelines adjacent to the project site: one lies underneath the southbound lanes along Von Karman Avenue within the project site and the other lies underneath the southbound lanes along Birch Street east of the project site. SoCalGas also has numerous medium pressure service pipelines that branch to the east and west from the distribution pipeline underneath Von Karman Avenue, as well as several service pipelines branching west into the parcel site from the distribution line underneath Birch Street.
- SoCalGas recommends that the project proponent call Underground Service Alert at 811 at least two business days prior to performing any excavation work for the proposed project. Underground Service Alert will coordinate with SoCalGas and other Utility owners in the area to mark the locations of buried utility-owned lines.
- Should it be determined that the proposed project will require new service or may require SoCalGas to abandon and/or relocate or otherwise modify any portion of its existing natural gas lines, SoCalGas respectfully requests that the project proponent coordinate with us by calling (877) 238-0092 for New Residential Services.

1

Page 2 of 2

Once again, we appreciate the opportunity to comment on the Draft EIR. If you have any questions, please feel free to contact SoCalGas Environmental Review at Envreview@semprautilities.com or (213) 244-5817.

Sincerely,



James Chuang
Senior Environmental Specialist
Southern California Gas Company

Cc/Jennifer Pezda, SoCalGas

Response 1

This comment letter states that SoCalGas has gas distribution infrastructure in Von Karman Avenue and Birch Street, and requests the Applicant to coordinate with SoCalGas regarding the provision of service to the Project. The comment is noted and no further response is required.

Letter A-6 Airport Land Use Commission for Orange County

Kari A. Rigoni, Executive Officer

November 10, 2017



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

November 10, 2017

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Koll Center Residences NOA of DEIR

Dear Ms. Ung:

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the proposed Koll Center Residential Project in the context of the Airport Land Use Commission's (ALUC) *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)*. The proposed project consists of a mixed-use infill development that includes 260 residential condominiums, 3,000 square feet of ground-floor retail uses, a 1-acre public park, a parking structure, and the reconfiguration of some of the surface parking. The project is located at 4400 Von Karman Avenue in Newport Beach, California.

The proposed project is located within the Federal Aviation Administration (FAA) Federal Aviation Regulation (FAR) Part 77 Notification Area for JWA. The DEIR states that the proposed maximum height for the residential towers is 160 feet and also discusses that the ground elevation for the project site ranges from 46 feet to 52 feet. The DEIR should clarify whether any portion of the proposed project would penetrate the horizontal surface for JWA which would be penetrated at 206 feet above mean sea level (AMSL). The ALUC recommends that proposed developments not exceed the horizontal surface since the airspace above 206 feet AMSL is reserved for air navigation.

The Land Use Planning Section of the DEIR discusses the various FAA surfaces above JWA but does not discuss the project's location within the horizontal surface for JWA. We recommend that the DEIR specifically address the proposed project's elevation above or below the horizontal surface. Development penetrating the 206 feet AMSL is not recommended and should be considered an impact to airspace.

As noted in the DEIR, a referral by the City to the ALUC may be required for this project due to the location of the proposal within an AELUP Planning Area and due to the nature of the required City approvals (i.e. Zoning Code Amendment) under PUC Section



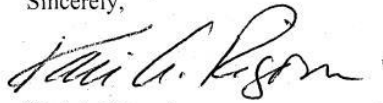
ALUC Comments- Koll Center DEIR
11/10/17
Page 2

21676(b). In this regard, please note that the Commission wants such referrals to be submitted and agendaized by the ALUC staff between the Local Agency's expected Planning Commission and City Council hearings. Since the ALUC meets on the third Thursday afternoon of each month, submittals must be received in the ALUC office by the first of the month to ensure sufficient time for review, analysis, and agendaizing.

cont'd
2

Thank you again for the opportunity to comment on the DEIR. Please contact Lea Choum at (949) 252-5123 or via email at lchoum@ocair.com should you have any questions related to the Airport Land Use Commission for Orange County.

Sincerely,



Kari A. Rigoni
Executive Officer

Response 1

The project site is within the horizontal surface elevation 206 feet “FAR Part 77, John Wayne Airport Obstruction Imaginary Surfaces Area”. Project within the horizontal surface area for JWA. Development: 206 AMSL is not recommended and considered an impact to airspace. The FAA, in their analysis of the proposed buildings, stated “This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation...” Buildings would not exceed 206 feet above mean sea level.

Response 2

The comment is noted and no further response is required.

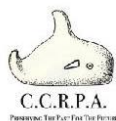
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Comment Letters and Responses: Organizations (B)

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Letter B-1 California Cultural Resource Preservation Alliance, Inc.

Patricia Martz
September 30, 2017



P.O. Box 54132
Irvine, CA 92619-4132

California Cultural Resource Preservation Alliance, Inc.
An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.

September 30, 2017

Rosalinh Ung, Associate Planner
City of Newport Beach

Re: Draft Environmental Impact Report for Koll Center Residences Project

Dear Ms. Ung:

Thank you for the opportunity to review the above-mentioned Draft Environmental Impact Report. We concur with the determination that the project area is culturally sensitive and with Mitigation Measure MM 4.4-1 with respect to the provisions for monitoring by a qualified archaeologist and Native American. However, we take issue with the statement on page 4.4-11 where mitigation is defined as data recovery, and with the mitigation measures because there are no provisions for avoidance or preservation of significant archaeological or tribal resources in place, if feasible. For example, should significant archaeological resources be discovered in the proposed park or landscaped areas.

State and federal guidelines and regulations, including California Public Resources Code of Regulations 15126.4. provide that with respect to archaeological sites, preservation through avoidance is the preferred treatment. Archaeology as it is practiced today is a destructive process and it is important to preserve significant archaeological sites for a future, less destructive archaeology. Most important, prehistoric sites hold special significance for Native American descendants and these religious and cultural values cannot be mitigated through data recovery excavations. It is estimated that 90% of prehistoric archaeological sites in Orange County have been destroyed to make way for development. The mitigation measures should have a provision for consideration of the feasibility of preservation in place.

1

Sincerely,

Patricia Martz, Ph.D.
President

Response 1

Preservation is a form of mitigation. Mitigation Measure (MM) 4.4-1 has been expanded to reflect the directives of CEQA with respect to archaeological resources, and is incorporated into the Final EIR as follows:

MM 4.4-1 The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical resources of an archaeological nature, preferably by preserving the resource(s) in place. Preservation in place options suggested by the State CEQA Guidelines include (1) planning construction to avoid an archaeological site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement. Prior to the issuance of a grading permit and/or action that would permit project site disturbance (whichever occurs first), the Applicant shall provide written evidence to the City that the Applicant has retained a qualified archaeologist and Native American monitor to observe grading activities and if preservation in place is not feasible, to salvage and catalogue historic and archaeological resources, as necessary. The selection of a qualified Gabrieliño Band of Mission Indians Native American monitor shall be made by the archaeologist subject to the approval of the City....

Letter B-2a Line in the Sand
Dennis Baker, President
October 9, 2017



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PO Box 15725 • Newport Beach, CA 92659
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October 9, 2017

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RE: Koll Center Residences Draft EIR: Request for Extension of the Public Comment Period

Dear Ms. Ung,

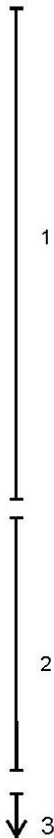
Line in the Sand submits this request for additional time to review and comment on the Koll Residences Project Draft Environmental Impact Report (DEIR). Our mission is to protect the residential character and qualities of Newport Beach. We do so by defending our beautiful town and residents' right to participate in local government processes. The California Environmental Quality Act also places a priority on public participation: "[p]ublic participation is an essential part of the CEQA process." CEQA Guidelines Section 15201.

In this matter, public participation during the 45-day comment period already underway is hindered because the DEIR's description of the proposed Koll Residences Project lacks information essential to the public's ability to adequately review and comment on the adequacy of the DEIR's analysis of impacts, mitigation and conclusions as to the significance of impacts.

Moreover, the cancellation of the Planning Commission Study Session on October 19th eliminates an opportunity to ask timely questions about these missing elements of the Project Description during the current comment period.

Project as defined by CEQA, means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15378). The DEIR's description of the Koll Residences Project fails to include the Draft Development Agreement as well as information concerning the type of retail uses and pricing for residential units.

Development agreements often contain new considerations or information that may create additional impacts or provide additional mitigation. This information is logically an important part of the Project description and must be available to the public as part of the DEIR during the review period. Information about the type or likely range of retail uses and unit pricing is essential information to the Project description.



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Line in the Sand

October 9, 2017

Rosalinh Ung, Associate Planner
Page Two

Without this information it is not possible to evaluate the DEIR’s conclusions concerning traffic impacts. For example, the Project’s “trip capture” on site – because of the elimination of the need for a commute trip or trip for services -- relies on a good understanding of the retail and housing proposals. Without additional information about the Project it is not possible for us to adequately review the DEIR’s conclusions concerning trip capture and therefore traffic impacts generated by the Project.

For these reasons, we respectfully request that the Draft Development Agreement, information about unit pricing, type of retail services and jobs associated therewith, be provided for public review, and the comment period extended accordingly to provide a full 45-days from the date of release of this information.

We appreciate the opportunity to comment on the Project DEIR and hope to be able to do so adequately.



Line in the Sand

Dennis Baker
President

cc: Newport Beach City Council

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Leilani Brown, City of Newport Beach, City Clerk

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Response 1

The public review period for the Draft EIR was extended from September 13, 2017 to November 13, 2017. The CEQA Guidelines mandate a 45-day public review period for EIRs. The City elected to extend the public review period an additional 17 days beyond what is mandated to provide the public a total of 62 days to review the EIR and related materials. With respect to the commenter's position that there are "missing elements of the Project Description", no response is possible because the commenter does not state what elements of the Project Description are missing. With respect to the Study Session, the Planning Commission Study Session has been rescheduled for January 18, 2018.

Response 2

CEQA does not require the public disclosure of a development agreement. CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City's standard public review and public hearing process for development agreements.

Response 3

The sales price for the condominiums has not been set by the Applicant, nor is such information relevant to the environmental impacts associated with the proposed Project. The dwelling units are not proposed as affordable housing units; no further information is needed in the Project Description to evaluate the potential environmental impacts of the Proposed Project.

As identified in Section 3.0, *Project Description*, the Project proposes 3,000 square feet (sf) of retail uses, of which 1,768 sf are proposed on the ground floor of Building 1 and 1,232 sf on the shared ground floor podium for Buildings 2 and 3. The specific uses have not yet been determined.

The traffic analysis applied a modest ten percent internal trip capture factor to the retail component of the Project to account for the potential for internal interactions that may occur between the future retail use and the existing offices and proposed residential uses. The ten percent factor was applied only to the small retail component, and represents a trip reduction of 13 trips over the course of any entire day, 0 trips in the morning peak hour, and 1 trip in the evening peak hour. This reduction in external trips is inconsequential to the Project traffic impacts on the surrounding street system.

Although the potential is much greater for there to be a substantial internal trip capture between the proposed residential uses and the existing offices, for a conservative analysis, no internal trip reduction was assumed between the residential and office uses.

Response 4

Please refer to the response to Comment 1.

Letter B-2b Line in the Sand
Dennis Baker, President
November 13, 2017



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November 13, 2017

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RE: Preliminary Comments on Koll Center Residences Draft Environmental Impact Report; SCH No. 2017011002

Dear Ms. Ung,

Line in the Sand (LITS) submits this preliminary comment letter on the Draft Environmental Impact Report (DEIR) for the proposed Koll Center Residences (Project). LITS believes this Project is premature given the City's commitment to updating its decade-old General Plan. A memo on the General Plan Update from the City identified two focused areas where re-evaluation of the City's vision is indicated in the Update: The Airport Area and Newport Center. <http://spon-newportbeach.org/wp-content/uploads/2017/05/GPU-flyer-CdMRA-2017-05-18.pdf>. However, because the City has circulated the DEIR for this Project, LITS submits these preliminary comments.

1

The DEIR's Project Description is Incomplete

A Project, as defined by CEQA, means the whole of an action which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. CEQA Guidelines Section 15378. The DEIR's description of the Koll Residences Project fails to include a complete description of the Project. Examples of information omitted from the DEIR include, but are not limited to:

2

- The Draft Development Agreement;
- The specific type of retail uses in the retail component;
- Price range for residential units (although the Applicant did comment on the luxury pricing of the units at the October 30th, 2017 briefing).
- Information concerning architectural features such as building materials, lighting, exterior appurtenances (such as antennas, etc.), landscaping and other design elements that could either mitigate or exacerbate bird strikes.

DEIR's must have a **strong informational foundation** including, but not limited to, complete information about the whole project and project setting, necessary to support adequate disclosure of impacts, analysis

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Line in the Sand

of direct and indirect impacts as well as provide the factual basis for determining the disposition of impacts in terms of significance. Development agreements often contain new considerations or information that may create additional impacts or provide additional mitigation. This information is logically an important part of the Project description and must be available to the public as part of the DEIR during the review period. Information about the type or likely range of retail uses and unit pricing is essential information to the Project description. Without this information it is not possible for the DEIR to adequately evaluate the DEIR’s conclusions concerning traffic impacts and the related impacts such as air quality, greenhouse gas emissions and noise. For example, the DEIR’s assumptions concerning trips and “trip capture” on site – tied to lower commute trips or trip for services – must rely on a Project description of the types of retail services and housing pricing. The DEIR must be recirculated to include this information. Specifically:

- What will the range of housing unit pricing be?
- Is that pricing affordable to employees residing in a 2-mile biking/walking radius?
- What services will be provided in the retail area?
- Are the services that typically reduce daily trips and trip length to the top daily destinations (e.g., grocery, pharmacy, day-care/schools, laundry, medical, dining, gym) provided in a 2-mile biking/walking radius?

Without additional information about the Project it is not possible for us to adequately review the DEIR’s conclusions concerning trip capture and therefore traffic impacts generated by the Project.

For these reasons, we believe the DEIR must be revised and recirculated with this information included and both project-related and cumulative impact analyses related to traffic, air quality, greenhouse gas emissions, bird-related impacts, among others, revised accordingly.

The DEIR’s Environmental Setting Information is Incomplete

The DEIR’s description of the existing environmental setting, like the Project Description, is an essential foundational element of an adequate DEIR. Without complete, up to date information about the Project and Cumulative setting, the DEIR’s analysis of impacts cannot be legally adequate.

Here, among other setting information, the DEIR omits:

1. All cumulative projects (e.g., Newport Crossings, Banning Ranch, numerous projects in the City of Irvine).
2. 2016 ambient air quality information.
3. Flight patterns and flight frequency by private planes and training exercises. See e.g., comment letter submitted by So Cal Pilots Assn on the DEIR.
4. Migratory bird and bird use in the Project area (e.g., bird travel and use between ponds and Upper Newport Bay, other water bodies on migratory routes and foraging and nesting areas in Orange County, Pacific Flyway).

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5. Existing “voter approved” development by parcel in Newport Beach, inclusive of TDR’s.¹

For these reasons, we believe the DEIR must be revised and recirculated with this information included and both project-related and cumulative impact analyses related to traffic, air quality, greenhouse gas emissions, bird-related impacts, among others, revised accordingly.

Questions Concerning the Proposed Transfer of Development Rights

In addition to the above comments, Line in the Sand believes that the Project’s reliance on transferred rights must be reconciled with updated information about how this and prior TDR’s, as well as any foreseeable TDR’s change the numbers in the General Plan development tables. Does the City have this information? If so, please provide it in response to this comment. Where are the available credits being transferred from? Please document they are still available and have not been used.

General Plan tables need to be amended to reflect the new, current numbers (and can't be left showing old, stale, out of date ones). In addition, please explain why the TDR in this instance, since it would change the numbers in the anomaly tables, does not automatically trigger a General Plan Amendment (GPA) and therefore an analysis of the need for a vote of the people. If the TDR does not trigger change in numbers and GPA, please describe in detail the authorization in the City’s charter, codes, General Plan or other authority.

Concluding Comments

We appreciate this opportunity to comment on the DEIR. For the above stated reasons, we request the DEIR be revised and recirculated. Alternatively, the City should consider requesting the applicant withdraw the Project and instead, participate as will we in the City’s General Plan Update process underway.

5

Very truly yours,

Line in the Sand

Dennis Baker

President

¹ Please also explain how this differs from the development assumptions in the City’s traffic model where they differ? If the City has not updated development numbers by parcel – please explain why not.

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Line in the Sand

cc:

**Newport Beach City Council
City Council**

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Response 1

The City has not initiated the process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process. As currently proposed, the Project is consistent with the General Plan. Additionally, it is appropriate to utilize the General Plan approved at the time the Project is being considered for approval.

As a point of clarification, the memo referenced by the commenter notes that an update to the General Plan may include a “review the City’s vision for the Airport area and Newport Center....” The statement should not be construed by the commenter as a commitment by the City to modify the development assumptions for the Airport Area.

Response 2

With respect to the Development Agreement, CEQA does not require the public disclosure of a development agreement. The State CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City’s standard public review and public hearing process for development agreements.

As identified in Section 3.0, *Project Description*, the Project proposes 3,000 square feet (sf) of retail uses, of which 1,768 sf are proposed on the ground floor of Building 1 and 1,232 sf on the shared ground floor podium for Buildings 2 and 3. The specific uses have not yet been determined.

The affordability of the proposed condominiums does not constitute an environmental issue and is not related to the adequacy of the Draft EIR analysis. No further response is required.

The Draft EIR provides the information requested by the commenter concerning architectural features; please refer to Section 3.0, *Project Description*, and Section 4.1, *Aesthetics and Visual Resources*. With respect to bird strikes, the City of Newport Beach does not have adopted design guidelines related to potential bird collisions with buildings.

As with all development, avian injury and mortality resulting from collisions with the proposed buildings as well as the existing buildings within and outside of Koll Center Newport could occur. Some birds are unable to detect and avoid glass and have difficulty distinguishing between actual objects and their reflected images. In addition, internal building lighting can interfere with some night-migrating birds. The frequency of bird collisions in any particular area depends on many factors, including local and migratory avian populations; densities and species composition; migration characteristics; resting and feeding patterns; habitat preferences; time of year; prevailing winds; and weather conditions.

Where existing and proposed buildings include wide expanses of glass, there is the potential for bird collisions and mortalities. It should be noted that the project site is within an existing developed area. The

City is not aware of known reports of avian injury or mortality associated with the existing buildings within or adjacent to Koll Center Newport. It is not expected that there will be any substantial adverse effect on sensitive species because of the lack of suitable on-site foraging habitat to attract such species to the project site. The proposed building design includes architectural details to break up the amount of glazing on the facades as is shown in Figure 3-8, Figure 3-9, and Figure 3-9 of the Draft EIR. As addressed in Section 4.1, *Aesthetics and Visual Resources*, reflective or shiny materials would not be used. The Glass Fiber Reinforced Concrete (GFRC) and concrete structural materials have matte finishes and would therefore have minimal to no reflectance. Metals accents would be specified to have a matte finish with minimal reflectance. The Proposed Project does include the use of glass throughout the buildings for window walls, curtain walls, and railings. However, the glass and glazing would be specified as Solarban 60 Clear with minimal reflectance. There are glazing design features that are compatible with energy conservation and bird safe design such as low reflectivity and opaque surfaces. The Proposed Project is not expected to have a substantial effect on avian populations.

Response 3

With respect to cumulative projects, please refer to Topical Response, *Cumulative Projects*.

With respect to flight patterns and frequency, please refer to Topical Response, *Airport Noise*. It should be noted that the airport noise contours include all aircraft operations including private aircraft.

With respect to issues related to migratory birds, a robust discussion of potential impacts can be found in Section 4.3 of the Draft EIR. While there is no suitable habitat for any special-status wildlife species on the project site, some of the existing trees could provide nesting habitat for native birds. Nesting birds are protected under the federal Migratory Bird Treaty Act (*16 USC § 703 et seq.*) and the California Fish and Game Code (§ 3503 et. seq.). Federal regulations prohibit any person to “pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, [or] purchase” any migratory bird, including parts of birds, as well as eggs and nests. The California Fish and Game Code Sections 3503, 3503.5 and 3512 also prohibit the take of birds and active nests. Mitigation Measure (MM) 4.3-1 requires a preconstruction survey for nesting birds with procedures should nesting birds be discovered. Implementation of MM 4.3-1 would reduce potential impacts to nesting birds to a less than significant level.

The analysis was initiated and completed prior to the release of the 2016 ambient air quality monitoring data (May 2017). Ambient air quality monitoring data does not vastly differ from 2015 to 2016. Therefore, the incorporation of the 2016 ambient air quality monitoring data would not change the conclusions of the Draft EIR and additional mitigation would not be required.

With respect to “voter approved” development in the City, the City tracks this information as required by City Charter Section 423. The requested data is available on the City’s website at: <http://www.newportbeachca.gov/government/departments/community-development-/planning-division/general-plan-codes-and-regulations/charter-section-423-tracking-tables>. The data is current and is updated where changes occur within a Statistical Area. There is only one transfer of development rights project in the Airport Area: MacArthur at Dolphin-Striker Way, which is identified on Table 4-14-14, *City of Newport Beach Committed Projects*, of Section 4.14, *Traffic and Transportation*, of the Draft EIR.

Response 4

As addressed in Section 3.0, *Project Description*, and Section 4.9, *Land Use and Planning*, the Project requires the approval of a transfer of development rights to transfer 3,019 sf of unbuilt office/retail from Koll Center Planned Community Development Standards (PC 15) Koll Center Site A (Anomaly Location 1) to Site B (Anomaly Location 2) within Statistical Area L4 (Airport Area). The anomaly locations for the Airport Area are shown on Figure 3-3 of the Draft EIR.

Per the 2006 General Plan, Anomaly Location 1 allows for 460,095 sf of development. There is currently 457,076 sf of development in Anomaly Location 1, with 3,019 sf of remaining unbuilt square footage under the control of Koll Center Newport. Should the City approve the transfer as a part of the Proposed Project, Anomaly Location 1 would be capped at 457,076 sf. Anomaly Location 2 would increase from 1,052,880 to 1,055,899 sf, a net increase of 3,019 sf. No other changes to Land Use Element Table LU2, Anomaly Locations, would occur.

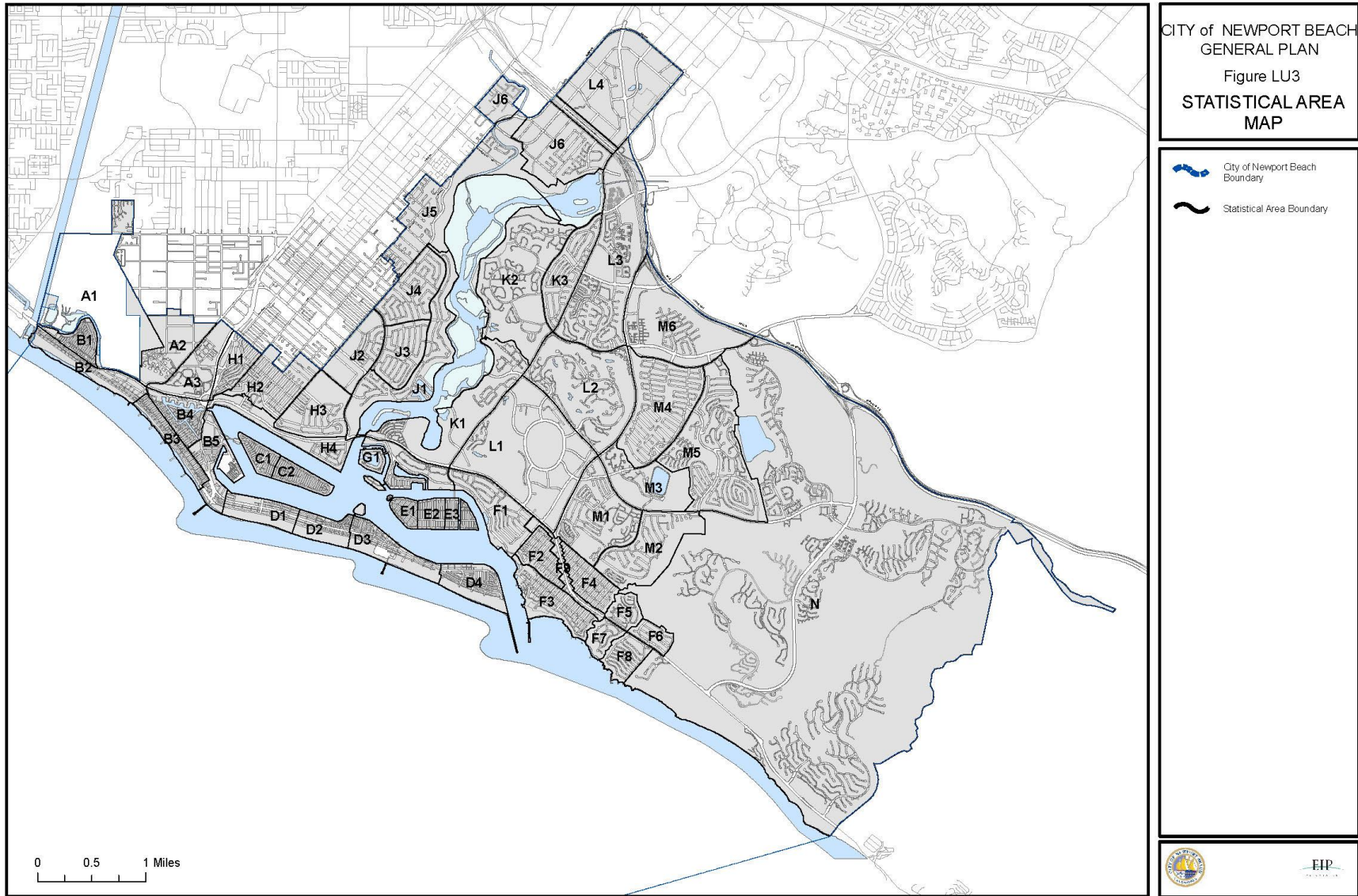
As a part of the Proposed Project, the City will consider an amendment to the Koll Center Planned Community Text to allow for the transfer of 3,019 gross sf of unused office/retail square footage from Office Site A (Anomaly Location 1) to Office Site B (Anomaly Location 2) of Koll Center Newport.

The transfer of 3,019 sf of unused development rights between Anomaly Location 1 and Location 2 does not require a General Plan Amendment. The transfer between the two areas does not cause a change in land use or trigger the voter approval requirements set forth in City Charter Section 423. General Plan Land Use Element Policy 4.3 allows for transfers of development rights and is implemented by Newport Beach Municipal Code Section 20.46.030 which permits transfers of development rights where the donor and receiver sites are located within the same General Plan Statistical Area. Both sites are located within the Koll Center Newport Planned Development Plan and General Plan Land Use Statistical Area L4. Both Anomaly Locations 1 and 2 are in Statistical Area L4 (see attached General Plan Land Use Element Figure LU3). There is available remaining square footage within Statistic Area L4 to accommodate the transfer.

As noted in the General Plan Housing Element, all housing opportunity sites, including the project site, are not subject to City Charter Section 423 as a result of voter approval of Measure V in November 2006. Section 423 of the City Charter (Measure S) requires voter approval of a project that increases density, intensity, or peak hour trip, above that provided for in the General Plan. Significance is quantified as 100 or more dwelling units, over 100 peak hour trips, or 40,000 or more square feet of nonresidential floor area. Charter Section 423 applies exclusively to General Plan amendments.

Response 5

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.



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Letter B-3a Stop Polluting Our Newport (SPON)
Michelle Black, Chatten-Brown & Carstens LLP representing SPON
October 9, 2017

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October 9, 2017

Via Email [rune@newportbeachca.gov](mailto:rung@newportbeachca.gov)

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Request for a Minimum 20-Day Extension of the Public Comment Period
for the Draft Environmental Impact Report for the Koll Center Residences
Project; SCH No. 2017011002

Dear Ms. Ung:

SPON respectfully requests an extension of the draft environmental impact report (DEIR) comment period for the Koll Center Residences Project to November 16, 2017 at 5:00 p.m. The City’s current 45-day comment period will close on October 27, 2017. An additional 20 days of public comment would ensure the City is able to satisfy the California Environmental Quality Act’s (CEQA) goal of ensuring public participation in the environmental review process.

CEQA Guidelines Section 15201 provides, “[p]ublic participation is an essential part of the CEQA process.” Courts have held, “Environmental review derives its vitality from public participation.” (*Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400.) SPON has retained experts to review technical portions of the DEIR in order to provide the City with thorough and constructive comments. Unless extended, the short comment period on this highly complex Project makes is likely that substantial comments on the DEIR, from SPON and other community members and organizations, will not be submitted until after the DEIR public comment period has closed. While SPON recognizes that the public may submit comments after the close of the DEIR comment period, late-submitted comments may not receive the good faith written responses required of comments submitted prior to the close of the formal comment period. SPON wishes to ensure that its comments to the City are complete and thorough and that it is afforded the opportunity to receive and review the City’s written responses. If the comment period is not extended an additional 20 days, SPON and others will be deprived of the meaningful, two-way communication with the City otherwise required by the CEQA process.



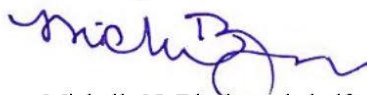
City of Newport Beach
October 9, 2017
Page 2 of 2

Additionally, SPON's members have determined that the DEIR contains citations and links to documents that are not currently available to the public. SPON and other members of the public are currently reviewing the DEIR to compile a list of these documents so that the City may make them available. The Development Agreement for the Project is also unavailable and should be disclosed so that the public and decisionmakers may ascertain whether all aspects of the Project, its impacts, and its mitigation measures and implementation conditions have not been adequately disclosed and analyzed in the DEIR. A short, 20-day extension of the comment period is necessary to provide the public the opportunity to review these supporting materials and to provide the City the opportunity to satisfy CEQA's public participation requirements.

cont'd
1

Thank you for your consideration of this request to extend the close of the comment period for the Koll Center Residences Project to November 16, 2017 at 5:00 p.m. Please contact me if you have any questions.

Sincerely,



Michelle N. Black, on behalf of
Stop Polluting Our Newport

Response 1

The 45-day public review period for the Draft EIR was extended. Rather than ending on October 27, 2017, the review period was extended to November 13, 2017, which provided the public a total of 62 days for public review and comments.

CEQA does not require the public disclosure of a development agreement. CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City's standard public review and public hearing process for development agreements.

With respect to the commenter's reference to unavailable citations and links, the City requests that the commenter contact City staff directly.

Letter B-3b Stop Polluting Our Newport (SPON)
Michelle Black, Chatten-Brown & Carstens LLP representing SPON
November 13, 2017

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November 13, 2017

Via Email rung@newportbeachca.gov

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Draft Environmental Impact Report for the Koll Center Residences Project;
SCH No. 2017011002

Dear Ms. Ung:

SPON thanks the City for extending the comment period in response to our request. SPON submits these comments on the draft environmental impact report (DEIR) prepared for the Koll Center Residences Project (Project).

Although it is presented as a mixed-use development, the Project would be almost 100 percent residential, with 260 luxury condominiums in three, 160 foot tall towers. The DEIR also claims the Project would provide affordable housing for City workers thereby increasing neighborhood walkability and reducing vehicle miles travelled (VMT). However, the DEIR contains no information about whether the Project's units would be accessible to local airport or University of California employees. Thus, these community benefits are illusory, at best. Notably, the Project is located within the flight path of John Wayne Airport's Runway 20L, the runway used for flight training. The Project would require 127,730 cubic yards of grading, 118,500 cubic yards of which would be exported by heavy truck, generating noise, air quality, and traffic impacts along the haul route. (DEIR p. 3-16.) The DEIR admits that the Project could have significant and adverse impacts related to land use if the Airport Land Use Commission does not vote to support the Project, but it does not adequately disclose the safety and health impacts related to airport noise, jet fuel exposure, or proximity to a busy runway. As this Project is inconsistent with surrounding land uses and presents a safety hazard to future residents, pilots, and airline passengers, SPON urges the City to reject the Koll Center Residences Project as proposed. At the very least, SPON requests that the DEIR be revised to disclose, analyze, and mitigate the Project's many likely environmental impacts and be recirculated to the public and decision makers before any additional

1

City of Newport Beach
November 13, 2017
Page 2 of 20

action is taken on the Project. SPON will be supplementing its comments prior to the City’s scheduled January Study Session on the Project.

cont'd
1

I. The Draft EIR Does Not Satisfy CEQA’s Requirement to Fully Disclose, Analyze, and Mitigate the Project’s Potentially Significant Environmental Impacts.

The California Environmental Quality Act (CEQA) serves two basic, interrelated functions: ensuring environmental protection and encouraging governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) CEQA requires full disclosure of a project’s significant environmental effects so that decision makers and the public are informed of these consequences before the project is approved to ensure that government officials are held accountable for these consequences. (*Laurel Heights Improvement Ass’n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) The environmental impact report process is the “heart of CEQA” and is the chief mechanism to effectuate its statutory purposes. (*In Re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal. 4th 1143, 1162.) As detailed below, SPON is concerned that the draft environmental impact report fails to adequately disclose, analyze, and mitigate many of the Project’s significant adverse environmental impacts.

2

Specifically, the DEIR’s Project Description and environmental setting lack information needed to accurately analyze the Project. The DEIR fails to analyze an alternative that is within the maximum square feet allowed for the anomaly area and conforms with all other applicable plans, policies and regulation or an off-site alternative that would avoid the Project’s likely significant and unavoidable impacts related to aviation. The DEIR’s greenhouse gas analysis compresses environmental analysis and mitigation to conclude that the Project would not contribute to global climate change, but the DEIR fails to incorporate any actual mitigation for the admitted greenhouse gas emissions. The DEIR also fails to account for the Project’s proximity to John Wayne Airport operations, and the resulting air quality, noise, and safety impacts to residents, as well as the significant and adverse effects on pilot and passenger safety. Traffic impacts identified by traffic experts must be properly addressed and mitigated in a recirculated DEIR. Finally, some of the Project’s significant impacts, such as those related to the safety of placing 160-foot-tall buildings in the flight path of John Wayne Airport’s Runway 20L, cannot be overridden unless the City makes findings that the safety of pilots, passengers, and residents are less important than the Project’s alleged benefits.

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A. The Project Description and Setting are Inadequate and Infect the Entire DEIR Analysis.

CEQA requires a project description for an EIR to contain the precise location and boundaries of a project site, a statement of objectives sought by a project including the underlying purpose, a general description of a project's characteristics, and a statement briefly describing the intended uses of the EIR. (CEQA Guidelines § 15124.) The DEIR recognizes, "An adequate project description need not be exhaustive, but should supply the detail necessary for project evaluation." (DEIR, p. 3-1.) The DEIR fails to supply this necessary detail.

CEQA prohibits use of an unstable project description. A "curtailed, enigmatic or unstable project description draws a red herring across the path of public support." (*County of Inyo v. City of Los Angeles* (1981) 71 Cal.App.3d 185, 197-98.) The Project DEIR's inconsistent use of "residential condominiums" in some portions of the DEIR and "luxury residential condominiums" in others renders the Project Description unstable. For example, the DEIR describes the Project as "residential condominiums," in the Project Description and Land Use analyses in order to claim that the Project will be providing much-needed housing affordable to local employees. However, the DEIR relies upon the Institute of Traffic Engineers (ITE) "Luxury Condominiums/Townhouse (Land Use 233)" trip generation coefficients to analyze the Project's traffic impacts. (DEIR sections 4.1.4.5, 4.1.4.6.) Luxury condominiums generate fewer trips than residential condominiums. Thus, this inconsistency infects every part of the EIR's analysis and must be clarified in a revised DEIR that fully evaluates and mitigates the Project's impacts using a stable definition of the Project's price point. An EIR that contains statements that are "at best confusing and at worse self-contradictory" on key issues is inadequate. (*San Joaquin Raptor Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 656 fn. 4.)

A project description also must describe all parts of the Project. The project description cannot fail to describe key elements of the Project. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730-35.) The DEIR fails to describe the 3,000 square feet of retail proposed. At only 3,000 square feet, it is unlikely that the services provided by the retail/commercial component could extend beyond a coffee bar or perhaps a mini-mart, but the DEIR provides no detail about what will be provided. Even so, the DEIR claims that the retail/commercial component of the Project makes it consistent with City land use policies aimed at increasing neighborhood services and creating a walkable community. Given that the Project site is a business park, far more than 3,000 square feet of retail will be needed to make the area into a functioning neighborhood. The retail component of the Project is also used to justify the Project's "mixed-use" labeling. The addition of a coffee bar to

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260 houses does not transform the Project into something that is truly mixed use. More detail about this crucial component is needed.

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Additionally, the DEIR fails to include any information about the Development Agreement that will be required by the Project. An EIR must discuss the “whole of the project” including all necessary project approvals. (CEQA Guidelines § 15003(h).) This necessarily includes the Development Agreement. Without public review of the Development Agreement, the public and decision makers cannot know if all phases or components of the Project are adequately discussed in the DEIR and if all potential environmental impacts are mitigated. Similarly, the DEIR does not include the zone text amendment. If the amendment will lead to any foreseeable changes not discussed in the Project EIR, the DEIR is deficient. (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d at 376, 396.) “While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” (CEQA Guidelines § 15144.) The zone text amendment is a necessary component of the Project and must be disclosed in the revised DEIR.

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CEQA provides, “Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region.” (CEQA Guidelines § 15125.) Although the DEIR does disclose the Project’s proximity to John Wayne Airport, it does not contain sufficient information about airport operations over the Project Site to adequately inform decision makers about the public safety impacts of the Project. For example, the DEIR does not disclose the flight paths of private planes or flight schools. This information is necessary to adequate discussion of the Project’s noise, air quality, land use, and aviation safety impacts. The DEIR must be revised to include this important information.

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By failing to disclose all relevant information about the Project, the DEIR fails to adequately inform decision makers about what the Project’s potentially significant environmental impacts may be. These issues infect the entire analysis and require revision of the EIR and recirculation to the public.

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B. The Alternatives Analysis is Inadequate.

The purpose of an alternatives analysis is to determine if feasible alternatives or feasible mitigation measures would substantially lessen a project’s significant environmental effects. (Pub. Resources Code § 21002.) For this reason, the alternatives analysis is the “core of the EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 564.) “One of [an EIR’s] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official.” (*Laurel Heights Improvement Ass’n. v. Regents of the University of California*

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(1988) 47 Cal. 3d 376, 400.) Further, “Under CEQA, the public agency bears the burden of *affirmatively demonstrating* that... the agency’s approval of the proposed project *followed meaningful consideration of alternatives* and mitigation measures.” (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134, emphasis added.)

The DEIR accurately summarizes CEQA requirements for the alternatives analysis, stating, “In selecting alternatives ... the City... is to consider alternatives that could feasibly attain most of the basic objectives of the Project and avoid or substantially lessen one or more of the significant effects.” (DEIR p. 6-1.)

The DEIR defines the Project’s significant and unavoidable impacts as:

- a. Air quality impacts during construction that would conflict with the adopted Air Quality Management Plan, especially with regard to emissions of oxides of nitrogen;
- b. Air quality impacts during construction related to emissions of oxides of nitrogen and exceedences of localized significance thresholds for 2.5 and 10 micron particulate matter;
- c. Cumulative air quality impacts caused by emissions of oxides of nitrogen during construction;
- d. A potential inconsistency determination by the Airport Land Use Commission; and
- e. Direct and cumulative noise impacts on sensitive receptors during Project construction.

Accordingly, a compliant alternatives analysis should focus on alternatives that are located further from the airport and those that are designed to reduce emissions of particulate matter and oxides of nitrogen or to reduce the volume or duration of construction. The DEIR’s alternatives analysis fails in this regard. All of the alternatives studied are located onsite, which fails to “avoid or substantially lessen” the ALUC impact. And all three of the build alternatives studied would require large amounts of grading, excavation, and hauling, which would result in significant construction air quality and noise impacts. The Alternatives analysis should have studied an offsite alternative, and one consistent with the maximum square feet allowed for the anomaly area and that conforms to all other applicable plans, policies and regulation.

The project objectives determine what constitutes a reasonable range of alternatives. (CEQA Guidelines § 15126.6(a).) The DEIR describes the objectives as:

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- (1) Implement the goals and policies that the Newport General Plan established for the Airport Area and the Integrated Conceptual Plan Development Area.
- (2) Develop a mixed-use community that provides jobs, residential, and supporting services in close proximity, with pedestrian-oriented amenities that facilitate walking and enhanced livability.
- (3) Develop up to 3,000 square feet of retail commercial uses to serve residences, businesses, and visitors within the business park.
- (4) Develop and attractive, viable project that yields a reasonable return on investment.
- (5) Provide beneficial site improvements including implementing a reclaimed water system for existing and proposed uses and a first flush (storm water) water quality treatment facility on the site. Pervious surface area would be increased by approximately 0.83 acre (or 7% from existing conditions as a result of Project implementation.)
- (6) Develop and maintain a 1-acre public park, adding additional park/open space for the City of Newport Beach.

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At first glance, the Project Objectives are impermissibly narrow. Use of unduly narrow project objectives violates CEQA (*In Re Bay Delta Coordinated Environmental Impact Report Proceedings* (2008) 43 Cal. 4th 1143, 1166 [“a lead agency may not give a project’s purpose an artificially narrow definition”].) The 3,000 square foot maximum for the commercial/retail component appears arbitrary, and actually prevents the Project from satisfying objectives (2) and (3) of providing a mixed-use project and amenities that serve residents and the business park in a way that promotes livability and walkability. While any increase in pervious surface should be applauded, a requirement that the Project increase pervious surface area by *exactly* 7 percent (0.83 acres) is unduly specific. An increase of *at least* 7 percent, however, would comply with CEQA. The lead agency must exercise its independent judgment on project objectives, and must not uncritically accept the applicant’s objectives. (Pub. Resources Code § 21082.1 (c)(1); *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1352; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1460.)

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Unduly narrow objectives aside, the Project’s basic purposes could be satisfied with any mixed-use project that is attractive, that provides pervious surface increases over the existing parking lots and a reclaimed water system, includes a public park, and

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provides for a return on investment. Such a project could be easily designed and could present an alternative consistent the maximum square feet allowed for the anomaly area and all other applicable plans, policies and regulation, which was not otherwise discussed in the DEIR. Alternatives are not required to meet all project objectives, and in reality it “is virtually a given that the alternatives to a project will not attain all of the project’s objectives.” (*Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087.)

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Although the Project’s significant impacts regarding ALUC compatibility could be avoided only by moving the Project, the DEIR rejects offsite alternatives without providing any analysis. (DEIR p. 6-6 and 7.) Instead, the DEIR constrains an offsite alternative to one within the Airport Area and claims that the applicant does not own sufficient land in the Airport Area for the Project to be moved. Offsite alternatives should be considered when “significant effects of the project would be avoided or lessened by putting the project in another location,” as here. (Guidelines §15126.6(f)(2)(A).) The Guidelines take a narrow view of what constraints would render an alternative site infeasible (for example, the lack of extractable resources on a site for a resource extraction project). (Guidelines §15126.6(f)(2)(B).) Furthermore, California Courts have endorsed the use of rigorous off site alternatives analyses. (See, for example, *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553 [upholding EIR in part because of adequate analysis of an offsite alternative] and *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 [EIR found inadequate for failure to assess an offsite alternative that would have reduced impacts].) A developer’s ownership or lack of ownership of an alternative parcel is not sufficient reason to dismiss offsite alternatives. The DEIR must be revised to include an analysis of offsite alternatives for the Project in areas of the City with demonstrated capacity for additional residences – including outside of the Airport Area. Portions of the City that have built all permissible residential units allowed by their governing land use plans should not be considered.

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C. The Greenhouse Gas Analysis is Inadequate.

CEQA directs agencies to “make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate, or estimate the amount of greenhouse gas emissions resulting from a project.” (Guidelines § 15064.4(a).) Recently, the California Supreme Court challenged agencies to “ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes.” (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 519.)

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Full mitigation of greenhouse gas emissions is important for more than just

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preventing further increases in temperature and sea level rise. It also affects public health. In a recent report on climate change published in the Lancet, a commission found that human-caused global warming “threatens to undermine the past 50 years of gains in public health.” The report also said that a comprehensive approach to slow the planet’s warming could be “the great health opportunity of the 21st century.”
(<https://www.nytimes.com/2017/10/30/opinion/climate-change-health-heat.html?ribbon-ad-idx=5&rref=opinion&module=Ribbon&version=context®ion=Header&action=click&contentCollection=Opinion&pgtype=article&r=0>; full study available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(17\)32464-9/fulltext?elsca=tpr](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)32464-9/fulltext?elsca=tpr).) The minimization of greenhouse gases in constructing and operating the Project is critical.

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All greenhouse gas emissions above zero contribute to global climate change and must be treated as causing direct and cumulatively significant environmental impacts.

The Project would emit at least 1,938 metric tons of carbon dioxide equivalent greenhouse gas emissions annually, but the DEIR claims the Project will not have significant impacts with regard to climate change because the Project is consistent with existing greenhouse gas policies, including the City’s Energy Action Plan and the Regional Transportation Plan (RTP). On its face, this claim makes no sense. Further, outside of the Project’s location allegedly near transit and near job centers, the DEIR does not analyze the Project’s features and their potential for reducing or avoiding greenhouse gas emissions. Nor does the DEIR discuss how the Project will reduce the amount of new materials needed, minimize the energy needed for construction, or be constructed to be energy efficient. Substantial evidence does not exist for these determinations.

In reliance on this unsupportable claim and on the Project’s project design features (PDFs), the DEIR finds that no mitigation is required. (DEIR p. 4.6-12.) CEQA requires the disclosure of significant impacts, even if they are fully mitigated. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-658.) The DEIR has improperly compressed environmental analysis and mitigation. This is “not merely a harmless procedural failing... [it] subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation.” (*Lotus, supra*, at 658.) Reliance on the PDFs is unlawful. An EIR cannot incorporate “the proposed mitigation measures into its description of the project and then conclude [] that any potential impacts from the project will be less than significant.” (*Id.* at 655-657.) Moreover, as discussed below, the DEIR’s claim that PDFs built into the Project will prevent environmental impacts is unsupported because the PDFs lack the detail or enforceability to ensure implementation or efficacy.

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Despite emitting at least 1,938 tons of carbon dioxide equivalent emissions, the DEIR claims that the Project will not have significant greenhouse gas impacts because the South Coast Air Quality Management District provides an interim screening level threshold of 3,000 metric tons, which the Project would not exceed. (DEIR p. 4.6-12.) However, it is well understood that *all* greenhouse gas emissions contribute to global climate change. “One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.) If the Project’s emissions will not be offset or reduced to zero, a significant impact must be found and mitigation incorporated.

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The DEIR also finds that the Project’s alleged consistency with the Southern California Association of Governments’ RTP/SCS prevents significant greenhouse gas impacts. (DEIR p. 4.6-13.) Consistency with the RTP itself does not result in any reductions in greenhouse gas emissions from the Project. Moreover, the Project is not actually consistent with the RTP. On the contrary, the 2016 SCAG RTP/SCS, required by SB 375, anticipates lowering greenhouse gas emissions to 18 percent below 2005 levels by 2025. Reaching this target requires reducing existing emission *and preventing new ones*. All emissions from demolition, construction, and operations of the Project interfere with SCAG reaching its target.

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SCAG anticipates land use strategies needed to meet this target include planning for new growth around livable corridors and encouraging people to live nearer to jobs and amenities to reduce vehicle miles travelled. (DEIR p. 4.6-6.) As the Project area actually has somewhat limited transit, the focus should be on walkability and providing homes for people who work in the surrounding business district. The DEIR acknowledges, “Increasing residential land use near major employment centers is a key strategy to reducing regional VMT.” (DEIR p. 4.6-13.) However, it is unclear whether Project condominiums will be affordable to people working nearby, including at the airport and the University of California, Irvine. The DEIR contains no information about the affordability of the Project’s units to local employees. News coverage of Project planning meetings reference a cost of \$1.5-2 million for the mid-sized units. (See, e.g., <http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-koll-forum-20171101-story.html>.) The DEIR relies upon the Institute of Traffic Engineers (ITE) “Luxury Condominiums/Townhouse (Land Use 233)” trip generation coefficients to analyze the Project’s traffic impacts. (DEIR sections 4.14.5, 4.14.6.) A luxury condominium will not be within the reach of most local employees. Additionally, the Notice of Preparation (NOP) describes the Project as “260 luxury residential condominiums...ranging from 1,240 to 3,160 sf.” The Project’s units will be both upscale and quite large. Thus, it seems more likely than not that the closest workers to the Project, those of John Wayne

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Airport and the University of California, Irvine, will not be able to afford the Project’s housing. The DEIR’s conclusions that the Project will promote walkability and reduce vehicle miles travelled, as promoted by the RTP, are unsupported. Information about the Project’s affordability to nearby employees must be disclosed in order to determine the Project’s consistency with the governing RTP/SCS. Inconsistency with the RTP would be a significant land use impact as well as a significant greenhouse gas impact that would require disclosure, analysis, and the incorporation of all feasible mitigation or alternatives to the Project.

The DEIR touts a proximity to transit on Jamboree Road, but how many feet will residents have to walk to get to the closest bus stop? The DEIR claims a distance of 650 feet (DEIR p. 4.6-14), but the Project will also be providing shuttle buses for office workers to access their vehicles in the Project parking garages. If the closest point in the Project is 650 feet away from a bus stop, how far is the furthest? Additionally, the shortest routes to the Jamboree bus stop will be blocked by existing and new Koll Center buildings. The Project will likely do little to promote transit use and reduce VMT as needed to reduce SCAG’s greenhouse gas emissions and meet the reductions target of the 2016 RTP.

The DEIR also fails to analyze the Project’s consistency with SB 32. The DEIR claims that the *Cleveland National Forest Foundation* decision can be interpreted such that, “AB 32 is the only legally mandated requirement for the reduction of greenhouse gases,” but this is incorrect. (DEIR p. 4.6-10.) As the DEIR explains at page 4.6-4, Senate Bill (SB) 32 was signed into law in September 2016, codifying the interim emissions target of 40 percent below 1990 levels by 2030 that had previously been contained in Executive Order B-30-15. (DEIR p. 4.6-4.) The *Cleveland National Forest Foundation* Court acknowledged as such:

Furthermore, after briefing was submitted in this case, *the Legislature in 2016 enacted Senate Bill No. 32* (SB 32) (2015–2016 Reg. Sess.), adding Health and Safety Code section 38566, *which adopts a goal of reducing greenhouse gas emissions by 40 percent below 1990 levels by the year 2030*. This 40 percent reduction is widely acknowledged as a necessary interim target to ensure that California meets its longer-range goal of reducing greenhouse gas emissions to 80 percent below 1990 levels by the year 2050. (See Governor's Executive Order No. B–30–15 (Apr. 29, 2015) [explaining the significance of the 40 percent reduction].) SB 32 thus reaffirms California's commitment to being on the forefront of the dramatic greenhouse gas emission reductions needed to stabilize the global climate. The legislation directs CARB to craft regulations to implement its goal. (Health & Saf. Code, § 38566.) These regulations may further clarify the way forward for public agencies to meet the state's 2050 climate goals. This

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regulatory clarification, together with improved methods of analysis, may well change the manner in which CEQA analysis of long-term greenhouse gas emission impacts is conducted.

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(*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 518–19, emphasis added.) The DEIR must analyze the Project’s consistency with SB 32, as well as with AB 32 and all greenhouse gas emissions reduction targets promulgated by the California Air Resources Board. By adding greenhouse gases to the atmosphere, the Project will interfere with reaching these statewide goals, a significant impact on greenhouse gases under CEQA.

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The DEIR states, without analysis, that the Project is consistent with the Newport Beach Energy Action Plan. (DEIR p. 4.6-12.) The DEIR then concludes, “[t]herefore, the Project is consistent with AB 32, which aims to decrease emissions statewide... Potential impacts are less than significant.” (DEIR p. 4.6-13.) The Newport Beach Energy Action Plan’s goals include meeting *and exceeding* AB 32 goals, promoting energy efficiency and sustainability, exploring green technologies, and exploring renewable energy sources. By introducing 1,938 metric tons per year of greenhouse gas emissions, the Project would interfere with meeting AB 32 reductions. The DEIR also contains no Project requirements or design features detailing energy efficiency and sustainability, green technologies, or renewable resources. The DEIR fails to explain the analytical route taken to its conclusion of no significance. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) On the contrary, based on the information contained in the DEIR, the Project appears to be inconsistent with the Newport Beach Energy Action Plan, a significant impact on both land use and greenhouse gas emissions. Further information about the Project’s consistency with the Newport Beach Energy Action Plan is required in the revised DEIR.

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In lieu of actual mitigation for greenhouse gas emissions, the DEIR relies on PDF 1, which states:

Building Design: The Applicant will pursue a Leadership in Energy and Environmental Design (LEED) Silver Certification for the Project. Project features may include the following. Bicycle storage and maintenance facility, electric vehicle charging stations, indoor water use reduction, optimized energy performance, low emitting materials, day lighting, enhanced indoor air quality features, and earth day functions for residents.

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This language does not commit the developer to implement or achieve any specific measures, or even to achieve LEED Silver. Additionally, any project claiming not to have greenhouse gas impacts would necessarily be required to include all of these

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features, but PDF 1 states only that “features may include” them. Mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures.” (Pub. Resources Code § 21081.6(b).) PDF 1 contains no such commitment. None of these features are concrete or described with enough sufficient detail to determine whether they have been implemented and what their likely efficacy would be in reducing Project emissions as compared to business-as-usual. “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside & Canyon v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261; *Katzeff v. California Dept. of Forestry and Fire Protection* (2010) 181 Cal.App.4th 601, 612; *Lincoln Place Tenants Assn v. City of Los Angeles* (2005) 130 Cal.App.4th 1491.)

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The DEIR does not state how many electric vehicle charging stations would be included, and whether they would be available to both office workers and residents. Also absent is how much indoor water use reduction would be expected, and how would it be implemented. The DEIR fails to quantify what emissions would be reduced by using “low emitting materials,” or to describe the materials that would be replaced. Importantly, “reduction,” “optimized,” and “low” are never defined. Mitigation measures that “are not guaranteed to occur at any particular time or in any particular manner” are inadequate. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119.) PDF 1 is useful as a mission statement, but not as a PDF relied upon to avoid the need for disclosing, analyzing, or mitigating the Project’s significant environmental impacts. As mitigation for these undisclosed impacts, it is neither concrete nor enforceable. Inclusion of PDF 1 into the Project’s conditions of approval does not guarantee any greenhouse gas emission reductions.

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The DEIR’s failure to include enforceable greenhouse gas reductions measures is particularly galling, given that residential buildings with net zero energy use are feasible. According to the DEIR, the “2016 Building Energy Efficiency Standards contained in Title 24 “will not achieve zero net energy.” (DEIR p. 4.6-5.) Residential buildings in California will be required to achieve zero net energy by 2030 and are feasible now, particularly in Southern California climate zones. (See, https://www.energydataweb.com/cpucfiles/pdadocs/904/california_zne_technical_feasibility_report_final.pdf, herein incorporated.) When other similar projects implement particular mitigation measures, it is evidence that those measures are feasible. (*Western States Petroleum Association v. Southern California Air Quality Management District* (2006) 136 Cal.App.4th 1012, 1020 [no evidence showed refineries could not make the same air pollution control changes one refinery made or that the cost of such changes would be prohibitive].) “[I]f the project can be economically successful with mitigation, then CEQA requires that mitigation...” (*Uphold our Heritage v. Town of Woodside*

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(2007) 147 Cal.App.4th at 600.) Zero net energy should be implemented in the Project. As the DEIR acknowledges, climate change is a global problem. All greenhouse gases contribute to this global problem, directly, indirectly, and cumulatively. Unless the Project is net zero for greenhouse gas emissions, the Project will have significant impacts related to DEIR Threshold 4.6-1, “Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”

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The DEIR must be revised to compare the Project’s emissions to the emissions reductions targets of SB 32, and to acknowledge that all greenhouse gas emissions contribute to global climate change and require mitigation. Mitigation measures formulated in the revised DEIR must be concrete and sufficiently detailed for the public to determine their efficacy. They must also be enforceable. Finally, the DEIR will need to be recirculated, as is required under CEQA and environmental review document is supplemented with significant new information.

D. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate the Impacts to Residents, Pilots, and Passengers of Locating the Project within the Flight Path of John Wayne Airport.

The Project would construct three, 13-story towers, 160 feet tall, under the flight path of John Wayne Airport’s Runway 20L. SPON has heard that pilots are very concerned about the safety of the Project. FAA Regulation 91.119(b) requires planes to fly at least 1,000 feet above the highest obstacle in occupied areas. Planes landing on Runway 20L fly over the site at an altitude on only 700 feet, far less than the 1160 feet that would be required to comply with FAA Regulations. The Project is therefore an impermissible obstruction to aviation and an inherent safety risk to Project residents, pilots, and their passengers.

Related to this concern, the DEIR does not disclose the flight paths of private planes and flight schools, especially those that use Runway 20L. Santa Monica Airport has experienced several crashes in the past decade, several of which destroyed nearby homes. (<https://patch.com/california/santamonica/20-years-santa-monica-airport-plane-crashes>, herein incorporated.) Several crashes have impacted a public park, such as that proposed by the Project. (*Ibid*; <http://smdp.com/plane-crashes-golf-smo/146091>, herein incorporated.) John Wayne Airport has also had emergencies arise where planes landed outside the airport complex. This summer, four vehicles were damaged when a small plane crashed on Interstate 405 shortly after takeoff and exploded in flames. (<http://www.latimes.com/local/lanow/la-me-ln-405-plane-crash-video-20170728-htm1story.html>, herein incorporated.) The missing information about private plane and flight school use of the airport must be disclosed in the revised DEIR. The DEIR’s noise, air quality, land use, and aviation safety analyses must be updated accordingly. CEQA

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does not tolerate attempts to sweep important public safety issues “under the rug.”
(*Concerned Citizens of Costa Mesa v 32nd Dist. Ag. Ass’n.* (1986) 42 Cal. 3d 929, 935.)

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Also not thoroughly discussed in the DEIR are the health impacts on the 260 new families that would be living in homes located next to a runway. The DEIR fails to analyze the significant noise and air quality impacts associated with the flight paths of John Wayne Airport.

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According to the U.S. Environmental Protection Agency, exposure to high noise levels presents a “health risk in that noise may contribute to the development and aggravation of stress related conditions such as high blood pressure, coronary disease, ulcers, colitis, and migraine headaches... Growing evidence suggests a link between noise and cardiovascular problems. There is also evidence suggesting that noise may be related to birth defects and low birth-weight babies. There are also some indications that noise exposure can increase susceptibility to viral infection and toxic substances.”¹

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Potentially deadly cardiovascular impacts can be triggered by long-term average exposure to noise levels as low as 55 decibels.² Exposure to even moderately high levels of noise during a single 8 hour period triggers the body’s stress response. In turn, the body increases cortisol production, which stimulates vasoconstriction of blood vessels that results in a five to ten point increase in blood pressure. Over time, this noise-induced stress can result in hypertension and coronary artery disease, both of which increase the risk of heart attack death.³ Studies on the use of tranquilizers, sleeping pills, psychotropic drugs, and mental hospital admission rates suggest that high noise levels cause adverse impacts on mental health.⁴

¹ EPA Noise Effects Handbook, <http://www.nonoise.org/library/handbook/handbook.htm>, incorporated by reference; see also EPA *Noise: A Health Problem* <http://www.nonoise.org/library/epahlth/epahlth.htm#heart%20disease>, incorporated by reference.

² World Health Organization Media Centre, http://www.euro.who.int/eprise/main/WHO/MediaCentre/PR/2009/20091008_1?language [elevated blood pressure and heart attacks], incorporated by reference; <http://whqlibdoc.who.int/hq/1999/a68672.pdf> [finding demonstrated cardiovascular impacts, including ischemic heart disease and hypertension after long-term exposure to 24 hour average noise values of 65-70 dBA], incorporated by reference.

³ Attachment 1, Excerpts of World Health Organization, Guidelines for Community Noise, p. x and pp. 47-48. The report is available in its entirety online at <http://whqlibdoc.who.int/hq/1999/a68672.pdf>; see also, Maschke C (2003). “Stress Hormone Changes in Persons exposed to Simulated Night Noise”. *Noise Health* 5 (17): 35-45. PMID 12537833, <http://www.noiseandhealth.org/article.asp?issn=1463-1741;year=2002;volume=5;issue=17;spage=35;epage=45;auiast=Maschke>, incorporated by reference; Attachment 2, Franssen EA, van Wiechen CM, Nagelkerke NJ, Lebre E (2004). “Aircraft noise around a large international airport and its impact on general health and medication use”. *Occup Environ Med* 61 (5): 405-13. doi:10.1136/oem.2002.005488. PMID 15090660.

⁴ Attachment 1, p. x. and pp. 48-49.

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High noise levels also have dramatic developmental impacts on small children, many of whom might one day reside in the Project. Children who are exposed to higher average noise levels have heightened sympathetic arousal, expressed by increased stress hormone levels, and elevated resting blood pressure. As proposed, the Project would expose community members to levels of noise that are unsafe for cardiovascular health, mental health, societal well being, and child development.

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CEQA requires environmental review of a Project’s potentially adverse impacts on human beings. (Guidelines § 15065 subd. (a)(2).) In the last decade, countless peer-reviewed studies have been published documenting the dangers of living near freeways due to their emissions of ultra fine diesel particulate matter and other air pollutants. Research on the impacts of airport emissions is ongoing⁵; however, jet fuel is chemically very similar to diesel in that it emits very fine particulate matter when burned.⁶ Ultra fine particulate matter causes cardiovascular and neuron damage.⁷ More than 90 percent of the particles in diesel exhaust are ultra fine particles, which are easily inhaled into the lung.⁸ Diesel particulate matter also contains gases such as acetaldehyde, acrolein, benzene, 1,3-butadiene, formaldehyde and polycyclic aromatic hydrocarbons, increasing the hazards to human health.⁹ Consequently, diesel particulate matter was declared a toxic air contaminant by the California Air Resources Board in 1998.¹⁰ According to the Air Resources Board, “Diesel particulate matter may cause cancer, premature death, and other health problems.”¹¹ These other health problems include asthma, bronchitis, and heart disease.¹²

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These pollutants have been correlated with asthma, congestive heart failure, autism, and other ailments, with the greatest impact on sensitive receptors such as children and the elderly. Pollution-related ailments have also been correlated with the

⁵ See, <http://web.mit.edu/aeroastro/partner/reports/proj15/proj15finalreport.pdf>, herein incorporated by reference.

⁶ See, <http://lae.mit.edu/air-quality/>, herein incorporated by reference.

⁷ See <http://www.arb.ca.gov/research/health/healthup/jan03.pdf>; see also <http://ehp03.niehs.nih.gov/article/fetchArticle.action?articleURI=info%3Adoi%2F10.1289%2Fehp.1002973>, both incorporated by reference.

⁸ Matsuoka, Hricko, et al. Global Trade Impacts: Addressing the Health, Social, and Environmental Consequences of Moving International Freight Through Our Communities, March 2011, p. 17, available at <http://departments.oxy.edu/uepi/>, herein incorporated.

⁹ See <http://www.epa.gov/NE/eco/airtox/diesel.html>, herein incorporated by reference.

¹⁰ See <http://www.arb.ca.gov/enf/hdvp/ccdet/saej1667.htm>.

¹¹ Ibid; see also, <http://www.arb.ca.gov/ch/communities/ra/westoakland/documents/factsheet0308.pdf>.

¹² Miller et al., Long Term Exposure to Air Pollution and Incidence of Cardiovascular Events in Women, New England Journal of Medicine, 356:5 (2007) 447-458, available at <http://burningissues.org/car-www/pdfs/miller-women-cv-NEJM4-2007.pdf>, herein incorporated; see also http://www.ehib.org/page.jsp?page_key=90#pm_health.

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distance a home sits from the freeway or a runway.¹³ A 2009 study found that one-third of the 160 estimated annual deaths caused by aviation particulate matter occur in Southern California.¹⁴

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E. The DEIR Does Not Contain a Health Risk Assessment.

The Office of Environmental Health Hazard Assessment (OEHHA) adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (Guidance Manual).¹⁵ As discussed in Section 8.2.10 of the Guidance Manual, “[t]he local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation.”

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The DEIR admits that construction-related air quality impacts will be significant, but does not provide an HRA that incorporates the new OEHHA Guidance. Agency guidance indicates that new OEHHA methodology will substantially increase the estimated significance of toxic air contaminants. Because the new OEHHA methodology includes a number of conservative assumptions about potential impacts to infants and children, short term construction emissions could lead to significant HRA results. For example, SCAQMD staff estimate that a six-month construction project for a typical one-acre office project could cause a significant HRA impact.¹⁶ This Project is larger than one acre and would require 127,730 cubic yards of grading. The construction that this will entail will result in significant construction and operational air quality impacts, which must be carefully calculated, analyzed, and mitigated in a revised and recirculated DEIR.

F. The Traffic Analysis is Inadequate.

Although the DEIR describes the Project as “residential condominiums,” the DEIR relies upon the Institute of Traffic Engineers (ITE) “Luxury Condominiums/Townhouse (Land Use 233)” trip generation coefficients to analyze the Project’s traffic impacts. (DEIR sections 4.14.5, 4.14.6.) Either the Project Description or the traffic analysis is misleading. ITE has determined that a “luxury condominium” generates fewer trips than a “residential condominium.” If the Project is not actually intended to be luxury condominiums, or if the Project’s target market changes, then the

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¹³ See, http://www.quietskiescoalition.org/Jet_Fuel.html, herein incorporated by reference.

¹⁴ See, <http://web.mit.edu/aeroastro/partner/reports/proj15/proj15finalreport.pdf>, herein incorporated.

¹⁵ See http://www.oehha.ca.gov/air/hot_spots/hotspots2015.html.

¹⁶ See SCAQMD Staff presentation, Potential Impacts of New OEHHA Risk Guidelines on SCAQMD Programs, Agenda Item 8b, <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/may-specsess-8b.pdf>.

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traffic analysis vastly understates the Project’s likely traffic impacts. This would result in a failure to fully mitigate those traffic impacts. A recirculated EIR is required to clarify the true nature of the Project and its likely traffic impacts.

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II. Mitigation Measures Are Not Concrete and Enforceable.

CEQA requires every EIR to contain a complete discussion of potential mitigation measures available to avoid or reduce adverse environmental effects (Pub. Resources Code section 21000(b)(3); Guidelines Section 15126(c)) because one of the basic purposes of an EIR is to indicate the manner in which significant effects can be mitigated or avoided. (Pub. Resources Code section 21002.1(a).) Mitigation measures must be concrete and enforceable through a mitigation monitoring plan and permit conditions. (Pub. Resources Code Section 21081.6(b); *Lincoln Place Tenants Ass’n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445.)

Due to the DEIR’s many deficiencies, far fewer mitigation measures are provided than should be for a project of this size. Unfortunately, the few mitigation measures that are provided fall short of CEQA’s requirements.

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The DEIR mitigates the potential impacts of adding 260 new families to Newport Beach by requiring plans to be submitted to the police department for their review prior to the issuance of grading permits. (Mitigation Measures 4.12-3 and 4.12-4.) This is deferred mitigation. (*Endangered Habitats League v. County of Orange* (2005) 131 Cal. App. 4th 777, 793-94; Guidelines Section 15126.4(a)(1)(B).) “Impermissible deferral of mitigation occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236.) As these plans will not be drafted until after project approval and the completion of the public review process, there is no assurance as to their efficacy. Furthermore, there is no reason the police department cannot review these plans now to determine if project features and design components provide the needed defensible space concepts to reduce demand on police services. Any changes to Project design could impact public open space, amenities, or other aspects of the project design that have environmental impacts or impacts related to findings that must be made for project entitlements and approvals. (e.g., the provision of an on-site public park, used to support a finding of no significant impact for Threshold 4.13-1/4.13-2 related to the use of parks and recreational facilities (DEIR p. 1-31.)

Project noise is estimated to range from 65.7 to 95.9 dBA during construction activities with the highest noise levels occurring near office buildings. (DEIR pp. 4.10-15 though 4.10-19.) Noise levels of 75 dBA are considered to be “normally

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incompatible” and noise levels over 80 dBA are considered to be “clearly incompatible” with office buildings. (Table 4.10-1.) The provided mitigation measures would not minimize these noise impacts or provide compatibility with office buildings. Either additional mitigation measures are required, or an offsite alternative must be discussed in the revised and recirculated DEIR.

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The DEIR claims it cannot feasibly require Tier 4 construction equipment to reduce significant impacts caused by emissions of oxides of nitrogen. (DEIR pp. 4.2-14 and 24.) However, as lead agency, the South Coast Air Quality Management District recently required the use of Tier 4 equipment in the Tesoro refinery consolidation project (LARIC). Another project’s use of a mitigation measure means it is feasible here. Further, the findings required for approving a project with significant and unavoidable impacts cannot be made here because all feasible mitigation (i.e., Tier 4 construction equipment) was not incorporated into the Project.

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The DEIR’s reliance on PDFs as opposed to enforceable mitigation measures violates CEQA. An EIR cannot incorporate “the proposed mitigation measures into its description of the project and then conclude [] that any potential impacts from the project will be less than significant.” (*Lotus, supra*, 223 Cal.App.4th 645, 655-657.) The DEIR claims that, with the exception of PDF 2, the PDFs are not mitigation measures and are not proposed to reduce or prevent environmental impacts. (DEIR, p. 3-15.) However, on the same page, the DEIR states the PDFs are part of the MMRP to ensure implementation. (DEIR p. 3-15.) SPON agrees these measures need to be implemented in an enforceable manner, but they are clearly intended to eliminate, reduce, or avoid significant impacts recognized by CEQA. The DEIR cannot have it both ways. In any case, even if the PDFs were considered mitigation measures, they fail to meet CEQA’s requirements.

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As discussed above, PDF 1, requiring the applicant to “pursue” but not achieve LEED silver certification, is clearly an attempt at a mitigation measure. It relates directly to trip generation and traffic, water supply, energy use, greenhouse gas production, and air quality. (DEIR, p. 3-15.) As written, it is unenforceable and cannot be relied upon for EIR analysis. PDF 3, regarding the use of reclaimed water and efficient irrigation systems, targets important environmental impacts, but contains insufficient specificity. The formulation of mitigation measures may only be deferred if they are subjected to quantifiable performance standards that are absence here.

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III. Additional Issues Must Be Addressed in a Revised and Recirculated EIR.

CEQA requires recirculation of an EIR when “significant new information” is added to the EIR. (CEQA Guidelines §15088.5.) Significant new information can

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include changes to the project or environmental setting or additional data and requires recirculation whenever a new significant impact has been discovered, a substantial increase in the severity of an environmental impact would result, a feasible project alternative or mitigation measure has been discovered, or when the draft EIR is “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (*Ibid.*) Based on SPON’s comments, the DEIR will need to be recirculated upon its revision.

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In addition to the issues identified above and in the comments of other members of the public, the revised and recirculated DEIR must include:

- An adequate cumulative impacts analysis that considers all reasonably foreseeable cumulative projects. The DEIR’s analysis ends at 2022, even though the Project will likely not even be completed by that time.
- Whether the tree:parking space ratio required by Ordinance 1449 is maintained by the Project; and
- The Project’s potential impacts on birds, given that the towers would be located within flyways needed to access the San Joaquin Marsh and the Upper Newport Back Bay, both of which are used by several sensitive bird species.

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IV. The Project’s Significant and Unavoidable Impacts Cannot Be Overridden.

CEQA prohibits approval of projects with significant adverse environmental impacts if there are feasible alternatives or mitigation measures that would reduce or eliminate those impacts. (Pub. Resources Code § 21002; Guidelines § 15021(a)(2).) When an agency seeks to approve a project despite its significant unmitigated impacts on the environment, the agency must adopt a statement of overriding considerations. (Pub. Resources Code § 21081.) A statement of overriding considerations must include two specific findings, supported by substantial evidence. The first finding that must be made is that “There is no feasible way to lessen or avoid the significant effect...” of the project. (Guidelines §§ 15043, 15093(b).) The second finding is that the project’s benefits outweigh its significant adverse environmental impacts. (Guidelines § 15093(a).) These findings must both be supported by substantial evidence. (Guidelines § 15093(a)-(b).)

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The DEIR notes that the Project may receive an inconsistency determination from the Airport Land Use Commission. However, absent a finding from the Airport Land Use Commission that the Project is consistent, the City lacks substantial evidence for any conclusion that the Koll Center Residences’ location at the end of a John Wayne Airport would not have significant, adverse safety impacts. These impacts cannot be mitigated by traditional mitigation measures, and the DEIR has not analyzed off-site alternatives.

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CEQA provides for significant, adverse impacts to be overridden only if substantial evidence supports a determination that the benefits of the Project outweigh the costs. The City has a duty to ensure the safety and welfare of its residents. Does the City really envision supporting a determination that providing additional housing is more important than the safety of the residents who would live there?

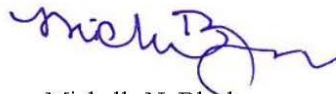
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Conclusion

Thank you for your consideration of these comments. SPON respectfully requests that the City revise the DEIR to remedy the discrepancies and deficiencies noted by SPON and other members of the public. The revised DEIR should then be circulated to the public for a minimum of 60 days. Please contact me if you have any questions.

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Sincerely,



Michelle N. Black

Response 1

The commenter is incorrect. The Draft EIR does not identify that affordable housing units are proposed. Further, affordable housing is not a prerequisite for neighborhood walkability. The Proposed Project would provide residences, retail uses, and a public park proximate to other existing, under construction, and planned offices, residences, financial institutions, retail uses and restaurants, and hotels.

With respect to transit, there is an existing OCTA bus stop on the east side of Jamboree Road (southeast of the intersection of Jamboree Road at Birch Street); on Von Karman Avenue (between Birch Street and Campus Drive); and, along Campus Drive. OCTA also operates the *i-Shuttle*. Route A connects the Tustin Metrolink Station to the John Wayne Airport area via Von Karman Avenue with a stop at the intersection of Von Kaman Avenue at Dupont Drive, one block north of the project site.

Future owners of the condominium units are unknown and it would be speculative to identify who would purchase the units. The commenter only cites John Wayne Airport and the University of California, Irvine (UCI) as potential employers for future Project residents. The project site is located within Koll Center Newport and proximate to other major employment centers, which includes various other employers such as Hyundai Motor Company, Wells Fargo, Bank of the West, Google, Allergan, Ingram Micro, etc. The commenter provides no evidence that the proposed dwelling units would not be affordable in the City of Newport Beach, which has a median income of \$113,071 and median home prices of over \$1,00,000.⁵ Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

The comment does not identify an environmental issue and is not related to the adequacy of the Draft EIR analysis. No further response is required.

Please refer to Topical Response, *Airport Noise*. It should be noted that the Airport noise contours include all aircraft operations including private aircraft.

Toxic air contaminants (TACs) and Health Risk impacts were addressed on page 4.2-21 of the Draft EIR. As discussed in the Draft EIR, health risk impacts for the project area were analyzed in the 2014 *John Wayne Airport Settlement Agreement Amendment Environmental Impact Report* (2014 John Wayne Airport EIR), which addressed risk impacts from the airport to surrounding receptor areas. As noted in the Draft EIR, the 2014 John Wayne Airport EIR identifies the project site as being outside of the airport risk area. Table 4.1-23 of the 2014 John Wayne Airport EIR shows that the worst-case cancer risk of a resident receptor ranges from 2.4 to 5.9, which is below the SCAQMD threshold of 10 (risk in one million). As the risk level for the worst-case airport scenario is 5.9, the cancer risk to all receptors would not exceed SCAQMD thresholds. As indicated in Exhibit 4.1-1 of the 2014 John Wayne Airport EIR, the nearest modeled residential receptor to the airport boundary line is closer than the project site. Additionally, the wind rose for the meteorological station indicates that the predominant wind patterns do not blow toward the site. Therefore, pollutant concentrations would continue to disperse going toward the project site and the

⁵ U.S. Census Bureau, *QuickFacts, Newport Beach, California*, <https://www.census.gov/quickfacts/fact/table/newportbeachcitycalifornia,US/INC110215#viewtop>, accessed November 11, 2017.

cancer risk of future residents at the site would be at or below the risk levels identified in the John Wayne Airport EIR.

Response 2

The subsequent responses to this comment letter, below, address the specific issues raised by this commenter.

Response 3

The commenter alleges the EIR analyses must be redone because the residential component of the Project is inconsistently defined. The commenter is incorrect. As noted in the response to Comment 1 of this response, neither Section 3.0, *Project Description*, nor Section 4.9, *Land Use and Planning*, state that the Project includes affordable housing units.

With respect to trip generation rates, based on the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (9th Edition), the Luxury Condominium (Land Use 233) generates more trips per unit in both the morning peak hour and the evening peak hour than either Residential Condominium (Land Use 230) or High-Rise Condominium (Land Use 232). See chart below.

Land Use	ITE Code	Trips Per Dwelling Unit	
		AM Peak Hour	PM Peak Hour
Residential Condominium	230	0.44	0.52
High-Rise Condominium	232	0.34	0.38
Luxury Condominium	233	0.56	0.55
Source: Institute of Transportation Engineers (ITE) <i>Trip Generation Manual</i> 9 th Edition			

By choosing to use the higher Luxury Condominium trip rates, the trip estimates for the Project were more conservative. The Project could develop as either standard Residential Condominium or Luxury Condominium; the analysis results would cover either product type.

With respect to the mix of uses, the Draft EIR identifies that the General Plan land use category for the project site is "Mixed Use Horizontal 2 (MU-H2)". The MU-H2 designation specifically applies to some properties located in the Airport Area. It is intended to provide for the development of areas in a horizontally distributed mix of uses which may regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. Non-residential uses are permitted according to the limits included in General Plan Table LU2: Anomaly Locations. The project site is within Anomaly Location 2 of Statistical Area L4; Anomaly Location 2 has a development limit of 1,052,880 sf. As proposed, the Project is consistent with MU-H2 designation.

The commenter's opinion on the definition of a neighborhood, mixed-use development, and walkability are noted but do not raise an environmental issue. No further response is required.

Because the commenter's understanding of the Project is incorrect, the commenter has not raised issues that would render the EIR deficient.

Response 4

CEQA does not require the public disclosure of a development agreement. CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City's standard public review and public hearing process for development agreements.

Response 5

The proposed new sections of the Koll Center Newport Planned Community Development Standards that pertain to the Proposed Project are provided following the responses to Comment Letter A-1. The Draft EIR evaluates the Proposed Project consistent with these zoning assumptions.

Response 6

Please refer to Topical Response, *Airport Noise*. It should be noted that the airport noise contours include all aircraft operations including general aviation aircraft. Airborne operations for both commercial and general aviation/private aircraft are governed by the Federal Aviation Administration (FAA). As addressed in the Draft EIR, the FAA has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. The Proposed Project is consistent with the building height limitations set forth under the current civilian airport standards in the Airport Environs Land Use Plan (AELUP) for John Wayne Airport and would not adversely affect John Wayne Airport's aeronautical operations or navigational-aid siting criteria, including interference with navigational aids or published flight paths and procedures.

Response 7

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.

Response 8

Please refer to Topical Response, *Alternatives*.

Response 9

Please refer to Topical Response, *Alternatives*.

Response 10

Pursuant to CEQA Guidelines 15124(b), the Draft EIR includes a list of the objectives sought by the City, as lead agency for the Project. In *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App4th 1, 14, the court ruled that a lead agency has broad discretion to formulate project objectives. CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set

of objectives. CEQA also does not require a lead agency to provide empirical evidence to justify the list of objectives, which are based on the fundamental purpose of the project.

The project objectives are relevant to the lead agency's consideration and review of a proposed project because they assist with development of a reasonable range of alternatives and will aid decision makers in preparing a statement of overriding consideration, if necessary, per CEQA Guidelines Section 15124(b). This is how the project objectives were used in the Draft EIR—to develop a reasonable range of alternatives. Moreover, CEQA does not impose any prohibition on the inclusion of project objectives that have any level of subjectivity.

Response 11

The referenced objective does quantify the increase in pervious surface area that would be associated with the Proposed Project. However, this does not preclude an increase; rather, it demonstrates with the Project there would be less impervious areas. The range of alternatives addressed in the Draft EIR is not restricted to alternatives that would have the same amount of pervious surface.

Response 12

Please refer to Topical Response, *Alternatives*.

Response 13

As a point of clarification, the Project has not yet been heard by the ALUC, and the ALUC did not provide comments on the Draft EIR. Please refer to Topical Response, *Alternatives*.

Response 14

The commenter suggests that all greenhouse gas (GHG) emissions above zero must be treated as causing direct and cumulatively significant environmental impacts. This approach would involve quantifying GHG emissions and using a zero net carbon dioxide equivalent increase as the threshold. Use of a zero net GHG emissions increase threshold is not a recommended threshold by the South Coast Air Quality Management District (SCAQMD) or any other applicable jurisdiction. Additionally, CEQA explicitly gives lead agencies the authority to choose thresholds of significance and defers to lead agency discretion when choosing thresholds. For this Project, the City of Newport Beach has selected the bright-line threshold developed by the SCAQMD and GHG CEQA Significance Threshold Stakeholder Working Group and is based on substantial evidence. Furthermore, as demonstrated in the Draft EIR, the Project would not conflict with the State's ability to meet GHG reduction targets.

Please also refer to Topical Response, *Senate Bill 32* and Topical Response, *Energy Action Plan* regarding GHG emissions thresholds and the Project's consistency with the City's Energy Action Plan and RTP/SCS.

Response 15

State CEQA Guidelines Section 15126.4(a)(1)(A) specifically permits the incorporation of project design features into a project. The comment has misunderstood the EIR's discussion of Project Design Features (PDFs). Section 4.0, Environmental Setting, states that "PDFs are specific design elements proposed by the Applicant that have been incorporated into the Project. Where noted in this EIR, PDFs are proposed to prevent the occurrence of, or reduce the significance of, potential environmental effects. Because PDFs

have been incorporated into the Project, they do not constitute mitigation measures as defined by CEQA. However, PDFs are identified in the Mitigation Program, and are included in the Mitigation Monitoring and Reporting Program (MMRP) to be developed for, and would be implemented as a part of, the Proposed Project.” Whether a PDF is proposed to preclude an environmental impact or is proposed as a part of the Project, all PDFs identified in the EIR would be required as a part of Project approval.

The Project Design Features are incorporated into the Project design and included in the Draft EIR as such. Failure to maintain the Project Design Features into project design would represent a change to the Project Description. Furthermore, the analysis does not rely on Project Design Features to reduce impacts. The GHG emissions analysis conservatively does not take credit for emissions reductions resulting from implementation of PDF 1 (LEED Certification). Project-related improvements in energy consumption associated with PDF 1 would reduce emissions beyond what is identified in the Draft EIR.

Response 16

The commenter inappropriately attempts to apply a statement from *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720 to the Proposed Project. However, CEQA has responded to the problem of incremental environmental degradation by requiring analysis of cumulative impacts. Cumulative impacts were analyzed in the Draft EIR. As discussed in the Draft EIR, Topical Response: *Senate Bill 32*, and the response to Comment 14, the Project would not result in cumulative GHG impacts as it would not conflict with State GHG reduction goals.

Response 17

The overall goal of the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) is a long-range regional transportation plan that provides a vision for regional transportation investments, integrated with land use strategies. The RTP/SCS provides strategies to meet GHG emissions reduction and air quality conformity requirements. is to create conditions and infrastructure that motivate increased mobility and accessibility, expanded transportation options, broader economic growth, equitably distributed benefits, and sustainability. The RTP/SCS strategies intend to reach the GHG emissions reduction targets through land use and transportation strategies. They focus on improving mobility, improving the transportation system, and encouraging land use and growth patterns that facilitate transit and non-motorized transportation. The RTP/SCS does not limit growth or GHG emissions from growth. The commenter is incorrect that reaching the RTP/SCS emissions reduction goals requires preventing new emissions.

Project consistency with the SCAG RTP/SCS is analyzed in the Draft EIR; please see Table 4.6-5 in Section 4.6, *Greenhouse Gas Emissions*. As indicated in the analysis, the Project would not conflict with implementation of the RTP/SCS. The Proposed Project is within a major employment center and is proximate to several major employers within Orange County (e.g., University of California, Irvine, Allergan, Pacific Life, Ingram Micro). Orange County is traditionally jobs-rich. A major transit stop along Jamboree Avenue connects the project site to major employment within the Irvine Business Complex with the OCTA *i*-Shuttle. Increasing residential land uses near major employment centers is a key strategy to reducing regional VMT.

Response 18

The comment incorrectly states that the project area has limited transit. However, as discussed in the Draft EIR, the Project is walkable to a major transit stop on Jamboree Avenue at Birch Street which connects the project site to major employment areas. According to the California Air Pollution Control Officers Association (CAPCOA) document *Quantifying Greenhouse Gas Mitigation Measures* (August 2010), transit stops approximately one-quarter mile (1,320 feet) away from a project can reduce Vehicle Miles Travelled (VMT) by up to 24.6 percent. Additionally, increasing density in urban areas can reduce VMT by up to 30 percent; locating projects in business districts can reduce VMT by up to 65 percent; and increasing land use diversity can reduce VMT by 30 percent. As described in the Draft EIR, the Proposed Project would not only have access to transit, but it is an infill project that would also increase density and land use diversity since it involves locating multi-family units adjacent to existing business and commercial uses.

Please refer to the response to Comment 1 with respect to future ownership of the condominium units.

As a point of clarification, the Project is not providing shuttle buses to parking garages. PDF 5 identifies that valet parking, will be provided during Phase A and Phase 3 of construction; shuttle service will be provided during all phases of construction. Valet parking and shuttle service is proposed as a convenience for guests and tenants only during Project construction. There is not a correlation between PDF 5 and the ability of residents to walk to work or use public transit.

The relevance of the furthest bus stop from the project site is unclear. What is pertinent is that there are existing OCTA bus stops within one block of the project site. Access to the bus stops on Jamboree Road, Von Karman Avenue, and Campus Drive would continue to be available along public sidewalks. Persons would not be precluded from walking through surface parking areas both on site and off site.

It should also be noted that the OCTA operates the *i-Shuttle* to allow residents and employees to have an alternative way to commute. Route A connects the Tustin Metrolink Station to the John Wayne Airport area via Von Karman Avenue with a stop at the intersection of Von Karman Avenue at Dupont Drive, one block north of the project site. Therefore, the Project would accommodate walking and transit use to a greater extent than would be the case for similar development in outlying areas without transit availability.

Please refer to Topical Response: *Senate Bill 32* regarding the Project's consistency with post-2020 GHG reduction targets. Implementation of the Project would not conflict with the State's GHG reduction goals. Additionally, regarding the *Cleveland National Forest Foundation v. San Diego Association of Governments* case, the Supreme Court's July 2017 opinion reinforces the general rule that lead agencies have substantial discretion in determining how to evaluate and discuss environmental impacts and significance thresholds. The Supreme Court determined that the San Diego Association of Governments (SANDAG) did not improperly conceal the impacts of their Regional Transportation Plan.

Response 19

Please refer to Topical Response, *Senate Bill 32* and the response to Comment 18, above. The Project's consistency with the SCAG RTP/SCS goals is analyzed in Table 4.6-5 of the Draft EIR to address post-2020

GHG emissions reduction goals. Additionally, as discussed in the topical response, project-related GHG emissions would not conflict with the State's post-2020 GHG reduction goals.

Response 20

Please refer to Topical Response, *Energy Action Plan Consistency*. Project consistency with the City's EAP was reviewed in Draft EIR Section 4.6, *Greenhouse Gas Emissions*, and Project energy consumption was assessed in Draft EIR Section 4.15.5, *Energy Consumption*. The Project would not conflict with the City's Energy Action Plan.

Response 21

The comment has misunderstood the EIR's discussion of Project Design Features (PDFs). Section 4.0, *Environmental Setting*, states that "PDFs are specific design elements proposed by the Applicant that have been incorporated into the Project. Where noted in this EIR, PDFs are proposed to prevent the occurrence of, or reduce the significance of, potential environmental effects. Because PDFs have been incorporated into the Project, they do not constitute mitigation measures as defined by CEQA. However, PDFs are identified in the Mitigation Program, and are included in the Mitigation Monitoring and Reporting Program (MMRP) to be developed for, and would be implemented as a part of, the Proposed Project." Whether a PDF is proposed to preclude an environmental impact or is as a part of the Project, all PDFs identified in the EIR would be required as a part of Project approval.

Please refer to the response to Comment 17 regarding PDFs. As indicated in the response, due to limited detail associated with PDF 1 at the time of the analysis, emissions reductions or other Project benefits associated with PDF 1 were conservatively not incorporated into the analysis. Implementation of PDF 1 is not necessary to reduce Project impacts to a less than significant level. Project-related improvements in energy consumption associated with PDF 1 would reduce emissions beyond what is identified in the Draft EIR.

Response 22

Please refer to the responses to Comments 17 and 21, above. The number of electric vehicle charging stations has not been identified. However, as noted in Section 3.0, *Project Description*, the Project would include charging stations in the free-standing parking structure, as well as the parking structures for Buildings 1, 2, and 3 which provide parking for both residents and office workers. With respect to PDF 1, please refer to the response to Comment 1. As previously addressed, PDF 1 is not necessary to reduce Project impacts to a less than significant level. Project-related improvements in energy consumption associated with PDF 1 would reduce emissions beyond what is identified in the Draft EIR.

Response 23

Please refer to Topical Response, *Senate Bill 32*.

It should be noted that the Project's GHG emissions were calculated with CalEEMod version 2016.3.1, which was released in October 2016. CalEEMod version 2016.3.1 calculates energy consumption and associated emissions based on consumption rates in the 2013 version of Title 24 (Part 6). However, the energy consumption based on the current version of Title 24 (2016) is 28 percent more efficient than the previous 2013 version. As such, an adjustment was applied in the CalEEMod mitigation module to account

for this State mandated improvement. Although the adjustment was made in the mitigation module, it is a conservative assumption, as Title 24 is updated on an approximately three-year cycle and the 2019 Standards will continue to improve upon the 2016 Standards. As the Project would be constructed through 2022, it is likely that it would be subject to more stringent energy efficiency standards. The analysis also conservatively does not take credit for the implementation of the Renewable Portfolio Standards.⁶ Furthermore, PDF 1 identifies that the Applicant will pursue a Leadership in Energy and Environmental Design (LEED) Silver Certification for the Project. Additional Project efficiency features include the use of landscape irrigation systems with weather sensors, timers, and low-flow irrigation devices to further reduce the overall water use (and associated water energy use) in the community. Non-potable water would also be used for all site irrigation (reducing energy associated with water treatment). The GHG emissions analysis provided in the Draft EIR is conservative because it does not take credit for 2019 Title 24 improvements or LEED certification.

As analyzed in the Draft EIR Section 4.6, *Greenhouse Gas Emissions*, the Project would not exceed applicable GHG thresholds and mitigation would not be required. As demonstrated in the Draft EIR, the Project would not conflict with the State's ability to meet GHG reduction targets. The commenter requests that the Project achieve zero net energy since this technology is feasible now. However, the commenter acknowledges that this is not currently required. Please refer to the response to Comment 18. As impacts would not exceed GHG thresholds, mitigation measures requiring zero net energy buildings would not be required.

Response 24

Please refer to Topical Response, *Airport Noise*, and the response to Comment 6. As discussed in the topical response, the project site is located outside the John Wayne Airport's 60 dBA CNEL contour. As described in Section 4.10 of the Draft EIR, the Project would be required to comply with Mitigation Measures (MMs) 4.10-5 and 4.10-6 to ensure on-site noise levels are less than significant.

General aviation aircraft are permitted to operate at John Wayne Airport 24 hours per day as long as they meet the applicable noise limits and other regulations of the General Aviation Noise Ordinance (GANO). Aircraft which exceed the noise limits are issued notices of violation. General Aviation aircraft must meet the noise limits at each airport Noise Monitoring Station on a single-event basis. If a general aviation aircraft exceeds the limits three times within three years, it can be denied use of John Wayne Airport for three years. (source: <http://www.ocair.com/aboutjwa/faq-noise>).

Response 25

Toxic air contaminants (TACs) and Health Risk impacts were addressed on page 4.2-21 of the Draft EIR. As discussed in the Draft EIR, health risk impacts for the project area were analyzed in the 2014 *John Wayne Airport Settlement Agreement Amendment Environmental Impact Report* (2014 John Wayne Airport EIR), which addressed risk impacts from the airport to surrounding receptor areas. As noted in the Draft EIR, the 2014 John Wayne Airport EIR identifies the project site as being outside of the airport risk area. Table 4.1-23 of the 2014 John Wayne Airport EIR shows that the worst-case cancer risk of a resident receptor

⁶ Senate Bill X1-2 was signed in April 2011 and set the RPS target at 33 percent by 2020. Senate Bill 350 (signed in October 2015) requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from eligible renewable energy resources by 2030.

ranges from 2.4 to 5.9, which is below the SCAQMD threshold of 10 (risk in one million). As the risk level for the worst-case airport scenario is 5.9, the cancer risk to all receptors would not exceed SCAQMD thresholds. As indicated in Exhibit 4.1-1 of the 2014 John Wayne Airport EIR, the nearest modeled residential receptor to the airport boundary line is closer than the project site. Additionally, the wind rose for the meteorological station indicates that the predominant wind patterns do not blow toward the site. Therefore, pollutant concentrations would continue to disperse going toward the project site and the cancer risk of future residents at the site would be at or below the risk levels identified in the John Wayne Airport EIR.

Please also refer to Topical Response, *Airport Noise*. The project site is located outside the John Wayne Airport's 60 dBA CNEL contour. As described in Section 4.10 of the Draft EIR, the Project would be required to comply with MMs 4.10-5 and 4.10-6 to ensure on-site noise levels are less than significant.

Response 26

Please refer to Topical Response, *Airport Noise*. The commenter provides background on the health risks associated with exposure to high noise levels. As discussed in the Draft EIR and the topical response, the project site is located outside the John Wayne Airport's 60 dBA CNEL contour. Additionally, the Project would be required to comply with MMs 4.10-5 and 4.10-6 to ensure on-site noise levels do not exceed City standards.

Response 27

Please refer to the response to Comment 25. As discussed in the Draft EIR, health risk impacts for the project area were analyzed in the 2014 *John Wayne Airport Settlement Agreement Amendment Environmental Impact Report* (2014 John Wayne Airport EIR) and show that risk levels would be below SCAQMD thresholds in the project area.

The Project would not include operational sources of toxic air contaminants (TACs) as it is proposed as a mixed-use infill residential and retail development. As addressed on page 4.2-18 of the Draft EIR, operational emissions, including diesel particulate matter (i.e., PM₁₀ and PM_{2.5}), from the Proposed Project would not exceed SCAQMD thresholds. Construction of the Proposed Project would result in exhaust (NO_x) emissions slightly above the SCAQMD threshold. Mitigation Measure (MM) M 4.2-1 identified in the Draft EIR would require the use of newer construction equipment with better emissions controls and would reduce construction-related NO_x emissions. Potential impacts of NO_x construction emissions on sensitive receptors was analyzed using localized significance thresholds (LSTs). Table 4.2-8 of the Draft EIR Table 4.2-8 identifies that NO_x construction emissions would remain below LSTs. Therefore, it is not necessary to further analyze health risk impacts in relation to the operation and construction of the Proposed Project.

Particulate matter exceedances of the LSTs occur primarily due to fugitive dust emissions. Additionally, the LSTs for particulate matter were derived based on requirements in SCAQMD Rule 403 – Fugitive Dust. Fugitive dust is comprised of inert silicates and does not include TACs or other toxins. As such, the exceedance of particulate matter LSTs (see Table 4.2-8 of the Draft EIR) does not indicate health risk would occur. Furthermore, construction would be subject to and would comply with California regulations limiting the idling of heavy-duty construction equipment to no more than five minutes, which would further reduce nearby sensitive receptors' exposure to temporary and variable construction emissions.

Response 28

Please refer to the responses to Comment 25 and Comment 27. Impacts associated with construction-related diesel particulate matter were also analyzed on Draft EIR (see page 4.2-21). The amount to which the receptors are exposed (a function of concentration and duration of exposure) is the primary factor used to determine health risk (i.e., potential exposure to TAC emission levels that exceed applicable standards). Health-related risks associated with diesel-exhaust emissions are primarily linked to long-term exposure and the associated risk of contracting cancer. The use of diesel-powered construction equipment would be temporary and episodic. The duration of exposure would be short and exhaust from construction equipment dissipates rapidly. Current models and methodologies for conducting health risk assessments are associated with chronic exposure periods of 9, 30, and 70 years, which do not correlate with the temporary and highly variable nature of construction activities. Furthermore, construction would be subject to and would comply with California regulations limiting the idling of heavy-duty construction equipment to no more than five minutes, which would further reduce nearby sensitive receptors' exposure to temporary and variable diesel PM emissions.

Response 29

Please refer to the response to Comment 3.

Response 30

The proposed site plans for the Project were previously circulated for interdepartmental City review and comment, including but not limited to the Police Department. City departments, including the Police Department, did not identify any concerns that would require changes to the site plans.

Response 31

The Draft EIR identifies significant and unavoidable construction noise impacts despite the implementation of Standard Conditions and Mitigation Measures. Standard Condition (SC) 4.10-1 would require that loud noise-generating construction would occur only during hours permitted by the City Noise Ordinance. In addition, MMs 4.10-1 through 4.10-4 would reduce construction noise impacts or minimize the severity of the impacts through a variety of noise abatement methods including the use of noise barriers. In accordance with CEQA requirements, the mitigation measures include performance standards and provide the timing and verification mechanisms for implementation. Although temporary noise barriers would not be affective at the upper floors at the surrounding office receptors and future residences, additional feasible mitigation is not available. Therefore, the Draft EIR determines that these measures would not reduce impacts to a less than significant level. It should be noted that construction noise would occur on an intermittent basis depending on the specific construction activity and proximity of equipment to receptors. As the Project would be developed in phases, construction activities would not occur adjacent to any receptor for the duration of Project development. As construction noise would cease once the project is completed, an offsite alternative is not necessary.

Additionally, the potential for development of the Project at an alternative location was addressed in Draft EIR Section 6.4.1. As discussed in the Draft EIR, should the Proposed Project be located at another site in the Airport Area, it is anticipated that the mixed-use project would have similar environmental impacts that would require the City to adopt a Statement of Overriding Considerations. Significant unavoidable impacts associated with development of an alternative site could include construction-related air quality

and noise impacts; and the need to override of the ALUC's finding of inconsistency with the AELUP. Therefore, the Draft EIR did not evaluate an alternative site because no other site in the Airport Area is known that would definitively "avoid or substantially less any of the significant effects associated with a proposed project."

Response 32

The commenter is incorrect that all construction equipment at Tier 4 standards is readily available. The commenter states that since Tier 4 construction equipment was required in the SCAQMD's Tesoro Refinery Project EIR, that it should be feasible for the Proposed Project. However, the Tesoro Final EIR acknowledges that the pool of available Tier 4 equipment is limited and it is not certain that all construction equipment will be available that meets Tier 4 standards.⁷ It should be noted that the emissions associated with the Tesoro project would still exceed thresholds despite the implementation of Tier 4 equipment. The Draft EIR for the Proposed Project conservatively requires all equipment greater than 50 horsepower to meet Tier 3 standards. Because Tier 3 equipment is readily available, the mitigation for the Proposed Project is reasonable and feasible.

Response 33

Please refer to the response to Comments 15 and 21.

Response 34

Please refer to the response to Comments 15 and 21.

Response 35

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.

Response 36

Please refer to Topical Response, *Cumulative Projects*.

The commenter's assertion regarding the completion of Project construction is noted. However, the commenter provides no evidence to support this opinion. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.) No further response is required.

Ordinance 1449 (PC-15 Koll Center) requires one tree per five surface parking stalls. This requirement does not apply to parking within structures. Where parking area trees are removed as a part of the reconfiguration of surface parking, as noted in Section 3.0, *Project Description*, landscaping would be provided within the surface parking areas consistent with City requirements governing the Project. The City is responsible for ensuring compliance with landscape requirements.

⁷ South Coast Air Quality Management District, *Tesoro Los Angeles Refinery – Integration and Compliance Project Final EIR*, page 4-42, May 2017.

An analysis of the Project's potential impacts to foraging, nesting, and sensitive birds is included in Section 4.3, *Biological Resources* of the Draft EIR.

Response 37

As noted in Section 4.9, *Land Use and Planning*, of the Draft EIR, the ALUC's consistency determination for the Project must occur prior to Newport Beach City Council action on this Project. The possibility of an ALUC determination of inconsistency with the AELUP is considered potentially significant. No mitigation measures are available that would reduce this impact to less than significant. A significant unavoidable adverse impact would result and a Statement of Overriding Considerations would be required to be made by the City Council at the time action on the Project is taken. The commenter's opinion regarding the appropriateness of the City Council to override an ALUC determination is noted.

California Public Utilities Code Section 21676(b) and John Wayne Airport Environs Land Use Plan (AELUP) Section 4. 11 require the City to refer the Koll Center Residences Project to the Airport Land Use Commission (ALUC) for consistency determination with the AELUP due to the proposed zoning amendments (Planned Community Development Amendment and adoption).

Should the ALUC find the Proposed Project to be inconsistent with the AELUP, as a final review authority on legislative acts, the City Council may, after a public hearing, choose to overrule the ALUC's decision by following the procedure established in Public Utilities Code Sections 21676 and 2176. 5. This two-step procedure requires the City Council to conduct two separate noticed public meetings. The initial step is to notify ALUC and State Division of Aeronautics of the City's intention to override the ALUC's determination by adopting a resolution of intent at least 45 days in advance of the overruling; and the second meeting is to make specific findings that the proposed overruling is consistent with the purposes stated in Public Utilities Code Section 21670. Should the Council adopt the notification resolution, this action does not constitute the Project's approval nor does it predispose the City's future action on the Project. When the ALUC makes a determination that a project is not consistent with the AELUP, approval of a project by the City Council requires a two-thirds vote to override this determination.

Response 38

The opinions of the commenter are noted.

Letter B-4a **SoCal Pilots**
Joe Finnell
October 11, 2017



October 11, 2017

Via Email rung@newportbeachca.gov

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Request for a Minimum 20-Day Extension of the Public Comment Period for the Draft Environmental Impact Report for the Koll Center Residences Project; SCH No. 2017011002

Dear Ms. Ung:

SoCal Pilots Association requests an extension of the draft environmental impact report (DEIR) comment period for the Koll Center Residences Project to November 16, 2017 at 5:00 p.m. The City's current 45-day comment period will close on October 27, 2017. An additional 20 days of public comment would ensure the City can satisfy the California Environmental Quality Act's (CEQA) goal of ensuring public participation in the environmental review process.

Unless extended, the short comment period on this project is likely to dissuade substantive comments on the DEIR, from SoCal Pilots Association and other organizations until after the current comment period. Moreover, late-submitted comments may not receive the good faith written responses required of comments submitted prior to the close of the formal comment period. SoCal Pilots Association wishes to ensure that its comments to the City are accurate and that it has sufficient opportunity to communicate with the City regarding its concerns about the project and its portrayal in the DEIR. If the comment period is not extended an additional 20 days, SoCal Pilots and others will be deprived of the meaningful, two-way communication with the City needed for a successful CEQA process.

SoCal Pilots members have reasons to believe that there are substantial safety and noise issues that have not been addressed in the DEIR. Furthermore, the Development Agreement for the Project has not been publicly disclosed. It is important that all aspects of the Project, its impacts, and its mitigation measures and implementation conditions are disclosed and analyzed in the DEIR. A short, a 20-day extension of the comment period is necessary to provide the public the opportunity to review these supporting materials and to provide the City the opportunity to satisfy CEQA's public participation requirements.

Thank you for your consideration of this request to extend the close of the comment period for the Koll Center Residences Project to November 16, 2017 at 5:00 p.m. Please contact me if you have any questions.

Sincerely,

Joe Finnell on behalf of
SoCal Pilots Association
joefinl@socal.rr.com

Response 1

The public review period for the Draft EIR was extended to November 13, 2017, which provided the public a total of 62 days to comment on the EIR. Additionally, both safety and noise impacts were fully analyzed in the EIR. Please refer to Sections 4.7, *Hazards*, and 4.10, *Noise*, respectively.

Letter B-4b **SoCal Pilots**
Joe Finnell
November 13, 2017



November 13, 2017

Via Email rung@newportbeachca.gov

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Comments on the Draft Environmental Impact Report (DEIR) for the Koll Center Residences Project; SCH No. 2017011002

Dear Ms. Ung,

The Southern California Pilots Association (SoCal Pilots) represents over 1400 pilots, of which 300 frequently use the John Wayne Airport. Many are tie-down or permanent hangar residents. Locating a residential development close to an airport goes against all urban planning guidelines. The proposed Koll Center development is in the flight path of Runway 20L which handles high intensity flight training and small aircraft. Established helicopter flight corridors are also within the planned development with helicopter traffic approaching to land at roof top level.

Current business owners in KCN operate during normal business hours. Business owners and their employees work indoors but typically walk or drive to lunch or hold walking meetings. Everyone accepts the airport noise as it is a **business park**. Commercial use is compatible with the airport corridor. However, intermixing residential use within close proximity to a busy airport will result in economic loss for existing airport businesses and the pilot community. This is because Koll Center Residence owner/occupants will be unsatisfied with the noise and pollution and will historically use their influence to restrict aircraft and flight training. Residences should never be placed this close to an airport.

Investors in luxury residential condos may find cause to sue the City of Newport Beach and other parties for approving residential use that is incompatible with existing known noise and pollution impacts. The inherent exhaust and oily particles from low flying aircraft will create daily **residential** tenant dissatisfaction of living in an environment so close to an airport. The planned pools and park will greatly suffer and become less





attractive simply by existing in a constant business commercial environment. Further, propeller and engine noise is going to be a huge issue for any future residential uses this close to the airport.

Aircraft flying in the pattern of runway 20L fly just over 700 feet in this pattern leg. However, there are numerous examples where aircraft are under this height when the ground below is a parking lot and not a thirteen-story residential tower. FAA regulations require 1,000 feet above the highest obstacle over occupied territory (Federal Aviation Regulation 91.119 (b) Minimum safe altitude over congested areas.) The Airport Land Use Planning Commission will be addressing the incompatibility of this project being this close to a busy airport.

The Koll Residences DEIR fails to address multiple and significant impacts associated with the flight path directly over the Project site by private planes, helicopters and flight school operations.

Project applicants emphasized the outdoor living opportunity provided by the Project at the October 1, 2017 briefing. Unlike the business uses in Koll Center, residential use will place families 24/7 on site. These families will be exposed to relentless noise from both small aircraft climbing at full power and large jets departing at maximum climb rate. Both of these significant impacts were not disclosed nor adequately analyzed in the DEIR.

For the reasons described in detail below, we request that the DEIR be revised to include this information and analysis and recirculated for at least a 60-day comment period.

The DEIR's Project Setting Fails to Describe the Flight Path of Private Planes and/or Pilots in Training.

The DEIR's setting information is incomplete with respect to the Flight Path of Private Planes and Pilot Training Schools; information material to an adequate disclosure and analysis of the Project's impacts related to noise, safety, living environment and liability. A revised DEIR must include this setting information and revise impact analyses accordingly.

The DEIR Fails to Disclose and Analyze the Significant Noise and Pollution Impacts Associated with existing Flight Paths

To illustrate the intensity of aircraft flying over the proposed high rise residential towers, SoCal Pilots requested that Access and Noise at John Wayne Airport provide flight statistics over the proposed development. For purposes of simplicity, the sample data

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was graphed over a one week period and drawn from runway 20L activity only. Three scenarios were utilized. **First**, overflights were monitored during a work week, Monday to Friday from 9:00 a.m. to 5:00 p.m. The attached graph shows the traffic pattern flights over the proposed project. For this one week, there were 417 flights that flew within the proposed project area around 4400 Von Karman at an average altitude of 776 feet. Note that Access and Noise data disclosed that the lowest altitude was a Helicopter that was 110 feet above the proposed site during this week’s sampling.

The **second** scenario graphs the air traffic pattern over the proposed project during **non**-business hours (evening/night to early morning), Monday to Friday during the same sample week. Refer to the attached graph. This second scenario tracked 160 aircraft that flew over the project area around 4400 Von Karman at an average altitude of 747 feet. What this shows is that air traffic starts early in the morning and goes late at night. Small aircraft do not have the curfew that the larger commercial airlines have. In fact, a propeller aircraft was tracked at 242 feet during the sample week between the hours of 5:00 p.m. and 9:00 a.m. the next morning.

The **third** scenario graphs the air traffic pattern over the proposed project during the weekend, Saturday and Sunday. During the sample weekend, there were 148 aircraft that flew over the proposed development around 4400 Von Karman at an average altitude of 799 feet. The lowest altitude tracked was a propeller aircraft at 216 ft. This illustrates that weekend air traffic is just as intense as weekday air traffic. The existing traffic pattern from 20L is not compatible with residential outdoor living spaces such as balconies, pools, lounge areas or the proposed park. **Moreover, because the DEIR doesn’t adequately address sound and pollution impacts with enough detail it needs to be redrafted.** There is no way that the residential development as proposed creates a cohesive development for residents and businesses.

The three data samples show that air traffic doesn’t discriminate between commercial and residential land use, it just follows the standard traffic pattern of typical airports.

Moreover, residents inhabit their space more than 8 hours a day. This intensity needs to be studied and compared to existing flight patterns. Because of the location in the departure flight path, the proposed height of the residential towers creates a safety risk for pilots departing to the East or in the pattern at John Wayne Airport. The proposed exterior spaces and especially the balconies will not translate into practical and usable outdoor living space for residents. Residents would end up complaining to the City about noise and it would create an antagonistic relationship between prior users of the airport corridor and the new residents who expect to be able to use their balconies and outdoor living space on the weekend and in the evenings.



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Furthermore, aircraft in the 20L pattern use full power when departing the airport and then turn while climbing in a counter clockwise direction. This flight pattern is standard across typical airports and is not unique to John Wayne Airport. Moreover, the departing aircraft are emitting their highest decibels right over the proposed location. High rise residential buildings are not compatible this close to the landing and departure of aircraft from runway 20L.


Finally, the charts are isolating air traffic only from 20L. There is a second runway, 20R that carries larger passenger and freight transportation aircraft. Although the take off and landing pattern of the larger aircraft extends over the Back Bay, there is still significant air pollution and noise associated with that air traffic within KCN. Commercial users primarily function in interior spaces and willfully accept the benefit of proximity to transportation corridors over the negative impact of sound and air pollution. Residential users have a completely different expectation when it comes to outdoor living... quiet enjoyment, perceived safety and pollution issues.

The DEIR Fails to Disclose and Analyze the Significant Liability for the City to Approve a Residential Project on this Site

It may be legal for the City to override an inconsistency with ALUC. However, doing so places the liability lawsuits related to noise complaints directly on the City. For this reason alone, the City should not approve a residential use on this site. The General Plan Update Should Be Completed Prior to Consideration of Major Projects in the Airport Area.

The City has initiated a General Plan Update process. During the public outreach to scope the Update, the Airport Area is one of two areas in Newport Beach the public specifically said is in need of revisioning. This Project should be denied and the General Plan Update completed.

For all the above stated reasons, the City must – at a minimum – revise and recirculate the DEIR. We will be supplementing these comments in January when additional technical information requested by our experts will be forthcoming.

Sincerely,

 Joe Finnell, President
 SoCal Pilots Association
 (714) 293-3601 (C)
 (714) 839-7377 (H)

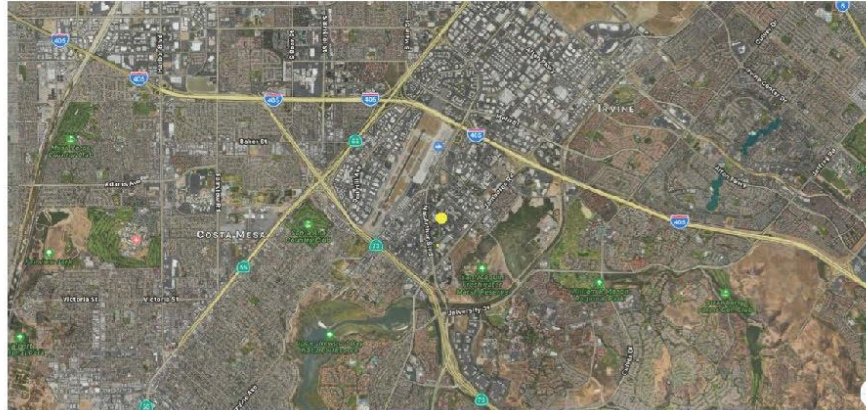
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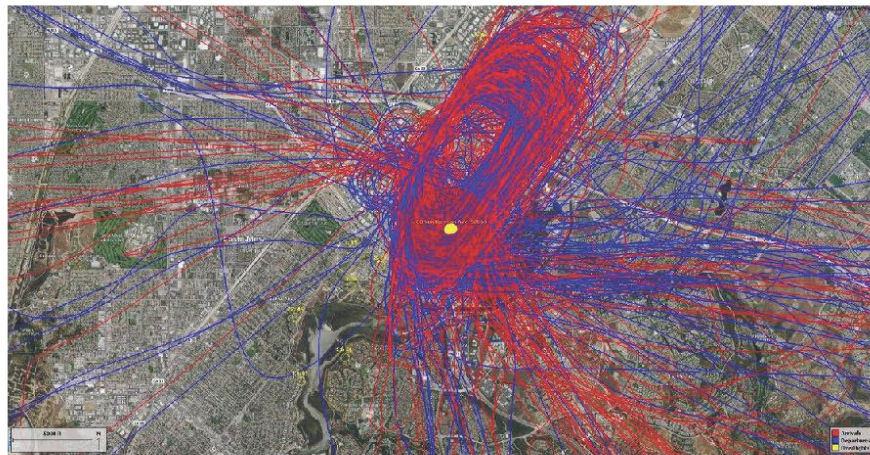


Attachments: Overflights of Project Site

Proposed Project Area with Yellow Dot



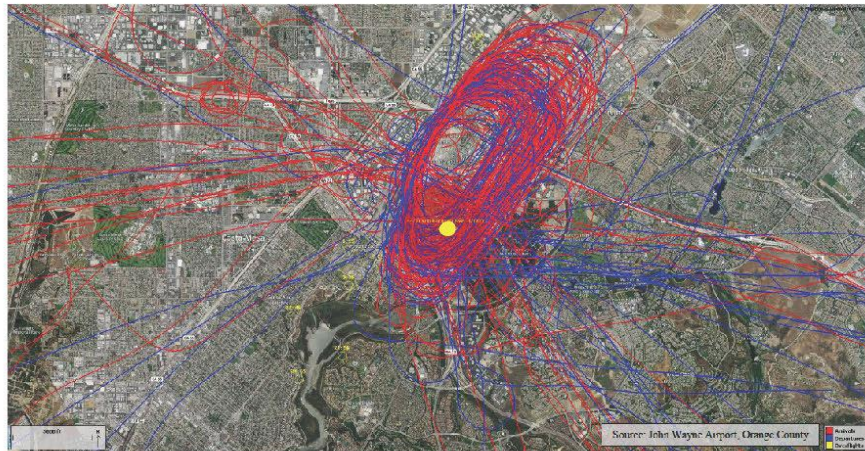
Weekday Overflights of Project Site
Monday, September 11, 2017 – Friday,
September 15, 2017 9:00 AM to 5:00 PM



Average Altitude Over Project /Site – 776 Ft
Total Flights Over Project Site- 417 .

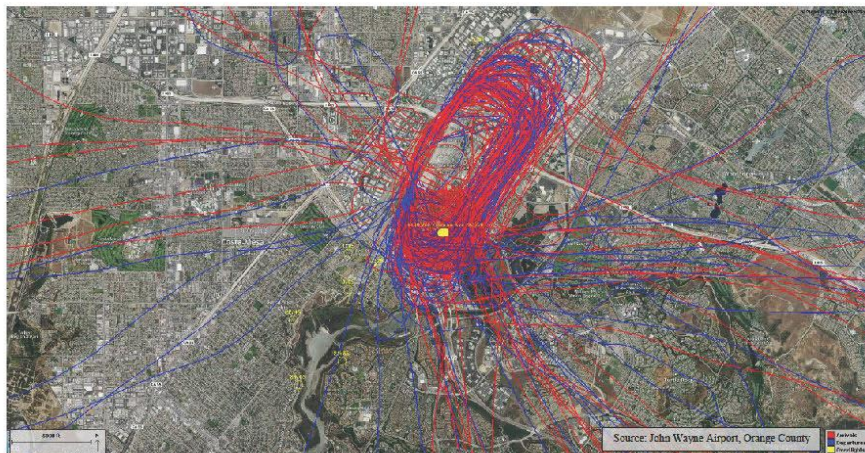


Weekday Overflights of Project Site
Monday, September 11, 2017 – Friday,
September 15, 2017 5:00 PM to 9:00 AM



Average Altitude Over Project /Site – 747 Ft
Total Flights Over Project Site- 160

Weekend Overflights of Project Site
Saturday September 16, 2017 to Sunday
September 17, 2017



Average Altitude Over Project /Site – 799 Ft
Total Flights Over Project Site- 148

Response 1

Please refer to Topical Response, *Airport Noise*. As discussed in the Draft EIR and the topical response, the project site is located outside of the John Wayne Airport 60 dBA CNEL contour. It should be noted that the Airport noise contours include all aircraft operations including private aircraft. The Draft EIR also includes mitigation requiring a future noise study to determine if upgraded building materials and sound insulation would be required.

The commenter's opinion regarding the potential for future litigation against the City of Newport Beach is speculative and beyond the scope of this EIR.

Response 2

Please refer to the response to Comment 1 and Topical Response, *Airport Noise*. The project site is outside of the John Wayne Airport 60 dBA CNEL contour and the Draft EIR also includes mitigation to ensure future residents would not be exposed to excessive noise levels. MM 4.10-5 requires interior noise levels to comply with Title 24 of the California Code of Regulations, and MM 4.10-6 requires a detailed acoustical study demonstrating that all residential units would meet the City's 60 dBA exterior noise standard for all patios, balconies, and common outdoor living areas through any necessary noise reduction features (barriers, berms, enclosures, etc.). The Airport noise contours include all aircraft operations including private aircraft.

Response 3

Please refer to Topical Response, *Airport Noise*. As noted, the Airport noise contours include all aircraft operations including private aircraft.

With respect to disclosure related to the location of the property to John Wayne Airport, PC-15 Koll Center as amended, would include the following provision:

A written disclosure statement shall be prepared prior to sale, lease, or rental of every residential unit within a mixed-use project. The disclosure statement shall indicate that the occupants will be living in an urban type of environment in proximity to John Wane Airport and that noise, odor, air quality, outdoor activity levels, etc. may be different or higher than typical suburban residential areas. The disclosure statement shall include a written description of the potential impacts to residents of both the existing environment and potential impacts based upon the allowed uses in the vicinity.

Each and every buyer, lessee, or renter shall sign the statement acknowledging that they have received, read, and understand the disclosure statement. The project applicant shall covenant to include within all deeds, leases or contracts conveying any interest in a residential unit within a mixed-use project (1) the disclosure and notification requirement as stated herein; (2) an acknowledgment by all grantees or lessees that the property is located within an urban type of environment and that the noise, odor, air quality, outdoor activity levels, etc. may be different or higher than typical suburban residential areas; and (3) acknowledgment that the covenant is binding for the benefit and in favor of the City of Newport Beach.

Response 4

The commenter introduces flight statistics for the John Wayne Airport and attempts to draw conclusions based on that data. It should be noted that noise impacts to the project site from the airport were evaluated based on recent data and noise contours for the John Wayne Airport. As discussed in the Draft EIR and Topical Response: *Airport Noise*, the project site is outside of the John Wayne Airport 60 dBA CNEL contour. These contours take into account aircraft type and flight paths associated with the airport. Furthermore, as described in the topical response, analysis from the Metroplex EA indicates that future noise levels in the project area may be lower. Additionally, the General Aviation Noise Ordinance (GANO) has been adopted by the County of Orange to regulate the hours of operation and the maximum permitted noise levels associated with general aviation operations. John Wayne Airport maintains ten permanent noise monitoring stations. The GANO specifies noise limits at each noise monitoring stations that vary by time of day. The GANO also identifies private aircraft that may not meet the noise standards and specifically limits their operations unless the aircraft owner/operator can furnish evidence that the aircraft can operate within acceptable noise levels.

Additionally, as noted in Section 4.9, *Land Use and Planning*, of the Draft EIR, the ALUC's consistency determination for the Project must occur prior to Newport Beach City Council action on this Project. The possibility of an ALUC determination of inconsistency with the AELUP is considered potentially significant. No mitigation measures are available that would reduce this impact to less than significant. A significant unavoidable adverse impact would result and a Statement of Overriding Considerations would be required to be made by the City Council at the time action on the Project is taken.

Response 5

The City has not initiated a process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process. As currently proposed, the Project is consistent with the General Plan. Additionally, it is appropriate to utilize the General Plan approved at the time the Project is being considered for approval.

Letter B-5 Aircraft Owners and Pilots Association (AOPA)

Adam Williams, Manager, Airport Policy

November 13, 2017



50 F St. NW, Suite 750
Washington, D.C. 20001

T. 202-737-7950
F. 202-273-7951

www.aopa.org

Comment Letter B-5

November 13, 2017

Rosalinh Ung, Associate Planner
Community Development Department, Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RE: Koll Center Residences Project Draft EIR

Dear Ms. Ung,

The Aircraft Owners and Pilots Association (AOPA) is the world’s largest general aviation association with nearly 350,000 members including 32,000 members in California. On behalf of our members, I am writing to provide comments on the Draft Environmental Impact Report (DEIR) for the Koll Center Residences Project (PA2015-024). The project aims to bring 260 new dwelling units to the project site. Residential development this location, 0.5 miles from the airport and directly beneath the traffic pattern, is incompatible with the airport. AOPA urges the Newport Beach Planning Commission to deny this residential development project.

The DEIR discusses several significant unavoidable adverse environmental impacts. One such impact relates to land use compatibility with SNA. The compatibility will be reviewed by the county’s Airport Land Use Commission (ALUC). The DEIR indicates the ALUC may find the project to be incompatible with the current land use plan for the airport. While this reality should have been recognized before the zoning was changed to mixed use, the City of Newport Beach still has an opportunity to prevent future conflicts between SNA and adjacent residents.

The real impact of aircraft noise on potential Koll Center residents has not been presented in the DEIR. The city’s General Plan indicates noise contours around John Wayne Airport. It is commonly held that an average noise level of 65 decibels is the maximum average noise level that is compatible with residential land use. Since the project site is located slightly beyond the 65-decibel contour, proponents of the Koll Center Residences Project will argue that aircraft noise is not a factor for the City’s consideration.

There are several problems with the assertion that aircraft noise will not be a factor for the residents. Noise data has not been recently collected at the project site, so the precise noise levels to be experienced by future residents is not known. Furthermore, the 65-decibel standard has been shown to be an insufficient measure of compatibility.

Naples Municipal Airport, which has *one third* of the number of annual flight operations of SNA, has been forced to adopt a 60 DNL standard after decades of costly legal battles over noise. The City of Naples, Florida, has spent tens of thousands of taxpayer dollars in federal



proceedings and litigation to address noise impacts of the airport on the surrounding community. This led to a ban on certain general aviation aircraft which remains in effect today. Similarly, Hanscom Airport in Massachusetts has strict noise abatement procedures and restrictions on evening and night operations. At one point, lawsuits were filed to halt flight training operations. Numerous other cities have suffered a similar fate while believing that residential encroachment of their airport would be harmless. When incompatible projects are allowed to develop the taxpayers have to pay the legal costs.

Several airports have been required to mitigate aircraft noise outside of the 65 DNL after finding the noise to substantially impact the residents in those areas. We strongly urge the City to develop Newport Beach in harmony with the airport and learn from the mistakes made by other locations around the country. Since an update to the General Plan has already begun, the City has an opportunity to collect public input and amend the General Plan to reflect the most appropriate uses of land surrounding the airport. Once the update is complete, this DEIR should be reviewed against the new General Plan, revised as needed, and recirculated for public comment.

Aircraft noise from operations at John Wayne Airport has already impacted surrounding communities enough to cause Orange County to create the General Aviation Noise Ordinance (GANO). The ordinance sets limits on aircraft noise and establishes penalties for violations. Three instances of noise violations result in the violator being banned from use of the airport. If a banned operator proceeds to use the airport, the operator will be charged with a misdemeanor punishable by civil penalty or imprisonment. The threat of jail time as a punishment for normal flight operations at a publicly-funded airport is highly unusual in the United States and indicates an environment that is abnormally sensitive to aircraft noise. Due to the lessons learned from other municipalities, and the historic noise issues in areas adjacent to John Wayne Airport, the Koll Center Residences Project must not be permitted by the City of Newport Beach.

While the project site is not directly aligned with a runway end, a high volume of air traffic flies directly over the project site during normal operations. An FAA finding of “no hazard” after a FAR Part 77 obstruction analysis does not suggest there is no hazard in every respect. It only states that the planned development will not exceed the obstruction standards of Part 77. That means the air traffic procedures will not need to be altered due to the height of the structures. The FAA makes no statement about hazards presented during an emergency or the noise impacts during normal operations. Future residents are depending on the City to plan responsibly, not the Federal government.

A map has been provided along with these comments which shows the concentration of air traffic over the project site. Aircraft departures, the loudest phase of aircraft flight, will be a daily occurrence over the site. The full effect of this cannot be appreciated until after the residents have settled in; long after the real estate developer has moved on to the next venture. Noise mitigations such as layout changes or insulating materials intended to meet the City’s noise standards may reduce average noise levels but will not sufficiently reduce *peak* noise levels to satisfy future residents. The distinct psychological impact of aircraft noise cannot be understood by observing the weighted average noise levels measured by noise monitors. The crescendo of aircraft overhead, the vibration effects, and the awareness of aircraft accidents all factor into the

cont'd
2

3

AIRCRAFT OWNERS AND PILOTS ASSOCIATION

negative human experience of living at a site such as this. The housing market will reflect this diminished quality of life in the future prices of these proposed condominiums.

cont'd
3

The residents of Newport Beach, current and future, are depending on the City to make responsible planning decisions. Consider the variety of uses such as commercial, industrial, parks, and open space which will allow the City to meet its development objectives without subjecting new residents to known noise impacts. John Wayne Airport is an economic engine in your community. Develop the City in harmony with the airport and it will continue to serve as an economic asset for generations to come. We urge the City to deny this project and to consider amendments to the General Plan to clearly discourage residential development in proximity to the airport.

4

Thank you for your attention to this important matter.

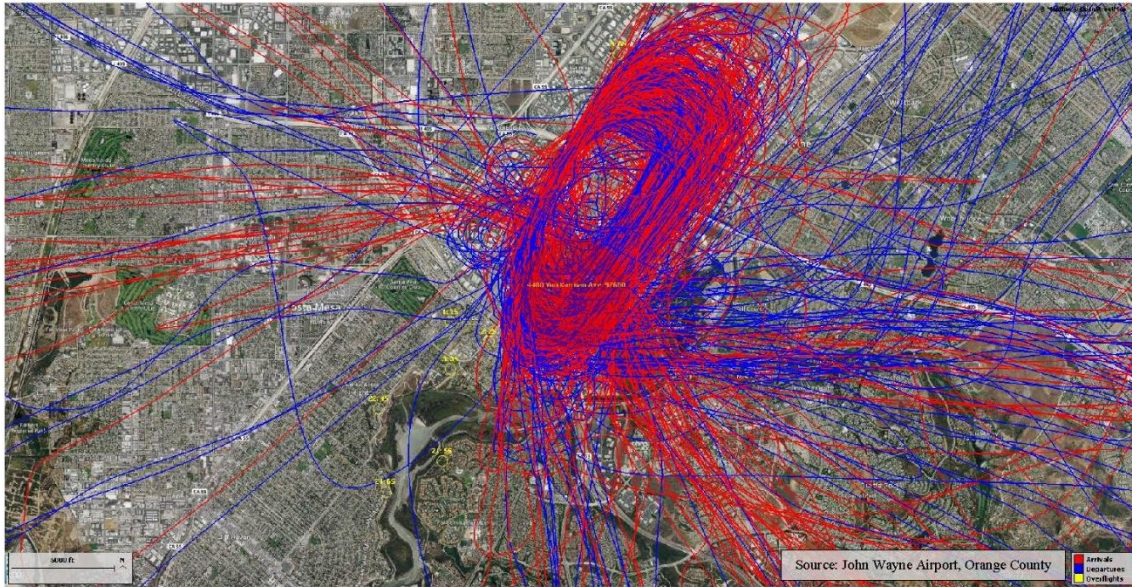
Sincerely,



Adam Williams
Manager, Airport Policy

AIRCRAFT OWNERS AND PILOTS ASSOCIATION

John Wayne Airport Access and Noise Office
Monday, September 11, 2017 – Friday, September 15, 2017
0900 – 1700L



Total Ops - 417

Average Altitude at 4400 Von Karman Ave. – 776 Ft.

Response 1

The comment is noted.

Response 2

Please refer to Topical Response: *Airport Noise*. The commenter focuses on the 65 CNEL contour in the City's General Plan and opines that the 65 CNEL contour is too high of a standard. However, as discussed in the Draft EIR and the topical response, the project site is located outside the John Wayne Airport 60 dBA CNEL contour. Additionally, Mitigation Measure (MM) 4.10-6 requires a detailed acoustical study demonstrating that all residential units would meet the City's 60 dBA exterior noise standard for all patios, balconies, and common outdoor living areas through any necessary noise reduction features (upgraded building materials/insulation, barriers, berms, enclosures, etc.). As noted in the comment, the General Aviation Noise Ordinance (GANO) has been adopted by the County of Orange to regulate the hours of operation and the maximum permitted noise levels associated with general aviation operations. Compliance with the GANO is mandated. It should be noted that the Project does not propose modifications to the GANO.

Response 3

The commenter raises the issue of impacts to the Project from FAA procedures. As noted in Section 4.9, *Land Use and Planning*, of the Draft EIR, the ALUC's consistency determination for the Project must occur prior to the Newport Beach City Council taking action on this Project. The possibility of an ALUC determination of inconsistency with the AELUP is considered potentially significant. No mitigation measures are available that would reduce this impact (inconsistency determination) to less than significant. A significant unavoidable adverse impact would result and a Statement of Overriding Considerations would be required to be made by the City Council at the time action on the Project is taken. Please also refer to the response to Comment 2 and Topical Response: *Airport Noise* regarding the noise levels from aircraft operation and associated Project mitigation.

Response 4

This comment provides concluding remarks and does not raise a specific issue regarding the Draft EIR or any other CEQA issue. The commenter's general opposition to the Project is noted. No further response is required.

Letter B-6 Orange County Flight Center

Gary Sequeira, President

November 13, 2017

From: Gary Sequeira [<mailto:gary@ocfc.com>]
Sent: Monday, November 13, 2017 4:18 PM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Cc: Adriana Fourcher <afourcher@bitcentral.com>
Subject: FW: URGENT REMINDER: Koll Center Residences DEIR comments due today

From: Gary Sequeira
Sent: Monday, November 13, 2017 3:01 PM
To: 'Adriana Fourcher' <afourcher@bitcentral.com>
Subject: RE: URGENT REMINDER: Koll Center Residences DEIR comments due today

To Whom it may concern,
RE: "Comments on the Draft Environmental Impact Report for the Koll Center Residences Project; SCH No. 2017011002"

This letter is to voice our growing concern regarding the planned community development known as the Koll Center Residents Project (PA2015-024) . As an operator of Orange County Flight Center here at KSNA since 1991, we have endured our fair share of noise complaints from the surrounding communities. To knowingly construct another community within a mile or so of John Wayne is unconscionable. We have been fighting with one of the local neighbors for over 2 years now. An additional residential community this close to all of the aviation traffic would only pave the way for more complaints, red tape, and ill feelings. We are totally on board with the thoughts and comments of AOPA, and support all they are doing to make sure this issue is completely examined prior to any ground breaking.

Yours Truly,
Gary Sequeira/Pres. OCFC

1

Response 1

The commenter’s opposition to the Project is noted.

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Comment Letters and Responses: Individuals and Businesses (C)

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Letter C-1a Bruce Bartram
September 28, 2017

From: Bruce Bartram [mailto:cpq1x8v0@verizon.net]
Sent: Thursday, September 28, 2017 10:22 AM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Cc: nanalston@gmail.com; Dennis.Baker@DiandDen.net; abeek@flash.net; Don Harvey <harveydonw@juno.com>; jocarol@ix.netcom.com; dorothyjkraus@gmail.com; dkrotee@krotee.com; andylinge@gmail.com; elinhoff@sbcglobal.net; bobbylovel2000@yahoo.com; jenmcd10@aol.com; marko@uci.edu; pricejcb@gmail.com; nbseely@aol.com; jskinnermd@aol.com; jwatt4@aol.com; portia weiss@gmail.com; terrywelsh@hotmail.com; Karen_Tringali@msn.com; dho@obermanassociates.com; jimmosher@yahoo.com
Subject: Re: Koll Center Residences DEIR Comment I

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Koll Center Residences draft environmental impact report (DEIR) Comment I

Dear Ms. Ung:

According to Koll Center Residences DEIR Executive Summary the project location and description are described as follows in pertinent part:

"The Koll Center Residences project site (project site) is approximately 13.16 acres within the Koll Center Newport, a 154-acre mixed-use development area. The project site is an irregularly-shaped property generally bordered by Birch Street to the northeast, Von Karman Avenue to the west, and existing office uses and associated surface parking lots and parking structures to the east and south....

The Proposed Project is a mixed-use infill residential and retail development with up to 260 residential condominiums, 3,000 square feet (sf) of ground-floor retail uses, a 1.17-acre public park, a free-standing parking structure, and the reconfiguration of some of the existing surface parking areas. The residences would be in three, 13-story residential buildings. The buildings would be up to 160 feet in height with two levels of above-grade and two to three levels of below-grade structured parking....

The project site is zoned "Koll Center Newport Planned Community (PC-15 Koll Center)". Specifically, the project site is within Professional and Business Offices Site B of PC-15 Koll Center (Site B). PC-15 zoning permits professional and business offices, hotels and motels, retail, restaurants and entertainment, a courthouse, private clubs, and auto detailing and service stations. Currently, Site B allows professional and business offices, restaurants, and support commercial uses...." (Emphasis added)

In Section 3.4.2. of the Project Description portion of the Koll Center Residences DEIR the Zoning Designation of the project site is discussed in pertinent part as follows:

"The City of Newport Beach Municipal Code (NBMC) Chapter 20.56 allows a "Planned Community District" to address land use designation and regulations in the form of Planned Communities. A Planned Community (PC) District, as stated in Municipal Code Section 20.56.010, is intended to:

- A. Provide for the classification and development of parcels of land as coordinated, comprehensive projects in order to take advantage of the superior environment which can result from large-scale community planning.
- B. Allow diversification of land uses as they relate to each other in a physical and environmental arrangement while ensuring substantial compliance with the spirit, intent, and provisions of this Zoning Code.
- C. Include various types of land uses, consistent with the General Plan through the adoption of a development plan and text materials that identify land use relationships and associated development standards.

As depicted in Figure 3-5, Existing Zoning Designation, the project site is zoned "Koll Center Newport Planned Community (PC-15 Koll Center)". Specifically, the site is within Professional and Business Offices Site B of PC-15 Koll Center (Site B)....

Zoning regulations are provided in the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 and subsequently amended several times...."

The Koll Center Newport Planned Community is a community plan. Under California state law, a community plan is part of the general plan, focusing on a particular neighborhood or community within the larger jurisdiction. Community plans allow a city or county to concentrate on the most salient issues and develop planning strategies and actions best suited for particular communities without going through the time and expense involved in revising or updating the general plan as a whole. A community plan must be consistent with the general plan of which it is a part. Government Code §65301(b); Public Resources Code § 21083.3; Naraghi Lakes Neighborhood Preservation Association v. City of Modesto (2016) 1 Cal. App. 5th 9.

The City of Newport Beach provides a webpage listing the City's Planned Communities including the Koll Center Newport Planned Community and their respective development standards at:
<http://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/planned-communities>.

Attached are the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 linked by the City on their above webpage. As you can see, on pages 16-17 of the Development Standards it is stated as follows:

"Building Height

Maximum building height shall not exceed twelve (12) stories above ground level, and shall in no way exceed the height limits set by the Federal Aviation Authority for Orange County Airport." (Emphasis added)

The twelve (12) story building height limit contained in Koll Center Planned Community Development Standards conflicts with the Koll Center Residences project's intended "three, 13-story residential buildings. The buildings would be up to 160 feet in height with two levels of above-grade and two to three levels of below-grade structured parking..." as stated in the DEIR's Executive Summary cited above. Yet this conflict is nowhere discussed the DIER.

Instead, as is listed in Section 1.6 of the Executive Summary Table 1.1 Summary of Significant Impacts and Mitigation Program on Page 1-24 the following is stated in pertinent part::

"Thresholds Applied Environmental Impacts/ Level of Significance Before Mitigation
Summary of Mitigation Program: Project Design Features, Standard Conditions, and Mitigation Measures
Level of Significance After Mitigation

Threshold 4.9-2

Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

Environmental Impacts/ Level of Significance Before Mitigation
Implementation of the Project would not result in significant land use impacts related to relevant Newport Beach General Plan goals and policies . The Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development. Because the amendment would be consistent with the General Plan and Airport Business Area ICDP, the amendment to PC-15 Koll Center would not result in a change in policy that would result in significant impacts." (Emphasis added)

As noted above, the DEIR only mentions the need to amend Koll Center Planned Community Development Standards to include residential uses. A review of the attached does indeed reveal that no residential uses are listed as permitted uses. However, no mention is made of the Development Standards' twelve (12) story building height limitation and its conflict with the project's intended three, 13-story residential buildings.

1

As noted in the Section 2 Introduction of the DEIR the following is stated:

"2.1

Purpose of this Environmental Impact Report

This Environmental Impact Report (EIR) has been prepared to evaluate the potential environmental impacts associated with the construction and implementation of the proposed Koll Center Residences Project (Proposed Project or Project). The EIR has been prepared in conformance with the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] §§ 21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations [CCR] Chapter 3, §§ 15000 et seq.). The EIR has also been prepared in accordance with Newport Beach City Council Policy K-3, "Implementation Procedures for the California Environmental Quality Act".

The City of Newport Beach (City) is the "public agency which has the principal responsibility for carrying out or approving the project" and, as such, is the "Lead Agency" for this Project under CEQA (14 CCR §15367). CEQA requires the Lead Agency to consider the information contained in an EIR prior to taking any discretionary action. This EIR is intended to provide information to the Lead Agency and other public agencies, the general public, and decision makers regarding the potential environmental impacts from the construction and operation of the Proposed Project. The City, as the Lead Agency, will review and consider this EIR in its decision to approve, revise, or deny the Project."

CEQA Guidelines § 15125(d) requires an EIR to discuss any inconsistencies between a proposed project and applicable general plans, specific plans and regional plans. (Emphasis added) Pfeiffer v. City of Sunnyvale City Council (2001) 200 Cal.App.4th 1552. Under the Government Code, every county and city is required to adopt a comprehensive, long-term general plan for the physical development of the county or city (Gov. Code, § 65300). A general plan provides a charter for future development and sets forth a city or county's fundamental policy decisions about such development. These policies typically reflect a range of competing interests. Nevertheless, a city's land use decisions must be consistent with the policies expressed in the general plan. (Emphasis added) Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal.App.4th 807, 815.

2

As noted above, under state law a community plan is part of the general plan. Govt.Code §65301(b); Pub. Res. Code § 21083.3. The Koll Center Planned Community Development Standards are part of the City of Newport Beach's General Plan. Consistent with state law, NBMC § 20.10.030 states as follows:

"20.10.030 Authority—Relationship to General Plan.

A. Authority. The regulations within this Zoning Code are enacted based on the authority vested in the City of Newport Beach by the State of California and Section 200 of the City Charter.

B. Consistency with General Plan. This Zoning Code is the primary tool used by the City to carry out the goals, objectives, and policies of the General Plan. It is intended that all provisions of this Zoning Code be consistent with the General Plan and that any development, land use, or subdivision approved in compliance with these regulations will also be consistent with the General Plan." (Emphasis added).

In conclusion, the Koll Center Residences DEIR in its present form is inadequate under CEQA due to its failure to discuss the inconsistencies between the Koll Center Planned Community Development Standards' twelve (12) story building height limitation and the project's intended three, 13-story residential buildings. Further, City approval of the Koll Center Residences project is currently barred due to the project's conflict with the City's General Plan. Id.

Please acknowledge receipt of this email. Thank you for your expected cooperation in this matter.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

Response 1

As addressed in the Draft EIR, the Federal Aviation Administration (FAA) has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. Buildings 1, 2, and 3 would not exceed 160 feet above ground level. The parking structure would not exceed 56 feet above ground level.

As noted by the commenter and addressed in the Draft EIR, the Proposed Project would require an amendment to the zoning text; please see Section 3.0, *Project Description*, and Section 3.9, *Land Use and Planning*. As disclosed in the Draft EIR, the project site is zoned “Koll Center Newport Planned Community (PC-15 Koll Center)” and zoning regulations are provided in the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 and subsequently amended several times. PC-15 Koll Center is separate from, and not a part of, the General Plan.

The Proposed Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The 12-story building height requirement applies to professional and business office developments within PC-15 Koll Center. The proposed changes to PC-15 Koll Center include a Public Park Overlay and a Mixed-Use Residential Overlay, the latter which identifies building height rather than the number of stories associated with site-specific development. With respect to building height, it states:

Building Height

1. No building or structure shall exceed 160 feet above the ground level. Ground level shall be the finished grade established by an approved grading plan.
2. Buildings and structures shall not penetrate Federal Aviation Regulation (FAR) Part 77, Obstruction—Imaginary Surfaces, for John Wayne Airport unless approved by the Airport Land Use Commission (ALUC).
3. In compliance with FAR Part 77, applicants proposing buildings or structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1, Notice of Proposed Construction or Alteration with the FAA. A copy of the FAA application shall be submitted to the ALUC and the applicant shall provide the City with FAA and ALUC responses.

Potential environmental impacts associated with the development of the Project with 13-story buildings up to 160 feet above the ground level are evaluated in the Draft EIR.

Response 2

As a point of clarification to the commenter, the Project does not include the preparation of a community plan. The Planned Community Development standards establishes the zoning regulations for the project site. While the Municipal Code requires consistency between the General Plan and provisions of the Zoning Code, PC-15 Koll Center is not a community plan/General Plan.

Letter C-1b Bruce Bartram
October 6, 2017

From: Bruce Bartram [mailto:cpq1x8v0@verizon.net]
Sent: Friday, October 06, 2017 9:22 AM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Cc: nanalston@gmail.com; Dennis.Baker@DiandDen.net; tomlubaker@hotmail.com; abeek@flash.net; Don Harvey <harveydonw@juno.com>; jocarol@ix.netcom.com; dorothyjkraus@gmail.com; dkrotee@krotee.com; andyingle@gmail.com; elinhoff@sbcglobal.net; bobbylovell2000@yahoo.com; jenmcd10@aol.com; marko@uci.edu; pricejcb@gmail.com; nbseely@aol.com; jskinnermd@aol.com; jwatt4@aol.com; portiaaweiss@gmail.com; portiaaweiss@gmail.com
Subject: Re: Koll Center Residences DEIR Comment II

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Koll Center Residences draft environmental impact report (DEIR) Comment II

Dear Ms. Ung:

This email is in follow up to my Koll Center Residences DEIR Comment I dated September 28, 2017. A copy of that comment is attached and is incorporated by reference herein. In that comment, I pointed out that the Koll Center Residences DEIR in its present form was inadequate under the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] §§ 21000 et seq.). This because of the DEIR’s failure to discuss the inconsistencies between the Koll Center Planned Community Development Standards’ twelve (12) story building height limitation and the project’s intended construction of three, 13-story residential buildings. A copy of the Development Standards is attached to the same September 28, 2017 email above.

1

The Koll Center Residences DEIR’s failure to address the project’s height inconsistencies affects multiple areas of the DEIR’s analysis mandated under CEQA to evaluate the potential environmental impacts associated with the construction and implementation of the proposed Koll Center Residences Project. To cite just one example, Koll Center Residences DEIR Section 5.3 addresses the project’s potential to generate “Growth-Inducing Impacts.”

Section 5.3 states in pertinent part as follows:

“5.3 Growth-Inducing Impacts of the Proposed Action
Section 15126.2(d) of the State CEQA Guidelines (14 *California Code of Regulations* [CCR]) requires the evaluation of the growth-inducing impacts of a project. This section is required to determine the manner in which a project could encourage substantial economic or population growth or construction of additional housing in the surrounding area, either directly or indirectly.

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.....

Growth inducement can be defined as the relationship between a project and growth within the surrounding area.

To address this issue, potential growth-inducing effects are examined through analysis of the following questions:

- Would this Project remove obstacles to growth, e.g., through the construction or extension of major infrastructure facilities that do not presently exist in the project area, or through changes in existing regulations pertaining to land development?
- Would this Project result in the need to expand one or more public services to maintain desired levels of service?
- Would this Project encourage or facilitate economic effects that could result in other activities that could significantly affect the environment?
- Would approval of this Project involve some precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment? “ (Emphasis added)

In answer to the first question above regarding removal of obstacles to growth through changes in existing land development regulations Section 5.3 states in pertinent part as follows:

“..... approval of the Project would not remove any existing regulatory obstacle to growth. The Project is consistent with the General Plan category for the site. As part of the Proposed Project, PC-15 Koll Center Site B would include new overlay zones: Park and Residential, allowing for residential development consistent with the General Plan. Therefore, the Project is not considered growth inducing with respect to removal of obstacles to growth or through the provision of infrastructure.”

In fact, approval of the Project would require an amendment to the Koll Center Planned Community Development Standards’ twelve (12) story building height limitation. This to accommodate construction of the intended 13-story height of the Project’s three residential buildings. In addition, further amendment of Development Standards would be necessary to establish Building Height Land Coverage and Landscape Open Space Land Coverage standards for a thirteen (13) story development like that proposed under the Koll Center Residences Project.

As you can see, the current Development Standards address Building Height Land Coverage and Landscape Open Space Land Coverage only up to a twelve story development. This, of course, is to be expected with the current Development Standards’ twelve (12) story building height limitation for the Project site. As noted on Page 18 on the Development Standards:

“The preceding figures indicate that within a fixed maximum density as the height of the building increases the resulting open landscaped area also increases.”

In answer to the question regarding whether the Project’s approval would involve some precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment Section 5.3 states in pertinent part as follows:

“A project can encourage growth that has already been approved and anticipated through the General Plan process. This planned growth would be reflected in land use plans that have been developed and approved with the underlying assumption that adequate supporting infrastructure ultimately would be constructed. The project site is in the Airport Area of the City of Newport Beach. The Airport Area is approximately 360 acres bordered by Jamboree Road, Campus Drive, and Bristol Street. Within the Airport Area, properties proximate to John Wayne Airport are designated Airport Office and Supporting Uses (AO). Properties near Bristol Street at Jamboree Road, and two additional properties internal to the Airport Area are designated General Commercial. The California Superior Court Harbor Justice Center parcel is designated Public Facilities. The remainder of the Airport Area, inclusive of the project site, is designated Mixed Use Horizontal 2 (MU-H2).

The MU-H2 designation provides for a horizontal intermixing of uses that may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.

- A maximum of 2,200 residential units are permitted as replacement of existing office, retail, and/or industrial uses at a maximum density of 50 units per adjusted gross acre, of which a maximum of 550 units may be developed as infill.
- Non-residential uses are permitted according to the limits included in General Plan Table LU2: Anomaly Locations. The project site is located within Anomaly Location 2 of Statistical Area L4. Anomaly Location 2 has a development limit of 1,052,880 sf.

Of the 2,200 units, 1,650 units must replace existing development so there is no net gain in vehicular trips. The remaining 550 units are “additive” units that can only be constructed on existing surface parking lots located east of MacArthur Boulevard in the Airport Area. The approved Airport Business Area Integrated Conceptual Development Plan (ICDP) covers that portion of the Airport Area generally bordered by MacArthur Boulevard, Jamboree Road, and Birch Street, inclusive of the project site. The Airport Business Area ICDP allows for up to 1,504 new residential units: 1,244 units on the Uptown Newport site and 260 units on the surface parking area of Koll Center Newport where the Koll Center Residences Project is proposed. All of the 260 residential units were identified as “additive” units in the Airport Business Area ICDP because no existing development uses would be removed. The remainder of the units are associated with the Uptown Newport Project.

cont'd
2

Because the Project is consistent with the allowable development assumptions of the Airport Business Area ICDP, both the residential and retail components of the Project were anticipated land uses in this location. Approval of the Project would not change the existing restrictions on development as set forth in the City of Newport Beach General Plan.

.....

Most of the area surrounding the project site is either developed or planned for development. In summary, the Project would not remove obstacles to growth and is therefore not considered growth inducing." (Emphasis added)

Once again, contrary to the DEIR's conclusion above, approval of the Project would require an amendment to the Koll Center Planned Community Development Standards' twelve (12) story building height limitation to accommodate the planned construction of the three, 13-story residential buildings. This certainly qualifies as a "precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment" according to state law standards for determining growth-inducing environmental impacts.

According to the DEIR's Executive Summary, the project site is zoned "Koll Center Newport Planned Community (PC-15 Koll Center)". Specifically, the project site is within Professional and Business Offices Site B of PC-15 Koll Center (Site B). From the Koll Center Newport Planned Community Development Standards the twelve (12) story building height limit applies to the following sites within the Planned Community: Sites A, B, C, D and E. The needed amendment to allow the Project's construction of the three, 13-story residential buildings constitutes a precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment. That being the encouragement of developers on other potential residential projects in the Koll Center Newport Planned Community to seek height amendments in excess of the present twelve (12) story building height limit.

In short, approval of the Project's planned construction of three 13-story residential buildings in the face of the Development Standard's twelve (12) story building height limitation requires additional analysis of the potential for growth-inducing environmental impacts beyond that provided in the DEIR.

It should be noted that such additional analysis would likely constitute significant new information requiring public review. CEQA Guideline 15088.5 states that a "lead agency is required to recirculate an EIR when significant new information is added...after public notice is given...for public review...but before certification. As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information." The information could show that a "new significant environmental impact would result" and/or that a "substantial increase in the severity of an environmental impact would result" and/or that the "draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."

The above "significant new information" and the provisions of CEQA Guideline Section 15088.5 fully justify and require review and recirculation of DEIR. Notice in Section 15088.5(e) that a "decision not to recirculate an DEIR must be supported by substantial evidence in the administrative record". This indicates that CEQA favors recirculation of a DEIR in making the determination under Section 15088.5. This is consistent with both statutory and case law stating "the California Environmental Quality Act (CEQA) (Pub. Resources Code 21000 et seq.) is to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." Tuolumne County Citizens for Responsible Growth v. City of Sonora (2007) 155 Cal. App. 4th 1214.

Please acknowledge receipt of this email. Thank you for your expected cooperation in this matter.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

3

4

Response 1

As addressed in the Draft EIR, the Federal Aviation Administration (FAA) has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. Buildings 1, 2, and 3 would not exceed 160 feet above ground level. The parking structure would not exceed 56 feet above ground level.

As noted by the commenter and addressed in the Draft EIR, the Proposed Project would require an amendment to the zoning text; please see Section 3.0, *Project Description*, and Section 3.9, *Land Use and Planning*. As disclosed in the Draft EIR, the project site is zoned “Koll Center Newport Planned Community (PC-15 Koll Center)” and zoning regulations are provided in the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 and subsequently amended several times. PC-15 Koll Center is separate from, and not a part of, the General Plan.

The Proposed Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The 12-story building height requirement applies to professional and business office developments within PC-15 Koll Center. The proposed changes to PC-15 Koll Center include a Public Park Overlay and a Mixed-Use Residential Overlay, the latter which identifies building height rather than the number of stories associated with site-specific development. With respect to building height, it states:

Building Height

1. No building or structure shall exceed 160 feet above the ground level. Ground level shall be the finished grade established by an approved grading plan.
2. Buildings and structures shall not penetrate Federal Aviation Regulation (FAR) Part 77, Obstruction—Imaginary Surfaces, for John Wayne Airport unless approved by the Airport Land Use Commission (ALUC).
3. In compliance with FAR Part 77, applicants proposing buildings or structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1, Notice of Proposed Construction or Alteration with the FAA. A copy of the FAA application shall be submitted to the ALUC and the applicant shall provide the City with FAA and ALUC responses.

Potential environmental impacts associated with the development of the Project with 13-story buildings up to 160 feet above the ground level are evaluated in the Draft EIR.

Response 2

Please refer to the response to Comment 1. Regarding the commenter’s opinion that development of the Project with 13-story buildings would be growth-inducing, the degree to which other properties are redeveloped at an increase building height is speculative. The commenter has not presented evidence to support this opinion.

Response 3

Please refer to the response to Comment 1.

Letter C-1c Bruce Bartram
October 30, 2017

From: Bruce Bartram [mailto:cpq1x8v0@verizon.net]
Sent: Monday, October 30, 2017 10:38 AM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Cc: Dennis.Baker@DiandDen.net; Tom Baker <tomlubaker@hotmail.com>; abeek@flash.net; Don Harvey <harveydonw@juno.com>; Jo Carol Hunter <jocarol@ix.netcom.com>; Dorothy Kraus <dorothyjkraus@gmail.com>; dkrotee@krotee.com; andylinge@gmail.com; elinhoff@sbcglobal.net; bobbylovell2000@yahoo.com; marko@uci.edu; pricejcb@gmail.com; nbseely@aol.com; jskinnermd@aol.com; jwatt4@aol.com; portiaweiss@gmail.com; nanalston@gmail.com; jenmcd10@aol.com
Subject: Re: Koll Center Residences DEIR Comment III

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Koll Center Residences draft environmental impact report (DEIR) Comment III

Dear Ms. Ung:

This email is in follow up to my Koll Center Residences DEIR Comments I and II dated September 28, 2017 and October 6, 2017 respectively. A copy of those comments is attached and is incorporated by reference herein. In Section 3.1 of the Project Description of the Koll Center Residences DEIR the Purpose of the Project Description is stated as follows in pertinent part:

"The purpose of the Project Description is to describe The Koll Center Residences Project (Proposed Project or Project) to allow for meaningful review by reviewing agencies, decision makers, and interested parties. Section 15124 of the California Environmental Quality Act (CEQA) Guidelines (14 California Code of Regulations § 15124) requires that a project description for an environmental impact report (EIR) contain (1) the precise location and boundaries of a project site; (2) a statement of objectives sought by a project including the underlying purpose of the project; (3) a general description of a project's characteristics; and (4) a statement briefly describing the intended uses of the EIR,.....An adequate project description need not be exhaustive, but should supply the detail necessary for project evaluation." (Emphasis added)

Section 3.5 of the DEIR states the Project Objectives as follows in pertinent part:

"Section 15124(b) of the State CEQA Guidelines (14 California Code of Regulations [CCR]) requires "A statement of objectives sought by the proposed project. A clearly written statement of objectives would help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and would aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project". The following objectives have been identified for the Project:

- Implement the goals and policies that the Newport Beach General Plan established for the Airport Area and the Integrated Conceptual Plan Development Plan.
- Develop a mixed-use community that provides jobs, residential, and supporting services in close proximity, with pedestrian-oriented amenities that facilitate walking and enhance livability. (Emphasis added)

In turn, in Section 3.6 the DEIR the Project Characteristics are listed as follows in pertinent part:

“As proposed, the Project would allow for the development of a mixed-use infill residential and retail development with 260 residential condominiums, 3,000 sf of ground-floor retail uses, a 1.17-acre public park, a free-standing parking structure, and the reconfiguration of some of the existing surface parking areas...”

Throughout Project Description Section 3 of the Koll Center Residences DEIR the residential component of the proposed mixed-use development is described only as “260 residential condominiums.”

By contrast, attached is the “Notice of Preparation and Scoping Meeting The Koll Center Residences Environmental Impact Report” dated January 4, 2017 prepared by the City of Newport Beach directed to “Reviewing Agencies and Other Interested Parties.” Once a lead agency, here, the City of Newport Beach, determines an EIR is required for a project, the lead agency must send the state Office of Planning and Research and other affected agencies a “notice of preparation” of an EIR. CEQA Guideline 15082 (a). The “notice of preparation” (NOP) must, at minimum, include information regarding the description of the project, its location and its probable environmental effects, to permit responsible agencies to make a meaningful response. CEQA Guideline 15082 (a)(1). (Emphasis added)

On Page 4 of the NOP the “Description of the Proposed Project” is stated as follows in pertinent part:

“The applicant proposes the demolition of existing surface parking lots and landscape improvements to accommodate the development of 260 luxury residential condominiums in three 13-story residential buildings with structured parking; 3,000 sf of ground-floor retail; a 1-acre public park; and a freestanding parking structure. Residential units are proposed as one-, two- and three-bedroom units. The units would be configured as flats ranging in size from approximately 1,240 sf to 3,160 sf with private patios/balconies. Each residence would have a semi-private access through a private lobby in each building or from a secured residents-only area of the parking garage.” (Emphasis added)

The NOP description of the Koll Center project residential component as “luxury condominiums” as opposed to the above Section 3.6 the DEIR the Project Characteristics description as mere “residential condominiums” is significant. A review of the entire Koll Center Residences DEIR reveals only one section where the Project’s residential component was analyzed under their true character as “luxury condominiums”, that being Section 4.14 “Traffic and Transportation.”

Specifically, in Section 4.14.5 the “Project Assumptions” are stated as follows in pertinent part:

“4.14.5 PROJECT ASSUMPTIONS

Trip Generation

Trip generation estimates for the Proposed Project were developed using the Institute of Transportation Engineers (ITE) Trip Generation Manual (9th Edition) publication. The Project components and trip generation estimates for the Koll Center Residences are as follows:

- Luxury Condominiums/Townhouse (Land Use 233) (Emphasis added)

In turn, in Section 4.14.6 “Environmental Impacts” in Table 4.14-10. Project Trip Generation Trip Generation Estimates are based upon the Land Use “Luxury Condominiums/Townhouse” with a “Quantity” of “260” “DU” dwelling units.

Though not discussed in the DEIR, it must be noted that the ITE Trip Generation Manual has a number of land use categories that describe residential trip generation for projects like this. Thus according to the Manual “Residential Condominium” is considered as Category 230 with, for example, a PM Peak generation rate of 0.52 per unit. By contrast, “Luxury Condominium” is a distinct category - Category 233 - which has a rate of 0.65 PM trips per unit. This, of course, is a higher trip generation rate than that for “residential condominium” and demonstrates a greater environmental impact that will be generated by the Koll Center project residential component being “Luxury Condominiums.”

1

This raises the question(s) regarding how the remainder of the DEIR’s analysis of Koll Center project is impacted by this differing “residential condominium” versus “luxury condominium” treatment. Most prominently, that differing treatment affects the evaluation regarding how and to what extent the Koll Center project achieves the stated “Project Objective” listed above. Namely, to “[D]evelop a mixed-use community that provides jobs, residential, and supporting services in close proximity.”

The above Project Objective is obviously derived from the City of Newport Beach General Plan Land Use Element Goal LU 6.15. LU 6.15 is specially directed at the Airport Area and states as follows:

“Goal LU 6.15 – A mixed-use community that provides jobs, residential, and supporting services in close proximity, with pedestrian-oriented amenities that facilitate walking and enhance livability.”

Table 4.9-1 “General Plan Consistency Analysis” contained in DEIR discusses numerous applicable General Plan Goals and Policies and how the Project is allegedly consistent with those goals and policies. Thus, on Page 4.9-16 Goal LU 6.15 is listed along with a number of supporting General Plan policies. One such policy is LU 6.5.15 which states as follows in pertinent part:

“LU 6.15.5 Residential and Support Uses. Accommodate the development of a maximum of 2,200 multi-family residential units, including work force housing, and mixed-use buildings that integrate residential with ground level office or retail uses, along with supporting retail, grocery stores, and parklands.” (Emphasis added)

According to Table 4.9.1 the Project is consistent with the LU 6.16.5 policy as follows in pertinent part:

“Consistent: Consistent with this policy and the Airport Business Area ICDP, the Proposed Project would allow for the reuse of the project site as a mixed-use residential project adjacent and proximate to existing office and commercial land uses that provide jobs and supporting services within the Airport Area. More specifically, the Project would consist of mixed uses with 260 residential units, 3,000 sf of neighborhood-serving retail space, and a 1.17-acre public park.”

Left unanswered in Table 4.9.1 nor addressed anywhere in the DEIR is to what extent, if any, will the proposed 260 (luxury) residential units serve as “work force housing” for the Airport Area. This to allow Airport Area employees to live in the Koll Center Residences Project, work in the area and achieve the Project Objective of a “mixed-use community that provides jobs, residential, and supporting services in close proximity.”

The major employer in the Airport Area is, of course, John Wayne Airport. Paysa.com is a website designed to provide employees with salary information by company, title and location “to make educated and informed job & career decisions.” According to Paysa.com the average salary for John Wayne Airport employees is \$90,000. The weblink to this information is: <https://www.paysa.com/salaries/john-wayne-airport>.

According to an Orange County Register article dated May 15, 2017 the income needed to afford a median-priced Orange County house now stands at \$154,120 a year. From the article:

“Unless you have a huge bank account, you need to earn \$154,120 a year to afford the median-priced Orange County house worth \$750,000, the California Association of Realtors reported Monday, May 15.

Just 21 percent of Orange County households met that benchmark during the first quarter of 2017, the period covered in CAR’s latest affordability report.”

The weblink to this article is: <http://www.ocregister.com/2017/05/15/income-needed-to-afford-an-orange-county-house-now-at-154120-a-year/>.

In researching the Koll Center Residences Project I was unable to locate any information regarding the pricing of the proposed 260 luxury condominiums. However, the attached Daily Pilot article dated November 29, 2016 can serve as a price guide. As you can see the article discusses the City of Newport Beach’s approval of the Museum House Project, “a 25-story luxury condominium development in Newport Center.” From the article:

2

"Museum House is planned to contain 54 two-bedroom units and 46 three-bedroom units. The condos, ranging from 1,800 to 6,000 square feet, are proposed to sell for \$2 million to \$4 million." (Emphasis added)

Assuming the Koll Center Residences Project luxury condominium units are priced at half that of the Museum House units they will remain likely unaffordable to the vast majority of John Wayne Airport employees. How then and to what extent does the Koll Center Residences Project achieve the mixed-use development goal of work force housing for the Airport Area where residents can live and work both within "close proximity", i.e., walking distance of the other? This where the proposed luxury condominium units likely far exceed the median price of an Orange County home.

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In DEIR Table 4.9.1. LU Policy 2.3 and its consistency analysis is stated as follows:

"LU 2.3 Range of Residential Choices. Provide opportunities for the development of residential units that respond to community and regional needs in terms of density, size, location, and cost. Implement goals, policies, programs, and objectives identified within the City's Housing Element." (Emphasis added)

"Consistent: The Proposed Project would develop 260 residential unit offering a range of floor plans and amenities (!) at a density of approximately 31 units per net acre." (Emphasis added)

The apparently deliberate failure of the DEIR to analyze whether Koll Center Residences Project achieves the Project Objective to "[D]evelop a mixed-use community that provides jobs, residential, and supporting services in close proximity" using "residential condominiums" instead the actual "luxury condominiums" proposed renders the analysis incomplete and misleading. The DEIR cannot analyze Project Objectives using a different standard to characterize the proposed residential units from that used to analyze traffic impacts.

3

The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. ' The EIR has been aptly described as the heart of CEQA. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government. The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. (Emphasis added) Napa Citizens for Honest Government v. Napa County Bd. Of Supervisors (2001) 91 Cal. App. 4th 342.

In summary, the Koll Center Residences DEIR's shifting use of "residential condominiums" for some purposes of analysis versus "luxury residential condominiums" for others renders the Project Description uncertain and unstable. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. However, a curtailed, enigmatic or unstable project description draws a red herring across the path of public input. County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185. Only through an accurate view of the project may the public and interested parties and public agencies 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. (Emphasis added) City of Santee v. County of San Diego (1989) 215 Cal. App. 3d. 1438.

Please acknowledge the receipt of this email. Thank you for your expected cooperation in this manner.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663



Notice of Preparation and Scoping Meeting
The Koll Center Residences Environmental Impact Report

DATE: January 4, 2017

TO: Reviewing Agencies and Other Interested Parties

FROM: City of Newport Beach, Community Development Department, 100 Civic Center Drive, Newport Beach, CA 92660

PROJECT TITLE/SUBJECT: The Koll Center Residences – Notice of Preparation of an Environmental Impact Report (EIR) and Public Scoping Meeting

NOTICE OF PREPARATION REVIEW PERIOD: January 4, 2017 to February 2, 2017

SCOPING MEETING: Wednesday, January 18, 2017, at 6:00 PM, Newport Beach Central Library, Friends Room, 1000 Avocado Avenue, Newport Beach, CA 92660

Pursuant to Public Resources Code Section 21165 and the California Environmental Quality Act Guidelines (CEQA Guidelines) Section 15050, the City of Newport Beach (City) is the Lead Agency responsible for preparation of an Environmental Impact Report (EIR) addressing potential impacts associated with the proposed The Koll Center Residences Project.

REQUEST FOR COMMENTS ON THE SCOPE OF THE EIR

The purpose of this Notice of Preparation (NOP) is to solicit comments and suggestions regarding the scope and content of the EIR and the environmental issues and alternatives to be addressed in the EIR (CEQA Guidelines § 15082). This NOP also provides notice for the public scoping meeting. The City, as Lead Agency, respectfully requests that any Responsible or Trustee Agency responding to this notice reply in a manner consistent with State CEQA Guidelines Section 15082(b). Comments and suggestions should identify the significant environmental issues, reasonable alternatives, and mitigation measures that should be explored in the EIR, in addition to whether the responding agency will be a responsible or trustee agency for the proposed project.

The attached summary of the proposed project's probable environmental effects and alternatives is not an analysis of the project or its impacts. The project summary information is intended to provide said agencies, interested parties, and organizations with sufficient information describing the proposed project and the environmental issues that will be addressed in the EIR so that meaningful responses and comments can be provided.

PROJECT LOCATION

The project site is located in the Koll Center Planned Community, at 4400 Von Karman Avenue (Assessor Parcel Numbers [APN] 445-131-04, -29, -30). The site is approximately 12.56 acres and is currently developed with surface parking lots and common landscape areas. The irregularly-shaped site is generally bordered by Birch Street to the northeast, Von Karman Avenue to the west, and existing office uses and associated surface parking lots and garages to the east and south. The project site is located northwest of the Uptown Newport mixed-use development which is currently under construction.

PROJECT DESCRIPTION

The project site has a General Plan land use designation of Mixed Use Horizontal (MU-H2) and a zoning designation of Koll Center Newport Planned Community Development Plan (PC-15 Koll Center). The proposed mixed-use infill development includes 260 residential condominiums, 3,000 square feet (sf) of ground-floor retail uses, a 1-acre public park, a parking structure, and the reconfiguration of existing surface parking.

The existing office buildings located within the boundaries of the project site (4440 Von Karman, 4490 Von Karman, 4900 Birch, 4910 Birch), or immediately contiguous to the project site (5000 Birch, 4340 Von Karman,

*Notice of Preparation
The Koll Center Residences Project*

4350 Von Karman) are not a part of the proposed development. The proposed residential units would be in three, 13-story podium buildings. The three buildings would be approximately 150 feet in height with 2 levels of above-grade parking and 2 to 3 levels of below-grade parking. The proposed one-acre public park would be located adjacent to the entrances to the project site from Birch Street.

All project parking would be provided in parking garages underneath the buildings, with additional on-site surface parking for the proposed one-acre public park and retail uses. Parking displaced by project construction activities and by the proposed development would be provided in a new parking structure to be located southeast of the 5000 Birch office tower's parking structure.

A more detailed Project Description is provided in the attached Project Summary, which is intended to provide agencies, and interested parties and organizations with sufficient information meaningful comments can be provided to the City.

RESPONDING TO THIS NOTICE

The City requests your careful review and consideration of this notice, and it invites input and comments from responsible and trustee agencies, and interested persons and organizations regarding the preparation of the EIR. Pursuant to CEQA Section 21080.4, agencies must submit any comments in response to this notice no later than *30 days after receipt of this notice*. The City will accept comments from other parties regarding this notice through the close of business on February 2, 2017. If comments are submitted by e-mail with attachments, it is recommended that the attachments be delivered in writing. Virus protection measures and variety of formats for attachments can limit the ability for the attachments to be delivered. E-mail responses to this notice may be sent to RUng@newportbeachca.gov.

All comments or other responses to this notice should be submitted in writing to:

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department
100 Civic Center Drive
Newport Beach, California 92660

The NOP is also available at the City of Newport Beach at the address and department noted above, and can also be accessed online at: <http://www.newportbeachca.gov/ceqadocuments>. Additionally, copies of the document are also available for review at the following City of Newport Beach public libraries:

Central Library
1000 Avocado Avenue
Newport Beach, CA 92660

Balboa Branch
100 East Balboa Boulevard
Newport Beach, CA 92660

Mariners Branch
1300 Irvine Avenue
Newport Beach, CA 92660

Corona del Mar Branch
420 Marigold Ave.
Corona Del Mar, CA 92625

All parties that have submitted their names and mailing addresses will be notified of the availability of the Draft EIR. If you wish to be placed on the mailing list, have any questions, or need additional information, please contact the person identified above at (949) 644-3208.

SCOPING MEETING

The City will hold a Public Scoping Meeting to solicit comments on the scope of the EIR at 6:00 PM on January 18, 2017, in the Friends Room of Newport Beach Central Library, 1000 Avocado Avenue. Questions regarding the Scoping Meeting should be directed to Rosalinh Ung.

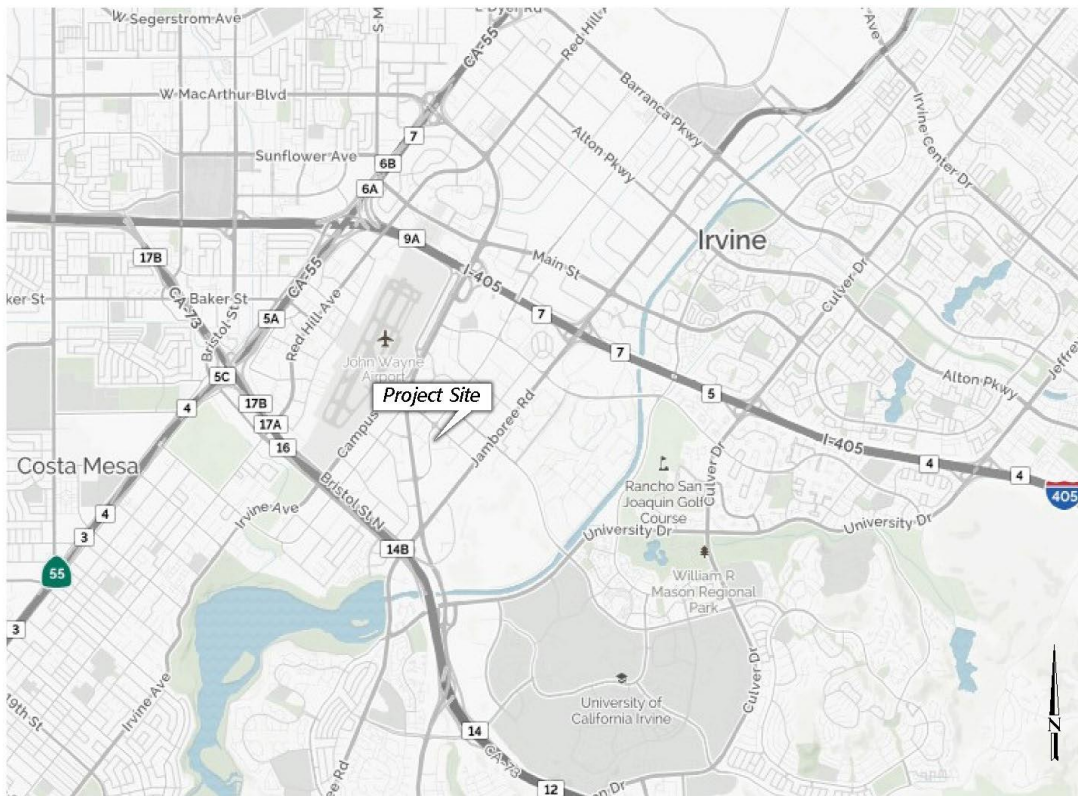


Figure 1: Regional Location

Kimley»Horn



Figure 2: Project Vicinity

Kimley»Horn

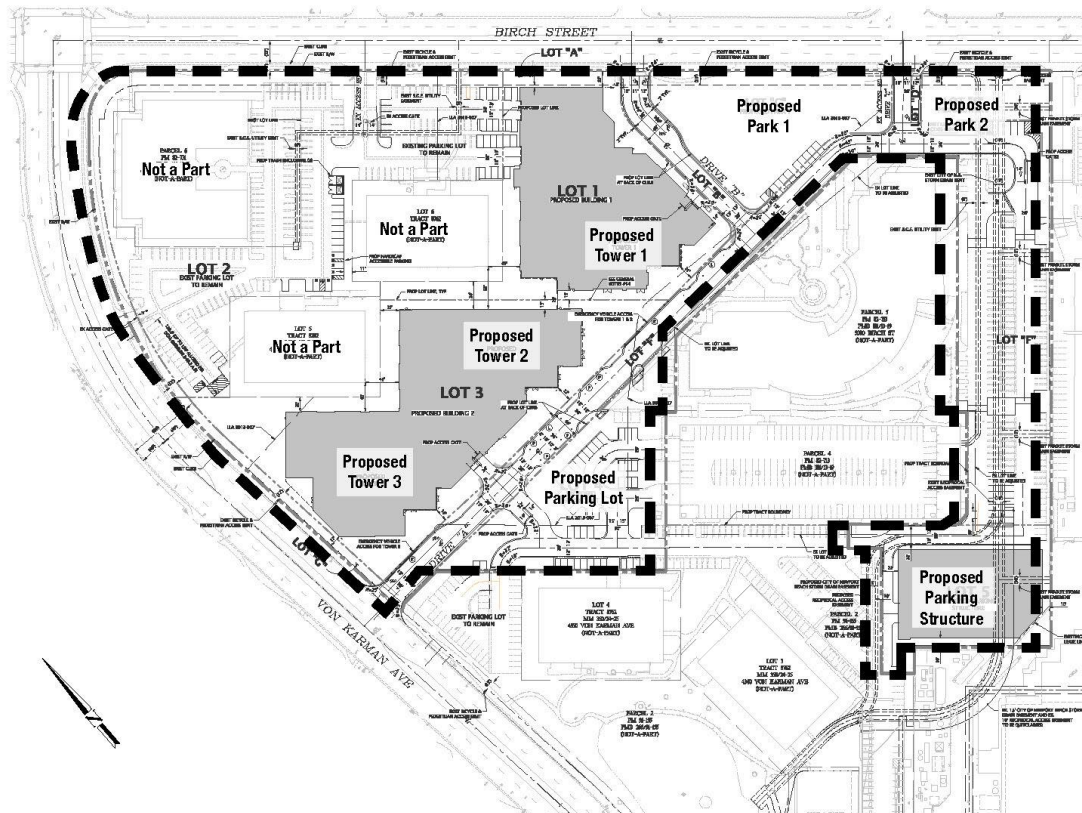


Figure 3: Conceptual Site Plan



THE KOLL CENTER RESIDENCES

The Koll Center Residences Project (proposed project) includes 260 residential condominiums, 3,000 square feet (sf) of ground-floor retail uses, a 1-acre public park, a parking structure, and the reconfiguration of existing surface parking areas. To allow for the construction of the proposed project, existing surface parking areas and common landscape areas would be demolished. The existing office buildings located within the boundaries of the project site (4440 Von Karman, 4490 Von Karman, 4900 Birch, 4910 Birch), or immediately contiguous to the site (5000 Birch, 4340 Von Karman, 4350 Von Karman) are not a part of the proposed development. The proposed residential units would be in three, 13-story buildings. The three buildings would be approximately 150 feet in height with 2 levels of above-grade parking and 2 to 3 levels of below-grade parking. The proposed one-acre public park would be located adjacent to the entrances to the project site from Birch Street.

All project parking would be provided in parking garages underneath the buildings, with additional on-site surface parking for the proposed one-acre public park and retail uses. Parking displaced by project construction activities and by the proposed development would be provided in a new parking structure to be located southeast of the 5000 Birch office tower's parking structure.

Existing Setting

The project site is in the Koll Center Office Park, at 4400 Von Karman Avenue (Assessor Parcel Numbers [APN] 445-131-04, -29, -30). The site is approximately 12.56 acres and is currently developed with surface parking lots and common landscape areas. The site is relatively flat at an approximate elevation of 46 to 52 feet above mean sea level (msl). The irregularly-shaped site is generally bordered by Birch Street to the northeast, Von Karman Avenue to the west, and existing office uses and associated surface parking lots and garages to the east and south. Vehicular access to the project site is provided from driveways along Birch Street and Von Karman Avenue.

Surrounding Land Uses

Koll Center is comprised of clusters of low-, mid-, and high-rise office buildings (from 1 to 15 stories in height) typically set back from roadways by large surface parking lots and ornamental landscaping. Three office buildings are located directly north of the proposed development and three office buildings are located directly south.

The Extended Stay America Hotel and the Fairmont Newport Beach Hotel are located on the northwest and southwest corners, respectively, of Von Karman Avenue at Birch Street. The project site is approximately 0.5 mile southwest of John Wayne Airport, and 0.3 mile northwest of the San Joaquin Freshwater Marsh Reserve, and 1.5 miles northwest of the University of California, Irvine (UCI).

The Uptown Newport project site is located southeast of the project site within the City's Airport Area. Under Phase 1 construction, Uptown Newport will include up to 1,244 residential units, 11,500 sf of neighborhood-serving retail space, and 2 acres of park space when completed. Allowed building heights for Uptown Newport are up to 150 feet.

General Plan Land Use

The project site is designated as Mixed Use Horizontal (MU-H2) in the General Plan. The MU-H designation is intended to provide for the development of areas in a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses. The proposed land uses are consistent with the General Plan land use designation on the property.

*Notice of Preparation
The Koll Center Residences Project*

The MU-H2 designation specifically applies to properties located in the Airport Area. It provides for a horizontal intermixing of uses that may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.

- A maximum of 2,200 residential units are permitted as replacement of existing office, retail, and/or industrial uses at a maximum density of 50 units per adjusted gross acre, of which a maximum of 550 units may be developed as infill.
- Non-residential uses are permitted according to the limits included in General Plan Table LU2: Anomaly Locations. The project site is located within Anomaly Location 2 of Statistical Area L4. Anomaly Location 2 has a development limit of 1,052,880 square feet.

Existing Zoning

The project site is zoned Koll Center Newport Planned Community Development Plan (PC-15 Koll Center). Specifically, the project site is located in Professional and Business Offices Site B of the Koll Center Newport Planned Community. The City of Newport Beach Municipal Code Section 20.35.010 states that a Planned Community (PC) District is intended to “provide for the classification and development of parcels of land as coordinated, comprehensive projects so as to take advantage of the superior environment which can result from large-scale community planning...Include various types of land uses, consistent with the General Plan, through the adoption of a development plan and text materials which set forth land use relationships and development standards.” The boundary of the existing Planned Community District (PC-15 Koll Center) includes all parcels bordered by Campus Drive to the northeast, Jamboree Road to the southeast, and MacArthur Boulevard to the southwest. PC-15 zoning permits professional and business offices, hotels and motels, retail, restaurants and entertainment, a courthouse, private clubs, and auto detailing and service stations. Site B allows professional and business offices, restaurants, and support commercial uses.

Proposed Zoning

The proposed project includes a request for an amendment to the Koll Center Newport Planned Community Development Plan (PC-15 Koll Center) text to allow for residential mixed-use development in Professional and Business Offices Site B.

Description of Proposed Project

The applicant proposes the demolition of existing surface parking lots and landscape improvements to accommodate the development of 260 luxury residential condominiums in three 13-story residential buildings with structured parking; 3,000 sf of ground-floor retail; a 1-acre public park; and a free-standing parking structure. Residential units are proposed as one-, two- and three-bedroom units. The units would be configured as flats ranging in size from approximately 1,240 sf to 3,160 sf with private patios/balconies. Each residence would have a semi-private access through a private lobby in each building or from a secured residents-only area of the parking garage.

Implementation of the proposed project would be phased over a four-year period with demolition and construction activities anticipated to commence in the first quarter of 2018 and construction completed in the third quarter of 2022. A free-standing parking structure would be constructed prior to the first residential building (Building 1) to accommodate surface parking temporarily and permanently displaced. Completion of the parking structure would be followed by Building 1, and then Buildings 2 and 3. The project site would be graded, and foundation excavation would require the removal of the approximately 107,000 cubic yards of soil in total.

*Notice of Preparation
The Koll Center Residences Project*

	Building 1	Building 2	Building 3	Total
One-Bedroom Units	17	16	17	50
Two-Bedroom Units	60	60	60	180
Three-Bedroom Units	10	10	10	30
<i>Total Units</i>	<i>87</i>	<i>86</i>	<i>87</i>	<i>260</i>
Gross Building Area (sf)	238,890	447,237		686,127
Retail Space (sf)	1,768	1,232		3,000
Parking Garage within each Building	202,112	181,411		383,523
<i>Gross Floor Area (sf)</i>	<i>441,002</i>	<i>628,648</i>		<i>1,072,650</i>

Implementation of the project would displace approximately 819 parking spaces associated with the existing office buildings. While a portion of the spaces will be replaced as surface parking around the proposed residential buildings, other spaces will be permanently displaced for the three buildings, a one-acre public park, and free-standing parking structure.

Phase A includes the demolition of approximately 137 surface parking spaces to allow for the construction of a 490-stall parking structure. The approximately 50-foot-high parking structure would include three levels of below-ground parking and five levels of above-ground parking and roof deck parking. Valet parking is proposed for the use of office employees and visitors during the construction of the parking structure. Phase A would begin in advance of breaking ground on the remainder of the residential buildings. Grading associated with the parking structure would be approximately 24,726 cubic yards (CY) of cut with approximately 24,139 CY of export from the project site. Construction activities are anticipated to occur over an approximate 10-month timeframe.

Phase 1 includes the demolition of approximately 307 surface parking spaces to allow for the construction of the first residential building. Accessible parking spaces for the 4440 Von Karman office building and the trash enclosure would be relocated from the south to north side of the building, and surface parking improvements adjacent to the building would be provided.

Building 1 would be located adjacent to Birch Street and adjacent to the office building located at 4910 Birch Street within the boundaries of the project site. Building 1 includes 87 residential units with 5 levels of parking (2 levels above-grade and 3 levels of below-grade parking), and approximately 1,768 sf of retail uses on the ground level of Building 1. The parking garages within the buildings would be gated. The displaced parking is replaced in the new free-standing parking structure and at Building 1. Construction activities are anticipated to occur over an approximate 22-month timeframe.

Phase 2 includes the demolition of approximately 243 office parking spaces to allow for the construction of Building 2 and Building 3. Building 2 would be located adjacent to and south of Building 1. Building 3 would be located southwest of Building 2. Buildings 2 and 3 include 86 and 87 residential units, respectively, 4 levels of parking (2 levels above-grade and 2 levels of below-grade parking), and approximately 1,232 sf of retail on the ground level of Building 2. The displaced parking is replaced in the new free-standing parking structure and Phase 1 parking garage in Building 1. Buildings 1 and 2 would require approximately 103,005 CY of cut with approximately 97,926 CY of export from the project site. Construction activities are anticipated to occur over an approximate 22-month timeframe.

Phase 3 includes the demolition of approximately 132 parking spaces to allow for the construction of the public park and the reconfiguration of on-site surface parking and access. The displaced parking is

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replaced in the new free-standing parking structure. Construction activities are anticipated to occur over an approximate 6- to 9-month timeframe.

Parking, Circulation, and Access

Parking would be provided in the new free-standing parking structure, a parking garage within Building 1, and a shared parking garage within Buildings 2 and 3. Additional parking would be provided in surface lots and along private streets. Ingress and egress into the project site, as well as the existing office buildings, would be provided from three locations on Birch Street and two locations on Von Karman Avenue.

Open Space and Landscaping

The project would include construction of a one-acre public park with dedicated parking in the location of the existing surface parking area adjacent to Birch Street. Recreational uses within the park may include a pickleball court; lawn; park plaza with picnic area; recreation area with seating; and botanical gardens.

In addition to the public park, a plaza lounge with seating and a water feature would front the retail space along the main private street through the site. An elevated “Marsh Walk” would connect existing office buildings to the northeast with the proposed residential buildings. Parking lots and sidewalks would be landscaped.

Atop the podium of each building, private open space could include a club room, pool, spa, pool deck with shower and restroom, lawn, amenity courtyard, fitness area, and bocce ball courts. Private patios/balconies would also be provided for each residential unit.

Utilities

The proposed project would connect to existing utility systems. The project site is within the service area of the Irvine Ranch Water District. The City of Newport Beach collection system serves the project site and conveys wastewater to the Orange County Sanitation District. Storm water drainage is managed by the City and the Orange County Flood Control Division of the Orange County Public Works Department. Dry utilities—Southern California Edison for electricity, Southern California Gas Company for natural gas, AT&T for telephone service, and Cox Communications for cable television and data transmission—would be extended to the new buildings.

Alternatives to the Proposed Project

CEQA Guidelines Section 15126.6(a) requires that, “an EIR 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.” The anticipated range of alternatives to be addressed for the project will include alternatives that are specifically required (i.e., No Project; No Action/No Development) by CEQA. Additional land use alternatives to be addressed could include a reduced development/reduced density alternative and a design alternative.

Anticipated Discretionary Project Approvals

City of Newport Beach discretionary actions that could be approved based on the certification of the Final EIR would include the following:

- **Planned Community Development Standards Text Amendment:** An amendment to the Koll Center Newport Planned Community Development Plan (PC-15 Koll Center) to allow for residential mixed uses in Professional and Business Offices Site B.

*Notice of Preparation
The Koll Center Residences Project*

- **Development Agreement:** A development agreement between the applicant and the City describing development rights and public benefits for the residential development pursuant to Newport Municipal Code Section 15.45.020.A.2.a (development of 50 or more residential units).
- **Traffic Study:** A traffic study pursuant to Municipal Code Chapter 15.40 (Traffic Phasing Ordinance).
- **Site Development Review:** Site development must be in accordance with applicable Planned Community and Municipal Code development standards and regulations pursuant to Newport Municipal Code Section 20.52.80 (Site Development Reviews).
- **Tentative Tract Map:** For condominium purposes including five numbered lots for development and seven lettered lots for the public park, parking, and private streets.
- **Tentative Parcel Map:** For finance and conveyance purposes.
- **Transfer of Development Rights:** Transfer of 3,019 sf of unbuilt office/retail from Koll Center Site A to Site B.

In addition to the approvals identified above, the proposed project would be subject to other discretionary and ministerial actions by the City as part of project implementation. Additional City approvals include but are not limited to site development permits, grading permits, a Water Quality Management Plan and Stormwater Pollution Prevention Plan, use permits, sign permits, and building permits.

The proposed project would require permits and/or approvals from the following agencies:

- **Orange County Airport Land Use Commission (ALUC):** Due to the proposed amendment to the Zoning Code (amendment to the PC-15 Koll Center regulations to permit residential development), the City of Newport Beach will refer the project to the ALUC for determination of project consistency with the Airport Environs Land Use Plan (AELUP) for John Wayne Airport.
- **Federal Aviation Administration (FAA):** Based on the location of the project site and the anticipated height of the buildings, the project applicant will file Form 7460-1, Notice of Proposed Construction or Alteration, with the FAA. The FAA will use information provided in Form 7460-1 and other data to conduct an aeronautical review for the proposed Project.

Probable Environmental Effects of the Proposed Project

The proposed Project has the potential to have significant impacts on several environmental factors. Using the City of Newport Beach Environmental Checklist as a guide, at least one impact area has been identified as having a “Potential Significant Impact” in the following areas, and will be addressed in the EIR:

Aesthetics and Visual Resources	Air Quality
Biological Resources	Cultural Resources
Geology and Soils	Greenhouse Gas Emissions
Hazards and Hazardous Materials	Hydrology and Water Quality
Land Use and Planning	Noise
Population and Housing	Public Services
Recreation	Transportation and Circulation
Utility and Service Systems	

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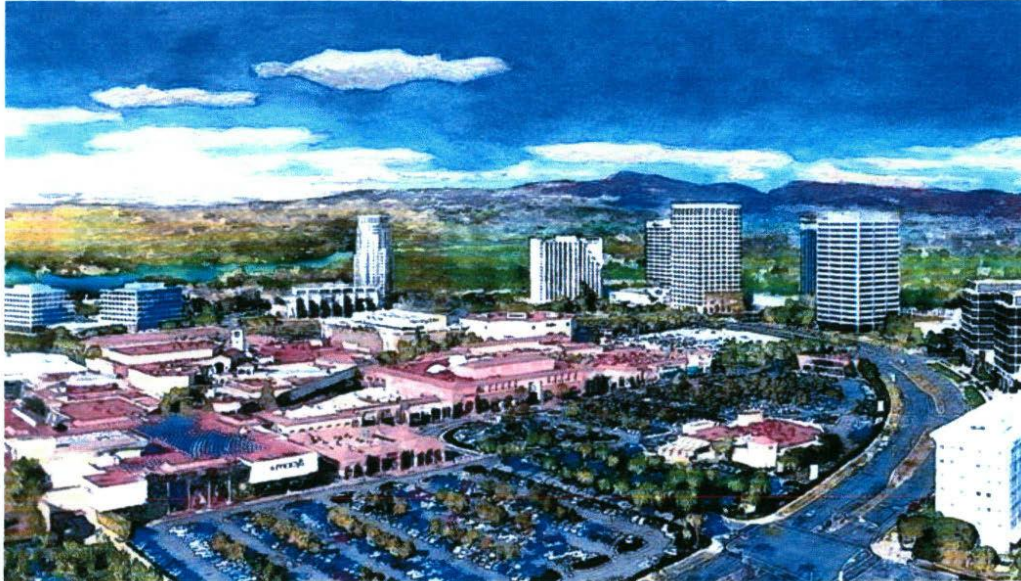
The topics identified on the City's Environmental Checklist that are not required for assessment in the EIR are Agricultural and Forestry Resources, and Mineral Resources. The project site is fully developed and does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the project site is covered by a Williamson Act Contract. The project site is not zoned for agriculture or forestry use, and it is not designated as forest land. The project site does not contain regionally or locally-important mineral resources, and there are no locally-important mineral resource recovery sites in the project site vicinity. The proposed Project would have no impact to these resources.

Anticipated Schedule

The Project schedule, as currently envisioned, anticipates a Draft EIR to be available for public review in Spring 2017. A 45-day public review period will be provided, after which responses to environmental comments received will be prepared. Public hearings before the Planning Commission and City Council are expected to start in Summer 2017.

Museum House condo tower gets Newport council approval - Daily ... <http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-museum-h...>

Museum House condo tower gets Newport council approval



The planned Museum House condominium tower, which the Newport Beach City Council approved Tuesday night, is shown in the rear center of this rendering depicting the building in the existing Newport Center skyline. Fashion Island is in the foreground. (Courtesy Related California)



By **Bradley Zint**

NOVEMBER 29, 2016, 11:35 PM

Before a standing-room-only crowd at City Hall on Tuesday night, the Newport Beach City Council approved a 25-story luxury condominium development in Newport Center intended to replace the Orange County Museum of Art.

After a roughly three-hour hearing with dozens of public comments for and against the 100-unit Museum House, the council approved the development on a 6-1 vote, with Councilman Tony Petros dissenting.

Proponents of the project, wearing stickers reading "Museum House supporter," called it a "world class" jewel and a picturesque addition to a thriving area of the city.

Representatives of the developer, Related California LLC, distributed the stickers outside the council

Museum House condo tower gets Newport council approval - Daily ... <http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-museum-h...>

to generate \$21.7 million to the city and schools through various fees paid by Related California.

Critics, who gathered more than 1,500 signatures against the development, expressed worry and fear about the project's possible traffic effects. They argued that the dense development would transform Newport into something akin to Los Angeles and set a precedent for more high-rise residences.

Museum House is planned to contain 54 two-bedroom units and 46 three-bedroom units. The condos, ranging from 1,800 to 6,000 square feet, are proposed to sell for \$2 million to \$4 million.

The project also would contain a terrace, pool, pet spa, wine cellar and fitness area, among other amenities.

Bill Witte, chairman and chief executive of Related California, said Museum House wouldn't block ocean views or present any "significant impacts" to existing traffic patterns.

Ruth Kobayashi of Harbor Cove said she supported the project and complimented Related California's effort to work with the community.

"They are people of high standards and integrity" who will create a "good-neighbor environment," she said.

Kacey Taormina, a real estate agent with Surterre Properties, said Museum House would provide high-rise luxury housing that's greatly needed in Newport Beach.

"This product provides a solution for a lot of our clients who live in larger homes ... and they're looking to downsize," she said.

Beacon Bay resident Drew Lawler argued that Museum House takes Newport "away from our roots."

"No to 10 stories, no to five stories," he said. "This project does not belong in Newport Beach."

Big Canyon resident Lynn Swain said "to say that there's no traffic problem is absurd."

"I didn't move to Newport Beach to have it be Century City," she added. "We're a beach community, and we want to stay the way we are."

The Orange County Museum of Art, which has been on the 2-acre site at 850 San Clemente Drive since 1978, plans to move to a new building in Costa Mesa, near the Segerstrom Center for the Arts.

Tuesday's meeting was preceded by behind-the-scenes tension between area activists and Related California.

OCMA Urban Housing LLC, an Irvine-based division of Related California that is dedicated to the Museum House project, published a full-page ad in Sunday's Daily Pilot that professed widespread support for Museum House, including from the Newport Beach Planning Commission —

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which **unanimously approved it** in October — firefighters, police officers and nearly 300 residents.

Placed prominently among the residents' names was activist Susan Skinner, whom the ad quoted as calling Museum House "a beautiful project"

In an interview Monday, Skinner said the ad used her words out of context and without her knowledge.

During a Speak Up Newport forum in August, Skinner did call the project "beautiful" but also said that adding it to Newport Center would make the city more urbanized with high-rises, like Los Angeles.

Skinner is associated with two activist groups — Still Protecting Our Newport and Line in the Sand — that have opposed Museum House.

"It's pretty desperate to take one of the high-profile opponents of this project and stick them in the middle of an ad," Skinner said. "It is unethical. It is unfair. It impugns my reputation and it confuses people by this whole project."

The Daily Pilot's editorial staff does not review or approve ads before their publication.

Related California did not respond to a request for comment about the ad.

The developer did, however, point to a cease-and-desist letter it sent Monday to Citizens Against High Rise Urban Towers, a Santa Ana-based group that has been distributing mailers, online petitions and television ads opposing Museum House.

The letter alleges the group has "engaged in a pattern of publicizing inaccurate and deceptive information" about Museum House.

The group claims that Museum House would violate **Federal Aviation Administration** and Newport Beach height restrictions.

According to the developer's letter, the FAA in October issued determinations that Museum House poses no hazards. The letter added that Newport Beach has a height limit of 300 feet and that Museum House would be 295 feet.

bradley.zint@latimes.com

Twitter: [@BradleyZint](https://twitter.com/BradleyZint)

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Updates

This article was originally posted at 10 p.m. Tuesday. It was updated at 11:35 p.m. with the council vote.

Response 1

The commenter correctly states that the PM peak hour trip rate for Residential Condominium (Land Use 230) is 0.52 trips per unit but incorrectly states that the trip rate for Luxury Condominium (Land Use 233) is 0.65 PM trips per unit. The correct PM trip rate is 0.55 trips per unit. See trip rate comparison chart below.

Land Use	ITE Code	Trips Per Dwelling Unit	
		AM Peak Hour	PM Peak Hour
Residential Condominium	230	0.44	0.52
Luxury Condominium	233	0.56	0.55

Source: Institute of Transportation Engineers (ITE) *Trip Generation Manual* 9th Edition

The difference in trips between the two categories would be 31 trips in the morning peak hour and 8 trips in the evening peak hour. By choosing to use the higher Luxury Condominium trip rates, the trip estimates for the Project were more conservative, and did not result in a significant impact at a study location. The Project could develop as either standard Residential Condominium or Luxury Condominium; the analysis results would cover either product type.

Response 2

Future owners of the condominium units are unknown and it would be speculative to identify who would purchase the units. The commenter provides no evidence that the proposed dwelling units would not be affordable to a portion of the population in the City of Newport Beach, which has a median income of \$113,071 and median home prices of over \$1,00,000,⁸ or to persons working in the area including Koll Center Newport.

Response 3

Please refer to the responses to Comments 1 and 2.

⁸ U.S. Census Bureau, *QuickFacts, Newport Beach, California*, <https://www.census.gov/quickfacts/fact/table/newportbeachcitycalifornia,US/INC110215#viewtop>, accessed November 11, 2017.

Letter C-2 Bryan Perraud
October 3, 2017

October 3, 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001

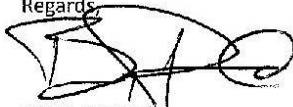
Dear Ms. Ung:

I am a resident of Newport Beach. I have lived here with my family for years and love our great city.

I have reviewed the proposed plan and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed use nature of the proposed development will only improve the quality and value of the surrounding properties.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,



Bryan Perraud
1006 Somerset Lane
Newport Beach, CA 92660

1

Response 1

The commenter's support for the Project is noted. No further response is required.

Letter C-3 Don Krotee
October 8, 2017

From: Don Krotee [mailto:dkrotee@krotee.com]
Sent: Sunday, October 08, 2017 10:24 AM
To: Bruce Bartram <cpq1x8v0@verizon.net>; Ung, Rosalinh <RUng@newportbeachca.gov>
Cc: nanalston@gmail.com; Dennis.Baker@DiandDen.net; tomlubaker@hotmail.com; abeek@flash.net; Don Harvey <harveydonw@juno.com>; jocarol@ix.netcom.com; dorothyjkraus@gmail.com; andylingle@gmail.com; elinhoff@sbcglobal.net; bobbylovell2000@yahoo.com; jenmcd10@aol.com; marko@uci.edu; pricejcb@gmail.com; nbseely@aol.com; jskinnermd@aol.com; jwatt4@aol.com; portia weiss@gmail.com; portia weiss@gmail.com
Subject: RE: Koll Center Residences DEIR Comment II

Thanks Bruce-
Your height limit comments might be something where the staff (could be made to feel) might feel as though the project is rather a non- starter, in that it is out of step with an approved max ht. limit in the Gen Plan. This could cause a re-submission and cause a re-circulation of a revision in the EIR. I'd like to suggest that I write a letter strictly on this subject, not refer to these comments and see if such a strategy might be useful to us.

1

Please let me know what you think of the *recirculation necessity* or likelihood in the face of pointing out (13 story) such a breach of GP (present GP allows, according to your observations, a maximum of 12), is brought forward. And, remind me if we are well into the comment period for the DEIR.

Very best, Don

From: Bruce Bartram [mailto:cpq1x8v0@verizon.net]
Sent: Friday, October 06, 2017 9:22 AM
To: RUng@newportbeachca.gov
Cc: nanalston@gmail.com; Dennis.Baker@DiandDen.net; tomlubaker@hotmail.com; abeek@flash.net; Don Harvey; jocarol@ix.netcom.com; dorothyjkraus@gmail.com; Don Krotee; andylingle@gmail.com; elinhoff@sbcglobal.net; bobbylovell2000@yahoo.com; jenmcd10@aol.com; marko@uci.edu; pricejcb@gmail.com; nbseely@aol.com; jskinnermd@aol.com; jwatt4@aol.com; portia weiss@gmail.com; portia weiss@gmail.com
Subject: Re: Koll Center Residences DEIR Comment II

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Koll Center Residences draft environmental impact report (DEIR) Comment II

Dear Ms. Ung:

This email is in follow up to my Koll Center Residences DEIR Comment I dated September 28, 2017. A copy of that comment is attached and is incorporated by reference herein. In that comment, I pointed out that the Koll Center Center Residences DEIR in its present form was inadequate under the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] §§ 21000 et seq.). This because of the DEIR's failure to discuss the inconsistencies between the Koll Center Planned Community Development Standards' twelve (12) story building height limitation and the project's intended construction of three, 13-story residential buildings. A copy of the Development Standards is attached to the same September 28, 2017 email above.

The Koll Center Residences DEIR's failure to address the project's height inconsistencies affects multiple areas of the DEIR's analysis mandated under CEQA to evaluate the potential environmental impacts associated with the construction and implementation of the proposed Koll Center Residences Project. To cite just one example, Koll Center Residences DEIR Section 5.3 addresses the project's potential to generate "Growth-Inducing Impacts."

Section 5.3 states in pertinent part as follows:

"5.3 Growth-Inducing Impacts of the Proposed Action

Section 15126.2(d) of the State CEQA Guidelines (14 *California Code of Regulations* [CCR]) requires the evaluation of the growth-inducing impacts of a project. This section is required to determine the manner in which a project could encourage substantial economic or population growth or construction of additional housing in the surrounding area, either directly or indirectly.

.....

Growth inducement can be defined as the relationship between a project and growth within the surrounding area.

To address this issue, potential growth-inducing effects are examined through analysis of the following questions:

- Would this Project remove obstacles to growth, e.g., through the construction or extension of major infrastructure facilities that do not presently exist in the project area, or through changes in existing regulations pertaining to land development?
- Would this Project result in the need to expand one or more public services to maintain desired levels of service?
- Would this Project encourage or facilitate economic effects that could result in other activities that could significantly affect the environment?
- Would approval of this Project involve some precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment? " (Emphasis added)

In answer to the first question above regarding removal of obstacles to growth through changes in existing land development regulations Section 5.3 states in pertinent part as follows:

"..... approval of the Project would not remove any existing regulatory obstacle to growth. The Project is consistent with the General Plan category for the site. As part of the Proposed Project, PC-15 Koll Center Site B would include new overlay zones: Park and Residential, allowing for residential development consistent with the General Plan. Therefore, the Project is not considered growth inducing with respect to removal of obstacles to growth or through the provision of infrastructure."

In fact, approval of the Project would require an amendment to the Koll Center Planned Community Development Standards' twelve (12) story building height limitation. This to accommodate construction of the intended 13-story height of the Project's three residential buildings. In addition, further amendment of Development Standards would be necessary to establish Building Height Land Coverage and Landscape Open Space Land Coverage standards for a thirteen (13) story development like that proposed under the Koll Center Residences Project.

As you can see, the current Development Standards address Building Height Land Coverage and Landscape Open Space Land Coverage only up to a twelve story development. This, of course, is to be expected with the current Development Standards' twelve (12) story building height limitation for the Project site. As noted on Page 18 on the Development Standards:

"The preceding figures indicate that within a fixed maximum density as the height of the building increases the resulting open landscaped area also increases."

In answer to the question regarding whether the Project's approval would involve some precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment Section 5.3 states in pertinent part as follows:

"A project can encourage growth that has already been approved and anticipated through the General Plan process. This planned growth would be reflected in land use plans that have been developed and approved with the underlying assumption that adequate supporting infrastructure ultimately would be constructed. The project site is in the Airport Area of the City of Newport Beach. The Airport Area is approximately 360 acres bordered by Jamboree Road, Campus Drive, and Bristol Street. Within the Airport Area, properties proximate to John Wayne Airport are designated Airport Office and Supporting Uses (AO). Properties near Bristol Street at Jamboree Road, and two additional properties internal to the Airport Area are designated General Commercial. The California Superior Court Harbor Justice Center parcel is designated Public Facilities. The remainder of the Airport Area, inclusive of the project site, is designated Mixed Use Horizontal 2 (MU-H2).

The MU-H2 designation provides for a horizontal intermixing of uses that may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.

- A maximum of 2,200 residential units are permitted as replacement of existing office, retail, and/or industrial uses at a maximum density of 50 units per adjusted gross acre, of which a maximum of 550 units may be developed as infill.
- Non-residential uses are permitted according to the limits included in General Plan Table LU2: Anomaly Locations. The project site is located within Anomaly Location 2 of Statistical Area L4. Anomaly Location 2 has a development limit of 1,052,880 sf.

Of the 2,200 units, 1,650 units must replace existing development so there is no net gain in vehicular trips. The remaining 550 units are "additive" units that can only be constructed on existing surface parking lots located east of MacArthur Boulevard in the Airport Area. The approved Airport Business Area Integrated Conceptual Development Plan (ICDP) covers that portion of the Airport Area generally bordered by MacArthur Boulevard, Jamboree Road, and Birch Street, inclusive of the project site. The Airport Business Area ICDP allows for up to 1,504 new residential units: 1,244 units on the Uptown Newport site and 260 units on the surface parking area of Koll Center Newport where the Koll Center Residences Project is proposed. All of the 260 residential units were identified as "additive" units in the Airport Business Area ICDP because no existing development uses would be removed. The remainder of the units are associated with the Uptown Newport Project.

Because the Project is consistent with the allowable development assumptions of the Airport Business Area ICDP, both the residential and retail components of the Project were anticipated land uses in this location. Approval of the Project would not change the existing restrictions on development as set forth in the City of Newport Beach General Plan.

.....

Most of the area surrounding the project site is either developed or planned for development. In summary, the Project would not remove obstacles to growth and is therefore not considered growth inducing." (Emphasis added)

Once again, contrary to the DEIR's conclusion above, approval of the Project would require an amendment to the Koll Center Planned Community Development Standards' twelve (12) story building height limitation to accommodate the planned construction of the three, 13-story residential buildings. This certainly qualifies as a "precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment" according to state law standards for determining growth-inducing environmental impacts.

According to the DEIR's Executive Summary, the project site is zoned "Koll Center Newport Planned Community (PC-15 Koll Center)". Specifically, the project site is within Professional and Business Offices Site B of PC-15 Koll Center (Site B). From the Koll Center Newport Planned Community Development Standards the twelve (12) story building height limit applies to the following sites within the Planned Community: Sites A, B, C, D and E. The needed amendment to allow the Project's construction of the three, 13-story residential buildings constitutes a precedent-setting action that could encourage and facilitate other activities that could significantly affect the environment. That being the encouragement of developers on other potential residential projects in the Koll Center Newport Planned Community to seek height amendments in excess of the present twelve (12) story building height limit.

In short, approval of the Project's planned construction of three 13-story residential buildings in the face of the Development Standard's twelve (12) story building height limitation requires additional analysis of the potential for growth-inducing environmental impacts beyond that provided in the DEIR.

It should be noted that such additional analysis would likely constitute significant new information requiring public review. CEQA Guideline 15088.5 states that a "lead agency is required to recirculate an EIR when significant new information is added... after public notice is given...for public review...but before certification. As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information." The information could show that a "new significant environmental impact would result" and/or that a "substantial increase in the severity of an environmental impact would result" and/or that the "draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."

The above "significant new information" and the provisions of CEQA Guideline Section 15088.5 fully justify and require review and recirculation of DEIR. Notice in Section 15088.5(e) that a "decision not to recirculate an DEIR must be supported by substantial evidence in the administrative record". This indicates that CEQA favors recirculation of a DEIR in making the determination under Section 15088.5. This is consistent with both statutory and case law stating "the California Environmental Quality Act (CEQA) (Pub. Resources Code 21000 et seq.) is to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal. App. 4th 1214.

Please acknowledge receipt of this email. Thank you for your expected cooperation in this matter.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

Response 1

As addressed in the Draft EIR, the Federal Aviation Administration (FAA) has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. Buildings 1, 2, and 3 would not exceed 160 feet above ground level. The parking structure would not exceed 56 feet above ground level.

As noted by the commenter and addressed in the Draft EIR, the Proposed Project would require an amendment to the zoning text; please see Section 3.0, *Project Description*, and Section 3.9, *Land Use and Planning*. As disclosed in the Draft EIR, the project site is zoned “Koll Center Newport Planned Community (PC-15 Koll Center)” and zoning regulations are provided in the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 and subsequently amended several times. PC-15 Koll Center is separate from, and not a part of, the General Plan.

The Proposed Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The 12-story building height requirement applies to professional and business office developments within PC-15 Koll Center. The proposed changes to PC-15 Koll Center include a Public Park Overlay and a Mixed-Use Residential Overlay, the latter which identifies building height rather than the number of stories associated with site-specific development. With respect to building height, it states:

Building Height

1. No building or structure shall exceed 160 feet above the ground level. Ground level shall be the finished grade established by an approved grading plan.
2. Buildings and structures shall not penetrate Federal Aviation Regulation (FAR) Part 77, Obstruction—Imaginary Surfaces, for John Wayne Airport unless approved by the Airport Land Use Commission (ALUC).
3. In compliance with FAR Part 77, applicants proposing buildings or structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1, Notice of Proposed Construction or Alteration with the FAA. A copy of the FAA application shall be submitted to the ALUC and the applicant shall provide the City with FAA and ALUC responses.

Potential environmental impacts associated with the development of the Project with 13-story buildings up to 160 feet above the ground level are evaluated in the Draft EIR.

The commenter has not raised an issue that would render the EIR deficient or require recirculation.

Letter C-4 Don Harvey
October 9, 2017

From: Ung, Rosalinh
Sent: Monday, October 09, 2017 12:59 PM
To: 'Don Harvey' <harveydonw@juno.com>
Subject: RE: Comment re Koll Center Residences DEIR

Mr. Harvey,

Thank you for your comments.

Rosalinh

-----Original Message-----

From: Don Harvey [mailto:harveydonw@juno.com]
Sent: Monday, October 09, 2017 12:19 PM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Cc: pattyharv@outlook.com
Subject: Comment re Koll Center Residences DEIR

Hi Ms Ung--I believe the city needs to consider the Project's environmental impacts, as its proposed height far exceeds the Planned Community Development Standards. Won't a new DEIR be needed?--Don Harvey, 2039 Port Weybridge Place, 949/759-9220

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Response 1

As addressed in the Draft EIR, the Federal Aviation Administration (FAA) has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. Buildings 1, 2, and 3 would not exceed 160 feet above ground level. The parking structure would not exceed 56 feet above ground level.

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Building Height

1. No building or structure shall exceed 160 feet above the ground level. Ground level shall be the finished grade established by an approved grading plan.
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Potential environmental impacts associated with the development of the Project with 13-story buildings up to 160 feet above the ground level are evaluated in the Draft EIR.

The commenter has not raised an issue that would render the EIR deficient or require recirculation.

Letter C-5a **COMAC American Corporation**
Douglas Evertz, Murphy & Evertz LLP
October 9, 2017



850 Town Center Drive, Suite 550
Costa Mesa, CA 92626
714.277.1700
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DOUGLAS J. EVERTZ, PARTNER
DIRECT DIAL NUMBER: 714.277.1702
EMAIL ADDRESS: DEVERTZ@murphyevertz.com

October 9, 2017

OUR FILE NO.
40136.00001

Rosalinh Ung, Associate Planner
rung@newportbeachca.gov
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

*Re: Request for 20-Day Extension of the Public Comment Period on Koll Residences
Draft Environmental Impact Report*

Dear Ms. Ung:

We represent COMAC America Corporation (“CAC”), owner of real property located at 4350 Von Karman Avenue, Newport Beach, California (“Property”). The Property is located within the Koll Center Newport (“Center”), a planned business/office development in the City of Newport Beach (“City”). CAC is a wholly owned subsidiary of Commercial Aircraft Corporation of China, which functions as the main vehicle in implementing large passenger aircraft programs in China.

The Proposed Koll Center Residences Project (“Project”) consists of three 13-story residential buildings and a parking structure immediately adjacent to the Property. CAC has significant concerns about this Project, as it is entirely inconsistent with surrounding integrated business and office uses. The Project will negatively impact both CAC’s substantial investment in its Property and its business operations.

The Koll Center Residences Draft EIR was circulated for public review on September 13, 2017, initiating a 45-day public review period scheduled to end on October 27, 2017. The Draft EIR contains significant amounts of data and information - - which in turn will take significant time to evaluate and comment upon. The California Environmental Quality Act (“CEQA”) places high value on public participation noting in CEQA Guidelines section 15201, “[p]ublic participation is an essential part of the CEQA process.” CEQA provides that the public comment period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances. (CEQA Guidelines § 15205.)

The Project is a complex one, and relevant planning documents pertaining to the Center span the course of many years. Before taking action on the EIR and Project, it is imperative that the City fully evaluate and consider meaningful comments from those most negatively impacted by the

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MURPHY & EVERTZ
Attorneys at Law

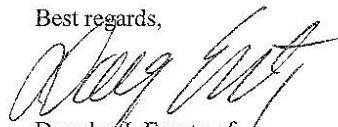
Rosalinh Ung
City of Newport Beach
Community Development Department, Planning Division
October 9, 2017
Page 2

Project. To its end, CAC requires and requests additional time in which to review the DEIR, relevant Project documents, and submit substantive comments.

To allow time for both CAC and the public to review the DEIR and provide meaningful comments during the formal DEIR period, we request an extension of an additional 20 days, extending the public comment period to 5:00 p.m. on November 16, 2017.

Thank you for your consideration of our request.

Best regards,



Douglas J. Evertz of
MURPHY & EVERTZ LLP

DJE/mm
Enclosure

cc: City of Newport Beach Mayor and City Council, c/o City Clerk's Office

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Response 1

The public review period for the Draft EIR was extended, allowing for a total of 62 days of public review, as opposed to the CEQA mandated 45-day public review period. Rather than ending on October 27, 2017, the review period was extended to November 13, 2017.

Letter C-5b **COMAC American Corporation**
Douglas Evertz, Murphy & Evertz LLP
October 9, 2017



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DOUGLAS J. EVERTZ, PARTNER
DIRECT DIAL NUMBER: 714.277.1702
EMAIL ADDRESS: DEVERTZ@murphyevertz.com

November 10, 2017

OUR FILE NO.
40136.0001

VIA OVERNIGHT MAIL AND E-MAIL

Rosalinh Ung, Associate Planner
rung@newportbeachca.gov
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

*Re: Comments in response to Koll Residences Draft Environmental Impact Report
 (State Clearinghouse No. 2017011002;PA 2015-024)*

Dear Ms. Ung:

We represent COMAC America Corporation (“CAC”), owner of real property located at 4350 Von Karman Avenue, Newport Beach, California (“Property”). The Property is located within the Koll Center Newport (“Center”), a planned business/office development in the City of Newport Beach (“City”). CAC is a wholly owned subsidiary of Commercial Aircraft Corporation of China, which functions as the main vehicle in implementing large passenger aircraft programs in China.

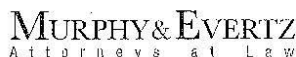
CAC submits the following comments on the Draft Environmental Impact Report (“DEIR”) for the Proposed Koll Center Residences Project (“Project.”) The Project consists of three 13-story residential buildings and a parking structure immediately adjacent to the Property. CAC has significant concerns about this Project, as it is entirely inconsistent with surrounding integrated business and office uses—uses carefully considered and previously approved by the City.

As detailed below and in the attached report of Environmental Audit Inc., the DEIR contains numerous deficiencies and fails to comply with the requirements of the California Environmental Quality Act (Pub. Res. Code. §21000 *et seq.*,”CEQA”). These deficiencies must be remedied and the DEIR recirculated for further and meaningful public input.

Moreover, and beyond pure environmental concerns, development and uses of property within the Center are governed by a comprehensive “Declaration of Covenants, Conditions and Restrictions” dated July 18, 1973, as amended (“CCR’s”). The carefully crafted CC&Rs, which were relied upon by purchasers of property within the Center, were intended to provide for a planned and integrated development consisting of professional and business office uses -- -- not high-rise and densely populated residential uses. The Proposed Project, consisting of high-rise residential



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Rosalinh Ung
City of Newport Beach
Community Development Department, Planning Division
November 10, 2017
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buildings and a parking structure, violates the CC&Rs in multiple respects, is entirely inconsistent with the surrounding business and office uses, and deprives existing owners of their investment backed expectations.

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Because the Project materially conflicts with the surrounding character of established professional/office enterprises and ownerships, the DEIR must, but fails to, discuss and evaluate socio/economic impacts that effect the physical environment. In this regard, CEQA Guidelines section 15064(e) provides: "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." This provision, along with Guidelines section 15064(d) on indirect effects, requires that a lead agency such as the City consider the reasonably foreseeable indirect environmental consequences of a project's economic or social changes.

The development of massive high-rise residential towers as proposed in the middle of a carefully planned and integrated low-rise office park will result in lost tenancies and vacancies within the Center. Business vacancies and closures have time and again been determined by the courts to be blighting conditions, resulting in urban decay, that must be thoroughly analyzed in an EIR. Here, DEIR fails to in any way consider these socio/economic impacts and how they will translate into direct and significant physical environmental changes. This complete lack of any analysis renders the DEIR inadequate and fails to provide necessary analysis for informed decision-making. (See *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal. App. 3d 433, 446 [EIR should consider whether potential economic problems caused by project could result in business closures and physical deterioration of downtown area]; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1215 [EIR improperly dismissed possibility that large shopping center could drive other retailers out of business as an economic effect when urban decay and other blight-like conditions could result.]

3

As set forth in the attached Environmental Audit Inc. report, which is incorporated herein by reference, the DEIR is deficient in its coverage of multiple other significant environmental effects, including aesthetics, air quality, greenhouse gas impacts, land use, noise, alternatives and cumulative impacts. As to the latter point, the DEIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is cumulatively considerable. (CEQA Guidelines §15130(a)) A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Guidelines §15065(a)(3)) The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum.

4

The CEQA Guidelines set forth two methods for satisfying the cumulative impacts analysis requirement: the list of projects approach and summary of projections approach. As explained in the

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MURPHY & EVERTZ
Attorneys at Law

Rosalinh Ung
City of Newport Beach
Community Development Department, Planning Division
November 10, 2017
Page 3

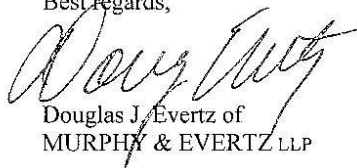
attached, the list of cumulative projects in the DEIR does not include a number of large projects which have been proposed in the City, rendering the entirety of the cumulative impacts analysis entirely lacking in data and support for the stated conclusions.

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CAC hopes that the above and attached comments and concerns (as well as comments submitted by others which are incorporated herein) resonate with the City. CAC and other owners and tenants within the Center have made substantial investments in their properties and businesses -- investments that will be significantly and irreversibly damaged by converting the comprehensively planned office and business land uses within the Center to a new high density residential development. We ask that the City carefully evaluate the environmental impacts of the Project, as well as the need for and utility of the Project within the Center.

5

Best regards,



Douglas J. Evertz of
MURPHY & EVERTZ LLP

DJE/mm
Enclosure

cc: City of Newport Beach Mayor and City Council, c/o City Clerk's Office

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COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT

Koll Center Residences
State Clearinghouse No. 2017011002

Prepared for:

Murphy & Evertz
650 Town Center Drive, Suite 550
Costa Mesa, CA 92626

November 8, 2017

{00117470.1}

Prepared by:



ENVIRONMENTAL AUDIT, INC.®

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(714) 632-6754 = Fax

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Prepared by:



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COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT
The Koll Center Residences

1.0 INTRODUCTION

Environmental Audit, Inc. (EAI) has reviewed the Draft Environmental Impact Report (DEIR) for the Koll Center Residences, prepared by the City of Newport Beach, September 2017, State Clearinghouse No. 2017011002. The Koll EIR was reviewed by Debra Bright Stevens and Marcia Baverman. Ms. Stevens and Ms. Baverman have combined over 45 years of experience preparing and reviewing CEQA documents, including EIRs, negative declarations and exceptions for a wide variety of projects. Resumes for Ms. Stevens and Ms. Baverman are included in Attachment 1.

An EIR must disclose all potentially significant adverse environmental impacts of a project (Pub. Res. Code §21100(b)(1).) Our review of this DEIR indicates that it fails to adequately disclose and analyze the Project’s significant aesthetics, air quality (including public health), greenhouse gas, land use, noise, and their related cumulative impacts. The DEIR must be revised to address these impacts and recirculated for public review. CEQA requires recirculation of an EIR when significant new information is added to the EIR following public review but before certifications (Pub. Res. Code §21092.1). New information is significant if the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project (CEQA Guidelines §15088.5). The following provides our comments on the DEIR, including potentially new significant environmental impacts, which must be addressed in a revised DEIR that is recirculated for public review. The page numbers, table numbers, sections, etc., refer to those in the DEIR.

6

2.0 DEIR EXECUTIVE SUMMARY

The DEIR is inconsistent and it is difficult to determine the appropriate significance conclusion for several resource analyses. Please see below for examples of these inconsistencies.

- A. Aesthetics Executive Summary, Page 1-13. The significance conclusion for aesthetics, Threshold 4.1-3, is inconsistent in the text of Table 1-1 and is inconsistent with the conclusions regarding light and glare in the Aesthetic Impact section (see page 4.1-13).
- B. Noise Executive Summary, Page 1-25. The significance conclusions for Operational and Stationary Noise indicate that it is “Potentially Significant” in Table 1-1 and that the level of significance after mitigation is “Significant and Unavoidable.” These conclusions conflict with the conclusions in Section 4.10. Page 4.10-30 indicates that Operational and Stationary Noise are less than significant. The is inconsistent and it is difficult to determine the appropriate significance conclusion for several resource analyses.

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3.0 PROJECT DESCRIPTION/ENVIRONMENTAL SETTING

- A. Page 3-6, fifth objective should be revised. “Pervious surface area would be increased by approximately 0.83 acre (or 7%) from existing conditions as a result of Project implementation” is not a project objective. This same comment applies to the objectives listed on page 6-3.
- B. Page 3-12, Open space. The Plaza Gardens are not included in Figure 3-14 as referenced. If they are included, it is such small print to be illegible. In addition, driveway numbers (e.g., Driveway 3) should be referenced on Figure 3-14 as the text discusses these features.

8

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT
The Koll Center Residences

C. Page 4-3, Mitigation Measures. The DEIR indicates that modifications may be made to the Mitigation Program based on certain findings. Please note that changes to the mitigation monitoring program need to be disclosed to the public and not just made available upon request.

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8

4.0 CUMULATIVE IMPACTS

A. Table 4-1, Cumulative Projects. The numbers in Table 4-1 do not match the locations in Figure 4-1. For example, No. 3 on Table 4-1 refers to the Koll Newport Residential development at 4400 Von Karman Ave. Figure 4-1 places No. 3 in the southern portion of Corona del Mar. No. 8 on Table 4-1 refers to the Newport Dunes Hotel. Figure 4-1 places No. 8 on the Balboa Peninsula. It appears that virtually all of the cumulative projects in the City of Newport Beach are in the incorrect location on Figure 4-1. Therefore, the cumulative analysis is flawed as the DEIR does not accurately evaluate the cumulative impacts.

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B. Table 4-1, Cumulative Projects. The DEIR indicates that it is using a list approach to analyze cumulative impacts. CEQA requires analysis of "past, present and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the (lead) agency." (CEQA Guidelines §15130(b)(1).) The list of cumulative projects in the DEIR does not include a number of large projects which have been proposed in the City of Newport Beach, including Newport Crossings, Banning Ranch, Mariner's Mile Revitalization Master Plan, and the General Plan Amendment. Substantial evidence shows that it is reasonably foreseeable that a number of other projects could occur in the Newport Beach/Airport Area.

C. On November 1, 2017, the City of Newport Beach released the Notice of Preparation for an EIR for the Newport Crossings Mixed Use Project¹. The Newport Crossings would include 350 residential dwelling units, 2,000 square feet of restaurant space, 5,500 square feet of commercial space and a 0.5 acre public park, at the existing MacArthur Square shopping center, within about 0.3 mile of the proposed Koll Center project. This Newport Crossings project must be included as part of the cumulative impact analysis as it is a proposed project and probable foreseeable future project located within the airport area and less than a mile from the Koll project.

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D. An EIR has been reviewed and development at Banning Ranch has been approved by the City, including 1,375 homes, a hotel and commercial uses. While the EIR has been overturned by the courts, it is unreasonable to assume no further development would occur at Banning Ranch and development at Banning Ranch is a probable future project.

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E. The City has developed the 163 page Mariner's Mile Revitalization Master Plan and this project remains in the Capital Improvement Program component of the City's FY2017-2018 budget. A draft of the Master Plan is available at the following link <http://www.newportbeachca.gov/trending/projects-issues/other-important-issues/mariners-mile->

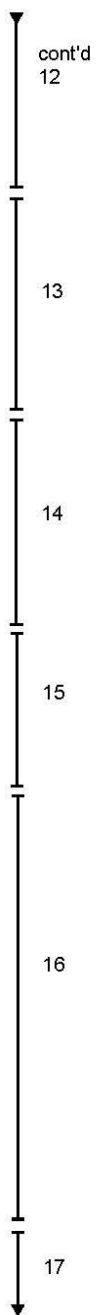
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¹ The NOP is available at http://www.newportbeachca.gov/pln/CEQA_REVIEW/Newport%20Crossings/NOP_Final.pdf

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT
The Koll Center Residences

planning-charrette/mariner-s-mile-revitalization-master-plan. The Master Plan has been placed on-hold by the City; however, a good portion of Mariner’s Mile (the Ardell/Haskell properties and the adjacent Duffy Boat sales/rental office) has recently been sold and is expected to be considered for development in the near future. At minimum the DEIR should include the Mariner’s Mile Revitalization Master Plan as a cumulative project as it is a probable future project.

- F. The City is currently proposing an update to the General Plan which is scheduled to begin at the November 14, 2017 City Council meeting. A recent flyer from the City outlined the General Plan Update and indicates that the City intends to review its vision for the Airport area and Newport Center because of community comments related to recent development applications. Therefore, the City has acknowledged that the planning in the Airport area is an important component of the General Plan Update and the impacts associated with the General Plan update should be included in the DEIR.
- G. Finally, the EIR for the Uptown Newport Project and the Koll Project should have been included in a single EIR as they are adjacent to each other. Figures of the site show that the two projects have been integrated, their construction phases overlap, both are similar types of development (mostly residential but with mixed commercial uses), and they are being permitted by the same developer (Shopoff). Attachment 2 shows the location of these two projects and the fact that they have been designed together; therefore, the impacts must be evaluated together in a revised DEIR and recirculated.
- H. Population and Housing, cumulative impacts, page 4.11-8. The DEIR states that the projects identified in Table 4-1 would result in an additional 3,766 residents. The cumulative projects identified above (Newport Crossings, Banning Ranch, Mariner’s Mile Revitalization Master Plan, and the General Plan Amendment) also must be included to provide an adequate estimate of the cumulative population/housing impacts.
- I. Section 4.14.7, Cumulative Traffic Impacts, page 4.14-54. The list of cumulative projects in the traffic analysis (Table 4.14-17) is not consistent with the list of cumulative projects that are claimed to be used in the cumulative analysis in Table 4-1. For example, Table 4.14-17 lists Project No. 3 as Newport Coast, while there is no Newport Coast Project in Table 4-1. More importantly, only three cumulative projects in the City of Newport Beach are included in the list of Traffic Analysis Cumulative Projects - ExplorOcean, Harbor Pointe Senior Living, and Newport Coast (see Table 4.14-17). Table 4-1 identifies 36 cumulative projects within the City of Newport Beach. Therefore, cumulative traffic impacts are inadequate and must be revised to include all cumulative projects in Table 4-1, as well as the projects identified above (Newport Crossings, Banning Ranch, Mariner’s Mile Revitalization Master Plan, and the General Plan Amendment). Some of the cumulative projects in Table 4.14-14 do not appear to be included in Table 4.1 including Fashion Island Expansion, Temple Bat Yahm Expansion, San Joaquin Hills Plaza, and Santa Barbara condominiums. The list of cumulative projects must be used consistently for evaluation of the various environmental resources.
- J. Section 4.15.6, Cumulative Utilities and Service Systems Impacts, page 4.15-28. The DEIR provides a cursory review of the cumulative utilities and service systems impacts and is



COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT
The Koll Center Residences

inadequate. The cumulative projects identified above (Newport Crossings, Banning Ranch, Mariner’s Mile Revitalization Master Plan, and the General Plan Amendment) also must be included to provide an adequate estimate of the cumulative utilities and service systems impacts.

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5.0 AESTHETIC IMPACTS

- A. Aesthetic Impacts, Figures 4.1-2a through 4.1-2h are not done to scale. To determine whether there are significant shade/shadow impacts, Figures 4.1-2a through 4.1-2h must be done to scale.
- B. Aesthetic Impacts, page 4.1-8 Grading and Construction. The construction activities that are characteristic of a typical construction site should be considered significant as they degrade the visual characteristics of the area, even though they are “temporary.” Construction activities would occur over a 4.5 year period and would impact the adjacent office buildings.
- C. Aesthetic Impacts, Degrade the Existing Visual Character (pages 4.1-8 thru 4.1-10). The project would result in an increase in building intensity versus the existing site. This increased density (three more 13-story buildings up to 160 feet in height) are generally considered to degrade the visual quality of an area versus less development.
- D. Cumulative Aesthetic Impacts, page 4.1-13 and 4.1-14. Current, past and probable future development projects along Jamboree and the Airport Area has greatly changed the aesthetic environment of the area. The increased development intensity on the Koll property, along with the following, contributes to this cumulative impact.
 - a) Uptown Newport., 4311-4321 Jamboree Road: 1,244 residential units, 11,500 sf of retail space, building heights up to 150 feet.
 - b) Newport Business Plaza Project, 4699 Jamboree Road: 46,044 sf of commercial development.
 - c) Colton Apartments, Campus Drive and Von Karman: 876 apartments in three, six story residential buildings.
 - d) The Boardwalk Project, 18691 Jamboree Road: 458,000 sf office uses in two nine-story buildings.
 - e) Newport Crossings, bounded by Corinthian Way, Martingale Way, Scott Drive, and Dove Street: 350 residential dwelling units, 2,000 square feet of restaurant space, 5.500 square feet of commercial space, and a 0.5-acre public park.
 - f) Additional development that would be part of the General Plan Amendment.

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Clearly, the intensity of the development within the Airport area of Newport Beach and along the Jamboree corridor in the cities of Newport Beach and Irvine has negatively changed the visual character of the area. Additional development in the Koll Center would continue this trend and result in significant cumulative impacts.

6.0 AIR QUALITY

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT
The Koll Center Residences

- A. Page 4.2-5 identified diesel particulate matter as a TAC but no health risk assessment (HRA) has been prepared for TAC emissions. A significance threshold for TAC emissions is provided on page 4.2-10, yet no analysis was provided of the TAC emission impacts from the proposed project.
- B. Air Quality, Table 4.2-2. CEQA requires the lead agency to include a description of the physical environmental conditions in the vicinity of a project as they exist at the time environmental review commences (CEQA Guidelines §15125(a)). The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project’s impacts. The most recent ambient air quality data must be used in the DEIR to adequately describe the existing air quality in the project vicinity. The DEIR used 2015 ambient air quality data, while 2016 ambient air quality data are available. The 2016 ambient air quality monitoring data are available from the SCAQMD at the following link: <http://www.aqmd.gov/docs/default-source/air-quality/historical-data-by-year/2016-air-quality-data-tables.pdf?sfvrsn=14>
- C. Air Quality, page 4.2-13. The first sentence indicates that the Project would be consistent with the 2016 AQMP and would not conflict with the second criterion. In the Impact Summary it is stated that “The Project would potentially conflict with the AQMP.” The DEIR is inconsistent with its significance conclusions regarding AQMP compliance.
- D. Air Quality, page 4.2-14, 1st paragraph under Table 4.2-6 and Mitigation Measure MM4.2-1 (page 4.2-24). The DEIR concludes that emissions of NOx from Project Construction are significant. The DEIR’s proposed mitigation is inadequate. The DEIR states that “Mitigation requiring all construction equipment to meet Tier 4 standards is not considered feasible because it means that the entire construction fleet would need to consist of new (or newly retrofitted) equipment. Additionally, Tier 4 equipment may not be available for all types of equipment. No other feasible mitigation measures exist that would reduce these emission to levels that are less than significant.” However, EIRs prepared by the South Coast Air Quality Management District (SCAQMD), the air district with jurisdiction over southern California, have determined that mitigation measures for significant construction emissions are feasible using Tier 4 equipment. For a recent project, the SCAQMD required the following mitigation measure:
 - a. “A-7: For off-road construction equipment rated greater than 50 hp, the project proponent shall use equipment that meets Tier 4 off-road emission standards at a minimum. Any emissions control device used by the Contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations. The project proponent shall provide documentation in the Construction Management Program or associated subsequent status reports as information becomes available that equipment rated greater than 50 hp equipped with Tier 4 engines are not available.”²



² See page 4-37 of the Final EIR for the Tesoro Los Angeles Refinery Integration and Compliance Project, SCH No. 2014091020, Certified by the SCAQMD in May 2017. Available at: <http://www.aqmd.gov/home/library/documents-support-material/lead-agency-permit-projects>.

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There are some exemptions to the above mitigation measure including equipment unavailability and when equipment is used for fewer than 10 calendar days. Tier 4 construction equipment is feasible and must be used when it is available, subject to the same requirements and exemptions identified by the SCAQMD.

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E. Air Quality Cumulative Analysis, DEIR page 4.2-3. The cumulative air quality analysis is wholly inadequate as presented. The proposed project and Uptown Newport, adjacent to the proposed project, will be under construction at the same time. While approved several years ago, Uptown Newport is just beginning construction which will occur in phases from 2017 through 2021³. The construction schedule for the proposed project is 2018 through 2022, therefore, the construction activities associated with these two projects alone directly impact the same area and the cumulative impacts must be evaluated, instead of the cursory review provided in the DEIR. The NOx construction emissions associated with the Uptown Newport project exceed the SCAQMD significance threshold (100 lbs/day) and were considered to be significant (up to 209 lbs/day of NOx). In addition, the impacts associated with a number of other cumulative projects in the Airport area must be disclosed to the public and included in the cumulative air quality analysis.

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F. Air Quality Impacts, Appendix B and Tables 4.2-6, 4.2-7, 4.2-8, and 4.2-9 of the DEIR. The CalEEMod runs used to estimate the project emissions are incomplete and understate the emissions for the proposed project. Correspondence with the SCAQMD staff indicates that parking structures associated with high rise buildings need to be added as a separate land use in the "Land Use" tab for CalEEMod (see Attachment 3). The DEIR only included the emissions associated with the number of residential units and development of the parking included in the residential buildings was ignored. Therefore, the CalEEMod runs are incomplete and understate the operational emissions for the proposed project and could possibly change significance determinations, as well as cumulative air quality impacts, all of which must be corrected, revised, and recirculated for public review. These errors need to be corrected, and the DEIR revised and recirculated for public review.

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G. Air Quality Impacts, DEIR page 3-7 and Appendix B page 47. The CalEEMod runs used to estimate operational air emissions under estimate air quality impacts. The residential floor area used in the model runs was only modeled as 260,000 square feet (Appendix B page 47), while the DEIR shows 691,162 square feet (DEIR page 3-7). Therefore, air emissions associated with operations reported in the DEIR for residential units are underestimated by over 60 percent.

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H. Diesel particulate matter (DPM), page 4.2-21. The use of construction equipment would occur over a 4.5 year period and expose residents to DPM, a toxic air contaminant (TAC) regulated by the state of California. No analysis is provided in the DEIR of the potential health effects of DPM, rather the impacts are dismissed as being temporary with no further analysis. As

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³ Final Environmental Impact Report for Uptown Newport, SCH No. 2010051094, February 2013. Available at: http://www.newportbeachca.gov/pln/CEQA_REVIEW/Uptown%20Newport/Final_EIR_February_2013/Final%20EIR_2-2013.pdf.

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discussed in Comment 6.E above, the DPM emissions from construction activities at the Koll Project site and Uptown Newport overlap and those impacts must be analyzed in the DEIR, especially since DPM is a TAC. In addition, the cumulative impacts from other projects, such as recent modifications made to the John Wayne Airport operations as part of NextGen, also must be evaluated.

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I. The DEIR claims the following: "The use of diesel-powered construction equipment would be temporary and episodic. The duration of exposure would be short and exhaust from construction equipment dissipates rapidly. Current models and methodologies for conducting health risk assessments are associated with longer-term exposure periods of 9, 30, and 70 years, which do not correlate well with the temporary and highly variable nature of construction activities." This is inaccurate. The accepted methodology for determining health risk is established by the Office of Environmental Health Hazards Assessment (OEHHA) and was adopted in 2015. The guidelines were outlined in the *Air Toxics Hot Spots Program Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments* (OEHHA, 2015). The OEHHA guidelines explicitly state that the methodology only fails for projects that are shorter than 2 months, and is acceptable and accurate for any projects that last longer than 2 months (Section 8.2.10 of the OEHHA guidance). Since the construction of the proposed project will last longer than 2 months, the methodology should be used to determine health risk.

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J. Air Quality Impacts, Table 4.2-6 and 4.2-7. The values in Tables 4.2-6 and 4.2-7 for criteria pollutants are not actual peaks. These tables only include values from one season. The true peak emissions would be a mix of the summer and winter scenarios from CalEEMod.

29

K. Air Quality Impacts, Section 4.2. The DEIR concluded that project-related construction emissions were potentially significant, but there was no discussion of related health impacts associated with those potentially significant air quality impacts. The associated health impacts associated with these significant impacts must be included in the revised DEIR and recirculated for public review.

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7.0 GREENHOUSE GASES

A. GHG Impacts, Table 4.6-4, page 4.6-12, and Appendix F. The values in Table 4.6-4 for greenhouse gases (GHG) do not match the values from CalEEMod runs in Appendix F. For example, the GHG estimates for operational energy consumption in Table 4.6-4 are 163 metric tons per year. The GHG estimates in the CalEEMod runs in Appendix F for operational energy consumption are 1,017 metric tons per year. The same is true for GHG emissions from mobile sources, waste, and water/wastewater. The GHG emission estimates between Table 4.6-4 and Appendix F are inconsistent and this discrepancy needs to be corrected. The correct total unmitigated GHG emissions are expected to be very close to the 3,000 metric tons per year threshold, and could possibly exceed the threshold when the parking and residential square footage identified in Comments 6.F and 6.G above is corrected in CalEEMod.

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B. City of Newport Energy Action Plan, page 4.6-12. How is the project consistent with the EAP when it will increase the use of energy and all of the policies identified in the DEIR emphasize a decrease in energy use?

32

C. SCAG's 2016-2040 RTP/SCS, Page 4.6-13. The DEIR claims that the project is within a major employment center and is consistent with the regional strategies to reduce passenger VMT. In order to make this claim, there must be disclosure regarding the affordability of housing that would be built in the Koll Center. The more costly the housing, the more unlikely that workers in the Airport region would be able to afford housing in the Koll Center and live close to where they work, actually reducing VMT. A representative of Shopoff at the October 30, 2017 community meeting at the Newport Beach City library indicated that the proposed project consisted of 260 "luxury" units that would be in the range of \$1,500,000 to 2,000,000. Studies completed by Caltrans show that programs to put more affordable homes near transit would result in GHG emission reductions.⁴ The study found two main conclusions: (1) Lower income households drive 25-30 percent fewer miles when living within 1/2 mile of transit than those living in non-transit-oriented development areas. When living within housing 1/4 mile of frequent transit they drove nearly 50 percent less. However, the study also showed that higher income households drive more than twice as many miles and own more than twice as many vehicles as extremely low-income households living within 1/4 mile of frequent transit. It may be reasonable to make the claim that a low income project near transit would reduce VMT. However, it is clear that luxury dwelling units cannot make this claim. The DEIR needs to be revised and recirculated to show the realistic impacts associated with luxury condos as opposed to affordable or low income housing.

33

8.0 NOISE

A. Noise Impact, page 4.10-6. Policy N3.2 is outdated as it requires that residential development in the Airport Area be located outside of the 65 dBA contour based on the 1985 JWA Master Plan. The 65 dBA noise contours from the 1985 JWA Master Plan are based on noise data that is over 30 years old and do not account for the increase in noise related to vehicle/truck traffic or airport traffic in the project area. CEQA requires the lead agency to include a description of the physical environmental conditions in the vicinity of a project as they exist at the time environmental review commences (CEQA Guidelines §15125(a)). The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts. Noise data from the 1985 JWA Master Plan do not represent the physical environmental conditions in the vicinity of the project at the time environmental review of the project began and more recent noise data are required to adequately describe the existing noise environment in the project area. Note that the minimal

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⁴ California Housing Partnership Corporation, May 2014, *Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy*. Available at <http://www.transformca.org/transform-report/why-creating-and-preserving-affordable-homes-near-transit-highly-effective-climate>

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noise data provided in the DEIR (Table 4.10-5) shows that noise levels in the Koll Center are at or near 65 dBA.

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B. Existing Ambient Noise Measurements, page 4.10-8. Ambient noise levels are based on 10-minute measurements taken between 11 am and 12:30 pm and “are considered representative of the noise levels throughout the day.” No evidence is provided in the DEIR to back up this statement, which appears to be incorrect. Further, a 10-minute sample covers less than 1 percent of a 24-hour period (0.7 percent), is wholly inadequate for estimating ambient noise levels, and does not include peak noise periods. As stated on page 4.10-9 noise most commonly in the project vicinity is produced by automotive vehicles including cars, trucks, buses and motorcycles. Vehicle traffic is highest during morning and evening peak traffic hours. Further, noise from the airport is also based on traffic levels and the highest air traffic is likely during the morning when the airport first opens. Ambient noise levels must be based on a minimum of 24-hour noise monitoring. For comparison purposes, the Uptown Newport Final EIR included both short-term (10-20 min) and long-term (24 and 48 hour) noise monitoring⁵. The long-term noise monitoring was used to establish the existing CNEL in the vicinity of the Uptown Newport site and similar monitoring is required as part of the Koll Development to establish the existing/baseline ambient noise levels.

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C. Construction Noise Impacts, pages 4.10-15 through 4.10-19. Construction noise impacts are estimated to range from 65.7 to 95.9 dBA during construction activities with the highest noise levels near office buildings. As shown in Table 4.10-1, noise levels in the 75 dBA are considered to be “normally incompatible” and noise levels over 80 dBA are considered to be “clearly incompatible” with office buildings. Mitigation measures would not adequately minimize these noise impacts to be compatible with the adjacent office buildings and additional mitigation measures are required so that the noise impacts to workers in the adjacent office buildings are reduced to at least to a “compatible” level. Additional mitigation measures are required to reduce noise levels so that construction activities are compatible with the adjacent commercial buildings.

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D. Table 4.10-11, page 4.10-27. Table 4.10-11 was based on traffic volumes and airport noise estimates from the Final EIR for the adjacent Uptown Newport project. The JWA existing noise level contours were based on the 2006 General Plan EIR. Noise data in the 2006 General Plan EIR was based on monitoring in 2003. Therefore, the ambient JWA noise levels used in the Koll EIR are based on noise data that is over 14 years old, do not include expansion of the airport or the increase in passenger/traffic volume. The airport reported that 10.5 million passengers went through JWA in 2016 as compared to 8.53 million passengers in 2003.⁶ The noise from JWA needs to be updated with more recent data as noise data from 2003 is not representative

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⁵ Final Environmental Impact Report for Uptown Newport, SCH No. 2010051094, February 2013. Available at: http://www.newportbeachca.gov/pln/CEQA_REVIEW/Uptown%20Newport/Final_EIR_February_2013/Final%20EIR_2-2013.pdf.

⁶ <http://www.ocair.com/newsroom/factsataglance>

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of the current noise levels, does not provide an adequate description of the existing environment, and does not include the recent changes to take-off patterns associated with NEXTGEN recently imposed by the FAA which altered some of the airplane take-off routes.

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E. Table 4.10-11, page 4.10-27. CNEL noise estimates are provided in Table 4.10-11 which average noise levels over a 24-hour period, including noise from airport take-offs and landings. Short-term instantaneous noise levels, such as Lmax values, should also be provided so that the higher impacts from take-offs/landings are accounted for in the analysis.

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F. Page 4.10-32, last paragraph. See Comment 8.D above. Updated noise contours for JWA need to be provided to determine the ambient noise levels and make an adequate impact determination. The CNEL for John Wayne Airport are based on 2003 noise monitoring data which is insufficient to use in a 2017 noise analysis.

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G. Cumulative Construction Noise, page 4.10-33. As discussed in Comment 6.E above, the proposed project and Uptown Newport, adjacent to the proposed project, will be under construction at the same time. Uptown Newport is just beginning construction which will occur in phases from 2017 through 2021⁷. The construction schedule for the proposed project is 2018 through 2022, therefore, the construction activities associated with these two projects alone directly impact the same area and the cumulative noise impacts must be evaluated, instead of the cursory review provided in the DEIR.

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H. Cumulative Operational Noise Impacts, pages 4.10-33 through 4.10-36. The cumulative operational noise impacts are based solely on traffic levels. Page 4.10-27 of the DEIR (first sentence) indicates that noise at the project site is associated with traffic as well as aircraft noise. Therefore, cumulative noise impacts need to include updated airport noise data as well as traffic data.

9.0 LAND USE

A. General Plan and Zoning Designations, page 4.9-6, last paragraph. The DEIR indicates that the proposed project is consistent with the General Plan but that the project requires the approval of a transfer of development rights of up to 3,019 sf of unbuilt office/retail from Koll Center Site A to Site B and references Figure 3.6. Figure 3-6 only shows the location of Site B. No figure or map in the DEIR shows the locations of Site A, therefore, the impacts of this transfer are not adequately disclosed to the public. No evidence is provided to substantiate the unused development rights from Koll Center Site A. If the project requires the transfer of development rights it would appear that it would not comply with the General Plan.

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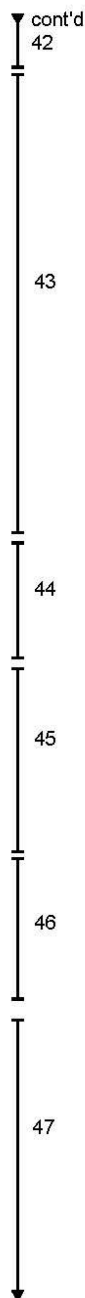
B. Land Use Impacts, page 4.9-9, second paragraph. The project would result in an increased in building intensity versus the existing site. This increased density (three more 13-story buildings

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⁷ Final Environmental Impact Report for Uptown Newport, SCH No. 2010051094, February 2013. Available at: http://www.newportbeachca.gov/pln/CEQA_REVIEW/Uptown%20Newport/Final_EIR_February_2013/Final%20EIR_2-2013.pdf.

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- up to 160 feet in height) are generally considered to degrade the visual quality of an area versus less development.
- C. Zoning Consistency, page 4.9-10. The project is inconsistent with the existing zoning of the site as the zoning does not allow for residential uses and the DEIR should acknowledge this as a significant impact. The fact that the project applicant is requesting a zone change doesn't change the fact that the project is not consistent with the existing zoning.
 - D. Table 4.9-1, LU2.2, LU2.3, LU3.2, and H2.3. The DEIR claims that the project is within a major employment center and is consistent with the General Plan policies and goals to minimize the need for residents to travel outside of the community for retail, goods and services, and employment. In order to make this claim, there must be disclosure regarding the affordability of housing that would be built in the Koll Center. The more costly the housing, the more unlikely that workers in the Airport region would be able to afford housing in the Koll Center and live close to where they work, actually reducing traffic and travel and improving the jobs-housing balance. The project would only provide a small amount of retail space and residents of the area would still need to travel outside of the Airport area for groceries, dry cleaners, etc. Nonetheless, the DEIR provides no data to make the claim that the DEIR is consistent with these policies.
 - E. Table 4.9-1 LU Policy 6.2.1. Please provide a reference for the comment that the "General Plan designates these areas as appropriate for development of up to 5,025 new dwelling units." Some of the areas listed are fully developed or close to fully developed under the current General Plan, e.g., Newport Center.
 - F. Table 4.9-1, LU 6.15.3, N1.1, N1.2, and N3.2. These policies require that residential development in the Airport Area be located outside of the 65 dBA contour based on the 1985 JWA Masters Plan. The 65 dBA noise contours from the 1985 JWA Master Plan are based on noise data that is over 30 years old and do not account for the increase in noise related to vehicle/truck traffic or airport traffic in the project area. More recent noise data are required to adequately describe the existing noise environment in the project area.
 - G. Table 4.9-1, NR8.1 requires developers to minimize air pollutants during construction activities. As discussed in Comment 6.D 15 above, the use of Tier 4 construction equipment is feasible and must be used when it is available, subject to the same requirements and exemptions identified by the SCAQMD. Therefore, as currently proposed, the project would not be consistent with NR8.1.
 - H. Cumulative Land Use Impacts, page 4.9-40 and 4.9-41. Same concerns as Comment 5.D above. Current, past and probable future development projects along Jamboree and the Airport Area has greatly changed the land use of the area. The increased development intensity on the Koll property, along with the following, contributes to this cumulative impact.
 - 1) Uptown Newport., 4311-4321 Jamboree Road: 1,244 residential units, 11,500 sf of retail space, building heights up to 150 feet.
 - 2) Newport Business Plaza Project, 4699 Jamboree Road: 46,044 sf of commercial development.



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- 3) Colton Apartments, Campus Drive and Von Karman: 876 apartments in three, six story residential buildings.
- 4) The Boardwalk Project, 18691 Jamboree Road: 458,000 sf office uses in two nine-story buildings.
- 5) Additional development that would be part of the General Plan Amendment.

Clearly, the intensity of the development within the Airport area of Newport Beach and along the Jamboree corridor in the cities of Newport Beach and Irvine has significantly impacted the land uses in the airport area. Additional development in the Koll Center would continue this trend and result in significant cumulative land use impacts.

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10.0 ALTERNATIVES

- A. Page 6-6, Alternative Sites. Alternative sites do not have to be limited to the Airport Area and more extensive review should be provided for alternative sites. For example, the Newport Crossings project location is an example of an alternative site.
- B. Page 6-6, 4th paragraph. The paragraph indicates that “the mixed-used development would need to be sited on a minimum of ten acres as set forth in General Plan Policy LU 6.25.6.” LU6.15.6 allows development of mixed-used residential villages, each containing a minimum of 10 acres and centered on a neighborhood park and other amenities. While this is true, the EIR should note that the City of Newport Beach has approved mixed-used development on less than ten acres (e.g., Museum House Development, although approvals have been rescinded for other reasons).
- C. Alternative B, Page 6-15. The DEIR indicates that Alternative B would decrease construction-related emissions but they would still exceed the SCAQMD NOx threshold. No evidence (e.g., emission estimates) is provided to make this claim.
- D. A reduced density alternative that considers developing only two buildings should be included in the DEIR as it could be consistent with General Plan Policy LU 6.15.9 and the Airport Business Area ICDP; and it could be designed to reduce construction impacts such as noise, air, traffic, etc. by reducing the building footprints.
- E. Alternative B, Feasibility and Ability to Meet Project Objectives. The DEIR indicates that Alternative B would be inconsistent with General Plan Policy LU 6.15.9 and the Airport Business Area ICDP which require a minimum density of 30 to 50 dwelling units per net acre.

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Attachments are in separate document (Appendix A of Responses to Comments) and can be found at this link:
<http://www.newportbeachca.gov/index.aspx?page=1347>

Response 1

The subsequent responses address the specific issues raised by this commenter.

Response 2

As acknowledged by the commenter, the compliance with CC&Rs and “investment backed expectations” are not environmental issues. The legislative body for the City is not prevented from amending the Zoning Code pursuant to its public process. The EIR evaluates potential environmental impacts both during construction and operation of the Proposed Project. No further response is required.

Response 3

The commenter alleges that the Proposed Project will result in “lost tenancies and vacancies” in Koll Center Newport resulting in urban decay and blight and cites *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 (*Bakersfield*), as reasoning for the Draft EIR to address urban decay. However, the commenter presents no evidence to support the assertion that the introduction of the mixed-use development would cause these outcomes. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.”

In Bakersfield, the courts defined urban decay as follows:

“[N]ot simply a condition in which buildings become vacant as businesses compete with each other in the normal course of the market-based economy, nor is it a condition where a building may be vacated by one business or use and reused by a different business or for alternative purposes. Rather, under CEQA ‘urban decay’ is defined as physical deterioration of properties or structures that is so prevalent, substantial, and lasting a significant period of time that it impairs the proper utilization of the properties and structures, and the health, safety, and welfare of the surrounding community. Physical deterioration includes abnormally high business vacancies, abandoned buildings, boarded doors and windows, parked trucks and long-term unauthorized use of the properties and parking lots, extensive or offensive graffiti painted on buildings, dumping of refuse or overturned dumpsters on properties, dead trees and shrubbery, and uncontrolled weed growth or homeless encampments.”

Blight in Koll Center Newport is not a reasonably foreseeable outcome associated with the implementation of an infill mixed development adjacent to an approved, under construction mixed use development within the Airport Area. As stated in *Placerville Historic Preservation League v. Judicial Council of California* (2017) __Cal.App.4th__ (Case No. A149501), “there is no reason to presume that urban decay would be a consequence of the project. As defined by CEQA, urban decay is a relatively extreme economic condition. In a dynamic urban environment, including that of a small city such as Placerville, change is commonplace. In the absence of larger economic forces, urban decay is not the ordinary result. On the contrary, businesses and other activities come and go for reasons of their own, without necessarily affecting the overall health of the economy.”

While the commenter suggests that the area is a low-rise business park, this characterization is misleading. The project site has a General Plan designation of “Mixed Use Horizontal 2 (MU-H2)”. The MU-H2 designation specifically applies to some properties located in the Airport Area. It is intended to provide

for the development of areas in a horizontally distributed mix of uses which may regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses.

As addressed in Section 4.9, *Land Use and Planning*, of the Draft EIR, the project site is within the boundaries of the Airport Business Area Integrated Development Plan (ICDP) which was adopted by the Newport Beach City Council in September 2010. It implements General Plan Land Use Policy LU 6.15.11 (Conceptual Development Plan Area) which requires the development of one conceptual development plan for the portion of the Airport Area that is generally bound by MacArthur Boulevard, Birch Street and Jamboree Road should residential units be proposed within this area. The Airport Business Area ICDP contemplates up to 1,504 new residential units, 11,500 sf of ground-level retail and commercial uses for Uptown Newport and 3,400 sf of commercial uses for the project site, as well as neighborhood park areas. Of the 1,504 dwelling units, 1,244 units are on the Uptown Newport site and 260 units on the surface parking area of Koll Center Newport where the Koll Center Residences Project is proposed. All of the 260 residential units at the project site were identified as “additive” units in the Airport Business Area ICDP because no existing development uses would be removed. These units would be allocated to the Proposed Project in accordance with the City’s General Plan and the Airport Business Area ICDP. According to the City’s General Plan, “additive” units “may be developed as infill on existing surface parking lots or areas not used as occupiable buildings on properties within the Conceptual Development Plan Area as depicted on Figure LU22 provided that parking is replaced on site”.

Response 4

Please refer to Topical Response, *Cumulative Projects*.

Response 5

The opinion of the commenter is noted.

Response 6

The subsequent responses address the specific issues raised by this commenter.

Response 7

With respect to Aesthetics, the commenter suggests that the Table 1-1, *Summary of Significant Impacts and Mitigation Program*, identifies a significance conclusion that is inconsistent with the analysis as it pertains to light and glare, and that Table 1-1 is inconsistent with Section 4.1, Aesthetics and Visual Resources. Both Table 1-1 and Section 4.1 of the Draft EIR identify potential impacts related to the nighttime lighting associated with the free-standing parking structure. This is identified as an impact that can be mitigated to a less than significant level. Mitigation Measure 4.10-7 requires that the free-standing parking structure incorporate a solid perimeter barrier or other light and noise attenuation features.

Section 4.1 incorrectly identifies the measure as MM 4.10-6. Page 4.1-13 has been revised and is incorporated into the Final EIR as follows:

Less Than Significant with Mitigation. The project site is in an urbanized area with existing sources of lighting. The site currently contains light standards within the surface

parking areas. Additional lighting in the area includes vehicle headlights, traffic signals, illuminated signage, and lighting associated with office and commercial uses. The introduction of additional light sources would not be a significant impact. Building materials would minimize the potential for glare. MM 4.10-67 in Section 4.10, *Noise*, would mitigate potential lighting impacts associated with the free-standing parking structure to a less than significant level.

With respect to Noise, Table 1-1, *Summary of Significant Impacts and Mitigation Program*, has been revised and incorporated into the Final EIR to clarify and provide consistency with Section 4.10, *Noise*. No changes to the Noise section are required.

Table 1-1. Summary of Significant Impacts and Mitigation Program			
Thresholds Applied	Environmental Impacts/ Level of Significance Before Mitigation	Summary of Mitigation Program: Project Design Features, Standard Conditions, and Mitigation Measures	Level of Significance After Mitigation
Noise			
	<p>Construction Noise... Potentially Significant Impact.</p> <p>Operational Noise: ... Potentially Significant.</p> <p>Stationary Noise: ... Potentially Significant.</p>		<p><u>Construction Noise: Significant and Unavoidable.</u></p> <p><u>Operational Noise: Less than Significant</u></p> <p><u>Stationary Noise: Less than Significant</u></p>

Response 8

The City respectfully disagrees with the commenter. Page 3-6 of the EIR states that it is an objective of the Project to provide beneficial site improvements. Increasing the amount of pervious surface on the Project site would help to achieve this objective. No change to the existing Project objectives is warranted.

The referenced objective does quantify the increase in pervious surface area that would be associated with the Proposed Project. However, this does not preclude an increase; rather, it demonstrates with the Project there would be less impervious areas. The range of alternatives addressed in the Draft EIR is not restricted to alternatives that would have the same amount of pervious surface.

With respect to the Plaza Gardens, page 3-13 of Section 3.0, *Project Description*, has been modified to cross-reference the callouts on Figure 3-14, and included in the Final EIR as follows:

Plaza Gardens. The Plaza Gardens would include four components: Entry Gardens (C1), Stars of the Bay Plaza (C2), The Marsh (C3), and Von Karman Plaza (C4) (Figure 3-14; the references to C1 through C4 are shown on the figure).

Figure 3-12, *Circulation Plan*, identifies the locations of the driveways. As requested, this information has been added to Figure 3-14.

With respect to potential modifications or substitutions to the Mitigation Program, Section 4.0, Environmental Setting, has been clarified and incorporated into the Final EIR as follows:

The City of Newport Beach Community Development Department, in conjunction with any appropriate agencies or City departments, shall determine the adequacy of any proposed “modification” and, if determined necessary, may refer said determination to the Planning Commission and/or City Council for review and approval consistent with Municipal Code Section 20.54.070: Changes to an Approved Project. Findings and related documentation supporting the findings involving modifications to any PDF, SC, and/or MM shall be maintained in the Project file with the MMRP and shall be made available to the public upon request.

Any changes made to any mitigation measures are included in this Final EIR, which is fully disclosed and available to the public. Additionally, the MMRP is incorporated as part of the public record for the Project and thus is available for review.

Response 9

The commenter has noted an inconsistency between Table 4-1 and Figure 4-1. Figure 4-1 has been revised to delete project location 3, and to renumber the subsequent cumulative project locations. The cumulative analysis provided in the EIR was based on the callouts of the figure and does not cause the analysis to be flawed.

Response 10

With respect to Newport Crossings, please refer to Topical Response, *Cumulative Projects*.

Response 11

With respect to Newport Banning Ranch, please refer to Topical Response, *Cumulative Projects*.

Response 12

With respect to the Mariner’s Mile Revitalization Master Plan, please refer to Topical Response, *Cumulative Projects*.

Response 13

The City has not initiated the process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process. As currently proposed, the Project is consistent with the General Plan. Additionally, it is appropriate to utilize the General Plan approved at the time the Project is being considered for approval.

As currently proposed, the Project is consistent with the General Plan. As a point of clarification, the memo referenced by the commenter notes that an update to the General Plan may include a “review the City’s

vision for the Airport area and Newport Center....” The statement should not be construed by the commenter as a commitment by the City to modify the development assumptions for the Airport Area.

Response 14

The commenter’s reasoning that the Uptown Newport Project and the Koll Center Residences Project must be evaluated as one project is flawed. The commenter states that because the approved and under construction Uptown Newport project site is adjacent to the proposed Koll Center Residences project site; contains some of the same land uses; that construction schedules could overlap, and that the projects have the same applicant, that one EIR is necessary. The Uptown Newport EIR was certified and the project was approved in 2013; the first phase of development is under construction. Although the two projects are near each other, the City received two separate applications for the two projects at two different times, and as such are processing them separately. The Uptown Newport Project is assumed in the cumulative analysis set forth in the Draft EIR.

Response 15

Please refer to Topical Response, *Cumulative Projects*.

Response 16

Please refer to the response to Comment 9 and to Topical Response, *Cumulative Projects*.

Response 17

Please refer to Topical Response, *Cumulative Projects*.

Response 18

Figures 4.1-2a through 4.1-2h mistakenly reference that the images are not to scale; the images are to scale.

Response 19

The opinion of the commenter stating that the development has changed the aesthetic environment of the area is noted but does not focus on the sufficiency of the Draft EIR analysis.

Response 20

Toxic air contaminants (TACs) and Health Risk impacts were addressed on page 4.2-21 of the Draft EIR. As discussed in the Draft EIR, health risk impacts for the project area were analyzed in the 2014 *John Wayne Airport Settlement Agreement Amendment Environmental Impact Report* (2014 John Wayne Airport EIR), which addressed risk impacts from the airport to surrounding receptor areas. As noted in the Draft EIR, the 2014 John Wayne Airport EIR identifies the project area as being outside of the airport risk area. Table 4.1-23 of the 2014 John Wayne Airport EIR shows that the worst-case cancer risk of a resident receptor ranges from 2.4 to 5.9, which is below the SCAQMD threshold of 10 (risk in one million). As the risk level for the worst-case airport scenario is 5.9, the cancer risk to all receptors would not exceed SCAQMD thresholds. As indicated in Exhibit 4.1-1 of the 2014 John Wayne Airport EIR, the nearest modeled residential receptor to the airport boundary line is closer than the project site. Additionally, the wind rose for the meteorological station indicates that the predominant wind patterns do not blow toward the site.

Therefore, pollutant concentrations would continue to disperse going toward the project site and the cancer risk of future residents at the site would be at or below the risk levels identified in the John Wayne Airport EIR.

The Project would not include operational sources of toxic air contaminants (TACs) as it is proposed as a mixed-use infill residential and retail development. As addressed on page 4.2-18 of the Draft EIR, operational emissions, including diesel particulate matter (i.e., PM₁₀ and PM_{2.5}), from the Proposed Project would not exceed SCAQMD thresholds. Construction of the Proposed Project would result in exhaust (NO_x) emissions slightly above the SCAQMD threshold. Mitigation Measure (MM) M 4.2-1 identified in the Draft EIR would require the use of newer construction equipment with better emissions controls and would reduce construction-related NO_x emissions. Potential impacts of NO_x construction emissions on sensitive receptors was analyzed using localized significance thresholds (LSTs). Table 4.2-8 of the Draft EIR Table 4.2-8 identifies that NO_x construction emissions would remain below LSTs. Therefore, it is not necessary to further analyze health risk impacts in relation to the operation and construction of the Proposed Project.

Particulate matter exceedances of the LSTs occur primarily due to fugitive dust emissions. Additionally, the LSTs for particulate matter were derived based on requirements in SCAQMD Rule 403 – Fugitive Dust. Fugitive dust is comprised of inert silicates and does not include TACs or other toxins. As such, the exceedance of particulate matter LSTs (see Table 4.2-8 of the Draft EIR) does not indicate health risk would occur. Furthermore, construction would be subject to and would comply with California regulations limiting the idling of heavy-duty construction equipment to no more than five minutes, which would further reduce nearby sensitive receptors' exposure to temporary and variable construction emissions.

Response 21

The analysis was initiated and completed prior to the release of the 2016 ambient air quality monitoring data (May 2017). Ambient air quality monitoring data does not vastly differ from 2015 to 2016. Therefore, the incorporation of the 2016 ambient air quality monitoring data would not change the conclusion of the Draft EIR and additional mitigation would not be required.

Response 22

Two criteria are identified under Threshold 4.2-1:

Whether a project will result in an increase in the frequency or severity of existing air quality violations or cause or contribute to new violations, or delay timely attainment of air quality standards or the interim emission reductions specified in the AQMP.

Whether a project will exceed the assumptions in the AQMP based on the year of project buildout and phase.

As stated on page 4.2-12 of Section 4.2, Air Quality, of the Draft EIR, the Project would not be consistent with the first criterion due to the potential exceedance of NO_x pollutant concentration standards during construction. However, the Project would be consistent with the second criterion as discussed on pages 4.2-12 and 4.2-13 of the Draft EIR. Therefore, the Impact Summary is referring to the first criterion as it is

not consistent with the 2016 AQMP. The Draft EIR is consistent with its significance conclusions regarding AQMP compliance.

Response 23

The commenter incorrectly states that the Draft EIR's proposed mitigation is inadequate. Tier 4 equipment has limited availability and it is not certain that all construction equipment will be available that meets Tier 4 standards. The commenter states that since Tier 4 construction equipment was required in the SCAQMD's Tesoro Refinery Project EIR, that it should be feasible for the Proposed Project. However, the Tesoro Final EIR acknowledges that the pool of available Tier 4 equipment is limited and it is not certain that all construction equipment will be available that meets Tier 4 standards.⁹ It should be noted that the emissions associated with the Tesoro project would still exceed thresholds despite the implementation of Tier 4 equipment. The Draft EIR for the Proposed Project conservatively requires all equipment greater than 50 horsepower to meet Tier 3 standards. Because Tier 3 equipment is readily available, the mitigation for the Proposed Project is reasonable and feasible.

Response 24

Cumulative air quality impacts are fully analyzed within Draft EIR. It should be noted that the SCAQMD does not require cumulative projects to be quantified and compared to thresholds. The following is stated on page D-3 of the SCAQMD 2003 *White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution*:

As Lead Agency, the AQMD uses the same significance thresholds for project specific and cumulative impacts for all environmental topics analyzed in an Environmental Assessment or EIR... Projects that exceed the project-specific significance thresholds are considered by the SCAQMD to be cumulatively considerable. This is the reason project-specific and cumulative significance thresholds are the same. Conversely, projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant.

Therefore, the project-specific thresholds were used to analyze the cumulative impact. As discussed on Draft EIR page 4.2-20, the Project would result in a significant cumulative impact for construction NO_x emissions (a criteria pollutant precursor). The Proposed Project, the Uptown Newport Project, and other cumulative projects would be required to reduce construction emissions per SCAQMD rules and mandates. However, as described in the Draft EIR, the Project's exceedance of construction NO_x thresholds despite the implementation of mitigation would be cumulatively considerable.

Response 25

The CalEEMod run has been revised to incorporate the parking structures for Buildings 1, 2, and 3 and to incorporate the residential square footage. Additionally, refinements were made to the construction acreage assumptions. Refinements to operational assumptions also included incorporating improvements from regulatory requirements such as the Renewable Portfolio Standards, and accounting for the Project's density and proximity to jobs. These model updates and refinements would not change the magnitude of

⁹ South Coast Air Quality Management District, *Tesoro Los Angeles Refinery – Integration and Compliance Project Final EIR*, page 4-42, May 2017.

impacts or the conclusions and mitigation in the Draft EIR. Table 4.6-3, Table 4.6-4, Table 4.2-6, Table 4.2-7, and Table 4.2-9 of the Draft EIR are revised and incorporated into the Final EIR as follows:

Table 4.6-3. Construction-Related Greenhouse Gas Emissions – Metric Tons per Year	
Construction Year	CO₂e
2018	1,142 <u>1,140</u>
2019	2,058 <u>2,061</u>
2020	1,555 <u>1,549</u>
2021	2,872 <u>2,693</u>
2022	926 <u>927</u>
Total Construction	8,553 <u>8,370</u>
Source: Michael Baker International, 2017b.	

Table 4.6-4. Greenhouse Gas Emissions – Project Operation – Metric Tons per Year	
Emissions Source	CO₂e
Construction Amortized over 30 Years	285 <u>279</u>
Area Source	61
Energy	163 <u>987</u>
Mobile	1,282 <u>962</u>
Waste	31
Water and Wastewater	116
Total	1,938 <u>2,157</u>
SCAQMD Bright-line threshold	3,000
Exceeds threshold?	No
Source: Michael Baker International, 2017b.	

Table 4.2-6. Unmitigated Construction-Related Emissions						
Construction Year	Pollutant (pounds per day)^{2a, b}					
	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO_x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO₂)	Coarse Particulate Matter (PM₁₀)	Fine Particulate Matter (PM_{2.5})
2018	5.22 <u>6.69</u>	47.13 <u>65.90</u>	35.14 <u>44.03</u>	0.14 <u>0.17</u>	8.02 <u>8.67</u>	2.73 <u>3.46</u>
2019	10.05 <u>10.10</u>	66.44 <u>66.41</u>	71.23 <u>71.55</u>	0.24	16.93 <u>16.92</u>	5.83
2020	9.17 <u>9.23</u>	74.02 <u>72.68</u>	66.72 <u>67.06</u>	0.24	16.66	5.57
2021	17.99 <u>17.65</u>	142.43 <u>135.08</u>	136.81 <u>129.05</u>	0.41 <u>0.40</u>	33.65 <u>30.61</u>	13.56 <u>12.86</u>
2022	9.83 <u>9.89</u>	79.08 <u>79.68</u>	76.81 <u>77.61</u>	0.27	26.03 <u>23.45</u>	9.67 <u>9.42</u>
Highest of all Years	17.99 <u>17.65</u>	142.43 <u>135.08</u>	136.81 <u>129.05</u>	0.41 <u>0.40</u>	33.65 <u>30.61</u>	13.56 <u>12.86</u>
SCAQMD Potentially Significant Impact Threshold	75	100	550	150	150	55
Exceed SCAQMD Threshold?	No	Yes	No	No	No	No
a. Emissions were calculated using CalEEMod, as recommended by the SCAQMD. b. Construction emission incorporate reductions/credits in CalEEMod that are required by the SCAQMD. The credits include the following: replace ground cover in disturbed areas quickly; water exposed surfaces two times daily; cover stock piles with tarps; water all haul roads twice daily; and limit speeds on unpaved roads to 15 miles per hour. Source: Michael Baker International, 2017a						

Construction Year	Pollutant (pounds per day) ^{a, b, c}					
	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
2018	3.55-4.33	44.24-57.87	40.90-52.59	0.14-0.17	6.29-6.57	2.24-2.80
2019	7.62-7.61	60.08-59.72	71.99-71.59	0.24	13.31-13.30	4.75-4.74
2020	7.08-7.06	62.86-62.17	67.83-67.44	0.24	13.33-13.32	4.67-4.66
2021	11.17-11.06	118.47-113.15	145.25-135.09	0.41-0.40	23.64-22.11	10.03-9.50
2022	7.25-7.28	69.88-70.50	85.09-85.93	0.27	17.42-16.35	6.64-6.57
Highest of all Years	11.17-11.06	118.47-113.15	145.25-135.09	0.41-0.40	23.64-22.11	10.03-9.50
SCAQMD Threshold	75	100	550	150	150	55
Exceed SCAQMD Threshold?	No	Yes	No	No	No	No

a. Emissions were calculated using CalEEMod, as recommended by the SCAQMD.
 b. Construction emission incorporate reductions/credits in CalEEMod that are required by the SCAQMD. The credits include the following: replace ground cover in disturbed areas quickly; water exposed surfaces two times daily; cover stock piles with tarps; water all haul roads twice daily; and limit speeds on unpaved roads to 15 miles per hour.
 c. Mitigation includes the use of CARB certified Tier 3 engines.
 Source: Michael Baker International, 2017a

Source	Pollutant (pounds per day)					
	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
Summer Emissions						
Area	6.89-16.31	4.13	23.19-23.40	0.03	0.43	0.43
Energy	0.09-0.08	0.77-0.71	0.33-0.30	0.00	0.06	0.06
Mobile	1.66-1.97	6.41-6.72	20.69-20.50	0.08-0.06	7.20-4.77	1.96-1.32
<i>Total Summer Emissions</i>	<i>8.64-18.37</i>	<i>11.31-11.56</i>	<i>44.21-44.20</i>	<i>0.11-0.09</i>	<i>7.69-5.26</i>	<i>2.45-1.81</i>
Winter Emissions						
Area	6.89-16.31	4.13	23.19-23.40	0.03	0.43	0.43
Energy	0.09-0.11	0.77-0.71	0.33-0.30	0.00	0.06	0.06
Mobile	1.63-1.95	6.57-6.89	19.90-20.21	0.08-0.06	7.20-4.77	1.96-1.32
<i>Total Winter Emissions</i>	<i>8.61-18.35</i>	<i>11.47-11.73</i>	<i>43.42-43.91</i>	<i>0.11-0.09</i>	<i>7.69-5.26</i>	<i>2.45-1.81</i>
SCAQMD Threshold	55	55	550	150	150	55
Exceed SCAQMD Threshold?	No	No	No	No	No	No

Note: emissions rates differ from summer to winter because weather factors are dependent on the season, and these factors affect pollutant mixing/dispersion, ozone formation, etc.
 Source: Michael Baker International, 2017a

Response 26

Please refer to the response to Comment 25. The CalEEMod model default value for 260 multi-family dwelling units is approximately 260,000 sf. As shown in Draft EIR Table 4.2-9, mobile emissions are the Project's primary emissions source and that the floor area square footage has a nominal effect on area and energy emissions and would not affect the Project's magnitude of emissions, or the significance finding or mitigation in the Draft EIR. However, as described in the response to Comment 25, revising the residential square footage in CalEEMod would not change the conclusions in the Draft EIR or require additional mitigation measures.

Response 27

Please refer to the response to Comment 20 and Comment 28. There is not a considerable health risk impact for projects that only last a small fraction of a lifetime. Therefore, it would not be necessary to analyze the health risk of diesel particulate matter (DPM) and the construction phase. Additionally, most DPM is from the use of heavy equipment which would be temporary and episodic. The duration of exposure would be short and exhaust from construction equipment would dissipate rapidly. Please refer to the response to Comment 24 regarding cumulative impacts.

However, in the interest of full disclosure, a screening-level dispersion model has been run to further support the conclusions in the Draft EIR. The EPA recommended screening model AERSCREEN was used to further address Project construction risk. AERSCREEN is the recommended screening model based on the AERMOD dispersion model. The model produces estimates of worst-case concentrations without the need for hourly meteorological data. According to the EPA Support Center for Regulatory Atmospheric Modeling (SCRAM) website, AERSCREEN is intended to produce concentration estimates that are equal to or greater than the estimates produced by AERMOD with a fully developed set of meteorological and terrain data.¹⁰ Maximum daily PM₁₀ exhaust construction emissions were used in AERSCREEN to approximate construction DPM emissions. Construction exhaust emissions were modeled as a volume source and resulted in a maximum annual concentration of 0.052 µg/m³ and a risk level of 7 in one million, which is less than the SCAQMD threshold of 10 in one million. Risk levels were calculated based on the California Office of Environmental Health Hazard Assessment (OEHHA) guidance document, *Air Toxics Hot Spots Program Risk Assessment Guidelines* (February 2015). It should be noted that the risk calculations use conservative age sensitivity factors and breathing rates. Since construction would only last 4.5 years, the age sensitivity factors for the first youngest (most conservative) age groupings were used. As described above, worst-case construction risk levels based on screening-level modeling (AERSCREEN) and conservative assumptions would be below the SCAQMD's thresholds.

Response 28

Section 8.2.10 of the OEHHA guidance states, "The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation. Frequently, the issue of how to address cancer risks from short-term projects arises. Cancer potency factors are based on animal lifetime studies or worker studies where there is long-term exposure to the carcinogenic agent. There is considerable uncertainty in trying to evaluate the cancer risk from projects that will only last a small fraction of a lifetime. There are some

¹⁰ <https://www.epa.gov/scram/air-quality-dispersion-modeling-screening-models>

studies indicating that dose rate changes the potency of a given dose of a carcinogenic chemical. In other words, a dose delivered over a short time period may have a different potency than the same dose delivered over a lifetime.” The OEHHA methodology uses a 70-year exposure duration and the construction phase would only last 4.5 years. Due to the uncertainty of the short time period methodology it would not be necessary to analyze the health risk of the construction phase.

Response 29

Air quality emissions model results shown in Tables 4.2-6 and 4.2-7 are the worst case and daily maximum values. Winter and summer emissions do not occur concurrently. Therefore, winter emissions (which have slightly higher NO_x emissions) were reported in the Draft EIR. Summer emissions are provided in Draft EIR Appendix B and vary slightly (less than one pound per day) than winter emissions but would not change the level of significance or require new mitigation. The worst-case scenario is provided in the Draft EIR.

Response 30

As shown in Draft EIR Table 4.2-6, NO_x during 2021 would be the only criteria pollutant to slightly exceed SCAQMD thresholds. However, SCAQMD thresholds are based on regional attainment of the National Ambient Air Quality Standards as well as the California Ambient Air Quality Standards and are not locally significant. Please refer to the response to Comment 19 regarding the health-related impacts from construction emissions. As indicated above, although construction NO_x emissions exceed SCAQMD regional thresholds in one year, localized NO_x thresholds are not exceeded and health-related impacts would not occur. Additionally, refer to the response to Comment 28 for the health risk associated with short-term (one year) of NO_x construction emissions above the SCAQMD threshold.

Response 31

Please refer to the response to Comment 25. The commenter identifies a typographical error in the energy and mobile emissions reported in the Table 4.6-4 of the Draft EIR. However, the commenter incorrectly identifies that emissions associated with waste and water/wastewater do not match the outputs. As previously addressed, the model refinements and the correction of the typographical errors for energy and mobile source emissions would not result in total Project emissions that exceed GHG thresholds. The magnitude of impacts would not change, the conclusions in the Draft EIR would remain the same, and additional mitigation would not be required.

It should be noted that the Project’s GHG emissions were calculated with CalEEMod version 2016.3.1, which was released in October 2016. CalEEMod version 2016.3.1 calculates energy consumption and associated emissions based on consumption rates in the 2013 version of Title 24 (Part 6). However, the energy consumption based on the current version of Title 24 (2016) is 28 percent more efficient than the previous 2013 version. As such, an adjustment was applied in the CalEEMod mitigation module to account for this State mandated improvement. Implementation of the 2020 Renewable Portfolio Standards goal was also incorporated.¹¹ Although the adjustment was made in the mitigation module, it is a conservative assumption, as Title 24 is updated on an approximately three-year cycle and the 2019 Standards will continue to improve upon the 2016 Standards. As the Project would be constructed through 2022, it is

¹¹ Senate Bill X1-2 was signed in April 2011 and set the RPS target at 33 percent by 2020. Senate Bill 350 (signed in October 2015) requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from eligible renewable energy resources by 2030.

likely that it would be subject to more stringent energy efficiency standards. Furthermore, PDF 1 identifies that the Applicant will pursue a Leadership in Energy and Environmental Design (LEED) Silver Certification for the Project. Additional Project efficiency features include the use of landscape irrigation systems with weather sensors, timers, and low-flow irrigation devices to further reduce the overall water use (and associated water energy use) in the community. Non-potable water would also be used for all site irrigation (reducing energy associated with water treatment). The GHG emissions analysis provided in the Draft EIR is conservative because it does not take credit for 2019 Title 24 improvements or LEED certification.

Please also refer to the response to Comment 25 regarding modeled residential floor area. As noted above, CalEEMod default values were used the residential floor area/square footage. It should be noted that the mobile emissions are the Project's primary emissions source and that the floor area square footage has a nominal effect on area and energy emissions. Additionally, the revised model results provided in response to Comment 25 demonstrate that these refinements would not affect the Project's magnitude of emissions, or the significance finding or mitigation in the Draft EIR.

Response 32

Please refer to Topical Response: *Energy Action Plan Consistency*. Project consistency with the City's EAP was reviewed in Section 4.6, *Greenhouse Gas Emissions*, of the Draft EIR and Project energy consumption was assessed in Section 4.15.5, *Energy Consumption*, of the Draft EIR. The Project would not conflict with the City's Energy Action Plan.

Response 33

Please refer to the responses to Comment 20 and Comment 21. The project site is located within walking distance of transit stops and OCTA's *i-Shuttle*, and would increase urban density, diversify land uses, and is located within a mixed-use development close to several major employers. These features would encourage active transportation and contribute to a reduction in VMT.

Response 34

As discussed in Topical Response: *Airport Noise*, the project site is located outside of the 60 dBA CNEL noise contour based on the *2008 Land Use Plan for John Wayne Airport*¹², and the *John Wayne Airport 2016 Annual 60-75 [5 dB intervals] CNEL Noise Contours*.¹³ General Plan Policy N3.2 is included in Draft EIR Section 4.10 (Noise) for informational purposes, and is currently adopted in the City's General Plan (adopted July 25, 2006).

Response 35

As stated in Draft EIR Section 4.10, *Noise*, three 10-minute noise measurements were taken at three locations in the project vicinity between 11:00 AM and 12:30 PM on April 18, 2017. The recorded noise measurements captured both mobile traffic and airplane noise during the 10-minute measurement

¹² Orange County Airport Land Use Commission, *Airport Environs Land Use Plan for John Wayne Airport*, http://www.ocair.com/commissions/aluc/docs/JWA_AELUP-April-17-2008.pdf, April 17, 2008.

¹³ John Wayne Airport, *John Wayne Airport 2016 Annual 60-75 [5 dB intervals] CNEL Noise Contours*, <http://www.ocair.com/reportspublications/AccessNoise/cnelnoisecontours/2016.pdf>, 2016.

recordings. As mobile traffic noise and airplane departures/arrivals are continuous throughout the day, a 10-minute measurement is considered representative of the existing noise environment.

The 10-minute measurements were recorded and shown in the Draft EIR in terms of dBA L_{eq} . The commenter suggests that a 24-hour dBA CNEL measurement is needed since traffic is loudest at peak hours and airport noise is loudest in the morning. Peak hour traffic noise can be quieter than non-peak hour traffic where traffic congestion results in slower travel speeds. As noted above, airport noise was captured during the 10-minute noise measurements for the project and is considered part of the existing noise environment. According to the *Technical Noise Supplement to the Traffic Noise Analysis Protocol* (California Department of Transportation, September 2013), a 24-hour measurement (dBA CNEL) is normally about 0.5 dBA higher than the 24-hour noise metric. As such, the difference in the three noise measurements recorded for the Proposed Project would vary by a maximum of +0.5 dBA, which is nominal and not detectable by the human ear.

Response 36

As discussed in the Draft EIR (pages 4.10-12 to 4.10-19), construction noise impacts would be significant and unavoidable due to a substantial temporary increase in ambient noise levels to various receptors adjacent to site development, including residential, office, and commercial uses. Implementation of SC 4.10-1 and MMs 4.10-1 through 4.10-4 would help reduce short-term construction noise impacts to the furthest extent feasible, and indoor noise levels at the nearby office uses would be reduced by 24 dB due to outdoor-indoor noise attenuation. It is noted that the Project's construction noise levels were provided in Draft EIR Table 4.10-7 for informational purposes, as construction noise is exempt from the City's noise standards in compliance with the allowable hours outlined in Municipal Code Section 10.28.040. Construction activities are not considered a "land use"; therefore, construction noise levels were not compared to the City's land use compatibility standards. Land use compatibility standards are typically used as thresholds for operational noise impact analyses.

Response 37

Please refer to Topical Response: *Airport Noise*. As discussed in the topical response, the project site is currently located outside of the 60 dBA CNEL contour based on the most recent data provided by John Wayne Airport.^{14,15} The project site is also located outside the 60 dBA CNEL under future expansion conditions at John Wayne Airport (i.e., an increase in the number of daily flights and passengers at John Wayne Airport) per the JWA EIR.

Response 38

The noise levels identified in Table 4.10-11 of the Draft EIR are provided in dBA CNEL, as the City of Newport Beach does not have noise standards for L_{max} . L_{max} noise levels are inconstant and of short duration, and are not representative of long-term noise impacts. Noise levels expressed in terms of dBA

¹⁴ Orange County Airport Land Use Commission, *Airport Environs Land Use Plan for John Wayne Airport*, http://www.ocair.com/commissions/aluc/docs/JWA_AELUP-April-17-2008.pdf, April 17, 2008.

¹⁵ John Wayne Airport, *John Wayne Airport 2016 Annual 60-75 [5 dB intervals] CNEL Noise Contours*, <http://www.ocair.com/reportspublications/AccessNoise/cnelnoisecontours/2016.pdf>, 2016.

CNEL represent long-term (24-hour) noise exposure, and thus, were used for the long-term noise analysis in the Draft EIR and as shown in Table 4.10-11.

Response 39

Please refer to Topical Response: *Airport Noise*, and the response to Comment 37.

Response 40

The commenter incorrectly characterizes the construction noise analysis in the Draft EIR. Construction noise impacts are thoroughly analyzed in Draft EIR Section 4.10.5. Additionally, construction of the Uptown Newport Project was taken into account in the Draft EIR. As indicated in the comment, the Project's construction timing would be offset from the timing of the Uptown Newport Project. Additionally, both projects would be constructed in phases, and the active development area in each phase would not be immediately adjacent to each other. For example, Phase 1 of the Uptown Newport Project would be located along Jamboree Road and would be located approximately 400 feet from Phase A of the Proposed Project. Additionally, these two phases would be separated and noise would be shielded by the existing industrial building. Although, Phase 2 of the Uptown Newport Project would be located closer to the property line of the project site, actual construction activities of Phase 1 and Phase 2 of the Proposed Project would be located approximately 600 feet away. Furthermore, the grading and earthwork (typically the loudest construction activities) for Phase 1 of the Uptown Newport Project would be completed by the time grading and earthwork for the Proposed Project begins.

Additionally, the Draft EIR determined that construction noise would be significant and unavoidable despite the implementation of feasible mitigation measures. Cumulative construction noise impacts were also found to be significant and unavoidable. As discussed on page 4.10-33 of the Draft EIR, construction noise impacts were determined to be cumulatively considerable should other development proximate to the project site occur concurrent with the Project.

The commenter also incorrectly states that the Draft EIR does not examine cumulative noise impacts from the aircraft as well as traffic noise. Please refer to Topical Response: *Airport Noise*. As indicated in the topical response, the proposed Project is outside the John Wayne Airport 60 dBA CNEL contour for existing and future airport scenarios (including future airport expansion scenarios).

Project exposure to future airport noise levels is addressed in Table 4.10-11 of the Draft EIR which includes combined cumulative noise levels from various noise sources in the Project area (i.e., traffic and airport noise). The commenter also takes statements from page 4.10-33 of the Draft EIR out of context. The full statement is: "Noise by definition is a localized phenomenon, and reduces as distance from the source increases." The intent of this statement is to set up the subsequent sentence that cumulative contributions to noise typically occur in the general project area and project-related noise attenuates further from the source. Furthermore, this discussion occurs in the cumulative operational noise section of Draft EIR Section 4.10, and focuses on cumulative traffic noise. Project exposure to airport noise is addressed in Draft EIR Table 4.10-11 and the associated discussion and combines the cumulative noise levels from various noise sources in the project area and uses worst-case future airport noise levels. The analysis fully complies with Section 21096 of the California Public Resources Code. Additionally, Section 21151.8 relates to school sites and is not applicable to the Project.

Response 41

As addressed in Section 3.0, *Project Description*, and Section 4.9, *Land Use and Planning*, the Project requires the approval of a transfer of development rights to transfer 3,019 sf of unbuilt office/retail from Koll Center Planned Community Development Standards (PC 15) Koll Center Site A (Anomaly Location 1) to Site B (Anomaly Location 2) within Statistical Area L4 (Airport Area). The anomaly locations for the Airport Area are shown on Figure 3-3 of the Draft EIR.

Per the 2006 General Plan, Anomaly Location 1 allows for 460,095 sf of development. There is currently 457,076 sf of development in Anomaly Location 1, with 3,019 sf of remaining unbuilt square footage under the control of Koll Center Newport. Should the City approve the transfer as a part of the Proposed Project, Anomaly Location 1 would be capped at 457,076 sf. Anomaly Location 2 would increase from 1,052,880 to 1,055,899 sf, a net increase of 3,019 sf. No other changes to Land Use Element Table LU2, Anomaly Locations, would occur.

As a part of the Proposed Project, the City will consider an amendment to the Koll Center Planned Community Text to allow for the transfer of 3,019 gross sf of unused office/retail square footage from Office Site A (Anomaly Location 1) to Office Site B (Anomaly Location 2) of Koll Center Newport.

The transfer of 3,019 sf of unused development rights between Anomaly Location 1 and Location 2 does not require a General Plan Amendment. The transfer between the two areas does not cause a change in land use or trigger the voter approval requirements set forth in City Charter Section 423. General Plan Land Use Element Policy 4.3 allows for transfers of development rights and is implemented by Newport Beach Municipal Code Section 20.46.030 which permits transfers of development rights where the donor and receiver sites are located within the same General Plan Statistical Area. Both sites are located within the Koll Center Newport Planned Development Plan and General Plan Land Use Statistical Area L4. Both Anomaly Locations 1 and 2 are in Statistical Area L4 (see attached General Plan Land Use Element Figure LU3). There is available remaining square footage within Statistic Area L4 to accommodate the transfer.

As noted in the General Plan Housing Element, all housing opportunity sites, including the project site, are not subject to City Charter Section 423 as a result of voter approval of Measure V in November 2006. Section 423 of the City Charter (Measure S) requires voter approval of a project that increases density, intensity, or peak hour trip, above that provided for in the General Plan. Significance is quantified as 100 or more dwelling units, over 100 peak hour trips, or 40,000 or more square feet of nonresidential floor area. Charter Section 423 applies exclusively to General Plan amendments.

Response 42

The commenter has not provided any evidence to support the suggestion that “increased density” typically degrades visual quality of an area when compared to “less development.” Section 4.1, *Aesthetics and Visual Resources*, includes a full analysis of visual resources, including the visual quality of the Project site. As discussed in Section 4.1, impacts regarding the visual quality of the site are considered to be less than significant.

Response 43

The Project, if approved, would be consistent after the Zoning text amendment is valid and in effect. The legislative body for the City is not prevented from amending the Zoning Code pursuant to its public process. As discussed in Section 4.9, *Land Use and Planning*, the Project includes an amendment to PC-15 to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area ICDP. PC-15 would be amended to include the following permitted land use: Residential Mixed Use on Site B. Site B is 43.703 acres with 966,720 sf of office uses and 260 dwelling units. The Project also requires the approval of a transfer of development rights to transfer of up to 3,019 sf of unbuilt office/retail from Koll Center Site A to Site B. Because the amendment would be consistent with the General Plan and Airport Business Area ICDP, the amendment to PC-15 Koll Center would not result in a change in policy that would result in significant impacts.

The commenter has stated, without providing evidence or support, that the level of affordability directly correlates and mandates General Plan goals and policies to minimize travel. No evidence or support is provided that the costlier the housing, the more unlikely that employees could afford housing in Koll Center Newport and would live closer to their place of employment.

Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

With respect to the commenter's opinion regarding alleged inconsistencies, it should be noted that, under CEQA, a project is consistent with the underlying general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238). Moreover, a lead agency's determination that a project is consistent with the general plan is entitled to deference (*Ibid.*).

Response 44

The analysis for General Plan LU Policy 6.2.1 has been revised and is incorporated into the Final EIR as follows:

Consistent: The Project is consistent with this policy. The General Plan Housing Element identifies five locations—Newport Banning Ranch, Airport Area, Newport Center, Mariners' Mile, and the Balboa Peninsula—as key sites for future housing opportunities. The General Plan designates these areas as appropriate for development of up to ~~5,025~~ 4,446 new dwelling units (source: Table H32 *Site Analysis and Inventory Summary*). The project site is in the Airport Area and 260 units are identified as additive units for the site.

Response 45

Please refer to Topical Response, *Airport Noise*.

Response 46

Please refer to the response to Comment 23.

Response 47

Please refer to Topical Response, *Cumulative Projects*.

Response 48

Please refer to Topical Response, *Alternatives*.

Response 49

As a point of clarification to the commenter, compliance with General Plan Land Use Element Policy 6.15.6, Size of Residential Villages, is a requirement for the Airport Area. Elsewhere in the City, the City Council may waive the minimum acreage requirement as set forth in Municipal Code Section 20.56.020.

Response 50

Please refer to Topical Response, *Alternatives*.

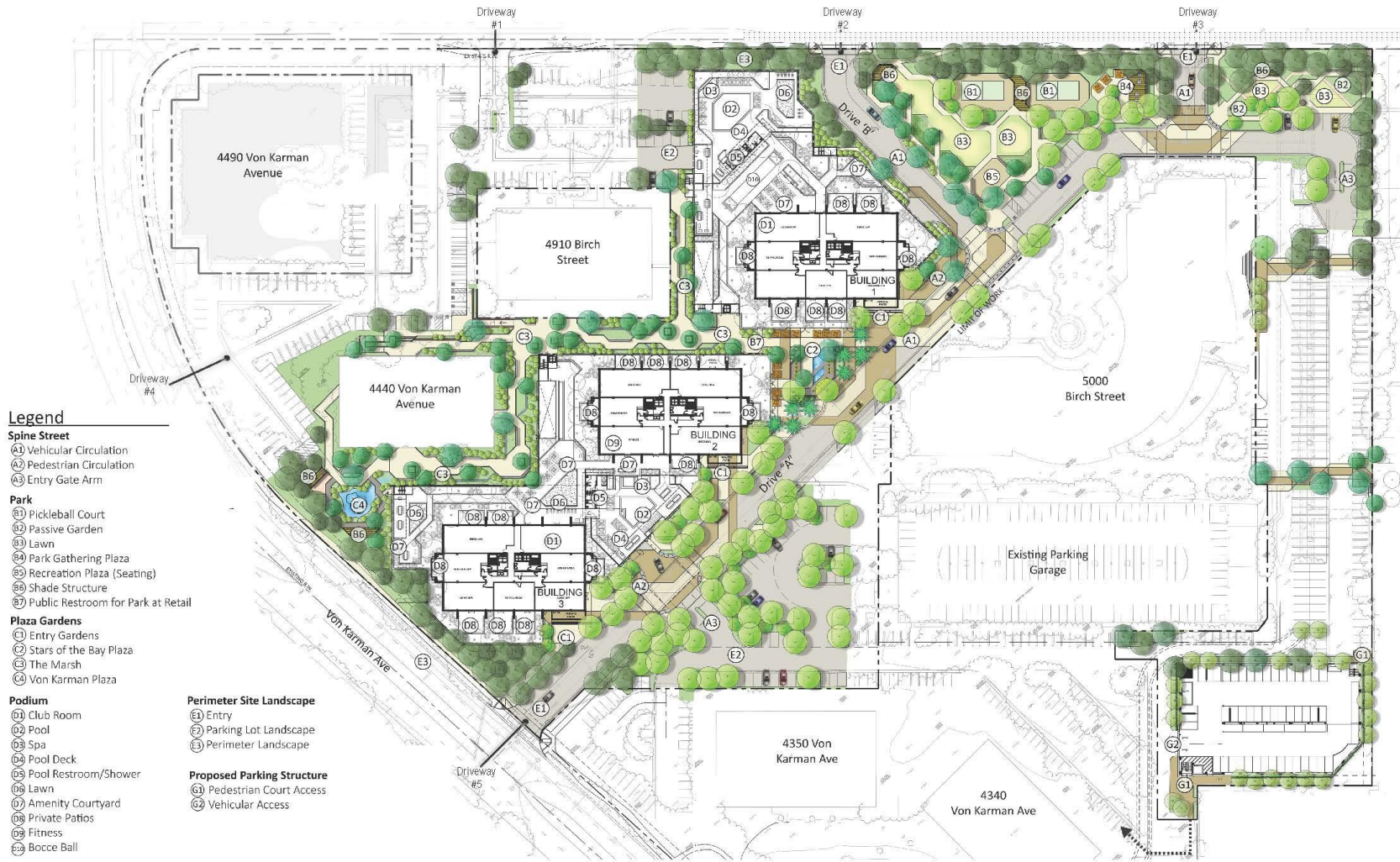
Response 51

Please refer to Topical Response, *Alternatives*.

Response 52

The comment is noted. Alternative B would be inconsistent with General Plan Policy LU 6.15.9 and the Airport Business Area ICDP which require a minimum density of 30 dwelling units per net acre and a maximum density of 50 dwelling units per net acre. Alternative B would have a density of approximately 20 dwelling units per net acre which is less than the requirements of the Airport Business Area ICDP and General Plan Policy 6.15.9. No further response is required.

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Source: BrightView Design Group, 2017

FIGURE 3-14: Conceptual Landscape Plan
The Koll Center Residences Project



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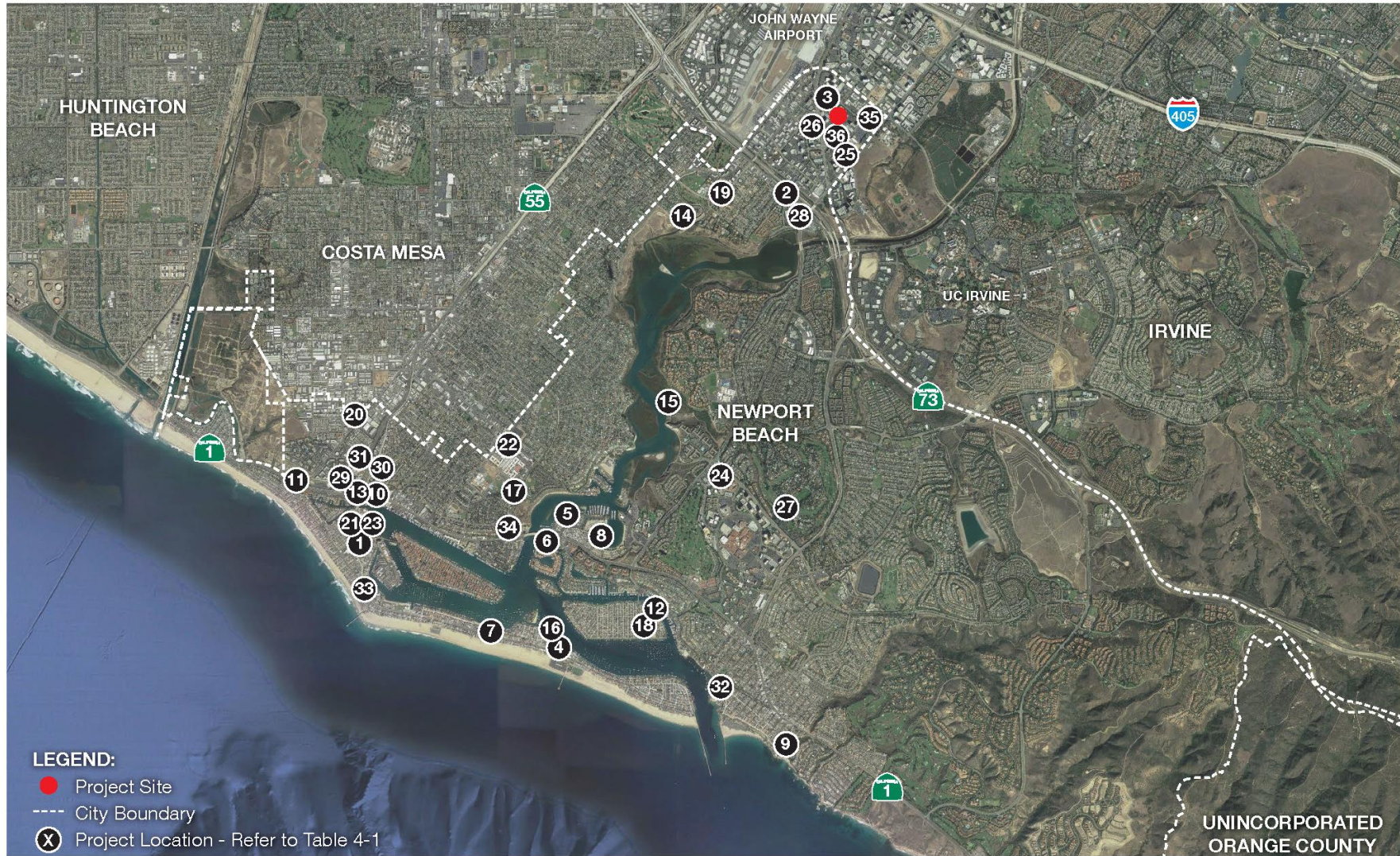


FIGURE 4-1: Development Activity in the City of Newport Beach
The Koll Center Residences Project



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Letter C-6 **Meyer Properties**
James Hasty, Senior Vice President
October 12, 2017

MEYER PROPERTIES

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Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

RECEIVED BY
COMMUNITY
DEVELOPMENT

OCT 12 2017

CITY OF
NEWPORT BEACH

Re: The Residences at Koll Center Newport

As a brief overview, the core of Koll Center Newport, bordered by Jamboree Road, MacArthur Boulevard and Birch Street is an office park developed more than three decades ago and consists primarily of office buildings set in a campus like environment. All of the office buildings are four stories or less, excepting two high-rise office buildings that are situated nearly a mile apart. There are two, two-story parking structures that are situated about a half mile apart. The remaining acreage is surface level parking and landscaping including a pond which is habitat to many bird species.

The buildings have been situated to avoid massing and to create a significant amount of open space which affords substantial light as well as easy pedestrian and vehicular ingress and egress.

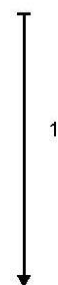
Having read the Draft Environmental Impact Report for The Koll Center Residences one, who didn't know better, would think inserting three 13-story high-rise residential structures practically in the middle of the office park and dwarfing all but one of the surrounding buildings would somehow be unobtrusive and compatible with the existing environment. One who knows better is, of course, insulted.

To read a report that has so many statements that are factually incorrect is disappointing and suggests an intent to mislead the reader.

I will elaborate with a few examples as follows:

Threshold 4.1-2: Would the Project substantially degrade the existing visual character or quality of the site and its surrounding?

Per the EIR, "Less Than Significant." This is patently ludicrous. What is now surface parking with substantial landscaping including a variety of trees and plants with a very wide open vista will be obliterated by three massive concrete and glass monoliths that will not only cast substantial shadows on most of the surrounding buildings, they will almost completely destroy the visual character of the existing open view corridors. The proposed project would create a street through the property which will not only impede



October 10, 2017

easy pedestrian movement which has long existed, but this will also minimize the security currently provided by gated access at both Von Karman Avenue and Birch Street. Of even greater importance is the change in the nature of the use. The introduction of dogs, cats, skate boarders and the like will forever disrupt the calm professional business environment which has existed for more than three decades.

cont'd
1

Schools 4.12.9

The description of the distances of the project to the schools appears disingenuous. They may be accurate as the crow flies, but not as the car travels. According to Google Maps, Monroe Elementary is not 3.3 miles away, but 4.1 miles (+24%), McFadden Intermediate is not 3.6 miles away, but 5.8 miles (+61%) and Century High is not 4.4 miles away, but 5.8 miles (+32%).

2

THRESHOLDS OF SIGNIFICANCE 4.9.4 Would the Project physically divide an established community?

Per the EIR, "No Impact." Again, this is ludicrous. The ease of pedestrian access will be harmed by the construction of a street that will essentially run through the heart of the existing office park and thereby effectively bifurcate an established office community.

3

Approval of this project by the city is an affront to all existing Koll Center Newport property owners because the residential use is not allowable under the existing Covenants, Conditions & Restrictions of Koll Center Newport.

Sincerely,
Meyer Properties



James B. Hasty
Senior Vice President

CC: City of Newport Beach Mayor and City Council

Response 1

With respect to landscaping, please refer to Figure 3-4, *Conceptual Landscape Plan*, in the Draft EIR and Section 3.6, *Biological Resources*, which identifies existing trees on the project site and changes associated with the Proposed Project. The landscape plan will be subject to City approval as a part of Site Development review process.

With respect to view corridors, the General Plan does not identify any viewpoints or view corridors in this area. With respect to view protection, the City of Newport Beach Municipal Code Section 20.30.100:

...provides regulations to preserve significant visual resources (public views) from public view points and corridors. It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deny the right to develop property in accordance with the other provisions of this Zoning Code....The provisions of this section shall apply only to discretionary applications where a project has the potential to obstruct public views from public view points and corridors, as identified on General Plan Figure NR 3 (Coastal Views), to the Pacific Ocean, Newport Bay and Harbor, offshore islands, the Old Channel of the Santa River (the Oxbow Loop), Newport Pier, Balboa Pier, designated landmark and historic structures, parks, coastal and inland bluffs, canyons, mountains, wetlands, and permanent passive open space....

It is not the intent of the Zoning Code to protect views from private property. Further, the City's General Plan goals and policies provide directives in its consideration of aesthetic compatibility. While Natural Resources Element Goal NR 20 is the "Preservation of significant visual resources", the policies of the Natural Resources Element are applicable to public views and public resources not private views or private resources.

With respect to shading, a shade/shadow analysis was prepared as a part of the Draft EIR. Please refer to Section 4.1, Aesthetics and Visual Resources, Figures 4.1-2a through 4.1-2h. The analysis identifies both shadows cast by existing buildings; the 4320 Von Karman office building is south of the buildings shown in the figures and would not be shaded by Buildings 1, 2, or 3 or the free-standing parking structure. No impact would occur.

The commenter's opinion regarding the change of use is noted.

Response 2

The comment is noted. The distances between the project site and the noted public schools will vary depending on the route of travel. This difference does not affect the analysis set forth in the Draft EIR.

Response 3

The referenced CEQA Guidelines threshold asks whether a project would physically divide an established community. The commenter suggests that the "office community" will be bifurcated by the construction of a road which would affect pedestrian access. The Proposed Project would not introduce any roadways that would bisect or transect the adjacent business uses. The proposed mixed-use buildings, free-standing parking structure, and public park would be constructed on existing surface parking areas. The Project

maintains the existing spine street through the property between Birch Street and Von Karman Avenue and provides for pedestrian walkways on both sides of the spine street (see Figure 3-8). The locations of existing sidewalks, and proposed walkways/pedestrian connections are shown on Figure 3-12. The Project would not preclude pedestrians from walking through the area (e.g., northwest of the spine street to southeast of the spine street).

Letter C-7a OLEN

Julie Ault, General Counsel
October 13, 2017



October 13, 2017

Rosalinh Ung, Associate Planner
rung@newportbeachca.gov

Leilani Brown, City Clerk
cityclerk@newportbeachca.gov

City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

RE: Request for a Minimum 20-Day Extension of the Public Comment Period on Koll Residences Draft Environmental Impact Report (EIR)

Dear Ms. Ung,

The Koll Center Residences Draft EIR was published on September 13, 2017 initiating a 45-day public review period scheduled to end on October 27, 2017. As you are aware, the California Environmental Quality Act places high value on public participation noting in CEQA Guidelines §15201, “[p]ublic participation is an essential part of the CEQA process.” The California Environmental Quality Act states that the public comment period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances. CEQA Guidelines § 15205.

We recognize that the close of the Draft EIR comment period does not limit the public’s ability to continue reviewing and commenting on the DEIR and to provide written comments after the close of the comment period. The distinction is that comments received before the close of the comment period may not, at the discretion of the City and Consultant team, receive a formal written response and be included in the Final EIR. Ideally, public comments are received by the end of the official public comment period and included in the Final EIR response to comments document. Unless extended, the short comment period on this highly complex Project makes likely that significant comments will be submitted after the DEIR public comment period closes. “Environmental review derives its vitality from public participation.” (*Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400.)

We appreciate your consideration of a 15-day extension of the public comment period for the following reasons:

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www.OlenProperties.com



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- The Project's Location – near both Airport and significant growth areas in the City of Irvine – make review of safety and transportation issues of paramount interest to the public. As such we have retained experts to review these sections of the DEIR requiring additional time for adequate review.
- Long Planning History - The long and complex planning history of the Koll Center and its surrounds is relevant to the public's review and understanding of the Project-related planning issues addressed in the DEIR. It is time consuming to fully understand the planning context, particularly since Irvine has experienced high growth in areas nearby the project site that must be considered in an adequate review of the project related and cumulative impacts.
- Missing Information - Essential information about the Project, including, but not limited to the Development Agreement (DA), has not been released for public review and could result in additional project impacts or mitigation depending on its substantive provisions. The DEIR also contains numerous citations and links to information relevant to an adequate review that are not readily available. This information should be released as part of the documents for review before the close of the public comment period so that the public can be assured that the DA does not invoke either impacts or mitigation.

To allow time for the public to review the Draft EIR and complete the bulk of their comments during the formal Draft EIR period, we request an extension of an additional 20 days, extending the public comment period to 5:00 p.m. on November 16, 2017.

We appeal to your prerogative, as allowed by CEQA, to grant an extension of the comment period to November 16, 2017 at 5:00 p.m. Thank you for your consideration of our request.

Finally, it recently came to our attention that the proposed Study Session for this project presented at the Newport Beach Planning Commission has been removed from the calendar. We also understand, the Commission will instead hold one hearing and vote on the project without prior knowledge, introduction, or questions about it on December 7, 2017. We respectfully request a new date for a Study Session be issued based on the complexity of this project and concerns from the public.

Sincerely,



Julie A. Ault
General Counsel

CC: City of Newport Beach Mayor and City Council via distribution from Ms. Leilani Brown, City Clerk

Response 1

The public review period for the Draft EIR was extended from October 27, 2017 to November 13, 2017.

With respect to the commenter's position that there are "missing elements of the Project Description", the City requests that the commenter contact City staff directly with any questions.

CEQA does not require the public disclosure of a development agreement. CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City's standard public review and public hearing process for development agreements.

Letter C-7b OLEN

Robert Perlmutter and Carmen Borg, Shute, Mihaly & Weinberger representing OLEN
November 9, 2017

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November 9, 2017

Via Electronic Mail Only

Ms. Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department
100 Civic Center Drive
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Rung@newportbeachca.gov

Re: Koll Center Residences Draft Environmental Impact Report, State Clearinghouse No. 2017011002

Dear Ms. Ung:

This firm represents Olen Properties on matters relating to the proposed Koll Center Residences. The purpose of this letter is to inform the City that the Draft Environmental Impact Report ("DEIR") for the Koll Center Residences Project violates the minimum standards of adequacy under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq. Olen Properties is deeply concerned about the far-ranging environmental impacts that the Project may have on quality of life in the vicinity of the Project.

As described below, the DEIR violates CEQA because it fails to: (1) adequately describe the Project, (2) adequately analyze the Project's inconsistency with the City's General Plan, (3) adequately analyze cumulative impacts, and (4) include an adequate range of alternatives.

The EIR is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal. 3d 376, 392 (citations omitted). It is "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.'"



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November 9, 2017
Page 2

Because the EIR must be certified or rejected by public officials, it is a document of accountability.” *Id.* (citations omitted).

Where, as here, the environmental review document fails to fully and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of either statute. *See* Pub. Res. Code § 21061. (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”)

As a result of the DEIR’s numerous and serious inadequacies, there can be no meaningful public review of the Project. The City must revise and recirculate the DEIR in order to permit an adequate understanding of the environmental issues at stake. Further, the City must develop feasible and prudent alternatives to redevelopment at this location.

I. The DEIR’s Flawed Project Description Does Not Permit Meaningful Public Review of the Project.

Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed project is critical to meaningful public review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (“*Inyo II*”). The court in *Inyo II* explained why a thorough project description is necessary:

“A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.”

Id. at 192-93. Thus, “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *Santiago County Water District v. County of Orange*, (1981) 118 Cal.App.3d 818, 830.

The DEIR fails to describe aspects of the Project critical to its analysis. In perhaps the most glaring example, the Project requires an amendment to the Koll Center Newport Planned Community Development Plan (PC-15 Koll Center). DEIR at 3-19. Amazingly,



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however, the DEIR fails to identify the content of this amendment or explain how it would relate to the existing Community Plan. As discussed below, the Project would be inconsistent with numerous provisions of the General Plan. Yet, because the DEIR does not identify the specific amendment to the Community Development Plan, the public and decision makers have no idea whether it is even possible to rectify all of the potential inconsistencies between the Community Plan and the General Plan, while ensuring the integrity of both Plans. The amendment may result in environmental impacts or internal inconsistencies within Plan. The environmental impacts and planning inconsistencies arising from these amendments are indirect impacts of the Project. Under CEQA, they must be identified, analyzed, and mitigated now; they cannot wait until after approval of the Project.

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2

In another glaring omission, the public has yet to be informed regarding the contents of the Development Agreement, but this Agreement will vest certain specific rights and entitlements with the developer, should the City approve the Project as proposed. Regardless of the specifics, once a development agreement is approved, a public agency “shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement,” even if the project requires further discretionary approvals. Gov. Code § 65865.2; *see also Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1214-15 (development agreement creates vested rights in the form of an “entitlement for use”). If the agency breaches a development agreement, it may be subject to damages. *See Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 443-47, 476 (developer awarded \$30 million for town’s anticipatory breach of development agreement). Given the importance of these documents, the City must release this information to the public and provide additional time for review and comment. Pub. Res. Code § 21092(b)(1). Without an opportunity to review the Development Agreement, the public and decision makers are in the dark about what it may contain.

3

Even where the DEIR does provide a description of Project features, the description is incomplete and confusing. For instance, the Project Description includes a list of Project Design Features (“PDFs”) that purportedly address the Project’s energy usage, storm water treatment, water use, traffic circulation, and parking during construction. DEIR at 3-15 and 3-16. However, the DEIR is unclear as to whether these features will be implemented. For example, PDF 1 Building Design states that project features “may” include electric vehicle charging stations, optimized energy performance, low emitting materials, and other features leading to LEED Silver Certification. But there is no commitment on the part of the applicant to follow through with this feature.

4

November 9, 2017
Page 4

To add further uncertainty, the DEIR states that all but one of the PDFs listed are *not* proposed as part of the Project, but will be included in the Project’s Mitigation Monitoring and Reporting Program. *Id.* The DEIR further states that the applicant may modify the PDFs during the approval process. *Id.* Thus, the DEIR presents an unstable project description so that the public and decision makers cannot know if these features will actually be implemented or not.

This approach is not permissible under CEQA. CEQA requires that an agency first assess the project’s environmental impacts. Only after impacts are identified may the agency identify and assess the effectiveness of feasible mitigation measures for those impacts. The two steps cannot be conflated. In sum, the DEIR fails to describe the Project with sufficient accuracy and specificity to enable either substantive public comment or an informed decision on the Project.

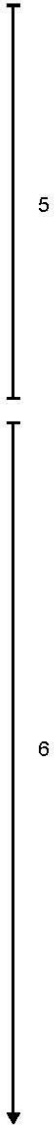
II. The DEIR’s Analysis of Land Use Related Impacts is Inadequate.

CEQA requires that EIRs analyze the consistency of a project with applicable local plans, including General Plans. *See Napa Citizens for Honest Govt. v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 386-87; CEQA Guidelines Appendix G, § IX (b). Inconsistencies with a General Plan or other local plan goals and policies that were enacted to protect the environment are significant impacts in themselves and can also be evidence of other significant impacts. *See id.*; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 929.

Here, the DEIR acknowledges that the Project must be consistent with the City’s General Plan, and purports to analyze the Project’s consistency and inconsistency with various specific General Plan policies and goals. However, in its analysis, the DEIR glosses over inconsistencies in order to reach the unsubstantiated conclusion that the Project is consistent with the General Plan. For example, the Project is inconsistent with General Plan land use and built environment policies, including but not limited to the following:

LU 4.3 Transfer of Development Rights: Permit the transfer of development rights from a property to one or more other properties when:

a. The donor and receiver sites are within the same Statistical Area.



November 9, 2017
Page 5

b. The reduced density/intensity on the donor site provides benefits to the City such as, but not limited to, the (1) provision of extraordinary open space, public visual corridor(s), parking or other amenities; (2) preservation of a historic building or property or natural landscapes; (3) improvement of the area's scale and development character; (4) consolidation of lots to achieve a better architectural design than could be achieved without lot consolidation; and/or (5) reduction of local vehicle trips and traffic congestion;

c. The increment of growth transferred to the receiver site complements and is in scale with surrounding development, complies with community character and design policies contained in this Plan, and does not materially degrade local traffic conditions and environmental quality.

The Project would transfer development rights of up to 3,019 square feet of unbuilt office and retail space from Koll Center Site A to Site B. Therefore, the DEIR should have analyzed the Project's consistency with this General Plan policy. It did not.

Transfers of development rights have historically been used to preserve open space and to move the rights to develop this space to lands more suited to development. This open-space-centric view of the transfer of development rights (TDR) is clear in the Newport Beach General Plan. The Land Use Element permits the transfer of development rights only when the reduced density/intensity at the donor site provides benefits to the city including the "provision of extraordinary open space" and "the preservation of ... natural landscapes." See LU 4.3.

The requested transfer does not appear to provide any specific benefits to the City and certainly does not provide or preserve open space. Moreover, the DEIR's consistency analysis omits discussion of the Project's consistency with LU 4.3 Transfer of Development Rights. Because the project requires a TDR and no analysis is done in the DEIR, there is no way to ensure that such a transfer is consistent with the General Plan policy.

LU 4.1: Land Use Diagram: Accommodate land use development consistent with the Land Use Plan.

Table LU2: Anomaly Locations

cont'd
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November 9, 2017
Page 6

As discussed above, the transfer of development rights requested is inconsistent with the General Plan, therefore, approval of the requested density transfer would necessitate a General Plan Amendment (GPA). The TDR creates an inconsistency with the General Plan since the Anomaly Table will no longer reflect the actual development limits. Koll Center Site A appears to be located in Anomaly Location 1 while Site B appears to be located in Anomaly Location 2.¹ A TDR will reduce the development limit in Anomaly Location 1, while increasing it in Location 2. Thus, the Anomaly Locations Table must be amended to reflect this change. To make this change, Project proponents must request an amendment to the General Plan. Absent a General Plan Amendment, the Project will be inconsistent with the General Plan.

7

Since the current General Plan was adopted in 2006, there have been three GPAs in Statistical Area L4 where the Project is located that have increased the development limits in the Anomaly Table. See GP2006-096 (increasing the limit by 19,212.8 square feet); GP2008-007 (increasing the limit by 9,235.2 square feet in Anomaly Number 6); GP2007-009 (increasing the limit by 11,544 square feet in Anomaly Number 2); see also City Council Staff Report, Agenda Item No. 12, Feb. 22, 2001, PRES Office Building B 4300 Von Karman Avenue.² Each of these GPAs has changed solely the development limit in Table LU2 Anomaly Locations in the General Plan and otherwise made no other changes to the General Plan. In the same way that these developments changed the development limit in the Anomaly Locations Table, the TDR in this Project would do so as well. The development limit for Anomaly Number 1 needs to be reduced by 3,019 square feet and the development limit for Anomaly Number 2 must be increased by 3,019 square feet to reflect the TDR and ensure consistency between the General Plan and the Project. Therefore, a GPA is necessary before the Project can proceed.

LU 3.3: John Wayne Airport Area: re-use of underperforming industrial and office properties and development of cohesive residential neighborhoods in proximity to jobs and services.

The Project would directly conflict with this policy. The Project would disrupt a vibrant office park, which emphasizes open space. The three 13-story buildings would eliminate much of the office park's common/open space. This loss of open space is concerning to businesses that operate out of the office park. The high-rise buildings will encroach on sunlight currently afforded the existing buildings. Businesses may choose

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¹ See, General Plan Figure LU 11 showing the Anomaly Locations.

² <http://ecms.newportbeachca.gov/Web/0,0/doc/74613/Page1.aspx>

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not to renew their leases and move to an office park where open space is valued. So rather than re-using an underperforming office park, this Project would create one.

Additionally, this Project in no way furthers the development of a cohesive residential neighborhood. The 13-story towers will be isolated from services other than those provided in the small amount of retail space at the lower levels of the buildings. The surrounding land uses in existence now include hotels, office buildings, and a strip of fast food restaurants. There are no grocery stores, banks, pharmacies, or other similar stores that are necessary to create a cohesive neighborhood.

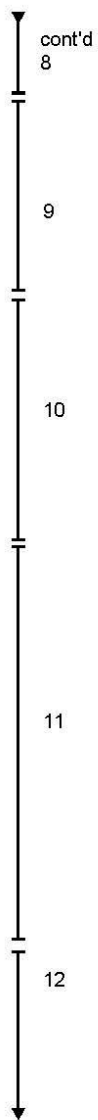
While the DEIR purports to find the Project consistent with this policy, claiming it would provide connectivity and livability close to employment, transportation, and retail centers, a closer look undermines this assertion. The DEIR seems to rely on the Uptown Newport development to conclude that there will be sufficient services available in the neighborhood to meet LU 3.3. While this development includes space for retail uses, there are no details provided to explain what type of retail this might include. Therefore, it is impossible to conclude that this development will exist in proximity to necessary services.

LU 5.3.1 Mixed-Use Buildings: Require that mixed-use buildings be designed to convey a high level of architectural and landscape quality and ensure compatibility among their uses in consideration of the following principles: ... Architectural treatment of building elevations and modulation of their massing.

The Project drops three nearly identical 13-story mixed-use buildings into the Koll Center. Rather than working to ensure compatibility with existing buildings and creating visual interest with a modulation of rooflines and building locations, all three towers are the same height and right next to each other. This failure to create visual interest conflicts with this General Plan policy and the DEIR does not even discuss the Project's consistency with LU 5.3.1.

LU 6.15.6 Size of Residential Villages [refer to Figure LU23]: Allow development of mixed-use residential villages, each containing a minimum of 10 acres and centered on a neighborhood park and other amenities (as conceptually illustrated in Figure LU23). ...

and



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LU 6.15.10 Regulatory Plans: Require the development of a regulatory plan for each residential village, which shall contain a minimum of 10 acres, to coordinate the location of new parks, streets, and pedestrian ways; set forth a strategy to accommodate neighborhood-serving commercial uses and other amenities; establish pedestrian and vehicular connections with adjoining land uses; and ensure compatibility with office, industrial, and other nonresidential uses.

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While the DEIR purports to comply with the 10-acre minimum size for residential villages, its calculation is misleading. The DEIR states that the project develops an approximately 13.16-acre project site. DEIR at 4.9-17. However, its calculation of the 13.16-acre site is not entirely composed of land that the developer owns outright. Instead, the 13.6-acre site includes common areas and streets. Without including the common areas, the project site is approximately five acres, well below the 10-acre requirement. This is a significant inconsistency and must be considered and remedied.

LU 5.3.3 Parcels Integrating Residential and Nonresidential Uses: Require that properties developed with a mix of residential and nonresidential uses be designed to achieve high levels of architectural quality in accordance with policies LU 5.1.9 and LU 5.2.1 and planned to ensure compatibility among the uses and provide adequate circulation and parking. Residential uses should be seamlessly integrated with nonresidential uses through architecture, pedestrian walkways, and landscape. They should not be completely isolated by walls or other design elements.

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and

LU 6.15.1 Land Use Districts and Neighborhoods: Provide for the development of distinct business park, commercial, and airport-serving districts and residential neighborhoods that are integrated to ensure a quality environment and compatible land uses.

As noted above in the discussion about the Project's inconsistency with LU 3.3, the Project fails to fully integrate the residential village with nonresidential uses. While a

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parking structure is included along the side of the Project shared by Uptown Newport, the parking structure is actually for use by one of the office buildings. An office parking structure will likely be empty at night and serve as a barrier between the two areas, as pedestrians will be hesitant to find their way through or around a deserted parking structure after dark.

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The Project also fails to be integrated in order to ensure a quality environment since the existing uses around the Project are not currently compatible with residential uses (hotels, office buildings, and a strip of fast food restaurants). The expected commercial and retail uses at Uptown Newport and the Project are not discussed so therefore cannot be analyzed. Without grocery stores, banks, and pharmacies, the Project will be an isolated residential development. This isolation will increase impacts on the environment as residents are forced to drive to essential services, thereby undermining one of the essential purposes of a mixed-use development and the purpose of these General Plan policies.

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LU 6.2.3 Residential Affordability: Encourage the development of residential units that are affordable for those employed in the City.

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The DEIR does not discuss the Project's consistency with this policy nor does it include expected prices for the residential units in the towers. Therefore, the DEIR fails to inform the public and the decision-makers about the Project's consistency with this General Plan policy.

In addition to misinforming decision-makers and the public about the Project's consistency with the General Plan, this analysis underestimates the actual impacts of the Project. The DEIR must be revised and recirculated to provide a comprehensive and accurate analysis of all General Plan inconsistencies.

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III. The DEIR's Analysis of Project-Related Traffic and Circulation Impacts is Inadequate.

The DEIR's analysis of transportation impacts fails to achieve CEQA's most basic purpose: informing governmental decision-makers and the public about the potential significant environmental effects of a proposed activity. CEQA Guidelines § 15002(a). CEQA additionally requires "adequacy, completeness, and a good-faith effort at full disclosure" in an EIR. CEQA Guidelines § 15003(i). The DEIR's analysis of the Project's traffic impacts fails to meet these standards.

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In fact, the DEIR’s analysis of Project-related traffic impacts contains numerous deficiencies that must be remedied in order for the public and decision-makers to fully understand the Project’s impacts. First, the DEIR fails to describe, discuss or address potential impacts resulting from a significant change in on-site circulation and parking access. Specifically, the proposed Project will segregate parking areas available to site users. Currently, all site ingress points provide full access to parking lots accessed from any one of the four gates. The Project would alter parking access such that if, for example, a driver enters at Driveway 1 and finds no parking available in the areas served by Driveway 1, the driver would have to exit via Driveway 1 or 4 and re-enter via Driveway 2, 3 or 5. Similarly, traffic entering via Driveways 2, 3 or 5 intending to access the surface parking lot serving 4490 Von Karman would need to exit and re-enter at Driveway 1.

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Moreover, the DEIR fails to analyze the potential circulation impacts on Von Karman Avenue and Birch Street resulting from the elimination of efficient on-site circulation. The traffic volumes in and out of Driveway 1 may increase due to the lack of access and connectivity to overflow parking provided in the proposed new parking structure accessible from only Driveways 2, 3 and 5.

Second, the DEIR fails to adequately evaluate parking impacts. The DEIR discloses the Project’s removal of surface parking, but fails to identify or address the impact to existing office uses as a result of the removal of convenient surface spaces and replacement with parking located hundreds of feet away in a new parking structure. DEIR at 3-18. The Project will remove 782 convenient surface parking spaces serving existing office tenants and guests. The Project proposes to replace the lost parking with 276 less convenient parking spaces in a structure under Proposed Building 1 and 544 inconvenient spaces in a new structure on Lot 5 located 300-500 feet away. This inconvenience will likely result in additional circulation impacts on both Von Karman Avenue and Birch Street as drivers search for the most conveniently located parking spaces. Moreover, the DEIR fails to provide the square footage and parking requirements for each of the existing office buildings, thus making it impossible to accurately determine the extent and severity of the parking impact on each existing office building on the site.

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Third, the DEIR fails to analyze impacts associated with the Project’s inadequate provision of support facilities for alternative modes of transportation. Pursuant to the City’s General Plan, as well as State Bill 743, the Project is required to include facilities to support alternative transportation modes, such as loading areas for rideshare and transportation network company services (e.g., Lyft and Uber), an area for ridesharing and transit options, preferential parking for carpools, and implementation of the planned

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Class II bicycle facilities on Von Karman Avenue and Birch Street. General Plan Policy CE 6.2.2. The Project fails to meet this mandate.

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Fourth, the DEIR fails to analyze the Project’s impacts on existing non-residential uses on-site. Specifically, because the Project will introduce residential uses to an established commercial area, the Project will trigger compliance with General Plan policies addressing noise. As such, the Project will be subject to compliance with General Plan Policy N 2.3, which prohibits truck deliveries between 10:00 p.m. and 7:00 a.m. The DEIR fails to analyze adverse impacts to existing businesses on site due to this requirement.

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Finally, the DEIR’s analysis of the Project’s contribution to cumulative impacts is also inadequate. The City’s General Plan assumes build-out conditions in 2030. Rather than evaluate impacts under cumulative conditions in 2030, however, the DEIR only considers the Project’s cumulative impacts related to growth within the next five years in 2022. Thus, the DEIR fails to assess the impacts of the Project together with impacts of future cumulative projects anticipated under the City’s General Plan. A revised DEIR must include this analysis.

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IV. The DEIR’s Analysis of Cumulative Impacts is Incomplete.

The DEIR fails to adequately analyze the cumulative impacts of the Project, for several reasons including an incomplete list of projects in the vicinity. The discussion of cumulative impacts must include a summary of the expected environmental effects to be produced by those projects, a reasonable analysis of the cumulative impacts, and full consideration of all feasible mitigation measures that could reduce or avoid any significant cumulative effects of a proposed project. See CEQA Guidelines §§ 15126.4(a)(1) and 15130(b)(3). The DEIR fails to meet these requirements.

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A legally adequate cumulative impacts analysis must consider the impacts of the Project combined with other past, present, and probable future projects. CEQA Guidelines § 15130(b)(1). Projects currently under environmental review clearly qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. See *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal.App.3d 61, 74 n.13 (1984). In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. See *Bozung v. Local Agency Formation Comm’n*, 13 Cal.3d 263, 284 (1975). Here, the DEIR’s list of cumulative projects is incomplete because it omits projects planned in the area.

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The Project site is located in close proximity to the western portion of the City of Irvine, where multiple, sizeable development projects are proposed. These include residential projects that will result in more than 3,100 residential units. A list of omitted development projects is included below.

List of Development Projects In City of Irvine Development Process

Project/Location	Housing Units	Status
2851 Alton Parkway	170	Under construction
2501 Alton Parkway	344	Under construction
2660 Barranca Parkway	180	In Review
17275 Derian Avenue	80	Under construction
Pistoia Apartments	371	In Review
2801 Kelvin Avenue	372	Under construction
1000 Elements Way	1600	Partially under construction

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All of the above listed projects must be included in a revised environmental document that is circulated to the public. In order for the DEIR to be adequate it must list, analyze, and mitigate to the extent feasible the cumulative impacts from all of these development projects.

V. The DEIR’s Analysis of Project Alternatives is Inadequate.

Every EIR must describe a range of alternatives to the proposed project and its location that would feasibly attain the project’s basic objectives while avoiding or substantially lessening the project’s significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126(d). A proper analysis of alternatives is essential for the City to comply with CEQA’s mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. As stated in *Laurel Heights Improvement Association v. Regents of University of California*, “[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully informed as to the consequences of action by their public officials.” 47 Cal. 3d 376, 404 (1988). The DEIR’s discussion of alternatives in the present case fails to live up to these standards.

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As this letter, and others from community members make clear, the DEIR fails to adequately analyze the Project’s environmental impacts. Had the DEIR done an adequate analysis, there is no doubt that the document would have determined that the Project would result in numerous potentially significant environmental impacts, including impacts to visual character, traffic, air quality, climate change, increased risk of accidents, and land use incompatibility. In light of the Project’s extensive significant impacts, it is incumbent on the City to carefully consider a range of feasible alternatives to the Project. The DEIR fails to do so. In fact, it analyzes only one alternative, in addition to the No Project Alternative, that is substantively different from the proposed Project. To ensure that the public and decision-makers have adequate information to consider the effects of the proposed Project, the City must prepare and recirculate a revised EIR that considers additional meaningful alternatives to the Project.

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A. The DEIR’s Failure to Adequately Analyze Project Impacts Results in an Inadequate Range of Alternatives.

As a preliminary matter, the DEIR’s failure to disclose the severity of the Project’s impacts necessarily distorts the document’s analysis of Project alternatives. As a result, the alternatives are evaluated against an inaccurate representation of the Project’s impacts. Proper analysis would have revealed that far more impacts were significant and unavoidable. Proper identification and analysis of alternatives is impossible until Project impacts are fully disclosed. Moreover, as discussed above, the document’s analysis is incomplete and/or inaccurate so that it is simply not possible to conduct a comparative evaluation of the Project’s and the alternatives’ impacts.

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This information necessitates consideration of additional alternatives. Without sufficient analysis of the Project’s underlying environmental impacts, the DEIR’s comparison of this Project to the identified alternatives is meaningless and fails CEQA’s requirements.

B. The DEIR’s Narrow Project Objectives Prevent Consideration of Reasonable Alternatives.

The first step in conducting an alternatives analysis under CEQA is to define the project’s objectives. This step is crucial because project objectives “will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR.” CEQA Guidelines § 15124(b). The lead agency may not define project objectives so narrowly as to make the proposed development a foregone conclusion. *Kings County Farm Bureau*, 221 Cal.App.3d at 736.

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Here, the City has identified the following very specific objectives for the Project:

- Implement the goals and policies that the Newport Beach General Plan established for the Airport Area and the Integrated Conceptual Plan Development Plan.
- Develop a mixed-use community that provides jobs, residential, and supporting services in close proximity, with pedestrian-oriented amenities that facilitate walking and enhance livability.
- Develop up to 3,000 square feet of retail commercial uses to serve residents, businesses, and visitors within the business park.
- Develop an attractive, viable project that yields a reasonable return on investment.
- Provide beneficial site improvements including implementing a reclaimed water system for existing and proposed uses and a first flush (storm water) water quality treatment facility on the site. Pervious surface area would be increased by approximately 0.83 acre (or 7%) from existing conditions as a result of Project implementation.
- Develop and maintain a 1-acre public park, adding additional park/open space for the City of Newport Beach.

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DEIR at 3-6.

The City may not define the Project’s objectives so narrowly as to preclude a reasonable alternatives analysis. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1089 (the “key to the selection of the range of alternatives is to identify alternatives that meet most of the project’s objectives but have a reduced level of environmental impacts,” not to identify alternatives that meet few of the project’s objectives so that they can be “readily eliminated”). Unfortunately, the Project objectives listed in the DEIR violate this core CEQA principle. Specifically, the objectives include such specifics as increasing pervious surface area by 7% and developing a 1-acre public park. In other words, the City’s objectives for the Project is *the Project itself*. CEQA forbids the use of this sort of circular logic to justify a project.

Additionally, one of the Project objectives specifies criteria unique to the Project site: Develop up to 3,000 square feet of retail commercial uses to serve residents,

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businesses, and visitors *within the business park*. In this way, the DEIR ensures that only a limited range of alternatives could possibly satisfy all Project objectives. This objective limits the range of viable alternatives to options that would locate the residential development on the Koll Center site. The DEIR’s pursuit of this objective is impermissible because it forecloses analysis of off-site alternatives and foreordains approval of the Project, or a similar alternative, on the proposed site. By designing its objectives to make selection of the Project’s site a foregone conclusion, the DEIR fails to proceed according to law.

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C. The DEIR Does Not Present a Clear Alternative that Reduces a Majority of the Project’s Significant Environmental Impacts.

The alternatives analyzed in the DEIR represent a false choice, because none reduce a majority of the Project’s significant environmental impacts. Far from complying with its obligations to suggest and analyze a reasonable range of alternatives to the proposed site, the DEIR offers “straw men” alternatives that are simply meant to bolster the case for the proposed project. For example, the DEIR discusses a “Reduced Height and Density” alternative: Alternative B, which reduces the size of the height of the buildings from 13 stories to 9 stories and allows 173 dwelling units instead of 260. However, this alternative still represents a use that is far too intensive for the proposed area and offers limited environmental benefits.

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Alternative B would do little to reduce the most impactful features of the Project (i.e., excessive building height and density) and would still result in significant impacts related to traffic, noise, air quality, greenhouse gases, and changes to the site’s visual character. Thus, this alternative is not taken seriously in the DEIR, and does not satisfy CEQA’s mandate that an EIR discuss a reasonable range of alternatives that “offer substantial environmental advantages over the project proposal.” *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d at 566 (1990).

The other two alternatives presented in the DEIR are substantively similar to the proposed Project. Alternative C: Age-Restricted Residences and Alternative D: Modified Site Plan both assume 260 for-sale residential units, 3,000 sf of retail uses, a 1.17-acre public park, the same development footprint and the same building heights just like the Project. The DEIR itself acknowledges that these two alternatives would only incrementally reduce significant impacts. DEIR at 6-31. The DEIR thus requires City decision-makers to choose between alternatives that, according to the DEIR, largely share the Project’s environmental impacts. None of these alternatives present a clearly less impactful alternative. The City claims that Alternative C, Age-Restricted Residences is environmentally superior, but this option still yields similar or greater impacts in many

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impact issue areas. *Id.* CEQA requires that “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of *avoiding or substantially lessening* any significant effects of the project” CEQA Guidelines § 15126.6(b); emphasis added. None of the DEIR’s alternatives meet this requirement.

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Moreover, the DEIR contends that an offsite alternative was considered but rejected because “no other site in the Airport Area is known that would definitively avoid or substantially less any of the significant effects associated with the proposed project. DEIR at 6-7. The County’s actual analysis fails to support this determination with substantial evidence. Therefore, the DEIR provides no evidence that other sites in the Airport Area or elsewhere in Newport Beach were evaluated or by what criteria. CEQA is clear that an agency must explain in “meaningful detail . . . the basis for the alleged infeasibility” of an alternative. *Preservation Action Council v. San Jose* (2006) 141 Cal. App. 4th 1336, 1357. The DEIR fails to do so.

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Given the adverse impacts that this Project would have on the visual character of the site, on traffic and circulation in the area, and on air quality and greenhouse gas emissions, the DEIR must include a rigorous, honest assessment of additional, less impactful, alternatives. A revised DEIR should include analysis of a substantially reduced height and density alternative and should thoroughly analyze the potential for an off-site alternative. Without this opportunity, the DEIR asks the public to accept on “blind trust” that the proposed Project is the best alternative. This approach is unlawful “in light of CEQA’s fundamental goal that the public be fully informed as to the consequences of action by their public officials.” *Laurel Heights*, 47 Cal. 3d at 494.

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VI. A Revised DEIR Must Be Prepared And Recirculated.

CEQA requires recirculation of a revised draft DEIR “[w]hen significant new information is added to an environmental impact report” after public review and comment on the earlier draft DEIR. Pub. Res. Code § 21092.1. The opportunity for meaningful public review of significant new information is essential “to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” *Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1017. An agency cannot simply release a draft report “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review.” *Mountain Lion Coalition v. California Fish and Game Comm’n.* (1989) 214 Cal.App.3d 1043, 1053.

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In order to cure the DEIR's defects identified in this letter and in letters from other community members, the City must obtain substantial new information to adequately assess the proposed Project's environmental impacts, and to identify effective mitigation and alternatives capable of alleviating the Project's significant impacts. This new information will clearly necessitate recirculation. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft supplemental EIR.

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VII. Conclusion

For the foregoing reasons, Olen Properties urges the City to delay further consideration of the Koll Residences Project unless and until the City prepares and recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter



Carmen J. Borg, AICP

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& WEINBERGER LLP

Response 1

The subsequent responses address the specific issues raised by this commenter.

Response 2

As a point of clarification to the commenter, the Project is not a part nor includes the preparation of a community plan. The Planned Community Development standards establishes the zoning regulations for the project site. While the Municipal Code requires consistency between the General Plan and provisions of the Zoning Code, PC-15 Koll Center is not a community plan/General Plan.

The proposed new sections of the Koll Center Newport Planned Community Development Standards that pertain to the Proposed Project are provided following the responses to this comment letter. As disclosed in the Draft EIR, the project site is zoned “Koll Center Newport Planned Community (PC-15 Koll Center)” and zoning regulations are provided in the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 and subsequently amended several times. The Proposed Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The proposed changes to PC-15 Koll Center include a Mixed-Use Residential Overlay and Public Park Overlay. The Draft EIR analysis has been prepared consistent with the assumptions identified for the two overlays.

Response 3

CEQA does not require the public disclosure of a development agreement. CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City’s standard public review and public hearing process for development agreements.

Response 4

The comment has misunderstood the EIR’s discussion of Project Design Features (PDFs). Section 4.0, *Environmental Setting*, states that “PDFs are specific design elements proposed by the Applicant that have been incorporated into the Project. Where noted in the Draft EIR, PDFs are proposed to prevent the occurrence of, or reduce the significance of, potential environmental effects. Because PDFs have been incorporated into the Project, they do not constitute mitigation measures as defined by CEQA. However, PDFs are identified in the Mitigation Program, and are included in the Mitigation Monitoring and Reporting Program (MMRP) to be developed for, and would be implemented as a part of, the Proposed Project.” Whether a PDF is proposed to preclude an environmental impact or is proposed as a part of the Project, all PDFs identified in the EIR would be required as a part of Project approval.

State CEQA Guidelines Section 15126.4(a)(1)(A) specifically permits the incorporation of project design features into a project. The Project Design Features are incorporated into the Project design and included in the Draft EIR as such. Failure to maintain the Project Design Features into project design would represent a change to the Project Description. Furthermore, the analysis does not rely on Project Design Features to reduce impacts. The GHG emissions analysis conservatively does not take credit for emissions

reductions resulting from implementation of PDF 1 (LEED Certification). Project-related improvements in energy consumption associated with PDF 1 would reduce emissions beyond what is identified in the Draft EIR.

Response 5

Please refer to the response to Comment 4.

Response 6

As addressed in Section 3.0, *Project Description*, and Section 4.9, *Land Use and Planning*, the Project requires the approval of a transfer of development rights to transfer 3,019 sf of unbuilt office/retail from Koll Center Planned Community Development Standards (PC 15) Koll Center Site A (Anomaly Location 1) to Site B (Anomaly Location 2) within Statistical Area L4 (Airport Area). The anomaly locations for the Airport Area are shown on Figure 3-3 of the Draft EIR.

Per the 2006 General Plan, Anomaly Location 1 allows for 460,095 sf of development. There is currently 457,076 sf of development in Anomaly Location 1, with 3,019 sf of remaining unbuilt square footage under the control of Koll Center Newport. Should the City approve the transfer as a part of the Proposed Project, Anomaly Location 1 would be capped at 457,076 sf. Anomaly Location 2 would increase from 1,052,880 to 1,055,899 sf, a net increase of 3,019 sf. No other changes to Land Use Element Table LU2, Anomaly Locations, would occur.

As a part of the Proposed Project, the City will consider an amendment to the Koll Center Planned Community Text to allow for the transfer of 3,019 gross sf of unused office/retail square footage from Office Site A (Anomaly Location 1) to Office Site B (Anomaly Location 2) of Koll Center Newport.

The transfer of 3,019 sf of unused development rights between Anomaly Location 1 and Location 2 does not require a General Plan Amendment. The transfer between the two areas does not cause a change in land use or trigger the voter approval requirements set forth in City Charter Section 423. General Plan Land Use Element Policy 4.3 allows for transfers of development rights and is implemented by Newport Beach Municipal Code Section 20.46.030 which permits transfers of development rights where the donor and receiver sites are located within the same General Plan Statistical Area. Both sites are located within the Koll Center Newport Planned Development Plan and General Plan Land Use Statistical Area L4. Both Anomaly Locations 1 and 2 are in Statistical Area L4 (see attached General Plan Land Use Element Figure LU3). There is available remaining square footage within Statistic Area L4 to accommodate the transfer.

As noted in the General Plan Housing Element, all housing opportunity sites, including the project site, are not subject to City Charter Section 423 as a result of voter approval of Measure V in November 2006. Section 423 of the City Charter (Measure S) requires voter approval of a project that increases density, intensity, or peak hour trip, above that provided for in the General Plan. Significance is quantified as 100 or more dwelling units, over 100 peak hour trips, or 40,000 or more square feet of nonresidential floor area. Charter Section 423 applies exclusively to General Plan amendments.

Response 7

The proposed transfer of development rights would allow for a mix of land uses within the project site. Please refer to the response to Comment 6. The Project does not require a General Plan Amendment.

Response 8

The comment's characterization of surface parking lots as common/open space is misleading. The Project would be constructed on existing surface parking, and would provide a 1.17-acre public park and landscaping.

Further, the Draft EIR does not characterize the project site as "an underperforming office park." In its entirety, Land Use Policy 3.3, *Opportunities for Change*, states "Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors: John Wayne Airport Area: re-use of underperforming industrial and office properties and development of cohesive residential neighborhoods in proximity to jobs and services." The Project allows for the introduction of 260 dwelling units and retail uses proximate to jobs and services.

The commenter's opinion that the Project will create an "underperforming office park" is noted but is not supported by evidence. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.) No further response is required.

Response 9

The commenter's opinion regarding the necessary components of a "cohesive neighborhood" is noted but does not raise an environmental issue. No further response is required.

Response 10

The commenter alleges that the Draft EIR relies on the Uptown Newport Project to provide consistency with General Plan Policy LU 3.3, *Opportunities for Change*. Rather, the Draft EIR recognizes that the Uptown Newport Project is an under construction mixed-use development project adjacent to the project site and which would provide pedestrian connections between the two project sites. LU 3.3 identifies the John Wayne Airport Area for the development of residences because of the proximity to jobs and services. This policy state that all potential services are to be provided within the limits of a singular project or project site.

Response 11

General Plan Policy LU 5.3.1, *Mixed-Use Buildings*, states:

Require that mixed-use buildings be designed to convey a high level of architectural and landscape quality and ensure compatibility among their uses in consideration of the following principles:

- Design and incorporation of building materials and features to avoid conflicts among uses, such as noise, vibration, lighting, odors, and similar impacts
- Visual and physical integration of residential and nonresidential uses

- Architectural treatment of building elevations and modulation of their massing
- Separate and well-defined entries for residential units and nonresidential businesses
- Design of parking areas and facilities for architectural consistency and integration among uses
- Incorporation of extensive landscape appropriate to its location; urbanized streetscapes, for example, would require less landscape along the street frontage but integrate landscape into interior courtyards and common open spaces (*Imp 2.1*)

The Project is consistent with this policy as demonstrated in the analysis set forth in the Draft EIR, including but not limited to Section 4.1, *Aesthetics and Visual Resources*, and Section 4.9, *Land Use and Planning*. Draft EIR Figures 3-8, 3-9, 3-10, 3-14, and 4.1a through 4.1h conceptually depict Project architecture, massing, and landscaping. Figure 4.1-1 identifies proposed building heights in relationship to existing and planned development. The commenter's opinion regarding the proposed architecture is noted.

Response 12

As a point of clarification to the commenter, compliance with General Plan Land Use Element Policy 6.15.6, Size of Residential Villages, is a requirement for the Airport Area. Elsewhere in the City, the City Council may waive the minimum acreage requirement as set forth in Municipal Code Section 20.56.020. Furthermore, project acreage (site area) may also include part of a contiguous property in a different land use category (i.e., office) to provide functionally proximate parking, open space, and newly-created neighborhood parks. The same property ownership is not necessary.

Response 13

Please refer to the response to Comment 8; the Project is not inconsistent with Policy LU 3.3. The opinion of the commenter is noted.

Response 14

Please refer to the response to Comment 10.

Response 15

Future owners of the condominium units are unknown and it would be speculative to identify who would purchase the units. The commenter provides no evidence that the proposed dwelling units would not be affordable to a portion of the population in the City of Newport Beach, which has a median income of \$113,071 and median home prices of over \$1,00,000,¹⁶ or to persons working in the area including Koll Center Newport. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion

¹⁶ U.S. Census Bureau, *QuickFacts, Newport Beach, California*, <https://www.census.gov/quickfacts/fact/table/newportbeachcitycalifornia,US/INC110215#viewtop>, accessed November 11, 2017.

or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

Response 16

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.

Response 17

The traffic analysis did survey the existing flow of traffic into and out of each of the Koll Center Newport driveways, and evaluated the change in traffic patterns that would occur as a result of the changes in the gate locations, on-site circulation, and the access to the parking areas. The changes in site circulation that would occur as a result of the placement of the buildings and the access to the parking areas were described in detail in the Draft EIR, and were taken into account in the analysis of all of the surrounding intersections, including Von Karman Avenue at Birch Street.

While it is acknowledged that the parking areas that are directly accessible via Driveway 1 (with exit also available at Driveway 4) would no longer be accessed via Driveways 2, 3, or 5, with the completion of the Project, there would be more parking spaces accessible via Driveway 1. The parking areas directly accessed by Driveway 1 would have approximately 120 existing surface spaces removed during the construction of Phase 1. With the completion of the Building 1, 276 structure spaces would be added for the office uses. These would be accessible from Driveway 1, and as is the case with the current parking utilization, would most likely be used by employees in the 4490 Von Karman Avenue, 4440 Von Karman Avenue, and 4910 Birch Street buildings.

Response 18

Section 3.0, Project Description, identifies that during the construction of the new parking structure (Phase A) and the construction of the public park and completion of landscaping and reconfiguration of surface parking (Phase 3), complimentary valet parking would be provided for the use of office employees of and guests to the office buildings. A complimentary shuttle would be provided during all phases of Project construction.

The parking supply for the existing Koll Center Newport development is the parking that has been approved for the site by the City of Newport Beach. The Project does not change the existing office square footage or the parking requirements for the office development. The proposed overall site parking plan was designed to provide full replacement of removed parking spaces and distinct parking areas for the existing office uses and adequate parking for the proposed residential uses.

Response 19

General Plan Policy *CE 6.2.2 Support Facilities for Alternative Modes* states: "Require new development projects to provide facilities commensurate with development type and intensity to support alternative modes, such as referential parking for carpools, bicycle lockers, showers, commuter information areas, rideshare vehicle loadings areas, water transportation docks, and bus stop improvements." As addressed in Section 4.9, *Land Use and Planning*, the Project is consistent with this policy.

Loading areas would be provided in curbside pullouts along the spine street or within the buildings. Designated parking spaces for carpools, clean air vehicles, electric charging stations, etc. would be provided in accordance with CALGreen requirements. As identified in Section 3.0, *Project Description*, the Project would provide bicycle storage for 144 bicycles, and bicycle racks would be provided on the site.

With respect to transit, there is an existing OCTA bus stop on the east side of Jamboree Road (southeast of the intersection of Jamboree Road at Birch Street); on Von Karman Avenue (between Birch Street and Campus Drive); and, along Campus Drive. OCTA also operates the *i-Shuttle*. Route A connects the Tustin Metrolink Station to the John Wayne Airport area via Von Karman Avenue with a stop at the intersection of Von Kaman Avenue at Dupont Drive, one block north of the project site.

As addressed in Section 4.9, *Land Use and Planning*, and Section 4.14, *Traffic and Transportation*, the City of Newport Beach Bicycle Master Plan recommends Class II bicycle facilities on Von Karman Avenue and Birch Street near the project site (Newport Beach, 2014). There are existing 12-foot wide sidewalks, and 19-foot wide pedestrian and bicycle City easement along both Von Karman Avenue and Birch Street that could serve to accommodate pedestrians and bicycles. Implementation of the Proposed Project would not interfere with planned bicycle facilities.

Senate Bill 743 (SB 743) encourages infill development to place complementary land uses, such as residential and employment uses, together; to reduce automobile trips and vehicle miles traveled. The Residences at Koll Center is consistent with the primary goals of SB 743.

Response 20

As noted by the commenter, the existing immediately adjacent uses are offices where truck deliveries are not typical between 10:00 PM and 7:00 AM. The commenter has not identified or provided evidence that an environmental impact would result. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

Response 21

The Project was analyzed for Year 2022 because that is the Project's anticipated opening year. Because the Project is consistent with the General Plan and does not require a General Plan Amendment, the City does not require a General Plan buildout traffic analysis to be prepared. Cumulative development is included in the Project's traffic analysis.

Response 22

Please refer to Topical Response, *Cumulative Projects*.

Response 23

Please refer to Topical Response, *Alternatives*.

Response 24

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient.

Response 25

Please refer to Topical Response, *Alternatives*.

Response 26

Please refer to Topical Response, *Alternatives*.

Response 27

Please refer to Topical Response, *Alternatives*.

Response 28

Please refer to Topical Response, *Alternatives*.

Response 29

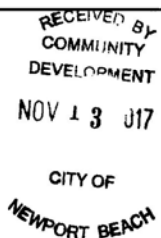
Please refer to Topical Response, *Alternatives*. The opinions of the commenter are noted.

Response 30

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.

Letter C-7c OLEN

Julie Ault, General Counsel
November 10, 2017



November 10, 2017



City of Newport Beach
ATTN: Rosalinh Ung
100 Civic Center Drive
Newport Beach, CA 92660

RE: Comments on the Draft Environmental Impact Report for the Koll Center Residences (SCH No. 2017011002)

Dear Ms. Ung:

This letter provides comments on the Draft Environmental Impact Report (DEIR) for the proposed Koll Center Residences (KCR) (PA2015-024) as allowed under the California Environmental Quality Act (CEQA).

Olen Properties has been in the commercial and residential real estate development and management business in Orange County for over 40 years and has made Newport Beach its headquarters for over 20 years. By way of background, Olen Properties owns the building located at 4910 Birch Street, and is one of the many long-term commercial owners within Koll Center Newport. Our primary concerns about this project focus on the impacts to our existing tenant; future economic impacts to our building, as well as neighboring buildings; land use planning impacts; and several other issues.

After careful review of the publicly available information related to the project and policy documents available through the City of Newport Beach's website, Olen Properties offers the following substantive comments related to the project's DEIR.

Project Fails to Align and Analyze Adopted Plans and Ordinances

The DEIR fails to adequately analyze the relationship between this project and the City of Newport Beach's General Plan and already approved Ordinances and policies.

Newport Beach General Plan

While the City has updated its General Plan numerous times, the residents and City have acknowledged a new vision needs to be drafted for this Airport Area. It is our understanding the City is launching into a General Plan update right now. With this in mind, we believe the City and residents would be far better served by actually completing the update prior to processing this project. We respectfully request the City halt processing this project and update the General Plan to determine the most appropriate new uses—if there are any—for this site.

Furthermore, the DEIR failed to analyze multiple General Plan policies and their consistency with proposed KCR project. These policies include:

1

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- **LU 2.4 Economic Development**
Since this project portends to create jobs, where is the analysis that this project is warranted and fulfills a specific community need? 2
- **LU 5.3.4 Districts Integrating Residential and Non-Residential Units**
This policy focuses on the viability, quality, and compatibility with adjoining uses. The project includes three 13 story residential towers which have no integration or alignment with the existing commercial uses. 3
- **LU 5.3.6 Parking Adequacy and Location**
Existing convenient integrated parking will be removed to make room for this project. Traffic impacts and parking lot segmentation reduce the ability for existing owners and tenants to find and reach adequate parking spots. 4
- **LU 6.2.5 Neighborhood Supporting Uses**
This policy focuses on complementary and supporting uses for a living environment. The only public benefit this project asserts is a one acre park in the midst of a commercial complex. There are no other supporting amenities that integrate within a residential neighborhood and based on the size of the retail within the towers, they will likely be coffee-shop type retail, nothing close to grocery store or market place. 5
- **LU 6.15.7 Overall Density and Housing Type**
This policy emphasizes density and a mix of housing types and incomes. The project fails to meet this policy. As described by the applicant at the October 30, 2017 forum, there is one housing type and one income level—these will be luxury condominiums. 6
- **NR 6.1 Walkable Neighborhoods**
As demonstrated below this project site does not have amenities near-enough to consider it a walkable community. Nevertheless, the City failed to even analyze this policy even though the project claims walkability and sustainability. 7
- **NR 6.2 Mixed-Use Development**
The purpose of this policy is to reduce vehicle trips by making amenities—specifically identifying jobs, services, and entertainment—accessible to the residents in new developments. However, this is a mixed-use project that failed to look at this policy. Further, the limited ~3,000 square feet of retail is a token gesture by the applicant and doesn't provide near the needed services a new residential area needs to function adequately. 8
- **NR 6.3 Vehicle Trip Reduction Measures**
Again, to reduce vehicle trips the Newport Beach General Plan promotes at-work day care facilities and on-site automated banking machines. 9
- **Airport Area**
While the General Plan states there was strong support for mixed use development, recent voter-based referenda and even City-run community workshops prove this “support” is no longer present. In a workshop about the upcoming General Plan Update, the City acknowledges it needs to revisit the Airport Area land uses. (See **Attachment 1**) This policy needs to be analyzed and the General Plan for this area needs to be updated. 10

All of these policies were omitted from the DEIR General Plan consistency analysis and must be included and analyzed in a revised document.

Additionally, several policies that were included in the DEIR appear to have been substantiated by opinion and not fact. Without fact based analysis, it makes challenging a consistency analysis difficult. These include:

- **LU 3.1 Neighborhoods, Districts, Corridors, and Open Spaces**
 This policy focuses on the pattern of land use types. This project inserts a residential component into a stable commercial district, thereby ignoring the current pattern of commercial centers. We assert KCR is inconsistent with this policy. 11
- **LU 3.2 Growth and Change**
 This policy focuses on changes in land use based on *economically underperforming* areas. (emphasis added) What evidence does the City have to substantiate a claim that the existing industrial and office properties are underperforming? There was no economic analysis provided to justify this in the DEIR. We assert KCR is inconsistent with this policy. 12
- **LU 3.3 Opportunities for Change**
 Again, this policy includes re-use of *underperforming industrial and office properties* in the Airport Area. (emphasis added) Again, what evidence does the City have to substantiate this claim? Without an economic analysis, the City has no justification of this claim. We assert KCR is inconsistent with this policy. 13
- **LU 5.3.1 Mixed Use Buildings**
 This policy seeks to avoid conflicts with noise, lighting, and other impacts and incorporates an integration of residential and non-residential uses with building elevations. How exactly does a 13 story residential building align building elevations with the existing compact, low commercial buildings? We also believe noise as it relates to airport take off and landings has not been properly analyzed for the building itself. New residents will have balconies facing the airport and take-off and landing-approaches have significant sound implications. This was not addressed in the DEIR and should be. 14
- **LU 5.6.2 Form and Environment**
 This policy outlines how abrupt changes in scale and form can have impacts on neighboring properties. We do not believe the scale and form of these three towers aligns with the existing buildings. 15
- **LU 6.15 GOAL**
 The General Plan states (page 3-100) "*A mixed-use community that provides jobs, residential, and supporting services in close proximity, with pedestrian-oriented amenities that facilitate walking and enhance livability.*" This project provides seven permanent jobs for which the average compensation will be insufficient to afford the proposed luxury condominiums and has limited pedestrian amenities with no access to transit. Furthermore, it includes a low walkability score as detailed in our comments below. 16
- **LU 6.15.12 Development Agreements**
 This policy confirms that development agreements are required for infill residential projects, but the documents available with this project, do not include said agreement. We request a copy of the development agreement. 17



Planned Community Standards

The Planned Community Development Standards for this area, known as Ordinance No. 1449, adopted by the City of Newport Beach August 14, 1972, (See **Attachment 2**) states on page 2 “This area is most appropriate for commercial and light industrial uses.” This site has been commercial and industrial uses for 45 years. We wholly concur and by inserting residential fundamentally changes the character of the exiting stable business center.

18

Within Ordinance 1449, it states that the requirements for parking include (page 35): “One (1) space for each 225 square feet of net floor area. The parking requirement may be lowered to one (1) space for each 250 square feet of net floor area upon review and approval of the modification committee.” This Ordinance sets very clear standards related to the parking requirements for each building and yet the project is being considered in a vacuum. Both 4910 Birch Street and 4490 Von Karman are wholly excluded from this project and deemed “Not a Part of Project.” The DEIR fails to analyze how buildings that are within Koll Center Newport, especially those listed as “Not a Part of Project” will or will not be impacted by the new parking offered by the KCR, or that during the minimum four year construction period will have all adjacent parking removed entirely.

19

In addition, on page 48 of Ordinance 1449, it states, “Trees, equal in number to one (1) per each five (5) parking stalls, shall be provided in the parking area. Planting area around building shall not be included in parking area.” The DEIR fails to analyze if this project is or isn’t consistent with the Ordinance. Furthermore, no mitigation measures are offered due to this lack of analysis which violates one of CEQA’s primary tenants—to avoid or minimize through mitigation the project’s impacts.

20

Airport Land Use Commission

Based on the DEIR’s position, the Airport Land Use Commission (ALUC) must make a finding for consistency between this project and the airport. As a reminder, the ALUC is governed by the Public Utilities Code §21670. Its primary goal is to help local jurisdictions ensure compatible land uses near all airports. If the ALUC does not find consistency, the City Council could make a statement of overriding considerations. Should the City chose to override the ALUC—the liability the City takes on is enormous. In addition, Ordinance 1449 also outlines, on page 7 that “The height of all buildings and structures shall comply with Federal Aviation Authority criteria.” A determination by the ALUC should be followed to reduce liability for the City.

21

Project Goals Are Unrealistically Limiting

Within the DEIR’s Project Description (§3.5, page 3-6) the project limits the alternatives for the site due to the artificially constrained project goals.

22

First, it notes that the project should be consistent with the City’s General Plan, of which we’ve already pointed out deficiencies there, as well as the Integrated Conceptual Development Plan (ICDP). However, the DEIR fails to focus any analysis on the goals from the Planned Community Development Standards (Ordinance 1449). Furthermore, it fails to consider the Grant Deed and Conditions, Covenants and Restrictions (CC&Rs) adopted by the City of Newport Beach as part of the original Koll Center Newport project in June 1973. (See **Attachment 3**)



The Grant Deed and CC&Rs relay (page 1) rights to Common Areas and Common Facilities. Section 1.01 specifically describes that this area is governed by (1) the CC&Rs, (2) the Planned Development Standards, and (3) Ordinance 1449. Standards and rights are established in the Grant Deed and CC&Rs that outline specific uses and rights of Common Areas and Common Facilities, including but not limited to: public and private streets, walkways, parking, etc. Furthermore, the owners within Koll Center Newport have been paying a pro-rated share of the maintenance of Common Facilities, yet the DEIR fails to even acknowledge the existing owners have a right to existing facilities and have been, in some cases for many years, paying into those facilities. How will the various owners reach agreement on the pro-rated share for new facilities? What authority does the project applicant have to remove common area/facilities without having updated/revised the existing CC&Rs? Therefore, the DEIR does not adequately review, acknowledge or understand the existing conditions for the Koll Center Newport area.

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Second, the project goals outline a mixed use facility that provides jobs and supporting services with pedestrian oriented amenities. As noted later in our letter, based on the meager walk score for the site, it really is not a pedestrian friendly development—nor with ~3,000 square feet of retail space does it have much in terms of supporting services. None of the existing commercial buildings would provide any supporting services for these new residents as all are business and professional uses as was intended by the Planned Community Development Standards. The DEIR reveals that construction jobs are temporary (lasting 4.5 years) (page 4.11-8), while there will be only seven new permanent jobs added to the Newport Beach economy. The DEIR boxes in this specific project through the project goals and unnecessarily limits project alternatives.

23

Project Fails to Meet Walkability and Sustainability Benchmarks

The project claims to be walkable and sustainable. However, our research indicates otherwise.

Walkability

Walk Scores demonstrate how easy it is to live a car-lite lifestyle. Walk Scores utilize 13 different categories and award points for the proximity of each amenity between ¼ to one mile. Amenities within ¼ mile receive maximum points, while no points are awarded for amenities further than one mile. The categories include: grocery store, coffee shop, movie theatre, park, bookstore, drug store, clothing and music stores, restaurant, bar, school, library, fitness, and hardware store. Generally anything over a score of 70 is considered good.

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To calculate the Walk Score for the KCR project, we used the nearest address to the project (4910 Birch Street) because the address for the proposed project does not exist yet. The 4910 Birch Street address has a walk score of 43 out of 100. (See **Attachment 4**) Furthermore, it does not include standard features like transit stops, benches, bike racks, etc.—all things that promote active transportation options. Therefore, this is not a walkable project.

SCAG RTP/SCS

Every four years the Southern California Association of Governments (SCAG) releases a new Regional Transportation Plan (RTP). With the passage of SB 375 (The Sustainable Communities Act of 2008), SCAG, as a Metropolitan Planning Organization for the Southern California

5



region, has also included a Sustainable Communities Strategy (SCS). The most recent RTP/SCS was adopted in April 2016. (See **Attachment 5**)

Nine goals were identified in the 2016 RTP/SCS and only one relates to this local project. Goal 8 (page 64) states, “Encourage land use and growth patterns that facilitate transit and active transportation.” Since this project does not facilitate transit, and based on the project’s walk score, does not promote active transportation, it does not align with this regional plan.

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24

Greenhouse Gas (GHG) Emission Standards

Furthermore, in September 2013, Governor Brown signed legislation that, through the Department of Transportation, consolidated the existing state and federal active transportation programs in California. The primary goal for consolidation was the focus of having California be the national leader in active transportation. Outside of providing sidewalks, the KCR provides no other active transportation benefits to this area or the City.

25

Additionally, based on the parking revisions for this project, this proposal plans for a single driver automobile dependence. This project does not meet the goals of AB 32 (the Global Warming Solutions Act of 2006) [to reduce GHG emissions to 1990 levels by 2020], SB 375 [to reduce GHG emissions by reducing the vehicle miles travelled (VMT) by light duty trucks and vehicles], and SB 32 (the extension of AB 32) [which establishes the goal of a 40% reduction in GHG emissions by 2030].

The KCR DEIR Appendix F asserts that no mitigation measures are required for the project “because of the global nature of climate change, most projects will not result in GHG emissions that are individually significant” (page 19). The reason it is “global” climate change is because many small pieces do add up to the larger picture—the context is cumulative. A death by a thousand cuts—is still death. As stated in Appendix F, the revised AB 32 threshold for GHG reductions is 21.7%. This project, even with its GHG construction emissions amortized over 30 years coupled with the remaining “daily” GHG emissions, still produces 1,938 metric tons of CO_{2e} per year above the baseline for that site. Therefore any increase in CO_{2e} emissions does not meet state thresholds because it is an increase—not a decrease. An increase does nothing to meet the 21.7% reduction threshold.

26

Additionally, the California Air Resources Board established regional GHG targets for each Metropolitan Planning Organization. As outlined in Appendix F (page 14), SCAG’s GHG reduction targets are 8% by 2020, 18% by 2035, and 21% by 2040. An increase of any amount, does not meet a reduction target. And, reliance on other projects within the SCAG region to reduce its GHG and VMT reduction goals places the burden unfairly on others—alternatively, every project should be reducing emissions to meet the regional goals.

CAPCOA Mitigation Measure

The California Air Pollution Control Officers Association (CAPCOA) has detailed GHG mitigation measures available from its August 2010 report. This project should consider substantive mitigation measures that to further reduce GHG emissions. (See **Attachment 6**)

27



Newport Beach Energy Action Plan

Furthermore, the City of Newport Beach adopted its Energy Action Plan in July 2013. The first goal listed in the Plan is to: “Meet or exceed energy reduction goals.” And, the Plan states (page 26) that “the City of Newport Beach will strive for a 15% reduction in City-wide energy use by the year 2020.” How can this project be consistent with a 15% reduction by 2020 when it is contemplating adding 1,938 metric tons of CO_{2e} per year? This project is inconsistent with the City’s Energy Action Plan.

28

To claim that this project is sustainable or walkable is not supported with the project as proposed.

The Project Fails to Consider Related Projects and Ambient Growth

The ambient growth rate of one percent is consistent with the SCAG TransCAD model. However, the ambient growth does not account for projects that are under construction, approved, or under consideration (pending). The Related Projects List (Table 4.14-17) and map (Figure 4.14-4) included in the document fail to include several projects within close proximity to the Project in the City of Irvine that are under construction, such as 700 units at Campus and Von Karman and 372 residential units at Jamboree Road and Kelvin. (See **Attachment 7**) It also fails to include several major projects in the City of Irvine that have been approved/entitled, such as an additional 900 residential units at Campus and Von Karman. Furthermore, it fails to include proposed projects that are under consideration by the City of Irvine, such as 371 residential units at Jamboree and Alton. It is unclear whether these projects were missed in the Related Projects List in the document but are included in the ITAM (Irvine Transportation Analysis Model) or if they were excluded from the modeling, as well. If they were not included in the modeling, the cumulative impact analysis is failed. If these projects were captured in the traffic modeling, were they also captured in the other analyses – such as impacts on schools, police and fire?

29

The Project Fails to Analyze Parking Utilization and Shared Parking

The DEIR fails to provide a parking utilization analysis of the existing surface parking areas. The impact of the removal of surface parking is difficult to determine without a parking utilization analysis.

The DEIR does not consider or analyze the opportunity to unbundle and share the new parking that will be provided under Buildings 1, 2 and 3. This parking could be shared with existing office tenants and visitors of 4490 Von Karman Avenue, 4440 Von Karman Avenue, and 4910 Birch Street. Shared parking could prevent over-construction of parking, improve ease of access to parking, and allow for better on-site circulation by connecting the existing surface parking to the proposed structured parking under Buildings 1, 2 and/or 3. As mentioned in comment #1, existing office tenants will have access to Building 1 parking only via Driveway 1. Office users will not be able to enter Building 1 parking from Driveways 2, 3 or 5. Figure 3-13 shows New Residential Gates, including one near Driveway 2 for Building 1 and one for Buildings 2 and 3 near Driveway 5. Accordingly, Building 1 parking access from Driveways 2, 3 and 5 is limited to residents only.

30



The Project Fails to Consider Visual Impacts

As noted in our Scoping Comments from January 31, 2017, the project is always only viewed from one side. The DEIR fails to provide any other viewpoints, as well as before and after illustrations. This means both the public and decision makers will not understand the true impacts of the project’s scope and magnitude because it was unanalyzed. The DEIR must include an analysis of impacts including more than just a shade analysis—specifically, sight lines, proximity to existing structures, landscaping, visibility of increased traffic associated with towers and other factors.

31

The Project Fails to Analyze Impacts to Birds

When the application for construction of the DaVita building (4300 Von Karman) was approved by the City of Newport Beach, a neighboring owner, Meyer Properties, provided comments on the biological impacts to the building. Those comments are attached to this letter because they are relevant to the biological impacts of the proposed KCR project. (See **Attachment 8**)

The KCR project is less than 500 feet from this studied water source and yet, the DEIR fails to look at any possible impacts. We also reaffirm the conclusions found in this letter, specifically as they relate to the possible presence of special status species, since Upper Newport Bay is located 0.8 miles southwest of the project site and San Joaquin Marsh property is 0.5 miles from the site. These possible special status species include, but are not limited to: Least Bittern, American Peregrine Falcon, California Least Tern, Black Skimmer, Clark’s Marsh Wren, Tri-colored Blackbird, as well as other species identified on-site such as: Allen’s Hummingbird, Osprey, Cooper’s Hawk, Costa’s Hummingbird, and Nuttall’s Woodpecker. The DEIR fails to even consider impacts on these avian species.

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Additionally, when the height, characteristics of the environment, and wind flow, among other things, are modified in areas where birds are known to congregate, they can easily become confused by window reflections and balcony glass. Birds often do not see clear glass as the barrier—sometimes lethal barrier—because the environment (trees, sky, clouds, habitat) are reflected back to them. Collisions are often fatal. According to the United States Fish and Wildlife Service, between 365 and 988 million birds die annual from window collisions. The DEIR fails to even consider bird strikes as a possibility when the three new 13 story towers are constructed and therefore has not identified any mitigation opportunities to reduce impacts.

33

Furthermore, tall buildings tend to attract some bird species that nest on buildings and building ledges. Sometimes falconers are hired to keep nesting birds at bay. The new balconies on the three towers offer prime “urban” habitat for nesting birds. Finally, there is also a potential significant risk with the displacement of birds in this area as the towers reduce in their flight corridors. Moving the birds’ flight path could create an increased potential for bird strikes with a plane from John Wayne Airport. None of these topics were analyzed in the DEIR.

34

The Project Fails to Analyze Loss of and Mitigation of Trees

The DEIR notes as a Standard Condition (SC 4.3-1) (p. 4.3-7) that the applicant shall replace the trees removed from the existing common area/parking area for the construction of the project per the Newport Beach Municipal Code 13.09. However, the DEIR fails to include a quantification of the requirements of the tree replacement and completely ignores their long-term survival.

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How many trees will be removed? How many trees will be replaced? What is the monitoring period for the trees? What is the required success rate for survival? What happens if the trees die—is there a replacement ratio? Without this information the DEIR fails to demonstrate an adequate mitigation measure. Until this information is available this measure defers mitigation. Under CEQA, deferred mitigation is a violation of the law.

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35

The Project Fails to Quantify All Known Water Uses

The DEIR relies on the Irvine Ranch Water District’s Urban Water Management Plan to confirm the available water supply for the project. And, the DEIR demonstrates through Figure 4.15-4 (p. 4.15-9) that the residential towers, retail, and parking structure car wash will use an estimated 33,665 gallons per day (GPD).

Further, in the Air Quality section, the Standard Conditions (4.2-1) include regular watering of the on-site roads and transported materials will be watered or stabilized, including daily street sweeping. In §4.2-13, it confirms the project estimates 2,366 tons of demolition materials from the removal of 819 parking spaces and landscaping, and the net export of ~118,504 cubic yards of soil during the grading and site preparation. One Standard Condition 4.15-1 relays that the project must abide by the Newport Beach Municipal Code 14.16.

36

However, the DEIR fails to analyze how much water will be used to control the 54 months of construction dust and daily street sweeping. That’s nearly five years of daily water use that wasn’t included in the project’s water use analysis. And, the short and long-term watering needs of the newly planted landscaping was also not analyzed. By only including the towers, retail, and parking structure car wash, potentially significant short and long-term water uses and needs of the remainder of the project are being completely ignored and is not allowed under CEQA.

The Project’s Transfer of Development Rights is Undefined

The DEIR notes that a transfer of 3,000 square feet will be transferred from “Site A to Site B.” Yet, the DEIR fails to document where these sites are actually located. There is no associated map or description of the sites or even how they relate to this project—or maybe they don’t. Consequently, the DEIR has failed to adequately describe the project violating CEQA.

Additionally, the DEIR is inconsistent in its estimates for the transfer. In some places it is listed as up to 3,019 square feet and in other places it is 3,000 square feet. Which exactly is it? Without this foundational information being accurate and consistent throughout the DEIR, the public can only guess at which number is actually correct. The project description and document need to consistently reflect the correct square footage.

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Project Underestimates Shade Impacts to Neighboring Properties

Based on the Shade Analysis within the DEIR, it appears the project will have significant shading impacts to our building—4910 Birch Street. In order to fully understand the cumulative impacts of the shadows on said building, we compiled all the new shadows that would fall across the roofline over the course of the year. Separating out the shadows by season doesn’t give the entire impact. As it turns out only 13.2% of our building is ever going to be completely outside of the shadow zone. In other words, 86.8% of our building has a shadow on it at some point

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throughout the year with the major impact occurring at the south corner of our building which would now remain in shade perpetually. (See Attachment 9)

With such a dramatic change in the shadows, this has potential impacts that were not included in the DEIR, including but not limited to: how the shading will increase our energy bills (for heating and lighting), how the shading will impact our ability to install solar on our roof top in the future, how the lack of sunlight will preclude vegetation and trees from growing between the towers and our building, and how the dark offices in the building will now be less attractive to existing and potential tenants. There are similarly other things that cannot be measured, such as how the decrease in sunlight will change productivity of the business, etc. The DEIR failed to analyze this serious impact to existing buildings.

Conclusion

Based on the above comments, it is clear that the DEIR contains numerous, critical omissions from the disclosure required by CEQA, as well as numerous unanalyzed policies within the Newport Beach General Plan. Consequently, we request a recirculation of the DEIR in its entirety addressing these and other issues submitted by the public and businesses, to bring the document in compliance with CEQA. Furthermore, we again, request the City consider halting this and other future development applications since the City is undergoing a General Plan Update. To more adequately reflect the community's vision, this is step in the right direction. Finally, we intend to supplement these comments in the future.

Thank you for consideration of our comments.

Sincerely,

Julie A. Attk
General Counsel

Enclosures:

- Attachment 1 – City of Newport Beach General Plan Update Flyer
- Attachment 2 – Koll Center Newport Planned Community Development Standards (Ordinance 1449)
- Attachment 3 – Koll Center Grant Deed and Newport Covenants, Conditions and Restrictions
- Attachment 4 – KCR Walk Score
- Attachment 5 – 2016 SCAG RTP/SCS
- Attachment 6 – CAPCOA Quantifying Greenhouse Gas Mitigation Measures
- Attachment 7 – Irvine Notable Development
- Attachment 8 – Meyer Properties Biological Review
- Attachment 9 – 4910 Birch Street Shade Study Overlay

cont'd
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Attachments are in separate document (Appendix A of Responses to Comments) and can be found at this link:
<http://www.newportbeachca.gov/index.aspx?page=1347>

Response 1

The City has not initiated a process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process. As currently proposed, the Project is consistent with the General Plan. Additionally, it is appropriate to utilize the General Plan approved at the time the Project is being considered for approval.

Response 2

The commenter broadly asserts that the Project would be inconsistent with several policies of the City's General Plan and the zoning code, as identified and responded to below, as necessary. As a general note, the Draft EIR identified and analyzed consistency with the General Plan and other applicable plans in Section 4.9, *Land Use and Planning*. With respect to the commenter's alleged inconsistencies, it should be noted that, under CEQA, a project is consistent with the underlying general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy (*Clower Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238). Moreover, a lead agency's determination that a project is consistent with the general plan is entitled to deference (*Ibid.*).

General Plan Land Use Policy LU 2.4 states "Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents." The commenter mistakenly states that economic development is the same as employment. However, the Project is anticipated to generate jobs both during construction and once the project uses are operational.

Response 3

General Plan Land Use Policy 5.3.4 requires that "sufficient acreage be developed for an individual use located in a district containing a mix of residential and nonresidential uses to prevent fragmentation and ensure each use's viability, quality, and compatibility with adjoining uses." The commenter mistakenly identifies that the Project has no integration with the surrounding uses. The Proposed Project includes a mix of residential and ground-floor retail uses within an existing business park. As a part of Project, a neighborhood park, several garden areas, and a pedestrian linkage system consisting of sidewalks would be created that would provide an important and convenient connections throughout the project site and to adjacent and surrounding uses.

Response 4

The parking areas directly accessed by Driveway 1 would have approximately 120 existing surface spaces removed during the construction of Phase 1. With the completion of the Phase 1 building, 276 structure spaces would be added for the office uses. This parking would be accessible from Driveway 1, and as is the case with the current parking utilization, would most likely be used by employees in the 4490 Von Karman, 4440 Von Karman, and 4910 Birch buildings.

The new free-standing parking structure, at the southeast corner of the project site, would most logically be used by the employees of the buildings on the southeast side of the spine street – 5000 Birch Street, 4340 Von Karman Avenue and 4350 Von Karman Avenue – which would be the buildings closest to the structure. The remaining surface parking on the northwest side of the spine street road and the new

structured office parking in Building 1 would most logically be used by the employees of the buildings on the northwest side of the main spine road – 4910 Birch Street, 4490 Von Karman Avenue and 4440 Von Karman Avenue.

Response 5

The opinion of the commenter is noted. Please refer to Section 4.13, *Recreation*, which describes the public and private open space amenities associated with the Proposed Project.

Response 6

This land use policy does not mandate that each development project include a range of building types (e.g., townhomes, high-rises). Rather, this policy aims at ensuring that, City-wide, a range of building types and densities are developed. The City acknowledges that the Project is a condominium development in three, 13-story buildings. Townhomes or other development types have not been proposed by the Applicant.

Response 7

General Plan Policy NR 6.1, *Walkable Communities*, states “Provide for walkable neighborhoods to reduce vehicle trips by siting amenities such as services, parks, and schools in close proximity to residential areas.” The mixed-use development with residential and retail uses, park and recreation amenities, and structured parking would be implemented on an existing surface parking area, and configured to provide a pedestrian-friendly environment with strong connectivity to adjacent and surrounding non-residential uses, as well as connectivity to Uptown Newport. The Project would create a better balance of buildings and open space, link open space amenities and create a network of pedestrian-friendly streets. Additionally, a 1.7-acre public park is a part of the Project.

Response 8

General Plan Policy NR 6.2 states “Support mixed-use development consisting of commercial or office with residential uses in accordance with the Land Use Element that increases the opportunity for residents to live in proximity to jobs, services, and entertainment.” The commenter asserts that the Project would be inadequately served by local commercial uses. The Airport Business Area ICDP contemplates up to 11,500 square feet (sf) of ground-level retail and commercial uses for Uptown Newport and 3,400 sf of commercial uses for the project site. Upon buildout of the General Plan, existing and proposed commercial uses within the general vicinity of the project site would more than adequately serve residents living there.

Response 9

The Project is a mixed-use project with a small retail component, and therefore would not typically be a candidate to provide the at-work facilities referenced. However, the placement of 260 residential units within an existing, vibrant employment center presents a strong potential for on-site trip capture between the residential and office components of what would otherwise be off-site commute trips. This trip capture potential is acknowledged but was not assumed in the impact analysis (i.e., no reduction in Project trips was assumed) for a more conservative approach in the Draft EIR.

Response 10

The City has not initiated a process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process. As currently proposed, the Project is consistent with the General Plan. Additionally, it is appropriate to use the General Plan approved at the time the Project is being considered for approval. The opinion of the commenter regarding potential policy changes to the General Plan do not address an environmental issue for the Propose Project. No further response is required.

Response 11

The opinion of the commenter is noted. As addressed in Section 4.9, *Land Use and Planning*, the Proposed Project is an infill, mixed use development on an existing surface parking area. The Airport Area, inclusive of Koll Center Newport, includes a mix of existing and planned office, commercial, hotel, and residential uses. The Project is consistent with the General Plan Land Use Plan. As concluded in Section 4.1, *Aesthetics*, Buildings 1, 2, and 3 would be of similar height, scale, and character to many of the other buildings in the Airport Area, inclusive of Koll Center Newport. Proximity to Newport Beach's job centers can reduce commute distances between home and jobs.

Response 12

The Draft EIR does not characterize the project site as "an underperforming office park." In its entirety, Land Use Policy 3.3, *Opportunities for Change*, states "Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors: John Wayne Airport Area: re-use of underperforming industrial and office properties and development of cohesive residential neighborhoods in proximity to jobs and services." The Project allows for the introduction of 260 dwelling units and retail uses proximate to jobs and services. The commenter's opinion is noted.

Response 13

Please refer to the response to Comment 12.

Response 14

While the commenter suggests that the area is a low-rise business park, this characterization is misleading. Figure 4.1-1 of the Draft EIR identifies the heights of existing structure in the project area which includes a mix of building heights. Additionally, the Uptown Newport Project will include buildings up to 150 feet.

Please refer to Topical Response: *Airport Noise*. The comment provides an anecdotal discussion of airplane noise in the area and states that proposed balconies and exterior living spaces are not practical because of significant airport noise. The commenter does not specifically challenge the data or analysis within the Draft EIR. However, as discussed in the topical response, the project site is located outside the John Wayne Airport's 60 dBA CNEL contour. As described in Section 4.10, *Noise*, of the Draft EIR, the Project would be required to comply with Mitigation Measures 4.10-5 and 4.10-6 to reduce on-site noise impacts to a less than significant level. Mitigation Measure 4.10-6 requires a detailed acoustical study demonstrating that all residential units would meet the City's 60 dBA exterior noise standard for all patios, balconies, and common outdoor living areas through any necessary noise reduction features (barriers, berms, enclosures, etc.).

General Plan Policy LU 5.3.1, Mixed-Use Buildings, states:

Require that mixed-use buildings be designed to convey a high level of architectural and landscape quality and ensure compatibility among their uses in consideration of the following principles:

- Design and incorporation of building materials and features to avoid conflicts among uses, such as noise, vibration, lighting, odors, and similar impacts
- Visual and physical integration of residential and nonresidential uses
- Architectural treatment of building elevations and modulation of their massing
- Separate and well-defined entries for residential units and nonresidential businesses
- Design of parking areas and facilities for architectural consistency and integration among uses
- Incorporation of extensive landscape appropriate to its location; urbanized streetscapes, for example, would require less landscape along the street frontage but integrate landscape into interior courtyards and common open spaces (*Imp 2.1*)

The Project is consistent with this policy as demonstrated in the analysis set forth in the Draft EIR, including but not limited to Section 4.1, *Aesthetics and Visual Resources*, and Section 4.9, *Land Use and Planning*. Draft EIR Figures 3-8, 3-9, 3-10, 3-14, and 4.1a through 4.1h conceptually depict Project architecture, massing, and landscaping. Figure 4.1-1 identifies proposed building heights in relationship to existing and planned development. The commenter's opinion regarding the proposed architecture is noted.

Response 15

The opinion of the commenter is noted. Figure 4.1-1 identifies proposed building heights in relationship to existing and planned development. No further response is required.

Response 16

The opinion of the commenter is noted. This or other projects in the City of Newport Beach are not required to provide on-site housing for a project's employees. Future owners of the condominium units are unknown and it would be speculative to identify who would purchase the units.

With respect to transit, there is an existing OCTA bus stop on the east side of Jamboree Road (southeast of the intersection of Jamboree Road at Birch Street); on Von Karman Avenue (between Birch Street and Campus Drive); and, along Campus Drive. OCTA also operates the *i-Shuttle*. Route A connects the Tustin Metrolink Station to the John Wayne Airport area via Von Karman Avenue with a stop at the intersection of Von Kaman Avenue at Dupont Drive, one block north of the project site.

As addressed in Section 4.9, *Land Use and Planning*, and Section 4.14, *Traffic and Transportation*, the City of Newport Beach Bicycle Master Plan recommends Class II bicycle facilities on Von Karman Avenue and Birch Street near the project site (Newport Beach, 2014). There are existing 12-foot wide sidewalks, and

19-foot wide pedestrian and bicycle City easement along both Von Karman Avenue and Birch Street that could serve to accommodate pedestrians and bicycles. Implementation of the Proposed Project would not interfere with planned bicycle facilities.

Response 17

CEQA does not require the public disclosure of a development agreement. CEQA Guidelines Section 15124 requires the project description to identify, to the extent known, a list of permits and other approvals required to implement a project. Section 3.0, *Project Description*, of the Draft EIR identifies a Development Agreement as a required approval for the Project consistent with City of Newport Beach Municipal Code Section 15.45.020. The Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Development Agreement. A copy of the draft Development Agreement will be provided to the public as a part of the City's standard public review and public hearing process for development agreements.

Response 18

The opinion of the commenter is noted. The Airport Business Area Integrated Conceptual Development Plan (ICDP), which was adopted by the City of Newport Beach City Council in September 2010, implements General Plan Land Use Policy LU 6.15.11 (Conceptual Development Plan Area). The Airport Business Area ICDP provides a framework for residential development on the project site. It contemplates up to 1,504 new residential units, 11,500 sf of ground-level retail and commercial uses for Uptown Newport and 3,400 sf of commercial uses for the project site, as well as neighborhood park areas. Of the 1,504 dwelling units, 1,244 units are on the Uptown Newport site and 260 units on the surface parking area of Koll Center Newport where the Koll Center Residences Project is proposed. The Proposed Project would carry out the intent of the Airport Business Area ICDP and the City's General Plan because the project site would be developed with the mix of uses envisioned in and approved under the Airport Business Area ICDP.

Response 19

As addressed in 3.0, *Project Description*, there are three office buildings located within the boundaries of the project site, of which two of the office buildings are not a part of the Project (Figure 3-2): 4490 Von Karman Avenue and 4910 Birch Street. In addition to the two aforementioned office buildings, the 4440 Von Karman Avenue office building is a part of the Project to allow for the inclusion of the property into the landscape plan including the provision of non-potable irrigation, as well as sidewalk improvements and the reconfiguration of accessible parking. No change in the square footage of the building is proposed as a part of the Project.

The Draft EIR Project Description thoroughly describes the number of parking spaces that would be removed and that would be provided during each phase of the Project: both during the construction of the phase when the surface parking has been removed, and at the completion of the phase when the replacement parking or the new parking has been completed. The Project Description includes in this assessment common surface parking spaces including those available to tenants in the 4910 Birch Street and the 4490 Von Karman Avenue buildings. Please also refer to Figure 3-19, *Parking Use Allocation*, of the Draft EIR.

The Project does not change the existing office square footage or the parking requirements for the Koll Center Newport development. All parking spaces that would be removed for construction of the Project would be fully replaced. As stated above, the combination of remaining surface parking to the northwest of the main spine road and the new office parking spaces that would be provided in the Building 1 parking structure would meet the parking needs of the buildings on that side of the spine street.

Response 20

Ordinance 1449 (PC-15 Koll Center) requires one tree per five surface parking stalls. This requirement does not apply to parking within structures. Where parking area trees are removed as a part of the reconfiguration of surface parking, as noted in Section 3.0, *Project Description*, landscaping would be provided within the surface parking areas consistent with City requirements governing the Project. The conceptual landscape plan is depicted on Figure 3-14 of the Draft EIR. The landscape plan would be subject to review and approval by the City as a part the Site Development review process. The City is responsible for ensuring compliance with landscape requirements.

Response 21

As addressed in the Draft EIR, the Federal Aviation Administration (FAA) has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. Buildings 1, 2, and 3 would not exceed 160 feet above ground level. The parking structure would not exceed 56 feet above ground level.

The opinion of the commenter is noted. No further response is required.

Response 22

Please refer to the response to Comment 20 for a discussion of compliance with Ordinance 1449. Private maintenance and association cost concerns should be directed to the Association. The legislative body for the City may amend the Zoning Code from time to time pursuant to its public process. The comments are noted but do not raise a CEQA issue. No further response is required.

Response 23

The opinions of the commenter are noted. Please refer to the response to Comment 16. Additionally, the Project is consistent with the Airport Business Area ICDP which focused on pedestrian connectivity and walkability between the project site and Uptown Newport (under construction). Both projects are designed to share common open space areas, parks, and retail uses.

Response 24

Walk Score is a part of the residential real estate company, Redfin. Walk Score provides data to assist persons looking for walkable places to live (listings on Redfin).

Please refer to the response to Comment 16. The overall goal of the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) is a long-range regional transportation plan that provides a vision for regional transportation investments, integrated with land use strategies. The RTP/SCS provides strategies to meet GHG emissions reduction

and air quality conformity requirements. is to create conditions and infrastructure that motivate increased mobility and accessibility, expanded transportation options, broader economic growth, equitably distributed benefits, and sustainability. The RTP/SCS strategies intend to reach the GHG emissions reduction targets through land use and transportation strategies. They focus on improving mobility, improving the transportation system, and encouraging land use and growth patterns that facilitate transit and non-motorized transportation. Proposed Project is within a major employment center and is proximate to major employers within Orange County. Orange County is traditionally jobs-rich. A major transit stop along Jamboree Avenue connects the project site to major employment within the Irvine Business Complex with the OCTA *i-Shuttle*. Increasing residential land uses near major employment centers is a key strategy to reducing regional VMT.

Response 25

Please refer to Topical Response, *Senate Bill 32*.

Response 26

The commenter suggests that all GHG emissions above zero must be treated as causing direct and cumulatively significant environmental impacts. This approach would involve quantifying GHG emissions and using a zero net carbon dioxide equivalent increase as the threshold. Use of a zero net GHG emissions increase threshold is not a recommended threshold by the South Coast Air Quality Management District (SCAQMD) or any other applicable jurisdiction. Additionally, CEQA explicitly gives lead agencies the authority to choose thresholds of significance and defers to lead agency discretion when choosing thresholds. For this Project, the City of Newport Beach has selected the bright-line threshold developed by the SCAQMD and GHG CEQA Significance Threshold Stakeholder Working Group and is based on substantial evidence. Furthermore, as demonstrated in the Draft EIR, the Project would not conflict with the State's ability to meet GHG reduction targets. Please also refer to Topical Response: *Senate Bill 32* regarding GHG emissions thresholds.

Response 27

Refer to Topical Response SB 32. As analyzed in the Draft EIR Section 4.6, the Project would not exceed applicable GHG thresholds and mitigation would not be required. As demonstrated in the Draft EIR, the Project would not conflict with the State's ability to meet GHG reduction targets. Furthermore, the Project design would implement several CAPCOA measures, including increase density (LUT-1), increase location efficiency (LUT-2), land use diversity (LUT-3), increase destination accessibility (LUT-4), increase transit accessibility (LUT-5), pedestrian network improvements (SDT-1), among others.

Response 28

Please refer to Topical Response, *Energy Action Plan*.

Response 29

The list of cumulative projects located in the City of Irvine was provided by the City planning staff, and includes all known projects at the time of the NOP. Cumulative project traffic for projects in the City of Irvine are included in the ITAM forecasts provided by the City.

Response 30

A parking survey was conducted for the Koll Center Newport offices to determine the current parking utilization of the existing parking supply within the project site and the availability of parking during each phase of Project construction. The results of the survey showed that the current parking utilization is approximately 75 percent, after taking current office occupancy rates, seasonal variations, and other potential fluctuations into account; leaving a surplus of 408 unoccupied spaces throughout the site under existing conditions. The survey substantiated that a parking deficit would not be created.

The parking supply for the existing Koll Center Newport development was previously approved by the City of Newport Beach. The Project does not change the existing office square footage or the parking requirements for the existing Koll Center Newport development. The existing parking supply (1,651 spaces) and available parking supply by phase must be maintained.

In addition to the 492 parking spaces in the new free-standing parking structure, as addressed in Section 3.0, *Project Description*, of the Draft EIR, 238 parking spaces would be provided for existing office tenants in the Building 1 Parking Structure. This additional parking would more than offset the change in parking in that area. The walk from the free-standing parking structure to the 4340 Von Karman Avenue office building would be approximately 200 to 300 feet, and approximately 400 feet to the 4350 Von Karman Avenue office building. The proposed overall site parking plan was designed to provide full replacement of removed parking spaces and distinct parking areas for the existing office uses and adequate parking for the proposed residential uses. The changes in site circulation that would occur as a result of the placement of the buildings and the access to the parking areas were described in detail in the Draft EIR, and were taken into account in the analysis of the site circulation and surrounding intersections.

Response 31

The Draft EIR thoroughly evaluates the relationship of the Proposed Project to existing and planned land uses. CEQA Guidelines Section 15204(a) directs persons and public agencies to focus their review of a Draft EIR be “on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. ...CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

Response 32

The commenter is referencing a comment letter from 2010, on the *PRES Office Building B General Plan and Planned Community Text Amendments Initial Study and Mitigated Negative Declaration* (ICF Jones & Stokes, August 2010). The water source referenced by the commenter as being 500 feet from the project site is a man-made pond bordered by Von Karman Avenue and three office buildings.

The Initial Study and Mitigated Negative Declaration (IS/MND) found that the project would have no impact on: (1) candidate, sensitive, or special status species; (2) riparian habitat; (3) federal wetlands or jurisdictional waters; (4) regional wildlife corridors; or (5) local polices and ordinances, or adopted conservation plans. As with the Koll Center Residences Project, the PRES Office Building IS/MND included

a mitigation measure requiring compliance with the Migratory Bird Treaty Act related to nesting sites for migratory birds.

With respect to issues related to migratory birds, a robust discussion of potential impacts can be found in Section 4.3 of the Draft EIR. While there is no suitable habitat for any special-status wildlife species on the project site, some of the existing trees could provide nesting habitat for native birds. Nesting birds are protected under the federal Migratory Bird Treaty Act (*16 USC § 703 et seq.*) and the California Fish and Game Code (§ 3503 et. seq.). Federal regulations prohibit any person to “pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, [or] purchase” any migratory bird, including parts of birds, as well as eggs and nests. The California Fish and Game Code Sections 3503, 3503.5 and 3512 also prohibit the take of birds and active nests. Mitigation Measure (MM) 4.3-1 requires a preconstruction survey for nesting birds with procedures should nesting birds be discovered. Implementation of MM 4.3-1 would reduce potential impacts to nesting birds to a less than significant level.

Response 33

The Draft EIR provides the information requested by the commenter concerning architectural features; please refer to Section 3.0, *Project Description*, and Section 4.1, *Aesthetics and Visual Resources*. With respect to bird strikes, the City of Newport Beach does not have adopted design guidelines related to potential bird collisions with buildings.

As with all development, avian injury and mortality resulting from collisions with the proposed buildings as well as the existing buildings within and outside of Koll Center Newport could occur. Some birds are unable to detect and avoid glass and have difficulty distinguishing between actual objects and their reflected images. In addition, internal building lighting can interfere with some night-migrating birds. The frequency of bird collisions in any particular area depends on many factors, including local and migratory avian populations; densities and species composition; migration characteristics; resting and feeding patterns; habitat preferences; time of year; prevailing winds; and weather conditions.

Where existing and proposed buildings include wide expanses of glass, there is the potential for bird collisions and mortalities. It should be noted that the project site is within an existing developed area. The City is not aware of known reports of avian injury or mortality associated with the existing buildings within or adjacent to Koll Center Newport. It is not expected that there will be any substantial adverse effect on sensitive species because of the lack of suitable on-site foraging habitat to attract such species to the project site. The proposed building design includes architectural details to break up the amount of glazing on the facades as is shown in Figure 3-8, Figure 3-9, and Figure 3-9 of the Draft EIR. As addressed in Section 4.1, *Aesthetics and Visual Resources*, reflective or shiny materials would not be used. The Glass Fiber Reinforced Concrete (GFRC) and concrete structural materials have matte finishes and would therefore have minimal to no reflectance. Metals accents would be specified to have a matte finish with minimal reflectance. The Proposed Project does include the use of glass throughout the buildings for window walls, curtain walls, and railings. However, the glass and glazing would be specified as Solarban 60 Clear with minimal reflectance. There are glazing design features that are compatible with energy conservation and bird safe design such as low reflectivity and opaque surfaces. The Proposed Project is not expected to have a substantial effect on avian populations.

Response 34

The *Draft Environmental Impact Report No. 617, John Wayne Airport Settlement Agreement Amendment* (JWA EIR) (County of Orange, May 2014) addressed the potential for bird strikes noting that “Bird strikes at JWA are relatively rare.” The EIR noted that increased airport operations between 6:00 AM to noon could result in a potential increase in wildlife aircraft collections without a wildlife management plan. The FAA requires Part 139 airports to conduct a Wildlife Hazard Assessment as a part of the Wildlife Hazard Management Plan (WHMP).

The JWA EIR notes that JWA has depredation activities under the WHMP, such as pole trapping for live captures of birds of prey, and relocating birds, using decoys, chasing out coyotes, and permanently removing individual animals under the FAA Depredation Permit. Additional planned actions under the WHMP include initiating efforts to identify and remove any type of habitats attracting wildlife at the JWA, initiation of live raptor demonstrations to maintain high level of awareness for bird strike reporting, and distribution of bird strike kits for identification purposes and data collection. John Wayne Airport has a WHMP that meets its obligations under the Federal Endangered Species Act and meets the requirements of the FAA and U.S. Department of Agriculture.

The JWA EIR also notes that bird migration typically occurs in the evening hours and overnight with birds arriving to their foraging ground very early morning. The EIR says that JWA is not active during nighttime hours. Further, the EIR states that literature on the subject indicates that airport-related bird strikes are almost never of any ecological significance and concludes that no significant direct or indirect biotic impacts would occur.

The JWA EIR states “JWA is located approximately one mile from Upper Newport Bay. In contrast to the Airport, Upper Newport Bay attracts numerous migratory bird species during the winter months. Given the Airports departure pattern (i.e., very steep climb to minimize noise impacts over the residences in Newport Beach, reaching an elevation of approximately 1,000 feet at the northern edge of the Upper Newport Bay) the height at which departing commercial aircraft pass over Upper Newport Bay is such that bird strikes would be expected to occur very infrequently. Although occasional bird strikes involving both private and commercial aircraft are reported at JWA, there is no evidence to indicate that these occurrences are of any significance to local bird populations or to migrating birds utilizing the Pacific Flyway. In addition, as discussed above JWA has a WHMP that provides minimization measures to wildlife-aircraft conflicts. Therefore, the Proposed Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors.”

Response 35

As clarification, Municipal Code 13.08 applies to public areas not private property. Municipal Code 13.09.020 states “It shall be the responsibility of the abutting property owner to water and fertilize the parkway trees adjacent to his property. The City shall be responsible for pruning and spraying parkway trees. (Ord. 2002-13 § 2 (part), 2002: Ord. 1338 § 1 (part), 1970).” The replacement ratio is 2:1 (for Table 4.3-1 of the Draft EIR has been revised to note that, of the nine City trees, only two (not seven) trees would be removed. Trees would be replaced to comply with Municipal Code 13.09.010 as addressed in SC 4.3-1. The City of Newport Beach Department of Municipal Operations, Parks and Trees Division currently is responsible for the maintenance and care of resources within public rights-of-way and on public

property. Please also refer to Figure 3-4, *Conceptual Landscape Plan*, in the Draft EIR. The landscape plan will be subject to City approval as a part of Site Development review process.

Table 4.3-1. Trees Summary				
Common Name	Scientific Name	Existing Trees	Trees to be Removed	Trees to Remain
City Trees				
California sycamore	<i>Plantanus racemose</i>	7	70	07
Red ironbark	<i>Eucalyptus sideroxylon</i>	2	02	20
Private Trees				
Camphora tree	<i>Cinnamomum camphora</i>	39	31	8
Spotted gum	<i>Corymbia maculate</i>	33	28	5
Carrot wood	<i>Cupaniopsis anacardioides</i>	5	0	5
Red ironbark	<i>Eucalyptus sideroxylon</i>	32	15	17
Benjamin tree	<i>Ficus benjamina</i>	20	20	0
Rustyleaf	<i>Ficus rubiginosa</i>	13	13	0
Jacaranda	<i>Jacaranda mimosifolia</i>	2	2	0
Crape myrtle	<i>Lagerstroemia indica</i>	5	0	5
Sweet gum	<i>Liquidambar styraciflua</i>	77	62	15
Brisbane box	<i>Lophostemon confertus</i>	4	0	4
Southern magnolia	<i>Magnolia grandiflora</i>	6	6	0
California sycamore	<i>Plantanus racemose</i>	101	84	17
Aleppo pine	<i>Pinus halepensis</i>	50	24	26
Fern pine	<i>Podocarpus gracilior</i>	2	2	0
Ornamental pear	<i>Pyrus calleryana</i>	4	0	4
Tipu tree	<i>Tipuana tipu</i>	45	38	7
Chinese elm	<i>Ulmus parvifolia</i>	12	12	0
Total		459	339	120
Source: BrightView Design Group, 2016b.				

Response 36

Data regarding non-potable water use was inadvertently omitted from the Draft Koll Center Sub-Area Master Plan (SAMP) Addendum for the Proposed Project. Table 6, Non-Potable Water Demands, from the Draft SAMP Addendum are provided below. Non-potable water will be used for all landscaping.

With respect to water use during construction, parking lot and street cleaning for dust and debris removal is typically conducted by a service purveyor using water trucks using water from off-site sources and would be less that the Project's daily average.

Table 4.15-4 has been revised to incorporate non-potable water information and is incorporated into the Final EIR.

Meter ID	Area Description	Use Type	Area (Ac)	Average Day Demand (gpd)	Estimated Irrigation Demand (gpm)	Maximum Estimated Irrigation Demand (Irrig. Demand x 1.8) (gpm)	Peak Hour Estimated Irrigation Demand (Irrig. Demand x 2.5) (gpm)
1	Park Area	Irrigation	0.72	2,471	36	65	90
2	Building 1	Irrigation	0.60	2,336	17	31	43
3	Buildings 2 and 3	Irrigation	1.18	4,605	25	45	63
4	Parking Lot	Irrigation	0.36	1,168	16	29	40
5	Parking Structure	Irrigation	0.19	937	12	22	30
Total				11,517	106	191	265

Water Supply and Demand

The Proposed Project would increase water demand on the project site. Projected water demand for the Project is shown in *Table 4.15-4*. The Project includes 260 residential dwelling units and approximately 3,000 sf of retail uses. The *SAMP Addendum* calculated the Proposed Project’s potable water demand to be 33,665 gpd (37.7 AFY) and its non-potable water demand to be 11,517 gpd. It should be noted that landscaping would not require irrigation on a daily basis.

Building	Land Use	Demand Factor	Average Gallons per Day (gpd)	Acre-Feet per Year (AFY)
Potable				
1	High Density Residential	125 gpd/du	10,875	12.2
	Retail	175 gpd/ksf	309	0.3
2	High Density Residential	125 gpd/du	10,750	12.0
	Retail	175 gpd/ksf	216	0.3
3	High Density Residential	125 gpd/du	10,875	12.2
Parking Structure	Car Wash	20 gpv	640	0.7
Non-Potable				
	Landscaping		11,517	
Total Potable			33,665	37.7
Total Non-Potable			11,517	(a)

gpd = gallons per day; du = dwelling unit; ksf = thousand square feet; gpv = gallon per vehicle
 a. Landscaping does not require daily watering.
 Source: DEA, 2017.

Response 37

As addressed in Section 3.0, *Project Description*, and Section 4.9, *Land Use and Planning*, the Project requires the approval of a transfer of development rights to transfer 3,019 sf of unbuilt office/retail from Koll Center Planned Community Development Standards (PC 15) Koll Center Site A (Anomaly Location 1) to Site B (Anomaly Location 2) within Statistical Area L4 (Airport Area). The anomaly locations for the Airport Area are shown on Figure 3-3 of the Draft EIR.

Per the 2006 General Plan, Anomaly Location 1 allows for 460,095 sf of development. There is currently 457,076 sf of development in Anomaly Location 1, with 3,019 sf of remaining unbuilt square footage under the control of Koll Center Newport. Should the City approve the transfer as a part of the Proposed Project, Anomaly Location 1 would be capped at 457,076 sf. Anomaly Location 2 would increase from 1,052,880 to 1,055,899 sf, a net increase of 3,019 sf. No other changes to Land Use Element Table LU2, Anomaly Locations, would occur.

As a part of the Proposed Project, the City will consider an amendment to the Koll Center Planned Community Text to allow for the transfer of 3,019 gross sf of unused office/retail square footage from Office Site A (Anomaly Location 1) to Office Site B (Anomaly Location 2) of Koll Center Newport.

The transfer of 3,019 sf of unused development rights between Anomaly Location 1 and Location 2 does not require a General Plan Amendment. The transfer between the two areas does not cause a change in land use or trigger the voter approval requirements set forth in City Charter Section 423. General Plan Land Use Element Policy 4.3 allows for transfers of development rights and is implemented by Newport Beach Municipal Code Section 20.46.030 which permits transfers of development rights where the donor and receiver sites are located within the same General Plan Statistical Area. Both sites are located within the Koll Center Newport Planned Development Plan and General Plan Land Use Statistical Area L4. Both Anomaly Locations 1 and 2 are in Statistical Area L4 (see attached General Plan Land Use Element Figure LU3). There is available remaining square footage within Statistic Area L4 to accommodate the transfer.

As noted in the General Plan Housing Element, all housing opportunity sites, including the project site, are not subject to City Charter Section 423 as a result of voter approval of Measure V in November 2006. Section 423 of the City Charter (Measure S) requires voter approval of a project that increases density, intensity, or peak hour trip, above that provided for in the General Plan. Significance is quantified as 100 or more dwelling units, over 100 peak hour trips, or 40,000 or more square feet of nonresidential floor area. Charter Section 423 applies exclusively to General Plan amendments.

Response 38

The commenter has not provided any documentation for the methodology used for Attachment 9. However, it appears that the commenter has first, selected one, one-hour image (e.g., Spring Equinox at 9:00 AM) from the Draft EIR shade/shadow exhibits and has used the one image to suggest it is representative of a much longer duration of time. The last image in Attachment 9 overlays all of images from the Spring Equinox, Fall Equinox, and Winter Solstice (no images for the Summer Solstice are provided as there are no shadows across the building) to suggest that this is representative of shadows that would be cast on the building every day. This is inaccurate and intentionally misleading.

The shadow studies provided in the Draft EIR are intended to convey the impacts of shadows from the Proposed Project at a given hour of each day per season. Shadows cast on a particular area of a building, at a given hour of the day, do not necessarily impact that same area for the remainder of that day, nor do these same shadows necessarily impact that same area on subsequent days of the year. Although shadows may be cast on a particular area of the 4910 Birch Street building, on a given hour and day of the year, the property owner to date has not installed solar equipment on the roof area and the Project would not preclude the potential for solar energy equipment to perform.

Response 39

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.

Letter C-7d OLEN

Barbara Lichman, Buchalter representing OLEN
November 13, 2017



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November 13, 2017

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VIA E-MAIL (RUNG@NEWPORTBEACHCA.GOV)

City of Newport Beach
Attn: Rosalinh Ung, Associate Planner
Community Development Department
Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Comments on Draft Environmental Impact Report for the Koll Center Residences

Dear Ms. Ung:

We represent Olen, owner a commercial property in Koll Center Newport, the site for the proposed Koll Center Residences ("Project"). Olen is, therefore, a party directly impacted by the proposed Project, comprised of three, 13-story residential condominium towers and two parking structures, to be located in the parking area contiguous to Olen's building. That same area is utilized by Olen's customers, those of its tenants, and tenants of other buildings in Koll Center.

Olen is deeply concerned about the environmental impacts of the proposed Project, which, as set forth in more detail below, are not fully disclosed or analyzed in the DEIR. These include, but are not limited to: (1) the Project's land use impacts, which include the dramatic change in the business character of the Project site, brought about by the overwhelming presence of residential structures in its midst and the overburdening and ultimate usurpation of easements granted to Olen for use of the parking area at the time of its purchase of the building; (2) the unexplored, but clear, visual impacts of the looming high rise structures which are not ameliorated or excused by the proximity of other high rise structures, but rather exacerbated by the their cumulative impacts taken with those of the Project; and (3) the Project's potential noise impacts, both independent and cumulative.

Therefore, for all the following reasons, Olen strongly recommends that the DEIR be sent back to the drawing boards and ultimately recirculated to adequately address Olen's concerns and those of other equally affected property owners and tenants.

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I. THE DEIR FAILS TO ADEQUATELY ADDRESS THE PROJECT’S CLEAR IMPACTS ON EXISTING PROPERTY RIGHTS

The Project site includes significant existing legal ownership rights, among them, for private restricted ingress, egress and surface parking, all of which are proposed to be eviscerated by this Project. This includes both significant temporary impacts during construction and phasing as well as significant permanent impacts, none of which are adequately identified or addressed in the DEIR.

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A. The DEIR Fails to Adequately Disclose or Analyze the Required Public Park and Access Easement Dedication

The DEIR references “public access easements for the purpose of facilitating public access to the park,” DEIR, Land Use and Planning, Table 4.9-1, p. 4.9-16, and further references a “1.17-acre public park” that is to be offered for dedication to the City.

The DEIR Traffic and Transportation Section 4.14 (page 4.14-17) correctly identifies that access to the site is currently controlled and not open to the public. However, Land Use Section, Table 4.9.1, (page 4.9-22) references that the Project will have “24 hour public access,” in contravention of the existing significant third-party ownership rights of the Office Park owners and the access easements, and a significant change from current conditions. The DEIR is not forthcoming with respect to the true function and public use of the internal streets within the Project and the function and use has not been fully disclosed nor analyzed. The Office Park owners currently have the right to adjacent surface parking to accommodate their office uses, which will be dramatically and fundamentally changed by the Project.

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Neither does the DEIR address or analyze the potential “taking” of the third-party, real property interests of the existing Office Park owners, the 1.17 acres that will be effectuated by the park dedication. Given Office Park owners’ existing easement rights over the proposed park area which are not discussed in the DEIR and which will be completely abrogated by such a park dedication, absent revelation concerning these issues and thorough discussion, the City could be exposed to liability for failure to compensate the Office Park owners for the loss of 1.17 acres of prime land that such owners currently have exclusive right to use for access and surface parking.

B. The Project Will Both Physically Divide the Established Business Community On-Site and Conflict with the City Zoning Code

Directly contrary to the DEIR’s claim of “no impact” on “established communities,” DEIR, § 4.9.4, p. 4.9-9, the Project will facially violate Threshold of Significance 4.9-1 by dividing the established business community on-site with a residential component that will dominate the site’s current, business-devoted character, and transform it into a shopping center

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with constant ingress and egress of vehicles, school buses, and even the possibility of children using the parking lot as a baseball diamond.¹

The Project will further divide and burden the site with a public street through the center of the property.² That street will not only divide the property into two sections that never before existed, but will further occupy areas that might otherwise be used to accommodate parking for existing building occupants and their customers as well as providing public competitors for the still available parking spaces. For those reasons alone, the Project's land use impacts should be deemed significant.

However, Threshold 4.9-1 is not the only measure of significance applicable to the Project. Rather, the DEIR acknowledges further that the Project facially violates Threshold 4.9-2, where the only uses currently permitted on the site by the Newport Beach Zoning Code, § PC-15-B are "professional and business offices, restaurants, and support commercial uses." DEIR, § 4.9.4, p. 4.9-10.

While the DEIR asserts that "[i]mplementation of the Proposed Project is consistent with the goals and objectives of the Airport Business Area ICDP and the City's General Plan for the project area," DEIR, § 4.9.4, p. 4.9-10, and, thus, "would not result in a change in policy that would result in significant impacts," *Id.*, the City's development intentions are not expressed merely in its General Plan designation for a "majority of properties in the Airport Area, inclusive of the project site," DEIR, § 4.9.4, p. 4.9-9. More specifically, those intentions are contained in the City's zoning of the Project area, and its dedication for a specific business use. Any change in that zoning will create a palpably significant impact on the site and its current occupants.

In summary, the proposed zoning amendment to create predominantly residential uses on the site, with the accompanying physical division of the site by a public street meant solely to accommodate the new residential and retail uses planned for the Project area, are the very definition of the physical division of an established community by a proposal that conflicts with an applicable plan for the area. The impacts of that conflict, and its resulting division of the commercial community currently on the site, must be further disclosed and analyzed in the DEIR, or the DEIR's land use discussion will remain manifestly inadequate.

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¹ The DEIR acknowledges that "[g]iven the predominately existing office uses in the surrounding area, the transition of the project site to include residential land uses would alter the character of the existing business community by introduction residential population [sic] and providing recreational open space amenities." DEIR, § 4.9.4, p. 4.9-8.

² "The spine street that crosses the property from Birch Street to Von Karman Avenue would become an open-access (ungated) center spine street through the site." DEIR, § 4.9.4, p. 4.9-9.

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II. THE PROJECT WILL SUBSTANTIALLY DEGRADE THE EXISTING VISUAL CHARACTER OF THE SITE, BOTH INDEPENDENTLY AND CUMULATIVELY

The DEIR acknowledges that the Project site is “relatively flat with a gentle slope to the west. Site elevation are [sic] approximately 46 to 52 feet above mean sea level (msl).” DEIR, § 4.1.4, p. 4.1-5. On to this flat landscape, currently improved with “surface parking lots and common landscape areas associated with adjacent office buildings,” *Id.*, which range from one to four stories in height, DEIR, p. 4.1-9, will be superimposed three, 13-story, high rise residential condominium towers, closely bunched along a “spine street” along the middle of the site, accompanied by multi-story parking structures. Despite that description, the DEIR concludes that the Project will not “substantially degrade the existing visual character or quality of the site and its surroundings.” DEIR, § 4.1.5, p. 4.1-7, Threshold of Significance 4.1-2.

A. The DEIR Attempts to Obscure the Acknowledged Visual Impacts of the Project by Improper Reference to the Impacts of Surrounding Existing and Planned Uses

The DEIR’s conclusion could not further from reality. In fact, the DEIR already acknowledges that “the introduction of residential mixed-use land uses would change the general character of the project site.” DEIR, § 4.1.6, p. 4.1-9. Nevertheless, it goes on to excuse the Project’s impacts by reference to the height of surrounding uses such as the Uptown Newport project, where “[a]llowed building heights” are up to 150 feet, DEIR, § 4.1.6, p. 4.1-9; the Duke Hotel, and the Bank of the West building. DEIR, § 4.1.6, pp. 4.1-9-4.1-10. The DEIR goes even further by attempting to take environmental credit for the impacts of the Uptown Newport’s future planned development which does not yet exist. DEIR, § 4.1.7, p. 4.1-14.

Unfortunately for the Project Proponent, however, the California Supreme Court has already determined that:

“Section 21060.5 [of CEQA] defines ‘environment’ as ‘the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.’ [Cites omitted.] Given the text of section 21083 and other relevant provisions of the statutory scheme to which it belongs—including CEQA’s statute-wide definition of ‘environment’—the phrase in question is best interpreted as limited to those impacts on a project’s users or residents that arise from the project’s effects on the environment. . . [S]ection 21083 does not contain language directing agencies to analyze the environment’s effects on a project. Requiring such an evaluation in all circumstances would impermissibly expand the scope of CEQA.”

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California Building Industry Assn., supra, 62 Cal.4th at 387 [emphasis in original]. Therefore, the DEIR’s comparison to what are purported to be even more draconian visual impacts from building off the site are to no avail in diminishing the palpable, although unanalyzed visual impacts of the Project.

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B. The DEIR Flies in the Face of CEQA’s Mandate to Properly Evaluate Cumulative Impacts

While the DEIR admits that “the Newport Business Plaza and the PRES Office Building B cumulative projects would alter the visual character of the area,” DEIR, § 4.1.7, p. 4.1-14, it goes on to deny that the “development of the Proposed Project in addition to these two cumulative projects would . . . negatively impact the visual character of the area.” *Id.*

The DEIR also gives short shrift to the cumulative impacts of 876 apartments located at the intersection of Von Karman Avenue and Campus Drive, “approximately 0.4 mile[s] north of the project site,” as well as the Boardwalk project, two nine-story towers, 0.6 miles northeast of the Project site, DEIR, § 4.1.7, p. 4.1-14, on the entirely unsupported ground that “[d]ue to the distance between the projects and the flat topography in the project area, the development of the Project in addition to the two cumulative projects would not negatively impact the visual character of the area.” DEIR, § 4.1.7, pp. 4.1-14-4.1-15.

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The DEIR fails in its full disclosure obligation on both counts. There is no dispute that the referenced projects, in combination with the proposed project, will “alter the visual character of the area,” DEIR, § 4.1.7, p. 4.1-14. Thus the projects fall directly within the definition of cumulative impacts set forth in 14 Cal. Code Regs. § 15355(b) [“The change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.”]. Because the impacts of the contiguous Uptown Newport project were invoked merely for the improper purpose of obscuring the otherwise obvious visual impacts of the Project itself; and absent any cumulative analysis of the Project when combined with the Uptown Newport and the other proximate projects with similar visual impacts of height and bulk, the DEIR clearly violates CEQA.

III. THE CITY’S OVERRULE OF AN AIRPORT LAND USE COMMISSION DETERMINATION OF INCONSISTENCY IS BOTH PROCEDURALLY DIFFICULT AND SUBSTANTIVELY PROBLEMATIC

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The DEIR takes the position that a potential determination of inconsistency with the applicable Airport Environs Land Use Plan (“AELUP”) by the Orange County Airport Land Use Commission (“ALUC”) is possible, potentially significant, and unmitigatable. Therefore, approval of the Project will require an overrule by the Newport Beach City Council (“Council”)

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and a Statement of Overriding Considerations at the time of Project approval. DEIR, § 1.5, Summary of Significant Unavoidable Impacts, p. 1-11; *see also* § 4.9, Land Use and Planning.

The overrule process, however, is neither simple nor without penalty to the overruling jurisdiction. First, an overrule requires a two-thirds vote by the governing body, *see, e.g.*, Cal. Pub. Util. Code § 21676. Because the relevant governing body here, the Council, has seven members, the “two-thirds majority” requirement actually translates into a “five out of seven” requirement, in order to exceed the 66% of the governing body required for an overrule by the governing statute.

In addition, the overrule decision cannot be made in a vacuum. It must be based on “specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.” *Id.* Thus, the Council will be required to find that the overrule complied with the statute’s purpose to “provide for the orderly development of each public use airport in this state and the areas surrounding these airports so as to promote the overall goal and objectives of the California airport noise standards . . .,” Cal. Pub. Util. Code § 21670(a)(1) and “to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.” Cal. Pub. Util. Code § 21670(a)(2). Those findings will be difficult if not impossible to make with regard to a project that moves approximately 500 additional residential occupants into an area regularly overflowed by aircraft from John Wayne Airport (“JWA”), located less than one-half mile from the Project area. *See* DEIR, App. I, p. 35, Table 14.

Finally, and not least important, is the section of the State Aeronautics Act that provides:

“With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission’s action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency’s decision to overrule the commission’s action or recommendation.”

Cal. Pub. Util. Code § 21678.

Therefore, according to the express provisions of the governing statute, while the Project is located within AELUP Zone 6 which allows (but does not require) additional residential development, DEIR, § 4.9.2, p. 4.9-7, it is still less than one-half mile from JWA, *Id.*, and is regularly overflowed by general aviation aircraft circling to approach the airport. Thus, an overrule will make the City and its coffers potentially responsible for any mishap, aberrant or

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not, that may involve the three high rise residential structures constituting the Project, as well as their occupants.

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In short, the City is assuming a large risk, to its citizens and its finances, that it should carefully consider before taking the major step of an overrule.

IV. THE DEIR'S NOISE ANALYSIS IS INTERNALLY INCONSISTENT AND, THUS, DOES NOT MEET THE DEIR'S INFORMATIONAL PURPOSE

The DEIR denominates the Project noise impacts as significant and unavoidable only with respect to the impact of construction activity. DEIR, § 4.10, p. 4.10-30. The DEIR thus turns a blind eye to other equally significant noise impacts arising not only from Project specific activities, but also from the demonstrably substantial traffic and aircraft overflight impacts on the Project and its residents.

A. The Noise Levels at the Project Will Violate the Requirements of the Newport Beach General Plan

8

The DEIR first sets forth the City of Newport Beach General Plan Noise Element, DEIR, Table 4.10-1 as the governing standard, and then proceeds to recount the Project's violation of it. Specifically, DEIR Impact Threshold 4.10-1, § 4.10.5, p. 4.10-12 asks "[w]ould the Project expose persons to or generate, noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies?" DEIR, App. I, p. 35, Table 14, first discloses that the total exterior noise level on the northeastern boundary of the Project (Birch Street), taking both traffic noise,³ and aircraft overflight noise into account is 64.1 dB CNEL which appears to fall within the permitted levels for mixed-use residential development set forth in DEIR, Table 4.10-1, p. 4.10-4.

The noise levels at the western boundary (Von Karman) bring about a different result, however. In that instance, the total exterior noise level created by combined traffic and aircraft noise is 66.3 dB CNEL, a level that the Newport Beach General Plan Noise Element denominates "normally incompatible" with mixed-used residential development. [Emphasis added]. "New construction or development should generally be discouraged." DEIR, Table 4.10-1, p. 4.10-4.

³ Both traffic and airport noise are measured in Cumulative Noise Equivalent Levels, or CNEL, which is a 24 hour average of each single event with a 5 decibel weighting for the hours of 7:00 p.m. to 10:00 p.m., and 10 decibel weighting for the hours of 10:00 p.m. to 7:00 a.m. Thus CNEL denotes only average, not single event, noise levels created by aircraft or overflight or traffic.

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Surprisingly, the DEIR appears to take quite the opposite position in its discussion of Thresholds of Significance 4.10-5, p. 4-10-32 [“For a Project located within an airport land use compatibility plan or where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the project area to excessive noise levels?”]. In dismissing the impacts under this threshold as “less than significant,” the DEIR asserts that “a review of the Land Use Plan for John Wayne Airport (2008), shows the Project site located outside of the 60 dBA CNEL contour,” and, “[t]herefore, there is no impact surrounding the Proposed Project concerning airport noise and no mitigation is required.” *Id.* This assertion appears to directly contradict the results of the “On-Site Mobile Combined Noise Levels Analysis,” set forth in DEIR, App. I, Table 14, in which aircraft noise is designated at the 60 dBA CNEL level over the Project, thus placing the Project inside the 60 dB CNEL contour.⁴ While no mitigation of airport noise may be required, or even possible, per the assertions in the DEIR, the combined effects of traffic and airport noise need to be reexamined in order to determine if, and how, the Project can meet the requirement that the Project “meet the City’s 60 dBA daytime noise standard.” DEIR, § 4.10.7, Mitigation Measure 4.10-6, p. 4-10-39.

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B. The DEIR’s Analysis of Construction Noise Impacts is Based on Unsupported, and Unsustainable Assumptions

The DEIR purports to support its estimate of construction noise, set forth in DEIR Table 4.10-8, p. 4.10-17, based on assumptions concerning the type and numbers of equipment that will be used during the construction process. No “worst case scenario” is provided to accommodate the possibility of additional, or different, types of equipment being used that might materially affect the level of noise being produced during the construction phase. Consequently, the DEIR entirely fails to provide a properly documented analysis of the Project’s construction noise impacts.

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C. The DEIR’s Discussion of Cumulative Noise Impacts Fails to Fully Acknowledge or Analyze the Impact of Current and Future Airport Noise on the Project

Last, but certainly not least important, the DEIR’s examination of cumulative noise impacts is sorely deficient where it fails to acknowledge the impact of the noise from JWA on the Project.

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First, the DEIR violates this standard at the most basic level.

⁴ JWA operations have grown significantly during the seven year interim between the 2008 noise analysis and the DEIR which may account for the discrepancy. In any event, this fact should be disclosed in the DEIR so that the public can weigh its importance.

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“The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”

14 Cal. Code Regs. § 15355(b). As a threshold matter, the criteria for ascertaining the existence of a cumulative impact as set forth in the DEIR is hopelessly complex for the uninitiated public.⁵

Ultimately, the DEIR concludes, based on those “criteria,” that “[n]oise by definition is a localized phenomenon,” DEIR, § 4.10.6, p. 4.10-33, and “only the Proposed Project and growth due to occur in the general area would contribute to cumulative noise impacts.” *Id.* That presumption of noise as a localized phenomenon does not apply to the noise coming from closely located JWA. The DEIR already acknowledges that the ambient noise impacts of overflights from JWA reach the level of 60 dBA CNEL over the Project site. DEIR, App. I, Table 14. Nevertheless, the DEIR fails to contain even the most cursory discussion of the potential changes in the aircraft fleet mix, possible construction of airport improvements, or any changes to the airport as set forth in the Airport Master Plan, that might increase the noise level over time and contribute to an increase in the ambient noise levels over the Project.

And there is no legally supportable excuse for this omission. The California Supreme Court has conclusively held that “[a]lthough CEQA does not generally require an evaluation of the effects of existing hazards on future users of the project, it calls for such an analysis in

⁵ “A project’s contribution to a cumulative traffic noise increase would be considered significant when the combined effect exceeds perception level (i.e., auditory level increase) threshold. The following criteria is used to evaluate the combined effect of the cumulative noise increase.

- *Combined Effect.* The cumulative with Project noise level (‘Cumulative With Project’) would cause a significant cumulative impact if a 3.0 dB increase over ‘Existing’ conditions occurs and the resulting noise level exceeds the applicable exterior standard at a sensitive use. Although there may be a significant noise increase due to the Proposed Project in combination with other related projects (combined effects), it must also be demonstrated that the Project has an incremental effect. In other words, a significant portion of the noise increase must be due to the Proposed Project.

The following criteria have been used to evaluate the incremental effect of the cumulative noise increase.

- *Incremental Effects.* The ‘Cumulative With Project’ causes a 1.0 dBA increase in noise over the ‘Cumulative Without Project’ noise level.

A significant impact would result only if both the combined and incremental effects criteria have been exceeded.” DEIR, § 4.10.6, p. 4.10-33.

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several specific contexts involving certain airport (§ 21096) and school construction projects (§ 21151.8), and some housing development projects . . . [remaining cites omitted].”⁶ *California Building Industry Assn. v. Bay Area Air Quality Management Dist.*, 62 Cal.4th 369, 391 (2015). Consequently, the impacts of airport overflight noise and its potential increase over time need to be definitively, not ambiguously, disclosed as significant at the specified level of 60 dB CNEL, and completely evaluated as the potential source of significant cumulative noise impacts on the Project.

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V. CONCLUSIONS

Based on the above, it is clear that the DEIR contains numerous, critical omissions from the disclosure required by CEQA, as well as numerous exceptions from the mandates of the Newport Beach General Plan which cannot be adequately remedied by isolated, equally numerous, General Plan Amendments. Olen, therefore, submits that both a recirculation of the DEIR in its entirety, and an update of the Newport Beach General Plan to reflect the Project’s numerous exceptions to the existing General Plan requirements, are necessary to rectify the manifest deficiencies in both the Project and accompanying DEIR, and to allow the community the opportunity for a complete review of the full panoply of the Project’s impacts, as required by CEQA.

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Sincerely,

BUCHALTER
A Professional Corporation



By

Barbara Lichman

⁶ The referenced housing development projects are those, among others, subject to a preliminary endangerment assessment to determine the existence of hazardous substances on site, Cal. Pub. Res. Code § 21159.21; is being developed to house agricultural employees, Cal. Pub. Res. Code § 21159.22; or low-income residents, Cal. Pub. Res. Code § 21159.23.

Response 1

The subsequent responses address the specific issues raised by this commenter.

Response 2

The Draft EIR thoroughly evaluates the potential impacts of the Project both during construction and operation. The Project is consistent with the General Plan and has been designed to be sensitive to the surrounding business and office uses. Mitigation measures and standard conditions are intended to address and reduce temporary construction and noise-related impacts on adjacent uses.

The parking supply for the existing Koll Center Newport development was previously approved for the site by the City of Newport Beach. The Project does not change the existing office square footage or the parking requirements for the existing Koll Center Newport development. The proposed overall site parking plan was designed to provide full replacement of removed parking spaces and distinct parking areas for the existing office uses and adequate parking for the proposed residential uses. The changes in site circulation that would occur as a result of the placement of the buildings and the access to the parking areas were described in detail in the Draft EIR, and were taken into account in the analysis of the site circulation and surrounding intersections.

Response 3

The proposed parcel to be dedicated to the City for a neighborhood park is under the ownership of KCNA Management, LLC (Koll Company) who has authorized the Applicant to file the application with the City for its consideration of site development (Proposed Project). Three-party ownership rights are a private matter between property owners, not a CEQA issue.

Response 4

The referenced CEQA Guidelines threshold asks whether a project would physically divide an established community. The commenter suggests that the “office community” will be bifurcated by the construction of a road which would affect pedestrian access. The Proposed Project would not introduce any roadways that would bisect or transect the adjacent business uses. The proposed mixed-use buildings, free-standing parking structure, and public park would be constructed on existing surface parking areas. The Project maintains the existing spine street through the property between Birch Street and Von Karman Avenue and provides for pedestrian walkways on both sides of the spine street (see Figure 3-8). The locations of existing sidewalks, and proposed walkways/pedestrian connections are shown on Figure 3-12. The Project would not preclude pedestrians from walking through the area (e.g., northwest of the spine street to southeast of the spine street).

With respect to the commenter’s assertions that the Project is transforming the site into a “shopping center”, the Project does not propose a shopping center. With respect to the assertion that the site will have a constant flow of vehicles and school buses, the existing office uses currently generate traffic which enters and exits the property. Section 4.14, Traffic and Transportation, evaluates the traffic generated by the Proposed Project; no significant impacts would occur. With respect to school buses, the Santa Ana Unified School District provides transportation to special education students and on a limited basis due to distance to a school. As identified in *Table 4.12-1* of the Draft EIR, using these student generation rates, the Proposed project would introduce approximately 29 students into the attendance area of school

district. Should these 29 students be transported by the school district, this does not represent a constant ingress and egress of school buses. With respect to the use of “the parking lot as a baseball diamond”, this assertion is not supported by any evidence nor raises an environmental issue. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.) No further response is required.

Threshold 4.9-2 asks whether the Project would conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

The Draft EIR clearly identifies and evaluates the amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The proposed changes to PC-15 Koll Center include a Mixed-Use Residential Overlay and Public Park Overlay. What is not acknowledged by the commenter is that the Airport Business Area ICDP contemplates up to 1,504 new residential units, 11,500 sf of ground-level retail and commercial uses for Uptown Newport and 3,400 sf of commercial uses for the project site, as well as neighborhood park areas. Of the 1,504 dwelling units, 1,244 units are on the Uptown Newport site and 260 units on the surface parking area of Koll Center Newport where the Koll Center Residences Project is proposed. All of the 260 residential units at the project site were identified as “additive” units in the Airport Business Area ICDP because no existing development uses would be removed. These units would be allocated to the Proposed Project in accordance with the City’s General Plan and the Airport Business Area ICDP. According to the City’s General Plan, “additive” units “may be developed as infill on existing surface parking lots or areas not used as occupiable buildings on properties within the Conceptual Development Plan Area as depicted on Figure LU22 provided that parking is replaced on site”.

Response 5

The commenter opines that a change in visual character is a significant environmental impact. The commenter further asserts that the identification of existing and under construction land uses is not permitted under CEQA. The Draft EIR recognizes that the Uptown Newport Project is an under construction, mixed-use development project adjacent to the project site with permitted development up to 150 feet above ground level. This is a statement of fact, not an impact analysis.

Response 6

Please refer to the response to Comment 5. Additionally, refer to Section 4.1.7 of the Draft EIR for a thorough discussion of cumulative aesthetic impacts, including those related to both existing and proposed projects in the area.

Response 7

The opinion of the commenter is noted. Should the ALUC find the Proposed Project to be inconsistent with the AELUP, as a final review authority on legislative acts, the City Council may, after a public hearing, choose to overrule the ALUC's decision by following the procedure established in Public Utilities Code

Sections 21676 and 2176. 5. This two-step procedure requires the City Council to conduct two separate noticed public meetings. The initial step is to notify ALUC and State Division of Aeronautics of the City's intention to override the ALUC's determination by adopting a resolution of intent at least 45 days in advance of the overruling; and the second meeting is to make specific findings that the proposed overruling is consistent with the purposes stated in Public Utilities Code Section 21670. Should the Council adopt the notification resolution, this action does not constitute the Project's approval nor does it predispose the City's future action on the Project. When the ALUC makes a determination that a project is not consistent with the AELUP, approval of a project by the City Council requires a two-thirds vote to override this determination.

Response 8

Please refer to Topical Response: *Airport Noise*. As discussed in the topical response, the Project site is located outside the John Wayne Airport's 60 dBA CNEL contour. As described in Section 4.10, *Noise*, of the Draft EIR, the Project would be required to comply with Mitigation Measures (MM) 4.10-5 and 4.10-6 to ensure that on-site noise levels are less than significant.

The comment also cites modeled exterior noise levels that combine to potentially place the Project within the "normally incompatible" range of the City's Land Use Noise Compatibility standards. It should be noted that the modeled exterior noise levels in Draft EIR Table 4.10-11 conservatively use a 60 dBA noise level for aircraft noise even though the Project is located outside of the 60 dBA CNEL contour for the John Wayne Airport under existing and all future airport growth scenarios.

As indicated in Draft EIR Table 4.10-1, under normally incompatible conditions, a detailed analysis of noise reduction requirements must be made and needed noise insulation features must be included in the design. Therefore, the Project would be required to comply with MMs 4.10-5 and 4.10-6, which require all residential units to be designed to include noise insulation features to meet applicable standards and require a detailed acoustical study based on detailed architectural plans.

Response 9

The comment incorrectly states that the construction noise analysis is not based on a "worst case scenario". In fact, the Draft EIR modeled construction noise levels based on a conservative, worst case assumptions and equipment list anticipated for the Proposed Project. The construction modeling assumed a conservative number of pieces of equipment and conservative distances to receptors to determine anticipated noise levels. Further, it should be noted that CEQA does not have a requirement to analyze the "worst case scenario", even though that is what was done for the Draft EIR. Instead, CEQA requires analysis of a project's reasonably foreseeable, most likely impacts.

Response 10

The comment incorrectly states that the Draft EIR does not examine cumulative noise impacts from the John Wayne Airport. Please refer to Topical Response: *Airport Noise*. As indicated in the topical response, the proposed Project is outside the John Wayne Airport 60 dBA CNEL contour for existing and future airport scenarios (including future airport expansion scenarios).

The comment also takes statements from page 4.10-33 of the Draft EIR out of context. The full statement is: “Noise by definition is a localized phenomenon, and reduces as distance from the source increases.” The intent of this statement is to set up the subsequent sentence that cumulative contributions to noise typically occur in the general Project area and Project-related noise attenuates further from the source. Furthermore, this discussion occurs in the cumulative operational noise section of Draft EIR Section 4.10, and focuses on cumulative traffic noise. Project exposure to airport noise is addressed in Draft EIR Table 4.10-11 and the associated discussion and combines the cumulative noise levels from various noise sources in the Project area and uses worst case future airport noise levels. The analysis fully complies with Section 21096 of the California Public Resources Code. Additionally, Section 21151.8 relates to school sites and is not applicable to the Project.

Response 11

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient or require recirculation.

Letter C-8a **Bitcentral, Inc.**
Fred Fourcher, CEO
October 13, 2017



October 13, 2017

Via Email rung@newportbeachca.gov

Rosalinh Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Request for a Minimum 20-Day Extension of the Public Comment Period for the Draft Environmental Impact Report for the Koll Center Residences Project; SCH No. 2017011002

Dear Ms. Ung:

Bitcentral, Inc. is headquartered at 4340 Von Karman on the 4th floor and employs over 50 people at that office. Our business is focused on software and services to the Broadcast Industry. The working environment is critical to the employees and we struggle to attract talented software developers in a competitive industry. Accordingly, we are just realizing the implications of the proposed residential towers on the campus environment at Koll Center Newport. It is not only traffic and visual impacts but also other impacts to our company and employees that are of concern. We had been looking forward to the Study Session so we could hear about the project and ask questions. As we received the notice of cancellation earlier this week we now feel at a disadvantage in the public process and respectfully request an extension of the draft environmental impact report (DEIR) comment period for the Koll Center Residences Project to November 16th. The City's current 45-day comment period will close on October 27, 2017. An additional 20-30 days of public comment would ensure the City can satisfy the California Environmental Quality Act's (CEQA) goal of ensuring public participation in the environmental review process. We are concerned that late-submitted comments may not receive the good faith written responses required of comments submitted prior to the close of the formal comment period.

In addition to the request for an extension in the comment period, we strongly suggest that the City reschedule a public Study Session since non-developer businesses in KCN are left to figure out the details of the project solely on the extensive amount of technical materials posted on the web. A public Study Session is needed to allow interested participants in the planning process the opportunity to hear about the project and hear the answers to each others questions.

Thank you for your consideration of our request.

Sincerely,

Fred Fourcher, CEO, Bitcentral

Cc: City Council members via City Clerk
Planning Commissioners
City Manager

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Response 1

The 45-day public review period for the Draft EIR was extended. Rather than ending on October 27, 2017, the review period was extended to November 13, 2017. With respect to the Study Session, the City of Newport Beach Planning Commission Study Session has been rescheduled for January 18, 2018.

Letter C-8b **Bitcentral, Inc.**
Fred Fourcher, CEO
November 13, 2017



November 13, 2017

Via Email [rune@newportbeachca.gov](mailto:rung@newportbeachca.gov)

Rosalind Ung, Associate Planner
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Comments on the Draft Environmental Impact Report for the Koll Center Residences Project; SCH No. 2017011002

Dear Ms. Ung,

Bitcentral, Inc. is headquartered at 4340 Von Karman on the 4th floor and employs over 50 people at that office. As described below in our initial comments on the Koll Center Residences Project (hereinafter Project) Draft Environmental Impact Report (hereinafter DEIR), the Project as proposed adversely impacts Bitcentral and its employees.



We have done our best to review the proposed Project documents and related DEIR and to submit our full comments by the November 13th deadline, but due to the

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complexity of the planning context and level of interest by our employees and neighboring businesses -- many of whom are just now becoming familiar with the Project -- we will be supplementing these comments with additional comments on the Project and both its direct and indirect impacts by the time of the Planning Commission Study Session in January 2018.

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Introductory Comments.

The working environment is critical to our employees and why we located in Koll Center Newport (hereinafter Koll Center). Koll Center attracted us due to its unmatched workplace experience, with open space areas to walk, lower rise buildings allowing abundant natural light, ease of secure and safe parking, tree lined pathways and lovely views. Understanding the positive effects natural light has on workplace productivity and quality of life, three years ago Bitcentral completely renovated its offices to take advantage of the open views and natural light by removing the window tints and installing automatic blinds that have pass thru visibility, so our employees could enjoy the views and light. The company put in an open lobby area that has expansive views towards the direction of the Project site.

2



The 4th floor Conference Room would look into the proposed 5 story parking structure.

The City of Newport Beach should value Koll Center, and protect it from diminution of these values as a business park. Instead, the City is considering a Project that would

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destroy these attractive values and potentially strike a significant blow to the areas economic vitality as a business park.

Currently there is abundant blue sky and natural light that can be seen from this side of the offices and open lobby. Many of our employees use the parking lot/landscaped common area for daily walking meetings as the common area provides sunlight and a break from computer screens. Productive workplaces offer not only functional indoor space but also landscaped outdoor spaces conducive for creative thinking and relaxation. It is this combination plus the proximity to business services and major transportation corridors that makes Koll Center attractive to the workforce.

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2



*View from Bitcentral's 4th floor Conference Room
The proposed 5 story Parking Structure would completely block this view*

For example, the Project's parking structure will be massive in size (taller than our building) and obstruct our views to the east. Employees on the north-east side of the floor will have some of their skyline views taken away because of the Project.

The Project will adversely impact Bitcentral, its employees and other occupants of the Koll Center in numerous potentially significant ways including, but not limited to, the loss of the unique business environment, loss of natural light and increasing shadow, loss of views, reduced safety and public services, as well as increased noise and traffic. The Project provides no benefits to Koll Center Businesses or to Bitcentral as the housing proposed will be unaffordable to our employees.¹ Due to the very small scale

¹ Based on Applicant's briefing on October 30, 2017, condominiums will sell in the millions.



of the retail element of the Project, it is unlikely to provide needed daily services to the residents (e.g., grocery, pharmacy, drycleaners, daycare/schools, etc.), and will not result in trip capture on site as asserted by the DEIR. Moreover, there is no description of these services. The DEIR utterly fails to disclose and analyze many of the impacts of the Project. Our understanding is that the schools that will serve this development are in Santa Ana. At 5:00 PM, will residents be heading north on Jamboree, the 405 and the 55 freeways to pick up their kids after soccer practice? Because of the DEIR’s lack of adequate analysis of these and other impacts, a revised DEIR is warranted.

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The Project DEIR Fails to Adequately Address Loss of Light.

Research by the World Green Building Council, the International Well Building Institute and Human Spaces, among multiple academic institutions and architectural experts document that daylight has been found to be the number one desired feature in the workplace. <http://www.eco-business.com/opinion/why-natural-light-matters-in-the-workplace/> See Attachment 1, hereto.

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In addition to work productivity and creativity, natural light has been scientifically shown to improve people’s health. Why is the loss of natural light a CEQA matter? Economic and social impacts of a project may be used to determine the significance of *physical changes* (loss of natural light) caused by a project. Economic impacts associated with the loss or reduction of natural light include, but not limited to, lower property values, lower productivity, lower rents and potentially even an exodus of business from the Koll Center. Here the social and economic impacts associated with a physical environmental impact – loss or reduction of natural light – renders the physical impact potentially significant and in need of further analysis.

The DEIR Fails to Adequately Address the Projects Impacts to Health.

In addition to the loss of light described above, employees use the parking lot common area for daily walking meetings and to reduce stress and unwind. The common area including the parking lot serve as essentially a break area to employees to stretch their legs and extend their vision towards a horizon. Such spaces are highly sought after by businesses since they increase productivity, creativity and health. Increased traffic and congestion, along with loss of light will therefore impact the health of our employees.

4

Arguably the scope of analysis for health effects under CEQA remains uncertain. However, in enacting CEQA, the Legislature found that: “[I]t is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.” Public Resources Code Section 21000(b).



In addition, it is the policy of the state to “[e]nsure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.” Public Resources Code Section 21001(b), (d).

The CEQA Guidelines are required to define a “significant effect on the environment” as occurring where, among other things, “the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” Public Resources Code Section 21083(a)(3).

EIR’s must identify and focus on the significant effects of proposed projects including health and safety problems caused by the physical changes. CEQA Guidelines Section 15126.2. Such impacts include, but are not limited to, consideration of impacts on people, including those already working in the area, and new residents, from increased noise, traffic hazards and poor air quality as well as loss of light (see above). In addition, the EIR must identify potentially significant health impacts to new residents, including but not limited to the psychological effect of low flying aircraft, noise, traffic and unhealthy air quality hot spots (e.g., due to increased congestion, queuing in the parking garage entrance, etc.).

The DEIR fails to analyze the health-related impacts that will result from the physical change in the environment on existing employees and new residents. A revised DEIR must include analysis of these health risks and proposed mitigation measures where feasible.

The DEIR Fails to Adequately Address Traffic and Pedestrian Safety.

Developing a massive residential complex as an “island” in the middle of a commercial zone will significantly increase traffic congestion and result in significant new pedestrian safety hazards. Day trips to and from Koll Center will escalate and occur throughout the day and night as high end residential use generates a completely different traffic pattern than business uses. This difference in travel patterns, and in particular the likelihood of auto trips throughout the day by residents as well as services to those residents (maid, gardening, deliveries, etc.) has not been adequately acknowledged or analyzed. Among the reasons these trips are grossly underestimated is the trend in delivery of goods. See Attachment 2, hereto.

Employees attempting to enter and exit Koll Center in the morning and after work will have to contend with vehicles and pedestrians in opposing directions. Employees utilizing common areas for walks, meetings and relaxation, will be disrupted by a steady stream of vehicle activity to and from the residential area. Both of these impacts increase the likelihood of traffic hazards. The City of Irvine commissioned a Traffic Study

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in 2015. The study highlighted Von Karman Avenue and Jamboree as having congestion issues and it recommended hundreds of thousands of dollars in street modifications, including turn signal modifications, and pedestrian medians on wide avenues. This is before Uptown or the proposed Koll Residences have been factored in. Additionally, the Traffic Study included a survey and of the 10 most frequent suggestions for reducing traffic congestion, the survey respondents stated that developing less residential units as number one. The residents in Irvine understand the correlation between traffic and residential development. Three 13 story residential towers is almost three times as many units as was proposed for the Museum House. This is too dense in too tight of an area, too close to an established commercial zone and will completely alter the on and off site trip pattern resulting in significant impacts that are not adequately analyzed in the DEIR and must be in a revised and recirculated DEIR.

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5

The DEIR Fails to Analyze the Impact of the Traffic and Pedestrian Pattern as it relates to the proposed location of the 5 Story Parking Structure or to Identify Feasible Alternatives

Koll Center Newport Association in its CC&R's provides occupants 3.15 surface parking spaces per 1,000 square feet of rentable square feet. The original parking layout was designed to be convenient for each building owner so that no one was expected to walk or be driven to a far side of the complex to get their vehicle. One significant impact of the Project is that it will shift traffic, parking and pedestrian patterns while creating bottlenecks and pedestrian hazards. The Project is not cohesive as it does not integrate the existing work habits and needs into a plan that is practical, convenient or safe.

6

The DEIR fails to adequately analyse the traffic patterns and the significant impact of the proposed roadway and parking structure to Koll Center. Will a portion of the dislocated 5000 Birch tenants choose the more convenient and less expensive surface parking in front of 4340 Von Karman over multi-level covered parking? Will the dislocated tenants at 4440 and 4910 Von Karman shift some portion of their traffic, pedestrian and parking patterns in front of and around our neighbor to the north at 4350 Von Karman? Consequently, would the owner and tenants at 4350 Von Karman shift their traffic, pedestrian and parking patterns in front of our building? What hazards will be created and how will those be mitigated because of the increased congestion? 4340 Von Karman has no where to shift surface parking spaces without a significant impact. The neighboring property to the west, 4320 Von Karman, has reserved surface parking spots (through a separate agreement when they purchased their parcel). This means that 4340 employees can not shift their parking patterns in proximity to 4320 Von Karman even if there appears to be ample open parking spaces. The Project



creates a bottleneck and a pedestrian hazard as employees will be driving further away from their respective job locations to find a parking space.

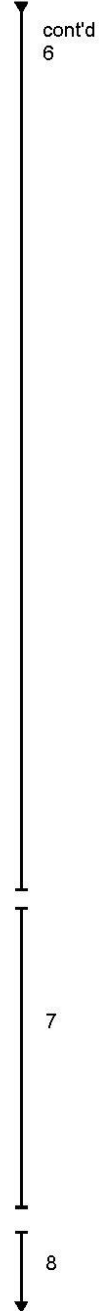
According to the Applicant briefing on October 30th the parking structure is being built to “replace” the lost surface parking spots of both 4440 and 4910 Von Karman and 5000 Birch. The DEIR does not adequately analyse how the Applicant would mitigate for the shift effect of the loss in surface parking spaces. Building a large multi level parking structure at a far end of a development does not make up for loss of convenience, impact to aesthetics and views or address the economic impact to business owners.

It would be assumed that there would be a significant cost to park in covered parking since there are existing comps in the vicinity, not only in KCN but other Newport Beach office buildings. Currently, the 5000 Birch building has one 2 level parking structure located directly to the east of 4340 Von Karman. It is partly below grade so that it doesn’t substantially block views. That parking structure is only accessible by tenants of 5000 Birch. It is unknown how much they charge their tenants for covered parking. However, Bitcentral approached the property manager of 5000 Birch about “leasing” parking spaces in their covered structure. The 5000 Birch owner quoted a rate of \$135 per month per space, but also said it is only short term and they can cancel at any time. As a business owner, that cost is prohibitive on a company wide basis (\$135 x12 mos.x 50 employees =\$81,000 annually) and does not provide a viable long term solution to the impacts of the parking pattern shift of the Project.

The Project unnecessarily places an oversized parking structure in an inconvenient location and presumably will pass along the associated covered parking expenses to 4340-4910 and the 5000 Birch building owners. The potential shift in parking and traffic pattern is a significant impact and the DEIR does not adequately address the economic cost.

The DEIR does not identify alternatives to these significant impacts. One alternative would be to replace all of the lost surface parking for the other office buildings within smaller parking structures and surface parking directly adjacent to the those office buildings. Another alternative would be to provide complimentary valet service. A third alternative to be analyzed would be to decrease the footprint of the Project to a level (less than 100 units) in order to reduce impacts including loss of surface parking spaces. However, it is still my opinion that residential development is an incompatible land use within Koll Center, specifically because of the existing noise and pollution issues associated with the airport corridor.

The DEIR does not adequately analyze and quantify the economic impact to Koll Center Newport Association’s dues and/or any parking fees to be passed through to businesses.





In fact, it is a reasonable legal question to evaluate if the Project violates the CC&R's of Koll Center and if it does what type of liability does that create? An owners association has a fiduciary responsibility to its members however it appears that Koll Center Owners Association has not provided any representation of its members in the decision to remove common area and permit a development agreement to be negotiated on terms that are not disclosed. The DEIR should disclose the economic impact of, but not limited to, the parking structure, security gates, landscaping and lighting that would be passed through to the building owners by Koll Center Newport Association either in dues or in direct covered parking charges.

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The DEIR Fails to Adequately Analyze Visual/Aesthetic Impacts.

Koll Center was developed with generous view corridors to provide an attractive and healthy environment for businesses and employees. The existing tenants and owners currently park in uncovered parking which is accessible to Bitocentral via an attractive, safe and landscaped area. As described above, the Project proposes a massive parking structure. A detached multi-level parking structure will always be less convenient and safe than ground level parking that is directly in front of a property. The Project will crowd the entrance off of Von Karman with additional landscaping (not to be confused with genuine recreational green space) and build three, massive uniform 13-story towers in a manner that is neither integrated into the Center's design, nor aesthetically compatible with the existing buildings and grounds. The DEIR fails to call out these significant visual and aesthetic impacts and erroneously concludes the Project is consistent with City General Plan policy calling for articulation of buildings, integrated design and improved walkability. A revised DEIR must re-analyze these impacts and identify alternatives (non-residential uses) and mitigation.

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The DEIR Fails to Address the Economic Impacts/Consequences.

The development will impair ingress and egress, increase traffic congestion and decrease Bitocentral's employee job satisfaction, quality of life and potentially reduce employee health. Offering a quality work environment is important for retaining and recruiting top professionals in a competitive high tech industry. Similarly, all the business owners and their employees will be impacted by a development that takes over a large portion of the common area parking lot with massive new structures. These impacts individually and collectively will reduce the attractiveness of Bitocentral's headquarters as well as other existing buildings, lowering economic values, rental values and overall productivity by these businesses. As stated above, a revised DEIR must include an analysis of the economic impacts stemming from the physical changes to the environment resulting from the Project's residential towers, parking lots, increased congestion and loss of open space, views and light. There is no value add for

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existing businesses who invested in Koll Center by buying and/or leasing office space and coupled with the loss of light and views, the potential for businesses to leave the area is high and the potential for vacancies must be evaluated in a revised and recirculated DEIR.

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Current view in the direction of the proposed Project from Bitcentral

Moreover, the Project sets a dangerous precedent for "spot" zoned infill developments in Newport Beach that eliminate open areas and reduce natural light. If one developer is able to remove convenient parking spaces and existing view corridors from building owners in a planned community (without compensation), what is stopping other developers from following suit? We are fortunate that we are not directly in front of the residential towers but there are other businesses in our community that are heavily impacted and will most likely move. There is a risk that businesses will leave Koll Center and the airport corridor because of the disruption to a commercial zone. Such a risk, and the potential for blight, must be analyzed in a revised and recirculated DEIR.

11

The DEIR Fails to Adequately Analyze the Likely Reduction in Public Services, Response Times and Potentially Increased Costs Associated with the Cost of Delivering Services.

High rise residential towers will demand different types and levels of services. Everything from trash to police, fire and emergency services will be impacted. Likewise, any consideration of residential development over eight stories, creates a fire/safety hazard for the residents in that property. Does the City have fire equipment and trained crew to deal with residential emergencies above eight stories 24/7? Who pays for the

12



increased public services required? Will costs of services increase as a result of added demand? How will schools be impacted?

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12

The DEIR Fails to Adequately Disclose and Analyze Land Use Impacts.

The Project would eliminate the existing use of the parking lot from servicing the businesses in Koll Center. By converting this user-friendly parking and common area to high density residential uses, the Project dramatically alters the commercial appeal of Koll Center, one of the few business centers in Newport Beach. The proposed land use is incompatible with the current land uses in the adjacent parcels. The design of the residential towers results in isolating future residents from the rest of the community; and eliminates from the business community the ambiance and amenities that make Koll Center an attractive and thriving business park. The City’s General Plan calls for integrated design in Koll Center and this Project is just the opposite, creating an isolated and uniform institutional looking trio of residential structures and parking structure. Other amenities in the Center also seem at risk. For example, will the pond in front of 4340 Von Karman be modified to serve the residential use instead of the commercial zone as intended? Will access be restricted to residential open space areas and grounds by commercial uses? How are the three uniform, institutional residential buildings and massive garage consistent with General Plan design requirements for articulation of building heights and facades, and integration with existing structures? These and other land use impacts must be addressed in a revised and recirculated DEIR.

13

The DEIR Fails to Adequately Address Noise/Safety Impacts.

Current business owners in Koll Center operate during normal business hours. Business owners and their employees primarily work indoors, but utilize the common areas to walk or drive to lunch and for walking meetings. Everyone accepts the airport noise as it is a business park. However, the rare office unit like ours that has a balcony provides an important data point for any potential residential use. **Quite simply, I am unable to be on a phone call with the patio doors open because of the sound of airplanes.** It is constant and yet our building is only four stories tall. Noise and perceived safety are going to be huge issues for any future residential uses this close to the airport. There is a practical and obvious reason why good design of office buildings in loud commercial zones do not feature functional balconies. There is a psychological impact from seeing and hearing airplane noise overhead on a constant basis. Businesses basically tune it out during the busy business day, but residential users expect quiet enjoyment and will inevitably refuse to coexist. Our balcony on the 4th floor it is simply a design element of the building and was never intended as usable space. For the same reason, the proposed balconies and exterior living space of the Project are not practical because of the significant noise and perceived safety impacts related to the airport corridor.

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The Project Fails to Provide Needed Housing and Services; Pre-requisites to Sustainability and Reduced Traffic Trips.

The proposed residential Project and structured parking offer no value to the employees of Bitcentral. None of Bitcentral’s employees would be able to afford the Koll Residences at the prices described by applicants at the October 30th briefing. As a result, new residents are unlikely to live and work in Koll Center, and therefore likely to commute to work as well, adding commute traffic to the all-day traffic patterns typical of residential uses. Research shows that higher income households drive more, drive longer distances (vehicle miles traveled), own more cars and have a significantly larger impact on greenhouse gas and air emissions than lower income households.

A revised DEIR must analyze the full traffic and related impacts (GHG, AQ) associated with luxury residences taking into consideration trends in trip generation and trip length and type (e.g., goods delivery, services, etc.). Trip generation is likely to be double that assumed in the DEIR trip analysis as a result of the high-end sales prices of the new units and the lack of onsite services, disconnect in unit pricing from employee salary, rendering trip capture on site an unlikely outcome.



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Concluding Comments.

For the above stated reasons, a revised and recirculated DEIR is required. Ultimately, we believe along with a growing number of concerned residents that the City of Newport Beach is long overdue for an update to its General Plan that should include the Airport Area. This project is literally the cart before the horse and it is out of place. Moreover, the other ShopOff apartments called Uptown are not even completed so the "real" traffic and services impacts are not currently able to be assessed. The City has reason to deny this Project as proposed and move forward with the General Plan Update and community vision for the Airport Area.

Thank you for keeping us apprised of any and all documents, meetings, Study Sessions, hearings and other matters related to this Project.

Sincerely,

Fred Fourcher, CEO
Bitcentral, Inc.
Fred@Bitcentral.com
(949) 417-4111

- Attachments:
No. 1 - Natural Light Matters in the Workplace
No. 2 - How Cities are Coping With the Delivery Truck Boom



11/7/2017

Why natural light matters in the workplace | Opinion | Eco-Business | Asia Pacific



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Why natural light matters in the workplace

As new daylight research emerges, a timeless workplace debate heats up: who gets the windows seat?



Research shows that exposure to natural light improves the well-being of office workers. Image: Shutterstock



By Ash Buchanan and Juliana Seyago
Monday 18 April 2016

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Over the past two years there has been a flurry of reports from the World Green Building Council, the International Well Building Institute and Human Spaces exploring the importance of our innate connection with natural elements. These reports bring together a wealth of academic research on how the presence of natural elements can promote health, wellbeing and productivity.

Out of these elements, daylight, has been found to be the number one wanted natural feature in the workplace. When you see the research findings, it's easy to see why.



The benefits of natural light

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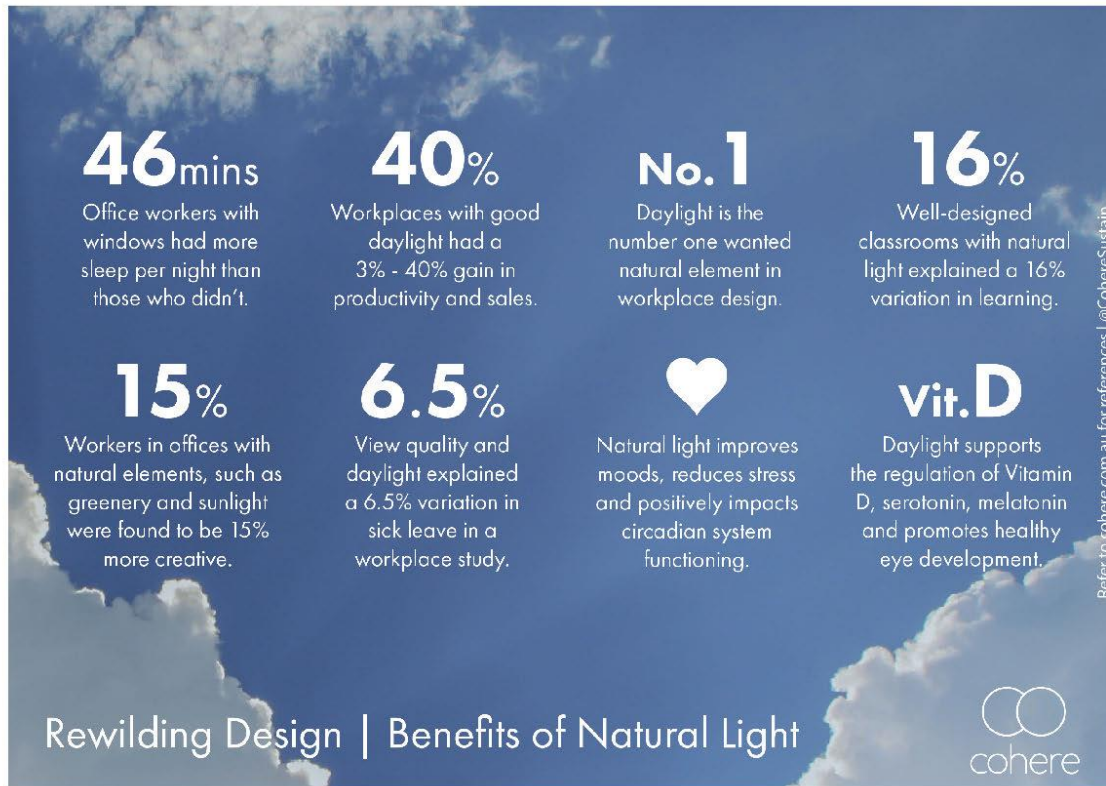
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A summary of the benefits of natural light. Image: Cohere

One neuroscience study found that people who sit by the window slept for 46 minutes longer a night on average compared with those who didn't.

Other studies have found that well illuminated spaces with natural elements such as daylight and greenery can improve creativity and learning.

These findings put scientific rigour behind our intuitive desire for daylight. The business case is clear: daylight promotes human health and potential. Workers around the world are catching on, with many starting to question how this valuable natural element should be shared between staff.

The business case is clear: daylight promotes human health and potential.

Where do you sit at work?

How were the window seats in your workplace allocated? Was it done on a first come first served basis? Or have senior management taken the best seats in the house on privilege, leaving others to work in more artificial environments?

These research based findings suggest that there is value in being more strategic about sharing daylight amenity in the workplace. Not only for the performance benefits, but in consideration of the health and wellbeing of all staff.

As concepts of equity and justness become more prominent in business, will we start to see minimum standards for daylight exposure in the workplace? Especially for those that have no access to natural light during working hours.

Promoting daylight equity

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Regardless of fitout design or building type, there are a number of practical things business can do to capitalise on the benefits of natural light.

From an operational perspective, strategies for rotating seating locations offers some value. Walking meetings are another great way for all staff to get a healthy dose of daylight, along with the numerous health and wellbeing benefits that come with a more active workforce.

Bringing an architectural lens increases scope for improving daylight distribution. From optimised furniture layouts, to external light shelves and the careful positioning of shared breakout spaces, there is a wide range of opportunities for increasing daylight amenity to the most frequently occupied work areas.

The case is clear: there is much more to a window seat than just the view. Given the demands of modern business, having environments that bring out our best is becoming increasingly important. Getting daylight distribution and justness right could be the key to creating workplaces brimming with creativity, productivity and wellbeing.

Ash Buchanan is the director of sustainable design and wellbeing at Cohere. Juliana Sayago is a communication designer completing a Master of Environment at The University of Melbourne. This post was written exclusively for Eco-Business.

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An increasingly common sight on American city streets: delivery vehicles // Mark Lennihan/AP

Cities Seek Deliverance From the E-Commerce Boom

ANDREW ZALESKI APR 20, 2017

It's the flip-side to the "retail apocalypse:" A siege of delivery trucks is threatening to choke cities with traffic. But not everyone agrees on what to do about it.

This post is part of a CityLab series on open secrets—stories about what's hiding in plain sight.

<https://www.citylab.com/transportation/2017/04/cities-seek-deliverance-from-the-e-commerce-boom/523671/>

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How Cities Are Coping With the Delivery Truck Boom - CityLab

Just before 3 in the afternoon on a rainy spring day, Keith Greenleaf busts out his “bricklaying” skills. That’s delivery-driver parlance for balancing an inordinate amount of cardboard boxes on a metal handcart. As high as his collarbone he stacks them, packages labeled HP, J. Crew, Amazon Prime. “This is probably one of the first days I don’t have Pampers or dog food,” he says.

Greenleaf also doesn’t have any 60-pound boxes of copier paper, which is a welcome way to finish his daily rounds. The veteran UPS driver is parked near 22nd and I St. in Washington, D.C., having arrived there about six hours earlier in a truck loaded down with 320 boxes. In a few hours he’ll drive back to the distribution center in Landover, Maryland; several hours after that, he’ll be at Outback Steakhouse downing beers with a few fellow drivers.



Right now, however, Greenleaf’s in the thick of it. For 15 of his 25 years driving for UPS, he has delivered along roughly a 10-block route close to 22nd and I. Several years ago, to meet the demand, UPS shortened Greenleaf’s route by two blocks and gave them to a new driver on a new route. When I meet up with him mid-afternoon one Friday (per UPS media ride-along convention, I’ve been given my own iconic brown uniform, including pants so baggy MC Hammer would cringe), he’s unloading boxes from his parked truck onto a loading dock underneath the Residences on the Avenue, an apartment building with a Whole Foods right next door. As I get ready to climb aboard, he tells me we won’t be making any deliveries in the truck.

Several years ago, the 56-year-old was delivering mainly to commercial locations. Now half his drop-offs are residential. The traffic congestion and lack of available parking has become so unworkable that Greenleaf would rather walk the remainder of his route, delivering packages by handcart, which is what he’s done every afternoon for the last three years.

Pick any other major city or metropolitan area in the U.S., and the situation’s probably the same: a massive surge in deliveries to residential dwellings, one that’s outstripping deliveries to commercial establishments and creating a traffic nightmare.

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Consumers today are spending less time in local stores and more time online, buying not only retail items but also such goods as groceries from Peapod, office supplies from Postmates, and whatever the hell they want from Amazon. It's estimated that, on average, every person in the U.S. generates demand for roughly 60 tons of freight each year, according to the National Capital Region Transportation Planning Board. In 2010, the United States Post Office—which has overtaken both FedEx and UPS as the largest parcel-delivery service in the country—delivered 3.1 billion packages nationwide; last year, the USPS delivered more than 5.1 billion packages. The growth in e-commerce is fueling a commensurate rise in the number of delivery vehicles—box trucks, smaller vans, and cars alike—on city streets.

While truck traffic currently represents about 7 percent of urban traffic in American cities, it bears a disproportionate congestion cost of \$28 billion, or about 17 percent of the total U.S. congestion costs, in wasted hours and gas. Cities, struggling to keep up with the deluge of delivery drivers, are seeing their curb space and streets overtaken by double-parked vehicles, to say nothing of the bonus pollution and roadwear produced thanks to a surfeit of Amazon Prime orders.

"A humongous amount of externalities are being produced," says José Holguín-Veras, director of the Center of Excellence for Sustainable Urban Freight Systems at Rensselaer Polytechnic Institute. "Every 25 people produce one Internet delivery. ... So imagine any congested city you know of. Imagine that you were to increase freight traffic by a factor of three. This is what's happening now."



UPS driver Keith Greenleaf is doing less driving in the city these days: Most of his urban drop-offs need to be done via hand-cart, because of traffic congestion. (Andrew Zaleski/CityLab)

It didn't used to be like this.

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The urban home-delivery ecosystem of yore evokes images of icemen making their rounds or kindly white-capped milk men stopping by with a new glass bottle. City dwellers, with their density of retail options within close walking distance, often had newspapers and perishables delivered daily, but in the earlier decades of the 20th century, home delivery of purchased goods was typically something arranged after a trip to the store, where shoppers tried on or tested out the clothes and furniture they wanted, and then scheduled what they couldn't carry back by hand or in taxis or streetcars to be dropped off later. It was for this very purpose that UPS was founded in 1907 in Seattle. Overall, though, bulk deliveries predominated. These were deliveries of large retail goods to stores in shopping districts, where some thought had been given to how streets would accommodate trucks.

In recent years, urban dwellers have managed to flip the script. Since the beginning of this decade, online retail sales in the U.S. have grown by about 15 percent every year. So consider a UPS driver like Greenleaf 110 years later: On any given weekday, he's one of an average of 241 drivers making deliveries on D.C.'s streets, delivering products like clothes, books, food, and household goods—stuff that shoppers could easily pick up on their own at area stores. (Often, he's dropping off boxes of toiletries to residents in an apartment building with a pharmacy or a grocery store on the same block.)

In 2010, UPS delivered 1.1 million packages around D.C. in the month of March. It's now dropping off 6,500 more packages each day than it did then. The demand is so great that this year, for the first time in its history, UPS will begin delivering packages by truck on Saturdays. "A lot of people see our brown trucks parked on streets with tickets on the window and say we're causing all this backup," says Jim Bruce, senior VP of corporate public affairs with UPS. "People may think of us as the cause of congestion, but you've got to have some way to get those packages delivered."

Sending fleets of box trucks through the streets of Manhattan is transplanting a suburban model of e-commerce delivery to a walkable, urban environment.

The problem, really, is that we now live in a world where the brick-and-mortar stores are only one part of the retail equation—and, as many a "retail apocalypse" story is warning, they are a shrinking part. Demand is being driven by people in their individual homes and apartments ordering smaller amounts of goods with higher frequency: groceries one day, several items from Amazon the next. "Instant" deliveries are now in vogue. Jean-Paul Rodrigue, a global studies and geography professor at Hofstra University, recently completed his own delivery survey of a 300-unit apartment building in northern New Jersey. Over the course of 2016, more than 23,000 packages were delivered, which breaks down to about 65 packages per day.

But as more goods are ordered, more delivery trucks are dispatched on narrow city streets. Often, the box trucks will double-park in a two-lane street if there's no loading zone to pull into, snarling traffic behind them. "We're taking that demand that used to be concentrated and we're spreading it throughout the city throughout all times of day. The streets were not designed for that kind of activity," says Alison Conway, an assistant professor of civil engineering at the City College of New York. She's conducted several pilot studies over the last year estimating the number of packages arriving at residential buildings and the related vehicle trips and parking patterns.

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Studies of the locations of residential buildings revealed the problems that leave delivery trucks idling in the street: no storage space for parcels, no freight elevators for deliveries, and no loading docks to park trucks. In a place like New York City, where more than 120,000 packages are delivered daily in Manhattan below 60th Street, according to the city's department of transportation, these missing accommodations compound the congestion problem.

Christopher Leinberger, chair of the Center for Real Estate and Urban Analysis at George Washington University, argues there's no way this current model of urban freight can continue to work, given the increasing demand for online goods. Sending fleets of box trucks daily through the crowded streets of Manhattan or down M Street in Georgetown is merely transplanting a suburban model of e-commerce delivery to a walkable, urban environment.

"Urban freight trips are basically fitting a square peg into a round hole," he says. "It's more trucks and more routes jammed onto city streets, which is trying to address a challenge with obsolete thinking."



With a growing number of urban residents picking up daily necessities from regular Amazon deliveries, the fate of brick-and-mortar retailers is increasingly cloudy. (Paul Sakuma/AP)

Not all urban traffic sages, however, are convinced that the delivery-fueled congestion woes cities are currently facing are here for the long haul.

"If over the next 20 years we slowly increase freight share, it's fine. It's offset by fewer private vehicle trips," says David Levinson, a professor at the School of Civil Engineering at the University of Sydney and co-author of The End of Traffic and the Future of Transport. "We might consume more [goods] in total, but the vast majority of this is substitution. And there's a lot of evidence that people are shopping less."

The thinking here goes that if online shopping is increasing, and there are more delivery vehicles on the roads, home deliveries will offset personal shopping trips, reducing the total number of cars on the road and ultimately reducing congestion. Cities will struggle in the short-term while this cultural transformation is happening. But eventually, you won't even be on the road to notice that FedEx van double-parked by your favorite parallel parking spot. You won't be parking at all.

"E-commerce delivery in the U.S. is currently a bloodbath.... But the number of passenger vehicles on the street is likely going to drop. Congestion, I suspect, will be less of an issue," says Rodrigue, who also thinks the advent of self-driving vehicles will be a boon for the freight industry.

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Others, like RPI's Holguín-Veras, aren't so optimistic. He says the data he's been studying shows there's a net increase in the number of vehicle trips. To take one example from UPS' hometown of Seattle: Data from the [Puget Sound Regional Council](#) shows that non-work trips increased from 10.3 million trips per day in 2006 to 12.6 million trips per day in 2014. Internet deliveries are not substitutes for trips to stores: We're just adding them on. "When you're sitting in your house, you don't give a damn if all you're ordering is a book or a watch. You're not internalizing those costs. And if you get free deliveries, you have the illusion that this is easy," he says. "And we are ordering a lot."

Addressing consumer behavior directly is perhaps the most difficult part of this. How do you ask urbanites to stop buying stuff online and getting it delivered to their homes when it could easily be purchased at a local store conveniently situated in their dense urban environment? Indeed, what's the point of *having* a city if your retail habits are shaped entirely by your online existence?

During a recent visit to Amazon.com, I was told via pop-up that my online shopping at the Bezos Emporium—books, board games, toiletries, two Tweety Bird dish towels for my Looney Tunes-obsessed grandmother—had saved me 15 shopping trips over the last year. I don't remember exactly, but by counting when packages were delivered, I figured about 17 truck drop-offs were needed to get those items to my door.

"People like you and me are the ones creating the problem," says Holguín-Veras.



A FedEx truck on the streets of the San Francisco (Jeff Chiu/AP)

By and large, many American cities are also playing catch-up as they try to understand these new urban delivery challenges and systems. That's due in part to the failures of urban planning and the nature of the trucking business. While matters of public policy like public transit, bike lanes, and walkability fall within the purview of planning boards and municipal departments of transportation, freight has always been a purely private-sector enterprise. That means cities don't even have reliable data on the number of delivery trucks coursing through their streets. "Metro planning organizations do regular data collection on personal travel. We don't have that equivalent for freight, and we don't have good, metropolitan-scale data about goods movement. Surprise surprise, we don't understand it very well," says Anne Goodchild, director of the [Supply Chain Transportation and Logistics Center](#) at the University of Washington in Seattle.

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Recently, the center launched UW's [Urban Freight Lab](#), a new partnership between the university, the Seattle Department of Transportation, and private-sector delivery companies (including UPS). Founded in the fall, the lab's job is to begin collecting some of that data. So far, Goodchild and a team of students are measuring dwell time (how long a delivery vehicle has to remain on the street) and failed deliveries (when a driver shows up somewhere to deliver a package but can't because the recipient isn't home and a signature is required). It's the sort of data Seattle hopes to incorporate into an urban goods delivery strategy, one of the cornerstones of a "freight master plan" the city adopted last year.

"It's going to lead to a whole bunch of policy questions," says Scott Kubly, director of the Seattle DOT. "For instance, how do you get away from an enforcement regime? With the volume of deliveries, ticketing isn't effective for us in terms of managing the street. UPS and FedEx will just negotiate a lump sum payment for all the tickets they get instead of fighting every ticket."

One thing is clear: Cities can't just ticket their way out of the delivery-truck problem. For big commercial delivery companies, parking fines are just part of the cost of doing business. UPS [paid](#) New York City \$18.7 million in parking fines in 2006; in 2011 in Washington, D.C., UPS alone [received](#) just shy of 32,000 tickets. Instead of adjudicating each ticket, many large cities will strike agreements or introduce programs through which delivery companies can pay off all tickets in one swoop. New York City's [stipulated fine program](#) is one example; by waiving their right to challenge parking tickets, delivery companies pay a pre-set, reduced fine for each parking violation.

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If enhanced enforcement isn't the answer, diverting delivery traffic might be. Kubly says that Seattle is taking an inventory of all the remaining alley space in the city. Instead of letting developers extend housing lots into the alleys, they might be used to accommodate some of the incoming delivery traffic. In New York City, where deliveries to residential areas have gone up 30 percent over the last five years, the department of transportation's [Office of Freight Mobility](#) is currently assembling its own freight master plan. It's also working with RPI's Holguin-Veras to obtain delivery data from several private companies. By signing a non-disclosure agreement with the university, the office is able to gain access to summary delivery data—on metrics like dwell time—which she says makes private companies, leery of competitors, more willing to share their own numbers.

"If you get free deliveries, you have the illusion that this is easy."

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“We need them to share data with us in order to understand what’s really happening and advance policy,” says Stacey Hodge, director of the Office of Freight Mobility. “Since we started the office in 2007, we’ve built a very good trust with the private sector. They understand the purpose of sharing data.”

Even Uber, notoriously tight-lipped about its data, has extended an olive branch. As part of its new Movement initiative, it’s making aggregated driver data available to city planners so they can get a better understanding of traffic and commuter behaviors. Washington, D.C., was one of the three pilot cities that launched the initiative earlier this year.

To ease the squeeze they’re feeling with more delivery trucks on the road, cities have begun considering different concepts to make urban spaces more e-commerce friendly. That might mean modifying zoning codes so that new residential buildings are approved for construction only if they accommodate a loading dock, or extending the amount of time a truck can be parked in an on-street delivery zone, or making sure that the corners of sidewalks slope down to meet the street to make it easier for a delivery person with a handcart. Existing apartment buildings could dedicate some of their ground floor space as an incoming deliveries room, which would enable drivers to make one stop instead of needing to go door to door. Some apartment buildings have installed package lockers, a series of closed-door cubbies that delivery drivers can access to drop off packages.

A UPS bike/truck plies the streets of Portland. (UPS)

Delivery companies are also experimenting with ways to reduce their impact. Late last year, UPS introduced its first “eBike” deliveries in (of course) Portland, Oregon. The aim is twofold: Reduce carbon emissions while putting a delivery vehicle on the road small enough to take advantage of curb space. UPS is also integrating across its U.S. routes its new big-data tool, Orion, or On-Road Integrated Optimization and Navigation. As a UPS driver travels their route, Orion works in the background considering up to 200,000 possible routes before picking the most optimal route for a driver to take to reduce the overall time spent driving around from delivery to delivery. “The next generation of that is going to be a real-time tool taking traffic into account,” says UPS’s Bruce.

Some cities have also begun taking concrete steps to address the issue—sometimes on their own, and sometimes in partnership with private companies. In New York City, a slow shift to off-hour deliveries is taking place. Of the Big Apple’s roughly 18,000 restaurants, about 400 restaurants now take deliveries between the off-peak hours of 7 p.m. and 6 a.m. Holguín-Veras led a study of the change in delivery time, and demonstrated that a truck traveling at night produced 60 percent less pollution, or a greenhouse-gas reduction of more than 6,000 tons a year, than a truck traveling in the morning. “Cities are congested now, and without changing behavior, there is no way out,” he says. “We need to somehow find solutions.”

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They're the sorts of challenges that guys like Keith Greenleaf know well, and his solution, at least for the time being, is to complete his daily route on foot, pushing and pulling a handcart weighed down with brown boxes. For nearly two hours I trudge along with him, playing the part of UPS delivery man in training.

Some parts of his job are getting easier. When we make our way inside the Residences on the Avenue apartment building, he tells me it used to take him almost an hour to deliver about 60 packages door to door. Now he handles it in 20 minutes by using a new package locker, where he's able to drop boxes off at individual storage units accessible to residents who receive text messages when their packages have arrived.

Five minutes before 5 p.m., a happy Greenleaf has completed his day. As he takes his seat, he motions to the back of his box truck. For motivation, Greenleaf keeps a Christmas tree stand hanging to remind him that, no matter how much of a slog it is, people are counting on him to get their packages on time. "Every day's Christmas, and every day's game day," he says.

With that, he hits the ignition and heads out into the rush-hour streets.

About the Author

Andrew Zaleski

🐦 @AJZALESKI / 📺 FEED

DC-based freelance writer Andrew Zaleski has written for Wired, The Washington Post Magazine, Backchannel, The Atlantic, Politico Magazine, The Guardian, and many other publications.



CityLab is committed to telling the story of the world's cities: how they work, the challenges they face, and the solutions they need.

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Response 1

The subsequent responses address the specific issues raised by this commenter.

Response 2

The opinions of the commenter regarding the working environment for Bitcentral are noted.

With respect to the commenter's employees use of parking lots and landscaped common areas for "walking meetings", the Project would be constructed on existing surface parking, and would provide a 1.17-acre public park and landscaping. The Project maintains the existing spine street through the property between Birch Street and Von Karman Avenue and provides for pedestrian walkways on both sides of the spine street (see Figure 3-8). The locations of existing sidewalks, and proposed walkways/pedestrian connections are shown on Figure 3-12.

With respect to view protection, the City of Newport Beach Municipal Code Section 20.30.100:

...provides regulations to preserve significant visual resources (public views) from public view points and corridors. It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deny the right to develop property in accordance with the other provisions of this Zoning Code....The provisions of this section shall apply only to discretionary applications where a project has the potential to obstruct public views from public view points and corridors, as identified on General Plan Figure NR 3 (Coastal Views), to the Pacific Ocean, Newport Bay and Harbor, offshore islands, the Old Channel of the Santa River (the Oxbow Loop), Newport Pier, Balboa Pier, designated landmark and historic structures, parks, coastal and inland bluffs, canyons, mountains, wetlands, and permanent passive open space....

It is not the intent of the Zoning Code to protect views from private property. Further, the City's General Plan goals and policies provide directives in its consideration of aesthetic compatibility. While Natural Resources Element Goal NR 20 is the "Preservation of significant visual resources", the policies of the Natural Resources Element are applicable to public views and public resources not private views or private resources.

With respect to shading, a shade/shadow analysis was prepared as a part of the Draft EIR. Please refer to Section 4.1, Aesthetics and Visual Resources, Figures 4.1-2a through 4.1-2h. The analysis identifies both shadows cast by existing buildings including the 4340 Von Karman Avenue office building, as well as shadows that would be cast by the Proposed Project. The 4340 Von Karman Avenue office building would not be shaded by Buildings 1, 2 or 3 or the free-standing parking structure. No impact would occur.

With respect to school transportation, the Santa Ana Unified School District provides transportation to special education students and on a limited basis due to distance to a school. Whether students would be transported by private vehicle and when students would be picked up should they participate in after school activities is unknown. Using the school district's student generation rates, the Project could have 29 students. The transport of 29 students would not change the findings to the traffic study prepared for the Draft EIR or cause a significant impact.

The commenter has not provided any evidence to suggest that the Project would reduce safety and public services. Please refer to Section 4.12, *Public Services*, of the Draft EIR. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

Please refer to Section 4.10, *Noise*, and Section 4.14, *Traffic and Transportation*, of the Draft EIR which evaluates potential noise and traffic impacts, respectively.

The affordability of the proposed condominiums to the commenter's employees does not identify an environmental issue and is not related to the adequacy of the Draft EIR analysis. No further response is required.

The traffic analysis applied a ten percent internal trip capture factor to the retail component of the Project to account for the potential for internal interactions that may occur between the future retail use and the existing offices and proposed residential uses. The ten percent factor was applied only to the small retail component, and represents a trip reduction of 13 trips over the course of any entire day, 0 trips in the morning peak hour, and 1 trip in the evening peak hour. This reduction in external trips is inconsequential to the Project traffic impacts on the surrounding street system.

Although the potential is much greater for there to be a substantial internal trip capture between the proposed residential uses and the existing offices, for a conservative analysis, no internal trip reduction was assumed between the residential and office uses.

The City disagrees with the opinions of the commenter. The commenter has not raised issues that would render the EIR deficient.

Response 3

Please refer to the response to Comment 2. The Project would not significantly shade the 4340 Von Karman Avenue office building.

Response 4

The commenter notes that employees use the parking lots for "walking meetings" and "to reduce stress and unwind" and implies that the Project would impact the physically and psychologically health of employees in the 4340 Von Karman Avenue office building. The commenter states "the scope of analysis for health effects under CEQA remains uncertain." Please refer to the response to Comment 2. The Project would not preclude employees from walking through the parking lots but would also provide addition open space amenities including but not limited to a new public park. Other environmental issues raised by the commenter – noise, air quality, safety –are already evaluated in the Draft EIR. "Psychological effects" are not CEQA environmental issues.

In *Preserve Poway v. City of Poway* (2016), held that psychological, social and economic impacts are not cognizable under CEQA. The case references *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 829 stating "More to the point, CEQA does not require an analysis of subjective psychological feelings or social impacts" "Rather, CEQA's overriding and primary goal is to protect the physical environment."

Response 5

The residential traffic would have opposite flow patterns compared to the existing traffic patterns for the Koll Center Newport office uses. This is typical of mixed-use developments that contain both residential and employment uses. The site driveways for the Koll Center Newport development would accommodate the additional opposite-flow traffic volumes. The internal entries to the residential areas of the parking structures have been designed to be separate from the main drives and entries for the office parking.

As conceptually depicted on Figure 3-12 of the Draft EIR, walkways would be provided within the site, and would connect with the existing sidewalk system along the streets surrounding the site.

The increase in online shopping and the associated increase in package deliveries to residential developments would have the related effect of reduced resident trips to and from stores. Since a package delivery company such as UPS or FedEx can deliver multiple packages to a neighborhood or residential development with a single trip in and a single trip out, a delivery trip has the potential to replace multiple resident trips.

The traffic analysis was conducted without taking the improvements identified for Jamboree Road and Von Karman Avenue into account. When those improvements implemented, traffic conditions would be improved compared to the conditions reported in the Draft EIR.

Response 6

The parking areas in front of and to the sides of the 4340 Von Karman Avenue and the 4350 Von Karman Avenue buildings would be reduced slightly by the final phase of the Project. The 492 parking spaces in the new free-standing parking structure would more than offset the change in parking in that area. The walk from the parking structure to the 4340 building would be approximately 200 to 300 feet, and approximately 400 feet to the 4350 building. There will be no cost to park in the new parking structure.

The new free-standing parking structure, at the southeast corner of the project site, would most logically be used by the employees of the buildings on the southeast side of the spine street – 5000 Birch Street, 4340 Von Karman Avenue and 4350 Von Karman Avenue – which would be the buildings closest to the structure. The remaining surface parking on the northwest side of the spine street road and the new structured office parking in Building 1 would most logically be used by the employees of the buildings on the northwest side of the main spine road – 4910 Birch Street, 4490 Von Karman Avenue and 4440 Von Karman Avenue.

The attached diagram shows the locations of each of the parking areas throughout the site as they correlate to the locations of the various office buildings. The purpose of this this diagram is to demonstrate that the parking areas closest to each building will provide adequate parking.

Response 7

The opinion of the commenter is noted.

Response 8

Compliance with CC&Rs is not a CEQA issue. The City has no comments on restrictions placed in the CC&Rs. CC&Rs are voluntary covenants and may be more restrictive than zoning. They are between private parties rather than between a governmental agency and a private party. No further response is required.

Response 9

The opinions of the commenter are noted. Please also refer to the response to Comment 2.

Response 10

The commenter identifies potential circulation, traffic congestion, and shading issues which, as noted in the responses, are evaluated in the Draft EIR.

The commenter provides no evidence to assert that the Proposed Project will result in lost tenancies and vacancies, and a “lowering of economic values”. These are not reasonably foreseeable outcomes associated with the implementation of an infill mixed development adjacent to an approved, under construction mixed use development within the Airport Area. As stated in *Placerville Historic Preservation League v. Judicial Council of California* (2017) __ Cal.App.4th __ (Case No. A149501), “there is no reason to *presume* that urban decay would be a consequence of the project. As defined by CEQA, urban decay is a relatively extreme economic condition. In a dynamic urban environment, including that of a small city such as Placerville, change is commonplace. In the absence of larger economic forces, urban decay is not the ordinary result. On the contrary, businesses and other activities come and go for reasons of their own, without necessarily affecting the overall health of the economy.” Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

Response 11

The Proposed Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The Airport Business Area Integrated Conceptual Development Plan (ICDP) contemplates up to 1,504 new residential units, 11,500 sf of ground-level retail and commercial uses for Uptown Newport and 3,400 sf of commercial uses for the project site, as well as neighborhood park areas. Of the 1,504 dwelling units, 1,244 units are on the Uptown Newport site and 260 units on the surface parking area of Koll Center Newport where the Koll Center Residences Project is proposed. These residential units were contemplated for the project site.

The commenter alleges that the Proposed Project could result in blight. However, the commenter presents no evidence to support the assertion that the introduction of a mixed-use development that is consistent with the General Plan and Airport Business Area ICDP would cause this outcome. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

In *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 (*Bakersfield*), the courts defined urban decay as follows:

“[N]ot simply a condition in which buildings become vacant as businesses compete with each other in the normal course of the market-based economy, nor is it a condition where a building may be vacated by one business or use and reused by a different business or for alternative purposes. Rather, under CEQA ‘urban decay’ is defined as physical deterioration of properties or structures that is so prevalent, substantial, and lasting a significant period of time that it impairs the proper utilization of the properties and structures, and the health, safety, and welfare of the surrounding community. Physical deterioration includes abnormally high business vacancies, abandoned buildings, boarded doors and windows, parked trucks and long-term unauthorized use of the properties and parking lots, extensive or offensive graffiti painted on buildings, dumping of refuse or overturned dumpsters on properties, dead trees and shrubbery, and uncontrolled weed growth or homeless encampments.”

Blight in Koll Center Newport is not a reasonably foreseeable outcome associated with the implementation of an infill mixed development adjacent to existing and approved mixed use development within the Airport Area.

Response 12

The questions asked by the commenter are addressed in Section 4.12, *Public Services*, of the Draft EIR.

Response 13

The commenter’s opinions regarding the Project architecture and “ambiance” of Koll Center Newport are noted. Please refer to Section 3.0, *Project Description*, which describes the replacement plan for surface parking spaces removed as a part of the Project. With respect to the man-made pond adjacent to the 4340 Von Karman Avenue office building, it is not a part of the Project and would not be changed by the Project.

Response 14

Please refer to Topical Response: *Airport Noise*. The comment provides an anecdotal discussion of airplane noise in the area and states that proposed balconies and exterior living spaces are not practical because of significant airport noise. The commenter does not specifically challenge the data or analysis within the Draft EIR. However, as discussed in the topical response, the project site is located outside the John Wayne Airport’s 60 dBA CNEL contour. As described in Section 4.10, *Noise*, of the Draft EIR, the Project would be required to comply with Mitigation Measures 4.10-5 and 4.10-6 to reduce on-site noise impacts to a less than significant level. Mitigation Measure 4.10-6 requires a detailed acoustical study demonstrating that all residential units would meet the City’s 60 dBA exterior noise standard for all patios, balconies, and common outdoor living areas through any necessary noise reduction features (barriers, berms, enclosures, etc.).

Response 15

The commenter’s opinion that trip generation is understated, with respect to trip generation rates, based on the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (9th Edition), the Luxury

Condominium (Land Use 233) generates more trips per unit in both the morning peak hour and the evening peak hour than either Residential Condominium (Land Use 230) or High-Rise Condominium (Land Use 232). See chart below.

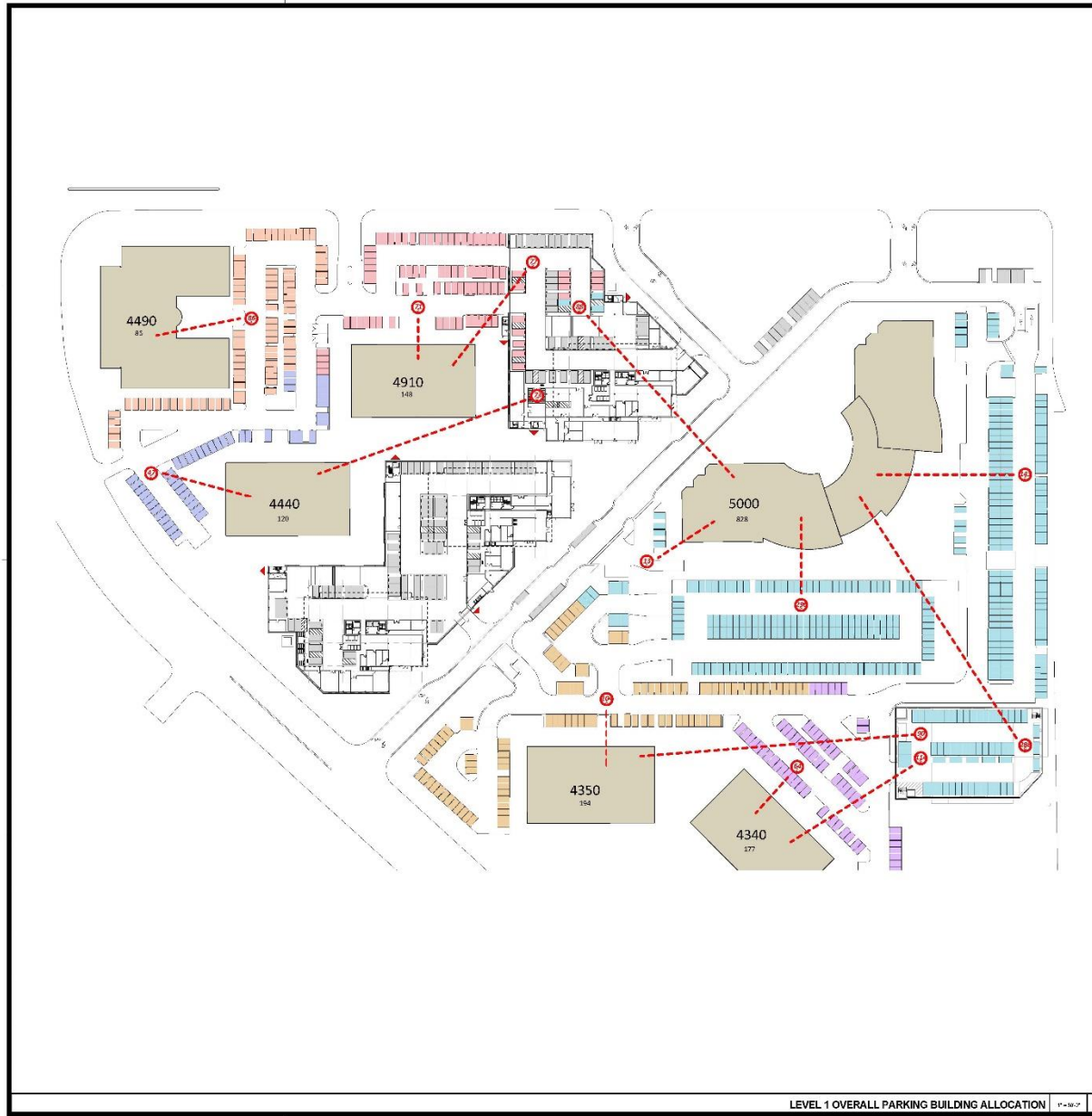
Land Use	ITE Code	Trips Per Dwelling Unit	
		AM Peak Hour	PM Peak Hour
Residential Condominium	230	0.44	0.52
High-Rise Condominium	232	0.34	0.38
Luxury Condominium	233	0.56	0.55
Source: Institute of Transportation Engineers (ITE) <i>Trip Generation Manual</i> 9 th Edition			

By choosing to use the higher Luxury Condominium trip rates, the trip estimates for the Project were more conservative. The Project could develop as either standard Residential Condominium or Luxury Condominium; the analysis results would cover either product type.

Response 16

The City has not initiated a process to update its General Plan. It is speculative to determine what changes will occur to the General Plan during its update process. As currently proposed, the Project is consistent with the General Plan. Additionally, it is appropriate to utilize the General Plan approved at the time the Project is being considered for approval. The opinion of the commenter is noted. No further response is required.

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ALLOCATED PARKING PER BUILDING (ASSUMED)			
BUILDING STREET	BUILDING ADDRESS	% OF TOTAL BUILDING AREA (SQ FT)	ASSIGNED STALLS PER BUILDING (OF 1035 TOTAL)
Van Kester	4490	42,000	176
	4910	48,000	204
	4440	42,000	176
	4900	33,000	136
	4910	37,000	156
Total	202,000	848	338

PARKING STALLS BY BUILDING ADDRESS	COL. 1*
4490	176
4910	204
4440	176
4900	136
4910	156
Total	848

* R - RETAIL
 * G - GARAGE
 * S - SURFACE

SHOPOFF
 REALTY INVESTMENTS
 PARK OFFICE, SUITE 200, BEACH, CA 92604
 TEL: 949.448.8700

THE KOLL CENTER RESIDENCES
 CITY OF NEWPORT BEACH

REVISIONS	
NO.	DATE

SHEET TITLE
 PARKING OFFICE
 BUILDING
 ALLOCATION
 OVERALL
 DIAGRAM

SHEET NUMBER
 A-01.6

MVE
 + PARTNERS

1900 Main Street, Suite 800
 Irvine, California 92614
 949.899.2588
 www.mve-architects.com

CONCEPTUAL DESIGN

LEVEL 1 OVERALL PARKING BUILDING ALLOCATION 11-16-21 1

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Letter C-9a Von Karman Corporate Owners Association

Dana Haynes, President

October 16, 2017

Von Karman Corporate Owners Association

4340 Von Karman, Suite 110
Newport Beach, California 92660

October 16, 2017

Sent via email: rung@newportbeachca.gov

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

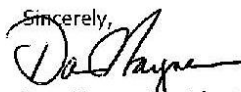
Re: Request for a Minimum 20-Day Extension of the Public Comment Period for the Draft Environmental Impact for the Koll Center Residences Project; SCH No. 2017011002

Dear Ms. Ung:

I am the President of the Von Karman Corporate Owners Association (VKCOA), which represents the owners of the building located at 4340 Von Karman. Von Karman Corporate Owners Association is a Nonprofit Mutual Benefit Corporation established in 2015. It was formed to provide for the management, maintenance and care of the real and personal property located at 4340 Von Karman, directly impacted by the proposed development. Our building is 4 stories tall and contains approximately 68,000 rentable square feet.

VKCOA requests an extension of the draft environment impact report (DEIR) comment period for the Koll Center Residences Project to November 16, 2017. The City's current 45-day comment period will close on October 27, 2017. Moreover, we request the rescheduling of the Study Session, which was canceled. The cancellation does not provide an opportunity for the members of VKCOA to participate in the process and obtain a full understanding of how the proposed project will impact their views, parking and access.

Thank you for your consideration of this request to extend the close of the comment period for the Koll Center Residences Project to November 16, 2017 at 5:00 p.m.

Sincerely,


Dana Haynes, President
Von Karman Corporate Owners Association
dhaynes@citivestinc.com
(949) 705-0408

1

Response 1

The 45-day public review period for the Draft EIR was extended. Rather than ending on October 27, 2017, the review period was extended to November 13, 2017. With respect to the Study Session, the City of Newport Beach Planning Commission Study Session has been rescheduled for January 18, 2018.

Letter C-9b Von Karman Corporate Owners Association

Dana Haynes, President

November 6, 2017

Von Karman Corporate Owners Association

4340 Von Karman, Suite 110
Newport Beach, California 92660

November 6, 2017

Sent via email: rung@newportbeachca.gov

Rosalinh Ung, Associate Planner
City of Newport Beach
Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Re: Comments on Draft Environmental Impact for the Koll Center Residences Project; SCH
No. 2017011002

Dear Ms. Ung:

I am the President of the Von Karman Corporate Owners Association (VKCOA), which represents the owners of the building located at 4340 Von Karman. Von Karman Corporate Owners Association is a Nonprofit Mutual Benefit Corporation established in 2015 and was formed to provide for the management, maintenance and care of the real and personal property located at 4340 Von Karman, directly impacted by the proposed development. The building is 4 stories tall and contains approximately 68,000 rentable square feet.

On behalf of VKCOA, we have the following comments on the Draft Environment Impact Report (DEIR) for the Koll Center Residences Project:

1. The proposed project eliminates existing and convenient parking for the three office buildings located at the corner of Von Karman and Birch and fails to replace the lost parking in a convenient location. Instead of replacing the parking within the proposed new parking structures located adjacent to the office buildings, the Project proposes to replace a significant portion of the lost parking spaces with parking spaces located in a new parking structure in front of 4340 Von Karman, over 1000 feet away from the three office buildings. Empirical evidence and research indicates this distance is too far away for the dislocated occupants of the three buildings to use, and instead, employees and visitors will park in front of and around our neighbor, 4350 Von Karman. In-turn, our neighbor's occupants will be forced to park in front of our building.

The DEIR fails to adequately disclose and analyze this significant impact and to identify feasible alternatives, including, but not limited to: a) all free day valet service at entrances to existing buildings, and/or b) replacement of all of the lost parking for the three office buildings within smaller parking structures and surface parking located directly adjacent to the three office buildings, among other alternatives and mitigation measures.

1

Von Karman Corporate Owners Association

4340 Von Karman, Suite 110
Newport Beach, California 92660

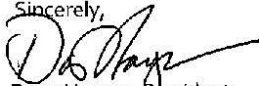
- 2. The proposed parking structure will impair existing views and reduce natural light from 4340 Von Karman and will bring more traffic directly in front of our office building. As discussed in Item 1 above, these impacts are not adequately disclosed or analyzed and must be addressed in a revised DEIR. As part of that revised analysis, alternatives and mitigation such as but not limited to, reducing the size and height of the parking structure to eliminate significant impacts associated with diminution of views, reduced natural light and increased traffic and congestion, must be considered. This modification should be paired with a significant reduction in the scale of the Project (beyond that analyzed in the reduced density alternative).

- 3. If a new parking structure is built in front of 4340 Von Karman, the City needs to condition that the Developer and the Koll Company cannot add any additional parking charges to the 4340 Von Karman and that Von Karman be allocated 272 parking spaces in the parking lot and structure (4 parking spaces per 1,000 sf). The existing parking allocation of 3.15/1,000 sf is inadequate and the proposed Project will only exasperate the problem. The revised discussion of parking impacts must acknowledge existing parking deficits even if not directly caused by the Project.

2

3

Sincerely,



Dana Haynes, President
Von Karman Corporate Owners Association
dhaynes@citivestinc.com
(949) 705-0408

Response 1

The parking areas in front of and to the sides of the 4350 Von Karman Avenue buildings would be reduced at the completion of Phase 3 associated with the reconfiguration of parking in this area; see Figure 3-19, *Parking Use Allocation*, in the Draft EIR. In addition to the 492 parking spaces in the new free-standing parking structure, as addressed in Section 3.0, *Project Description*, of the Draft EIR, 238 parking spaces would be provided for existing office tenants in the Building 1 Parking Structure. This additional parking would more than offset the change in parking in that area. The walk from the free-standing parking structure to the 4340 Von Karman Avenue office building would be approximately 200 to 300 feet, and approximately 400 feet to the 4350 Von Karman Avenue office building.

There will be no cost to park in the new parking structure. The new free-standing parking structure, at the southeast corner of the project site, would most logically be used by the employees of the buildings on the southeast side of the spine street – 5000 Birch Street, 4340 Von Karman Avenue and 4350 Von Karman Avenue – which would be the buildings closest to the structure. The remaining surface parking on the northwest side of the spine street road and the new structured office parking in Building 1 would most logically be used by the employees of the buildings on the northwest side of the main spine road – 4910 Birch Street, 4490 Von Karman Avenue and 4440 Von Karman Avenue.

The attached diagram shows the locations of each of the parking areas throughout the site as they correlate to the locations of the various office buildings. The purpose of this this diagram is to demonstrate that the parking areas closest to each building will provide adequate parking.

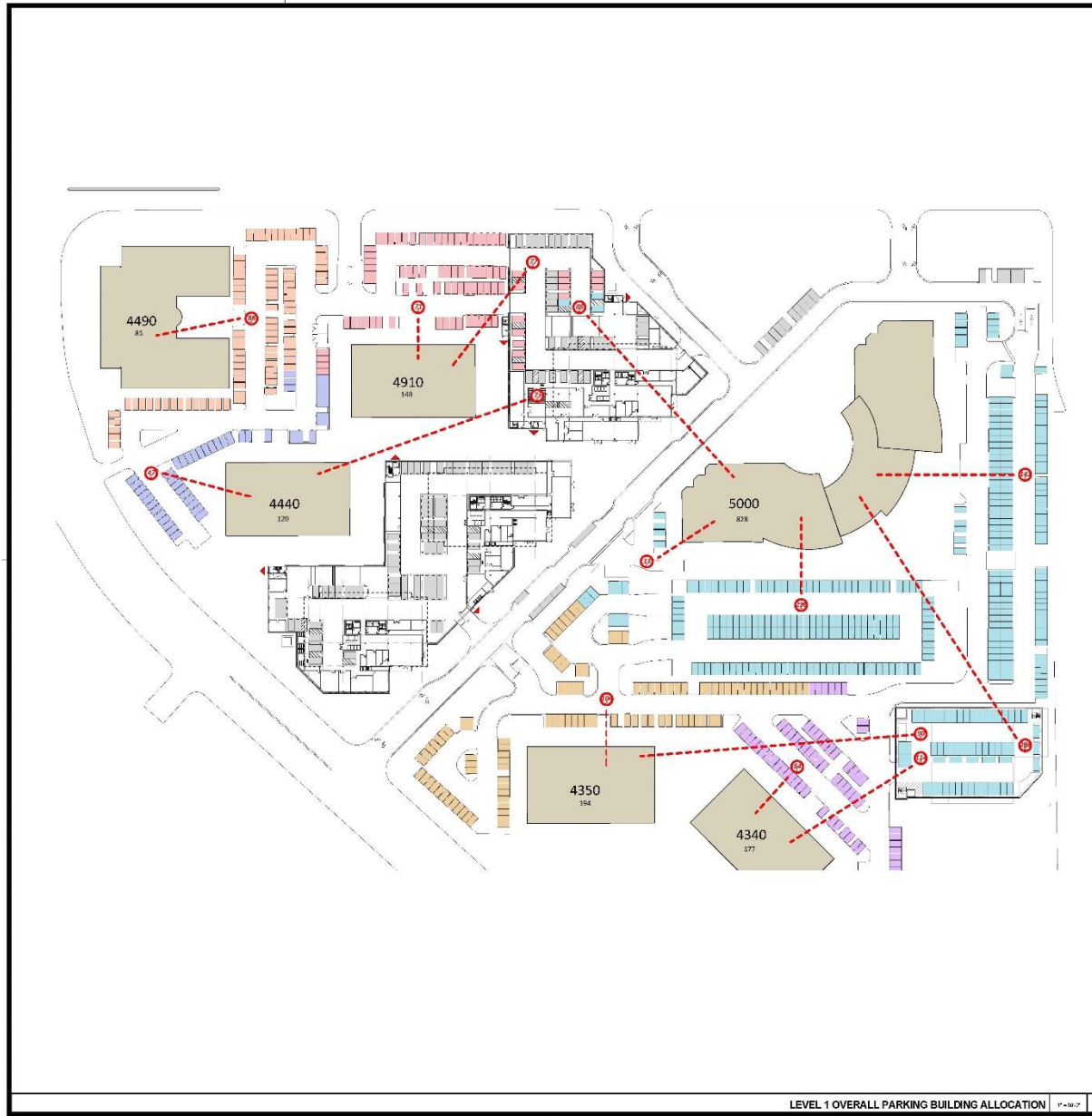
Response 2

A thorough analysis of visual resource impacts and shade/shadow impacts associated with both the parking structures and the residential buildings is provided in Section 4.1, *Aesthetics and Visual Resources*, of the Draft EIR. Additionally, Section 15126.6(a) and (b) of the State CEQA Guidelines states that “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.” The EIR concluded that no significant and unavoidable aesthetics impacts would occur with Project implementation. Thus, the need to further analyze a reduction in aesthetics impacts is not warranted. Additionally, a Reduced Density Alternative was chosen to be analyzed. Refer to Section 6 of the Draft EIR.

Response 3

There will be no cost to park in the new parking structure. The structure is a part of the common parking area. There is no allocation of parking spaces by office building, based on the existing parking arrangement, unless these spaces are located within the individual property.

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ALLOCATED PARKING PER BUILDING (ASSUMED)			
BUILDING STREET	BUILDING ADDRESS	BUILDING AREA (SQ FT)	ASSUMED STALLS PER BUILDING (SQ FT/STALL)
VIA RAYBURN	4490	82,000	170
	4910	48,000	170
	4440	42,000	85
	4900	33,000	85
	4910	57,000	170
Subt	5000	293,000	570
		546,000	1800

PARKING STALLS BY BUILDING ADDRESS	COUNT
4490	170
4910	170
4440	85
4900	85
4910	170
5000	570
TOTAL	1350

R - STALL COUNT
 G - STALL LOCATION
 S - GARAGE
 T - SURFACE

SHOPOFF
 REALTY INVESTMENTS
 PARK OFFICE, SUITE 200, RAYBURN BLVD, CA 92664
 TEL: 949.448.8700

THE KOLL CENTER RESIDENCES
 CITY OF NEWPORT BEACH

REVISIONS	
DESCRIPTION	DATE

SHEET TITLE
 PARKING OFFICE
 BUILDING
 ALLOCATION
 OVERALL
 DIAGRAM

SHEET NUMBER
A-01.6

MVE
 + PARTNERS
 1900 Main Street, Suite 800
 Irvine, California 92614
 949.899.2388
 www.mve-architects.com

CONCEPTUAL DESIGN

LEVEL 1 OVERALL PARKING BUILDING ALLOCATION 11-16-21 1

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Letter C-10 Rick Westberg
October 26, 2017

October 26, 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001

Dear Ms. Ung:

I am a resident of and have also located my business in Newport Beach. I have lived here with my family for over 10 years and love our great city.

I have reviewed the proposed mixed-use plan for Koll Center Newport and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed-use nature of the proposed development will only improve the quality and value of the surrounding properties.

Newport Beach has an enormous competitive advantage of bringing high paying jobs to our City. We need to provide the kind of housing options that appeal to the workforce associated with these new jobs to ensure the growth of our local economy and the sustainability of our City. I believe that providing this housing product type in this area will not only do that, but will also reduce traffic over the long-term much to the chagrin of the usual NIMBYs.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,

Rick Westberg
304 Colton Street
Newport Beach, CA 92663

1

Response 1

The commenter’s support for the Project is noted. No further response is required.

Letter C-11 **Gregory Puccinelli**
October 25, 2017

October 25, 2017
RECEIVED BY
COMMUNITY
DEVELOPMENT
OCT 30 2017

Ms. Rosalinn Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

CITY OF
NEWPORT BEACH

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001

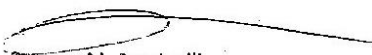
Dear Ms. Ung:

I am a resident of Newport Beach. I have lived here with my family for years and love our great city.

I have reviewed the proposed plan and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed use nature of the proposed development will only improve the quality and value of the surrounding properties.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,


Gregory M. Puccinelli
3078 Corte Portofino
Newport Beach, CA 92560

1

Response 1

The commenter's support for the Project is noted. No further response is required.

Letter C-12 Darrin Norton
October 31, 2017

October 31st , 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001

Dear Ms. Ung:

I am a resident of Newport Beach. I have lived here with my family for years and love our great city.

I have reviewed the proposed plan and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed use nature of the proposed development will only improve the quality and value of the surrounding properties.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,

Darrin Norton
1325 Mariners Drive
Newport Beach CA 92660

1

Response 1

The commenter’s support for the Project is noted. No further response is required.

Letter C-13 Robert Anderson
October 2017

October , 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001

Dear Ms. Ung:

I am a resident of Newport Beach. I have lived here with my family for years and love our great city.

I have reviewed the proposed plan and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed use nature of the proposed development will only improve the quality and value of the surrounding properties.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,



Robert Anderson
611 Lido Park Drive, 6B
Newport Beach, CA 92663

1

Response 1

The commenter’s support of the Project is noted. No further response is required.

Letter C-14 C. Jackson Investigations, Inc.

Cameron Jackson
November 1, 2017

From: Cameron Jackson [mailto:cameron@cjacksoninvestigations.com]
Sent: Wednesday, November 01, 2017 6:32 PM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Subject: Koll Center Condo Project

Rosalinh,

I am an owner here in the Koll Center. I was previously opposed to this project. However, since attending the community meeting on Monday night, I am now SUPPORTING the project. Please register my support to the appropriate officials. Thank you.

1

Sincerely,

Cameron
Jackson

Please be sure to CC my office manager Cynthia Plaxton on all emails. Thank you! cynthia@cjacksoninvestigations.com

Best Private Investigator - 2017, OC Weekly
Certified Professional Investigator
Certified Social Media Intelligence Expert
CA Licensed Investigator and CALI Member

Office: 949-892-5388
Cell: 949-892-0533
Fax: 949-207-6809

C. Jackson Investigations, Inc.
PI #25146
www.cjacksoninvestigations.com

4340 Von Karman Avenue
Suite 370
Newport Beach, CA 92660

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Response 1

The commenter's support of the Project is noted. No further response is required.

Letter C-15 Madison Street Partners

Paul Root, Partner

November 1, 2017

November 1, 2017

Ms. Rosalind Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL - 250 Units
Planned Community Amendment No. PC2015-002
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-002

Dear Ms. Ung:

I was born at Hoag Hospital in 1975 and have lived in Newport Beach ever since. I am very proud to be from such a great place that offers something for everybody. While I believe in keeping the city's culture, history and integrity intact, I also believe it's essential to be able to evolve with the changing times so that our offspring and new residents whose values are consistent with that of the City of Newport Beach may also have an opportunity live here.

That said, I have reviewed the proposed plan and feel that adding much needed residential and retail will be benefit our area. The mixed use nature of the proposed development will only improve the quality and value of the surrounding properties, many of which are old and have deferred maintenance.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it. I appreciate the hard work that you and the Planning Division put forth to keep our city a desired location to be a part of for years to come.

Sincerely,




Paul Root
Partner
Madison Street Partners
4100 MacArthur Boulevard, Suite 350
Newport Beach, CA 92660

1

www.mspcre.com

4100 MACARTHUR BOULEVARD SUITE 350 NEWPORT BEACH CA 92660
949.585.9865 T 949.585.9866 F



Response 1

The commenter's support of the Project is noted. No further response is required.

Letter C-16 **Scott Watson**
November 1, 2017

November 1, 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001


Dear Ms. Ung:

I am a resident of Newport Beach. I have lived in Newport Beach for many years and I care deeply about our wonderful city.

I have reviewed the proposed plan and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed use nature of the proposed development will only improve the quality and value of the surrounding properties.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,



Scott Watson
20 Colonial Drive

1

Response 1

The commenter's support of the Project is noted. No further response is required.

Letter C-17 Mark E. Foster
November 2, 2017

November 2, 2017

Mark E. Foster
1935 Port Cardiff Place
Newport Beach, CA 92660
(714) 427-7435
mfooster@swlaw.com

Ms. Rosalinh Ung
Associate Planner
City of Newport Beach (Planning Division)
1000 Civic Center Drive
Newport Beach, CA 92658-8915

Re: Support - Koll Residential - 260 Units
 Planned Community Amendment No. PD2015-001
 Site Development Review No. SD2015-001
 Tentative Tract No. NT 2015-001

Dear Ms. Ung:

My name is Mark Foster and I have been a resident of Newport Beach for the last 10 years, where I reside with my wife and two daughters. We love Newport Beach for the beautiful coastline, shopping, restaurants and entertainment. I cannot imagine raising my family in any other city. As the current population of Newport Beach ages and the city grows bigger every year, the area will greatly benefit by the addition of a 260 residential unit project located near Jamboree and MacArthur.

The City created the General Plan with a specific vision and this project is an important facet of the city's plan. It allows residents to live where they work and shop and will reduce traffic levels. Moderately priced housing is greatly needed and this area is perfect for Newport's aging population as well as making Newport affordable for our children. The project does not even require a variance because it is already a key component of the General Plan for the area.

Given the numerous benefits this project will bring to the City of Newport Beach and its residents, as well as its current inclusion in the General Plan, **I strongly urge you to consider moving forward with the 260 residential unit development.** Please contact me with any questions or concerns.

Very truly yours,

Snell & Wilmer



Mark E. Foster

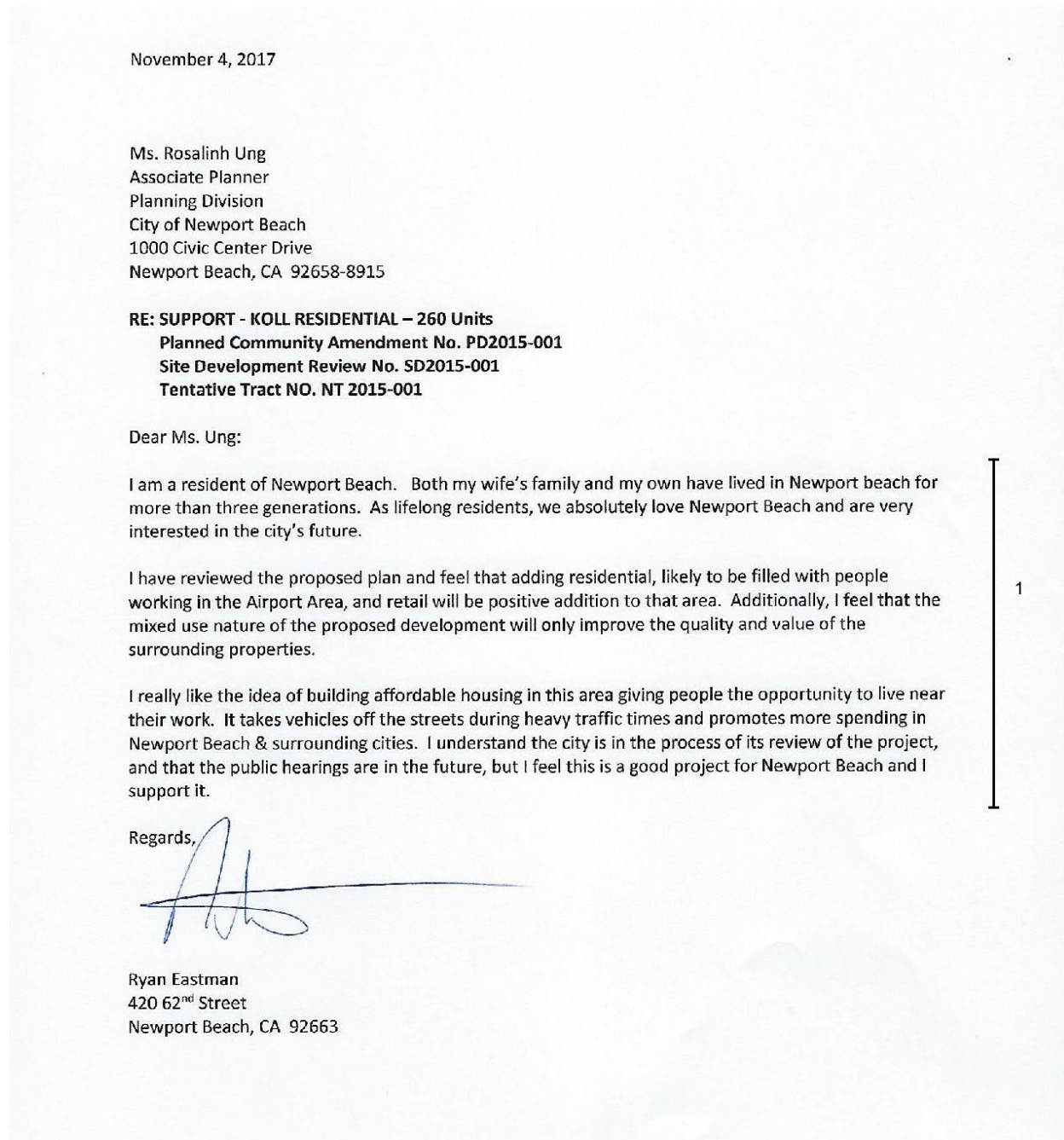
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Response 1

The commenter's support of the Project is noted. No further response is required.

Letter C-18 Ryan Eastman
November 4, 2017



Response 1

The commenter's support of the Project is noted. No further response is required.

Letter C-19 Coyne Development Corporation

Steve Coyne, President

November 6, 2017



November 6, 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658

**RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001**

Dear Ms. Ung:

I am a lifelong resident of Newport Beach, and I have a family with three kids that all attend Newport Harbor High School. My parents and siblings also live in our wonderful community, and enjoy many of the things that Newport Beach has to offer.

As a real estate developer and a general contractor I understand the process of changing uses and analyzing the total impact of a development opportunity better than most people. That said, I feel that the mixed-use nature of the development that Koll Residential has proposed will only improve the quality and value of the surrounding properties, and add character to a somewhat underutilized area of Newport.

As the development approvals approach their public review processes please know that many people in the Newport Beach area are very much in support of this proposal, and those who are not in support most likely don't understand traffic impacts, economic benefit and/or the necessary evolution of real estate.

Please don't hesitate to contact me with any questions or comments.

Very truly,
Coyne Development Corporation

Steve Coyne
President

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1501 Westcliff Drive Suite 300 * Newport Beach, CA 92660 * 949-300-9632

Response 1

The commenter's support of the Project is noted. No further response is required.

Letter C-20 Jack and Robyn Hamilton
November 6, 2017

November 6, 2017

Ms. Rosalinh Ung
Associate Planner
Planning Division
City of Newport Beach
1000 Civic Center Drive
Newport Beach, CA 92658-8915

RE: SUPPORT - KOLL RESIDENTIAL – 260 Units
Planned Community Amendment No. PD2015-001
Site Development Review No. SD2015-001
Tentative Tract NO. NT 2015-001

Dear Ms. Ung:

I am a resident of Newport Beach. I have lived here with my family for years and love our great city.

I have reviewed the proposed plan and feel that adding residential, likely to be filled with people working in the Airport Area, and retail will be positive addition to that area. Additionally, I feel that the mixed use nature of the proposed development will only improve the quality and value of the surrounding properties.

I understand the city is in the process of its review of the project, and that the public hearings are in the future, but I feel this is a good project for Newport Beach and I support it.

Regards,
Jack and Robyn Hamilton
339 Catalina Dr.
Newport Beach, 92663

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Response 1

The commenter’s support of the Project is noted. No further response is required.

Letter C-21 Dean Laws
November 8, 2017

From: Dean Laws [<mailto:stelmosfire@cox.net>]
Sent: Wednesday, November 08, 2017 11:14 AM
To: Ung, Rosalinh <RUng@newportbeachca.gov>
Subject: Koll Center Residences

Dear Ms. Ung,

Combining this project with Uptown Newport would mean almost 2000 new residences in a very small area.

I doubt those people who drafted and then voted on Greenlight measures ever envisioned that kind of density! They certainly never tried to get up Jamboree in that area at 5pm now, let alone after a project like this might be built. No one envisioned the kind of density that The City of Irvine would allow along what I call Jamboree Canyon.

And to suggest that the project(s) would have no impact on traffic is absurd. 2000 new residents in an area that is already badly congested? Comparing it to the traffic generated by the semi-conductor manufacturer that was there seems, honestly, insulting to the people of Newport Beach.

Please don't let Newport Beach become another Irvine, Pasadena or Los Angeles. All great cities destroyed by short sighted planning and too much influence from developers.

Thank you.

Dean Laws
stelmosfire@cox.net

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Response 1

The Draft EIR evaluates traffic that would be generated by the Proposed Project. Based on the significance criteria of the cities of Newport Beach and Irvine, no significant traffic impacts would occur.

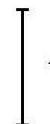
Letter C-22a Susan Skinner
November 8, 2017

November 8, 2017
Comments on the Koll Residences project EIR.

Dear Ms. Ung,

The following are my comments on the Koll Residences EIR:

1) The height of the proposed developments exceeds the allowable heights in the Planned Community text for the Koll Center, which is currently 12 stories tall.



2) The General Plan allows a density of 50 dwelling units per acre, but this project exceeds that. The project calculates the location as 13.16 acres, but it is not. That calculation includes all the property within the Koll complex that does not currently have a building on it, but this is an erroneous calculation. The acreage included is primarily surface parking for the surrounding buildings. Since the actual residences will have parking as part of the buildings, the inclusion of this land is most appropriately excluded. Even the parking garage that is gerrymandered into the acreage is designed (by the applicants own description) to provide parking for the commercial buildings and to replace the parking displaced by the residential units.



The actual area of the project is much smaller. Per the applicant's description, the acreage used for the buildings is 3.74 acres. If the park acreage is included, the total is 4.9 acres or enough to allow 245 residential units, but not 260. Thus, a General Plan amendment will be required if the current dwelling units/acre ratio remains.

Also, because the actual acreage is not 13.16, but 4.9 acres, it does not meet the 10-acre minimum required for a residential village.

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3) The Planned Community requires a specified acreage of landscaping based on the intensity of the buildings within section B, and the current project does not meet those requirements.

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4) The General Plan allows 1,052,880 sq ft of development in Anomaly Location 2 of Statistical Area L4. This location is already at its development limit for sq footage. The project describes 691,162 sq ft of residential space, but according to table 3.2 and 3.3 in the EIR, only 483,295 of this actually is contained within the 260 dwelling units. The remaining 207,867 sq ft are NOT part of the dwelling units. The EIR does not break out the sq footage of enclosed nonresidential space such as hallways and elevator shafts, but it does describe residential amenities on the third floor. These residential amenities certainly exceed 40,000 sq ft based on the fact that 207,867 sq ft of the building are not dwelling units.

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Greenlight requires a vote for additional entitlements over 40,000 sq ft. While the *dwelling units* themselves are included in the General Plan, the additional sq footage for amenities is not and clearly exceeds that 40,000 sq ft limit. Thus, a Greenlight vote is needed to approve this project in its current iteration.

5) While the General Plan allows dwelling units, it does not specify the size of those dwelling units. Although the developer clearly would like to make as much money as possible, the density of the buildings squeezed in the surface parking lot of the Koll Center represents an unacceptable increase in density. The city Planning Commission should take into account the political environment of

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Newport Beach, which is clearly one in which high density, high rise development is not acceptable. Because the entitlement of the dwelling units is baked into the General Plan, the building of the units cannot be denied, but the size and density of them can be. The location of these buildings (on a parking lot in the Koll Center) is not a particularly desirable location and it would be a much better use to have low intensity, affordable housing in this location instead.

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I herein include the comments submitted by or on behalf of of Jim Mosher, Chatten-Brown and Carstens (SPON law firm), Shute, Mihaly and Weinberger (Olen), Buchalter (Olen), Olen Properties (Julie Ault, Olen General Counsel), Meyer Properties and Bruce Bartram

6

Thank you,

Susan Skinner
2042 Port Provence Place
Newport Beach

Response 1

As addressed in the Draft EIR, the Federal Aviation Administration (FAA) has conducted an aeronautical study (pursuant to FAA Part 77 regulations) and has ruled that Buildings 1, 2, and 3, and the free-standing parking structure would not exceed obstruction standards and would not be a hazard to air navigation. Buildings 1, 2, and 3 would not exceed 160 feet above ground level. The parking structure would not exceed 56 feet above ground level.

As noted by the commenter and addressed in the Draft EIR, the Proposed Project would require an amendment to the zoning text; please see Section 3.0, *Project Description*, and Section 3.9, *Land Use and Planning*. As disclosed in the Draft EIR, the project site is zoned “Koll Center Newport Planned Community (PC-15 Koll Center)” and zoning regulations are provided in the Koll Center Planned Community Development Standards (PC Text) adopted by Ordinance No. 1449 and subsequently amended several times. PC-15 Koll Center is separate from, and not a part of, the General Plan.

The Proposed Project includes an amendment to PC-15 Koll Center to include provisions allowing for residential development consistent with the *City of Newport Beach General Plan* and the Airport Business Area Integrated Conceptual Development Plan (ICDP). The 12-story building height requirement applies to professional and business office developments within PC-15 Koll Center. The proposed changes to PC-15 Koll Center include a Public Park Overlay and a Mixed-Use Residential Overlay, the latter which identifies building height rather than the number of stories associated with site-specific development. With respect to building height, it states:

Building Height

1. No building or structure shall exceed 160 feet above the ground level. Ground level shall be the finished grade established by an approved grading plan.
2. Buildings and structures shall not penetrate Federal Aviation Regulation (FAR) Part 77, Obstruction—Imaginary Surfaces, for John Wayne Airport unless approved by the Airport Land Use Commission (ALUC).
3. In compliance with FAR Part 77, applicants proposing buildings or structures that penetrate the 100:1 Notification Surface shall file a Form 7460-1, Notice of Proposed Construction or Alteration with the FAA. A copy of the FAA application shall be submitted to the ALUC and the applicant shall provide the City with FAA and ALUC responses.

Potential environmental impacts associated with the development of the Project with 13-story buildings up to 160 feet above the ground level are evaluated in the Draft EIR.

Response 2

The Project development area is 12.56 acres which is consistent with General Plan Land Use Policy 6.15.6 (Size of Residential Village) which allows a project area to include multiple parcels that are contiguous to or that face one another across the street in a different land use category. For density qualification, the Project has a total of 8.46 acres of net land area (Lots 1, 2, 3, 4, and 5 of the proposed tentative tract map),

exclusive of existing and new right-of-way, public pedestrian ways, and neighborhood park for a Project density of 30.7 dwelling units per acre.

Response 3

The commenter references landscape requirements for office uses associated with PC-15 Koll Center. The Please refer to Figure 3-4, *Conceptual Landscape Plan*, in the Draft EIR. The landscape plan will be subject to City approval as a part of Site Development review process.

Response 4

As addressed in Section 3.0, *Project Description*, and Section 4.9, *Land Use and Planning*, the Project requires the approval of a transfer of development rights to transfer 3,019 sf of unbuilt office/retail from Koll Center Planned Community Development Standards (PC 15) Koll Center Site A (Anomaly Location 1) to Site B (Anomaly Location 2) within Statistical Area L4 (Airport Area). The anomaly locations for the Airport Area are shown on Figure 3-3 of the Draft EIR.

Per the 2006 General Plan, Anomaly Location 1 allows for 460,095 sf of development. There is currently 457,076 sf of development in Anomaly Location 1, with 3,019 sf of remaining unbuilt square footage under the control of Koll Center Newport. Should the City approve the transfer as a part of the Proposed Project, Anomaly Location 1 would be capped at 457,076 sf. Anomaly Location 2 would increase from 1,052,880 to 1,055,899 sf, a net increase of 3,019 sf. No other changes to Land Use Element Table LU2, Anomaly Locations, would occur.

As a part of the Proposed Project, the City will consider an amendment to the Koll Center Planned Community Text to allow for the transfer of 3,019 gross sf of unused office/retail square footage from Office Site A (Anomaly Location 1) to Office Site B (Anomaly Location 2) of Koll Center Newport. Residential amenities do not count towards development limits; they are a part of the dwelling unit count.

The transfer of 3,019 sf of unused development rights between Anomaly Location 1 and Location 2 does not require a General Plan Amendment. The transfer between the two areas does not cause a change in land use or trigger the voter approval requirements set forth in City Charter Section 423. General Plan Land Use Element Policy 4.3 allows for transfers of development rights and is implemented by Newport Beach Municipal Code Section 20.46.030 which permits transfers of development rights where the donor and receiver sites are located within the same General Plan Statistical Area. Both sites are located within the Koll Center Newport Planned Development Plan and General Plan Land Use Statistical Area L4. Both Anomaly Locations 1 and 2 are in Statistical Area L4 (see attached General Plan Land Use Element Figure LU3). There is available remaining square footage within Statistic Area L4 to accommodate the transfer.

As noted in the General Plan Housing Element, all housing opportunity sites, including the project site, are not subject to City Charter Section 423 as a result of voter approval of Measure V in November 2006. Section 423 of the City Charter (Measure S) requires voter approval of a project that increases density, intensity, or peak hour trip, above that provided for in the General Plan. Significance is quantified as 100 or more dwelling units, over 100 peak hour trips, or 40,000 or more square feet of nonresidential floor area. Charter Section 423 applies exclusively to General Plan amendments.

Response 5

The opinions of the commenter are noted.

Response 6

Please refer to the responses to the respective comment letters noted.

Letter C-22b Susan Skinner
November 13, 2017

-----Original Message-----

From: Susan Skinner [<mailto:seskinner@me.com>]

Sent: Sunday, November 12, 2017 10:29 AM

To: Ung, Rosalinh <RUng@newportbeachca.gov>

Subject: One additional comment for the Koll EIR

Rosalinh,

I would appreciate having you affirm that you received my letter sent via Email last Friday regarding the Koll Residences EIR.

I have one more comment to add to that, which is that I believe that the city's decision not to include parking garages in the sq footage calculated for Greenlight is an error. Based on my reading of the original Greenlight, intensity of development is one of three primary concerns of the initiative (which addressed traffic, density and intensity). The addition of parking garages to these buildings clearly adds intensity, but has not been counted for Greenlight and I consider this to be not in keeping with the intent of Greenlight. Additionally, part of the parking garage will be used for parking of the other developments already on site and thus cannot be considered to be part of the necessary parking for the dwelling units.

Thank you,

Susan Skinner

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Response 1

As noted in the General Plan Housing Element, all housing opportunity sites, including the project site, are not subject to City Charter Section 423 as a result of voter approval of Measure V in November 2006. Section 423 of the City Charter (Measure S) requires voter approval of a project that increases density, intensity, or peak hour trip, above that provided for in the General Plan. Significance is quantified as 100 or more dwelling units, over 100 peak hour trips, or 40,000 or more square feet of nonresidential floor area. Charter Section 423 applies exclusively to General Plan amendments. Therefore, the square footage of the parking structures is not recognized as floor area per the General Plan Land Use Element.

The opinion of the commenter is noted. The proposed Project is considered consistent with applicable transportation policies of SCAG, the City's General Plan, and the California Coastal Act. A project can have environmental impacts while being consistent with planning policies.

Letter C-23 **Jim Mosher**
November 13, 2017

November 13, 2017

Rosalinh Ung, Associate Planner
City of Newport Beach - Community Development Department, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660 (via Rung@newportbeachca.gov)

Re: Comments on Koll Center Residences Draft EIR, State Clearinghouse No. 2017011002

Dear Ms. Ung,

In the several weeks it has been available for public review, I have not had time to thoughtfully review the above-referenced document and hence hope to be able to do so, and submit additional comments, prior to the public hearings on the project.

In the meantime, among my many initial concerns, some major ones are these:

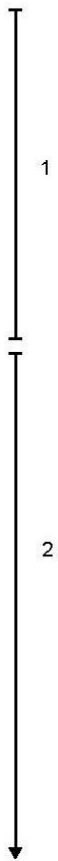
1. From the public's perception, release of the DEIR was long delayed. The contract with Kimley Horn (C-7030-1) was awarded on February 23, 2016, with a Scoping Meeting expected in near the end of April and DEIR expected for public review by mid-September, 2016. For reasons that have not been publicly explained, the Scoping Meeting was delayed to January 18, 2017, and the DEIR was not available until September 13, 2017 (a year later than planned and taking 8 months from scoping to completion, instead of the anticipated 5 months).

One assumes this means there were problems or concerns about the proposal, and unanticipated complications in preparing the DEIR. If that is true, it would have seemed helpful to disclose what those were so the public could consider whether they have been adequately addressed.

2. In 2006, Newport Beach voters were asked to approve certain Land Use Tables in the Land Use Element of a General Plan tentatively adopted by the Council pending that approval. In addition to setting general land use limits, those tables set specific development limits for a number of "Anomalies."

The present proposal appears to require the transfer of 3,019 sf of that voter-approved development limit from one Anomaly to another. I have not been able to find any explanation of why that change is necessary (is there no unbuilt development left in the present Anomaly?). Nor, if it is necessary, have I found any explanation of why that change in allowances would not trigger the need for a General Plan Amendment.

While it is true that in General Plan Policy LU 4.3 (which was never presented to or approved by voters) the City Council foresees that future transfers may occur, and even be appropriate under certain circumstances (including that it benefit the City with a better result), nothing in the General Plan says that as part of the granting of a transfer the Land Use Tables don't have to be amended to reflect the resulting allocations (including the creation of new Anomalies if the transfers involve moving allocations from or to areas



not currently covered by an Anomaly). Indeed, to *not* amend the tables would create confusing inconsistencies in land use regulations.

cont'd
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3. In addition to potential impacts on traffic, as I stated at the Scoping Meeting, it should be obvious one of the major concerns about this proposal should be how it will affect the aesthetics of what is arguably one of the more beautiful and aesthetically-planned, "low density" open-space office parks in Orange County. I am at a loss as to how the public is expected to assess the adequacy with that has been addressed in the absence of anything showing us what the project, if built, including its parking garage, would actually look like in the context of the existing office park (including the adjacent Uptown Newport as proposed to be built out by the same developer). Aside from Figure 3-9 (apparently "taken" from an unidentified vantage point on the spine street, but sans parking structure, and from all one can tell as likely at an oasis in the Sahara sands of North Africa), I am unable to find anything at all showing how the new project would from ground level appear in the business park context, let alone from a variety of vantage points, including the adjacent streets and the proposed new public road through the site.

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The remainder of this is basically a set of random comments based on a very quick review of a rather arbitrary sampling of pages in the DEIR copies available in the public libraries (as well as online, since, as explained below, the library copies did not appear to contain the complete DEIR).

To my mind, the number of errors and inconsistencies encountered in those few pages creates serious doubts about the adequacy of the internal review, and therefore about the conclusions reached.

4. The DEIR copies available in the public libraries have a rear cover pocket containing a CD-ROM, enticingly labeled "*Koll Center Residences - Draft Environmental Impact Report with Appendices - September 2017*" [emphasis added]. As best I and the librarians have been able to tell, the CD-ROM contains nothing but a single file reproducing the 582 pages of the printed "Volume 1" (from the cover to page 9-12), with no appendices.

4

While it's true the appendices can be downloaded from the City website, only after doing so was I able to decipher the meaning of the mysterious titles found in "*Volume II LIST OF APPENDICES*" on page x of the print edition (for example, that "*Appendix G Phase I*" is actually the "*Environmental Site Assessment*," and "*Appendix K Sub-Area Master Plan Addendum*" is the "*IRWD Preliminary Sub-Area Master Plan Addendum*," which, knowing the true title, I would assume has something to do with water supply, since I believe Airport Area wastewater disposal is handled by the City of Newport Beach). This might make one think the authors were trying to obscure access to information, rather than facilitate it

5. My confidence in what I was reading was further shaken when I looked at the Project Description, and discovered it differed from that I saw in the Notice of Preparation – the 12.56 acre site of the NOP having grown to 13.16 acres with readers seemingly left to guess for themselves what happened. My theory (and it's only a theory) is this

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happened because “*The 4440 Von Karman Avenue office building is a part of the Project*” in the DEIR (per page 1-1 of the DEIR), and it was not in the NOP (per the paragraph starting at the bottom of page1 of the NOP). However, the exact boundaries of the development project are hard to guess from the DEIR since many of the diagrams (such as Figure 3-13) show much of the area (including the 4440 Von Karman building itself, and the parking lots to the north of it, unchanged. All of this is further confused by Figure 3-6, which appears to depict the in-fill project as consisting *only* of a 3.98 acre “Mixed-Use Residential Overlay” plus a 1.26 acre “Park Overlay” – much smaller than the newly claimed 13.16 acres.

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6. It seems incredible the “Elevations” of Figure 3-10 and “Building Sections” of Figure 3-11 have no indication of height.

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7. In that same vein, why do so many of the figures in the DEIR say they are “not to scale.” “Not to scale” generally means the proportions can’t be trusted. If so, what evidentiary value do they have. Do the DEIR authors mean they are drawn accurately to scale, but the scale is not specified? And if not, why is it not specified?

7

8. I share the puzzlement expressed by Allan Beek at the applicant’s sumptuously catered October 30 public presentation in the Central Library Friends Room about the “yellow brick roads” – by which I believe he was referring to the pedestrian pathways of, for example, Figures 3-13 and 3-14, which appear to meander across and along the vehicular through-lanes. Without further explanation, are pedestrians expected to similarly meander down these streets and scurry out of the way when they see cars coming?

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9. Figure 4-1 has numbered circles that presumably are intended to identify the locations of the projects listed in Table 4-1. But everything from “4” on appears to be one off, leading to great confusion. For example, “ExplorOcean” is shown in the Airport Area, a little northwest of the proposed project, when it is actually along the harbor, adjacent to the Balboa Pavilion.

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10. The “Determination/Status” in Table 4-1 is frequently and confusingly out of date.

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11. Figure 4.1-1 puzzlingly has what I believe to be the border between Newport Beach and Irvine (Campus Drive) mislabeled as “Birch St,” making the proposed project appear a smaller entity in a larger context than it really is.

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12. Figure 4.1-1 further diminished my confidence in the adequacy of the DEIR by labeling numerous measurements as “Height to Sea Level (NAVD 88).” Since building heights are a recurrent issue discussed in numerous places, the authors of the DEIR may wish to know that heights in the NAVD 88 system are not at all the same as the (constantly changing) “height to [mean] sea level.” In fact, the zero point of NAVD 88 is currently much closer to Mean Lower Low Water than to Mean Sea Level in the vicinity of Newport Beach.

12

On further examination, a large amount of text and exhibits in the DEIR needs to be revised to clarify if the elevations listed are NAVD 88 or relative to sea level (and if sea level, what kind and epoch).

Comments on Koll Center Residences DEIR - Jim Mosher (11/13/2017) Page 4 of 4

13. The DEIR refers in some places to the "Transfer of up to 3,000 sf of unbuilt office/retail from Koll Center Site A to Site B" (for example, on pages 1-2 and 3-19) and in others to the "transfer of up to 3,019 sf of unbuilt office/retail from Koll Center Site A to Site B (for example, page 3-5). Why the discrepancy? Which is correct? How is one expected to believe an EIR that can't keep its numbers straight?

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14. As I understand it, the 2010 Integrated Conceptual Development Plan envisions residential villages built **around** community parks. This proposal is clearly not for residences **around** a park but rather with residences having a park nearby, **to their side**. Where is that addressed, and why is that not a problem?

14

15. The proposed parking concept does not appear to be environmentally friendly. The construction of the parking structure seems designed to make parking convenient for future residential tenants while making it more difficult for the existing office workers. But the office workers will need to arrive and leave each day wherever they park. Whereas trips by the residential tenants will likely be more discretionary. Residents would seem incentivized to avoid unnecessary trips by car if the parking for *them* was the one made less convenient.

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16. Finally, I wonder if the applicant will given an opportunity to the review the comments received on the DEIR and suggest responses to them before the public and decision makers see the Final EIR?

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Again, the errors and discrepancies noted in this tiny sampling of pages makes me doubt the adequacy of the DEIR as a whole.

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Yours sincerely,

Jim Mosher (jimmosher@yahoo.com)
2210 Private Road,
Newport Beach CA 92660

Response 1

The commenter's opinions are not based in fact and do not raise a CEQA issue. No further response is required.

Response 2

Per the 2006 General Plan, Anomaly Location 1 allows for 460,095 sf of development. There is currently 457,076 sf of development in Anomaly Location 1, with 3,019 sf of remaining unbuilt square footage under the control of Koll Center Newport. Should the City approve the transfer as a part of the Proposed Project, Anomaly Location 1 would be capped at 457,076 sf. Anomaly Location 2 would increase from 1,052,880 to 1,055,899 sf, a net increase of 3,019 sf. No other changes to Land Use Element Table LU2, Anomaly Locations, would occur.

As a part of the Proposed Project, the City will consider an amendment to the Koll Center Planned Community Text to allow for the transfer of 3,019 gross sf of unused office/retail square footage from Office Site A (Anomaly Location 1) to Office Site B (Anomaly Location 2) of Koll Center Newport.

The transfer of 3,019 sf of unused development rights between Anomaly Location 1 and Location 2 does not require a General Plan Amendment. The transfer between the two areas does not cause a change in land use or trigger the voter approval requirements set forth in City Charter Section 423. General Plan Land Use Element Policy 4.3 allows for transfers of development rights and is implemented by Newport Beach Municipal Code Section 20.46.030 which permits transfers of development rights where the donor and receiver sites are located within the same General Plan Statistical Area. Both sites are located within the Koll Center Newport Planned Development Plan and General Plan Land Use Statistical Area L4. Both Anomaly Locations 1 and 2 are in Statistical Area L4 (see attached General Plan Land Use Element Figure LU3). There is available remaining square footage within Statistical Area L4 to accommodate the transfer.

The City tracks and updates the Anomaly tables as applicable.

Response 3

The commenter's opinions regarding Koll Center Newport and other office parks are noted. Figure 3-8 depicts the three buildings looking northwest. The Duke Hotel, Atrium Building and the Airport Tower on Von Karman Avenue, and one of the office buildings in MacArthur Court on Birch Street are visible in the background. Figure 3-9 also depicts the three buildings at the ground level looking northwest.

The Project plans have been available on the City's website (<http://www.newportbeachca.gov/trending/projects-issues/the-koll-residences>). Included are conceptual plans for the free-standing parking structure which would be located between the existing 5000 Birch Street parking structure, the 4340 Von Karman Avenue office building, and the Uptown Newport site.

Response 4

All copies of the CDs should have included the Draft EIR and the Draft EIR appendices. The commenter can obtain a copy of the CD at the City of Newport Beach. The titles of the appendices do not raise a CEQA issue; no further response is required.

Response 5

The commenter is correct that the project site acreage increased to reflect the inclusion of the 4440 Von Karman Avenue office building. As addressed in Section 3.0, *Project Description*, "...the 4440 Von Karman Avenue office building is a three-story (62 feet) structure located south of the 4490 Von Karman Avenue office building. The 4440 Von Karman Avenue office building is a part of the Project to allow for the inclusion of the property into the landscape plan including the provision of non-potable irrigation, as well as sidewalk improvements and the reconfiguration of accessible parking. No change in the square footage of the building is proposed as a part of the Project." This change, per CEQA, is not considered significant new information and, therefore, recirculation of the NOP was not deemed necessary.

With respect to Figure 3-13, this exhibit shows existing and proposed vehicular gates. Figure 3-6 depicts the proposed changes to PC-15 Koll Center to include a Public Park Overlay and a Mixed-Use Residential Overlay. Exhibits have different purposes.

General Plan Policy LU 6.15.6 requires that the overall mixed-use project site acreage must be a minimum of ten gross acres. This acreage may include multiple parcels if they are continuous or face one another across an existing street. The policy also allows staff to include part of a contiguous property in a different land use category (office, retail, etc.) to provide functionally proximate parking, open space, or other amenity (to create the mixed-use environment). The Proposed Project meets these requirements by having a site area of 12.56 acres as original proposed. This was changed from 12.56 to 13.16 with the inclusion of 4440 Von Karman Avenue property. Figure 3-13 shows the overall parking and access for the entire Koll Newport Center, including the proposed development. Figure 3-6 show the proposed overlay zone where the residential buildings and public park to be placed (as we do not want the residential units and park anywhere on Office Site B). Each of these figures are being used to illustrate certain information.

The density required by LU6.15.7 is calculated based on the net area of the parcels (Parcels 1, 2, 3 and 4 of the Tract Map) which is $8.46/260 = 30.7$ du/ac.

Response 6

As stated in Section 3.0, *Project Description*, "The 260 dwelling units would be in three, 13-story buildings with a maximum building height of 160 feet in conformance with the height restrictions set forth by the Federal Aviation Administration (FAA) Federal Aviation Regulations (FAR) Part 77."

Response 7

The commenter has identified which exhibits. The scale is not relevant to many of the exhibits. For example, Figure 3-13, shows existing and proposed vehicular gates; the location of the gates is the relevant information. In their original format, scaled exhibits have been prepared and are accurate; see the response to Comment 3. However, when reduced, the scale is modified. Figures 4.1-2a through 4.1-2h mistakenly reference that the images are not to scale; the images are to scale.

Response 8

The Project Applicant's presentation on October 30, 2017 was not sponsored by the City of Newport Beach. As previously addressed, Figure 3-13 shows existing and proposed vehicular gates. Figure 3-12 conceptually depicts existing and proposed pedestrian pathways and crosswalks within the project site

and connections to off-site locations. Figure 3-14 conceptually depicts the landscape plan which also shows walkways and crosswalks. As stated in Section 3.0, *Project Description*, “There are existing sidewalks along Birch Street and Von Karman Avenue. Additionally, there is a sidewalk along one side of Driveways 2, 3, and 4. The sidewalk at Driveway 4 extends to and fronts the 5000 Birch Street office building. As a part of the Project, walkways would be provided within the site and connect to these existing sidewalks along the streets (Figure 3-12). Walkways would be provided along the Project frontage to the spine street and into Buildings 1, 2, and 3; along a portion of the west side of Driveway 2; between Buildings 1 and 2 and the 4910 Birch Street office building; between Buildings 2 and 3 and the 4440 Von Karman Avenue office building; and on the west side of the free-standing parking structure.”

Response 9

The commenter has noted an inconsistency between Table 4-1 and Figure 4-1. Figure 4-1 has been revised to delete project location 3, and to renumber the subsequent cumulative project locations. The cumulative analysis provided in the EIR was based on the callouts of the figure and does not cause the analysis to be flawed.

Response 10

The information is current as of preparation of the Draft EIR.

Response 11

Figure 4.1-1 has been corrected and incorporated into the Final EIR. The mislabeling of Campus Drive as Birch Street does not affect the analysis contained in the EIR.

Response 12

Unless otherwise stated in the EIR, references are to height to grade. No revisions are required.

Response 13

The proposed revisions to the Koll Center Planned Community Development Standards (PC Text) would allow for a maximum of 3,019 gross square feet of commercial uses. The Project proposes 3,000 square feet (sf) of retail uses.

Page 1-2 has been revised as follows:

The Project also requires the approval of a transfer of development rights to transfer up to ~~3,000~~ 3,019 sf of unbuilt office/retail space from Koll Center Site A to Koll Center Site B.

Page 3-19 has been revised as follows:

- **Transfer of Development Rights:** Transfer of up to ~~3,000~~ 3,019 sf of unbuilt office/retail from Koll Center Site A to Site B.

Response 14

The Integrated Conceptual Development Plan (ICDP) is not a regulatory document. The ICDP provides a framework for the redevelopment of the 25-acre Uptown Newport site, and for the redevelopment of subject portion of the Koll Center Newport office park with new residential development and open space. The locations of residential villages and parks – are approximate, not at the exact locations. GP Policy LU6.15.15 specified the location of neighborhood park as follow:

LU 6.15.14 Location Require that each neighborhood park is clearly public in character and is accessible to all residents of the neighborhood. Each park shall be surrounded by public streets on at least two sides (preferably with on-street parking to serve the park), and shall be linked to residential uses in its respective neighborhood by streets or pedestrian ways.

As it applies to the Proposed Project, the location of the park cannot be moved because it needs to be surrounded by public accessible streets (i.e., not gated) on at least two sides, in this case Birch Street and Spine Street as these are open and accessible to the general public at all time.

Response 15

The opinion of the commenter is noted; no further response is required.

Response 16

The question does not raise a CEQA issue; no further response is required.

Response 17

The City disagrees with the opinion of the commenter. The commenter has not raised issues that would render the EIR deficient.

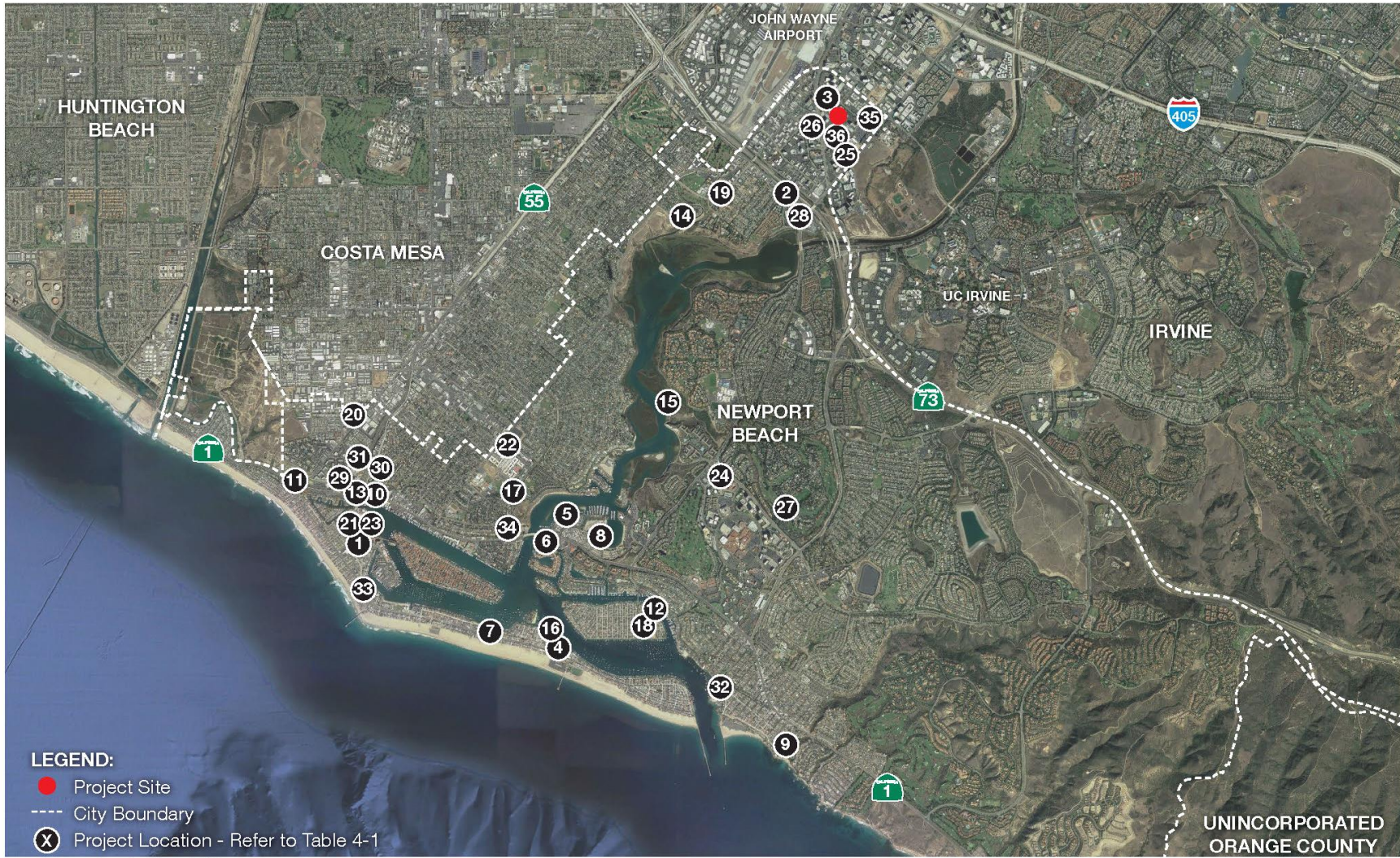
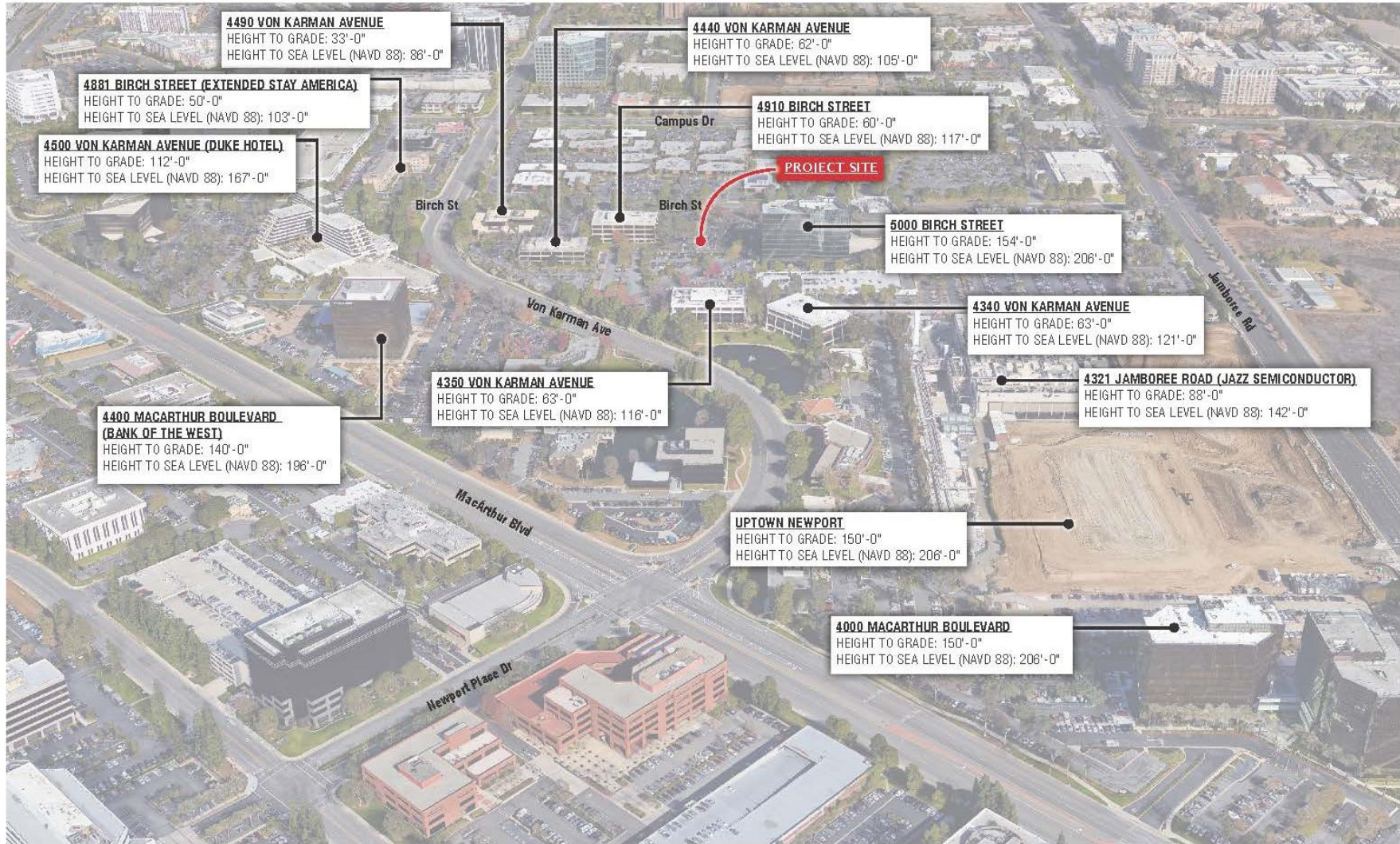


FIGURE 4-1: Development Activity in the City of Newport Beach
The Koll Center Residences Project



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Source: MVE + Partners, 2017

FIGURE 4.1-1: Contextual Building Heights
The Koll Center Residences Project



Not to scale



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4 NATIVE AMERICAN TRIBAL CONSULTATION

At the request of Andrew Salas, Chairman, of the Gabrieleño Band of Mission Indians – Kizh Nation, the City of Newport Beach entered into consultation consistent with Public Resources Code Section 21080.3.1(d), Assembly Bill 52. A meeting was held on December 12, 2017 at the City of Newport Beach City Hall. In attendance were:

Andrew Salas, Chairman, Gabrieleño Band of Mission Indians – Kizh Nation

Matt Teutimez, Tribal Biologist, Gabrieleño Band of Mission Indians – Kizh Nation

Gary Stickel, Tribal Archaeologist, Gabrieleño Band of Mission Indians – Kizh Nation

Rosalinh Ung, Associate Planner, City of Newport Beach

Dana C. Privitt, AICP, Consultant, Kimley-Horn and Associates

Mr. Salas and Mr. Teutimez noted that it is important to recognize that even development sites that have been disturbed can have resources, including fill material. Fill can be brought in from other areas. Another example is obsidian (volcanic) was used as arrowheads for hunting larger animals. Obsidian brought in; there are no local sources.

Mr. Salas provided some familial background.

It was noted that there is a need for archaeologist and a Native American monitor to understand the tribal resources. The representatives requested that EIR Mitigation Measure (MM) 4.4-1 be revised to require that the Native American monitor be selected by the Lead Agency rather than the archaeologist.

In response to this request, the City has proposed a modification to MM 4.4-1. The City does not have the expertise to select the most appropriate Native American monitor. However, the modifications to the measure reflect that the monitor is not under contract to the archaeologist and the selection of a Native American monitor requires input from the City.

MM 4.4-1 The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical resources of an archaeological nature, preferably by preserving the resource(s) in place. Preservation in place options suggested by the State CEQA Guidelines include (1) planning construction to avoid an archaeological site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement. Prior to the issuance of a grading permit and/or action that would permit project site disturbance (whichever occurs first), the Applicant shall provide written evidence to the City that the Applicant has separately retained a qualified archaeologist and Native American monitor to observe grading activities and if preservation in place is not feasible, to salvage and catalogue historic and archaeological resources, as necessary. The selection of a qualified Gabrieleño Band of Mission Indians Native American monitor shall be made with input from ~~by~~ the archaeologist subject to the approval of the City. The

archaeologist and Native American monitor shall be present at the pre-grade conference; the archaeologist shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the Applicant, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. Because of the disturbed condition of the project site, the duration of monitoring by both the archaeologist and the Native American monitor shall be determined by the archaeologist and the Native American monitor. If the archaeologist, ~~with the assistance of~~ and the Native American monitor, determines that they are unique historic or archaeological resources as defined by Public Resources Code (PRC) Section 21083.2 or a tribal cultural resource as defined by PRC Section 21074, then the archaeologist and Native American monitor shall conduct additional excavations as determined to be necessary to avoid impacts to these resources by the development. If they are not “unique” then no further mitigation would be required. Unique cultural resources shall be determined based on the criteria set forth in Section 21083.2 of CEQA. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the City of Newport Beach Community Development Department.

5 CLARIFICATIONS AND REVISIONS

This section includes recommended clarifications and revisions to the EIR. This section is organized by respective sections of the EIR. Deleted text is shown as strikeout and new text is underlined. Revised figures are provided at the end of Section 4.0.

Section 1.0, Executive Summary

Table 1-1, *Summary of Significant Impacts and Mitigation Program*, has been revised and incorporated into the Final EIR to clarify and provide consistency with Section 4.10, *Noise*.

Table 1-1. Summary of Significant Impacts and Mitigation Program			
Thresholds Applied	Environmental Impacts/ Level of Significance Before Mitigation	Summary of Mitigation Program: Project Design Features, Standard Conditions, and Mitigation Measures	Level of Significance After Mitigation
Noise			
	<p><i>Construction Noise... Potentially Significant Impact.</i></p> <p><i>Operational Noise: ... Potentially Significant.</i></p> <p><i>Stationary Noise: ... Potentially Significant.</i></p>		<p><u>Construction Noise: Significant and Unavoidable.</u></p> <p><u>Operational Noise: Less than Significant</u></p> <p><u>Stationary Noise: Less than Significant</u></p>

Section 3.0, Project Description

With respect to the total required parking spaces, Table 3-4. Parking Summary, has been revised to 555 and incorporated into the Final EIR as follows:

Dwelling Units	Proposed Parking Ratio	Building 1		Building 2		Building 3		Total		
		Total (du)	Required Spaces ^a .	Total (du)	Required Spaces ^a .	Total (du)	Required Spaces ^a .	Total (du)	Required Spaces ^a .	Provided Spaces
1 Bedroom	1.8	17	31	16	29	17	30	50	90	-
2 Bedrooms	1.8	60	108	60	108	60	108	180	324	-
3 Bedrooms	2.0	10	20	10	20	10	20	30	60	-
Total Resident Parking		87	159	86	157	87	158	260	474	477
Guest	0.3		27		26	87	27		79	80
Required			186		183		186		552 555 ^b .	557
Provided in Buildings 1, 2, 3			426	369						795
Free-Standing Parking Structure (office use) ^c										492
Total: New Structured Parking										1,287
Surface Parking: Retail, Public Park										21
Surface Parking: Office										97
Total: Surface Parking										118
Total New Parking: Structured and Surface										1,405
Total Existing Parking										1,651
Total Demolished Parking										-819
Total New Parking										1,405
Net Change										586
<p>Note: Parking Ratio = number of spaces per bedroom; du = dwelling unit</p> <p>b. "Required" parking ratios are in accordance with the standards adopted for Uptown Newport. Source: <i>Uptown Newport Village Parking Study Guidelines</i>, DKS, 2012, and as proposed for the Project as part of the PC-15 amendment.</p> <p>c. Any differences due to rounding</p> <p>d. Nine levels: three levels of below-ground parking and six levels of above-ground parking including rooftop parking.</p> <p>Source: MVE + Partners, 2017.</p>										

With respect to the Plaza Gardens, page 3-13 has been modified to cross-reference the callouts on Figure 3-14:

Plaza Gardens. The Plaza Gardens would include four components: Entry Gardens (C1), Stars of the Bay Plaza (C2), The Marsh (C3), and Von Karman Plaza (C4) (Figure 3-14; the references to C1 through C4 are shown on the figure).

Figure 3-12, *Circulation Plan*, identifies the locations of the driveways. As requested, this information has been added to Figure 3-14.

Section 4.0, Environmental Setting

With respect to potential modifications or substitutions to the Mitigation Program, Section 4.0, *Environmental Setting*, has been clarified and incorporated into the Final EIR as follows:

The City of Newport Beach Community Development Department, in conjunction with any appropriate agencies or City departments, shall determine the adequacy of any proposed “modification” and, if determined necessary, may refer said determination to the Planning Commission and/or City Council for review and approval consistent with Municipal Code Section 20.54.070: Changes to an Approved Project. Findings and related documentation supporting the findings involving modifications to any PDF, SC, and/or MM shall be maintained in the Project file with the MMRP and shall be made available to the public upon request.

Figure 4-1 has been revised to delete project location 3, and to renumber the subsequent cumulative project locations.

Section 4.1, Aesthetics and Visual Resources

Section 4.1 incorrectly identifies the measure as MM 4.10-6. Page 4.1-13 has been revised and is incorporated into the Final EIR as follows:

Less Than Significant with Mitigation. The project site is in an urbanized area with existing sources of lighting. The site currently contains light standards within the surface parking areas. Additional lighting in the area includes vehicle headlights, traffic signals, illuminated signage, and lighting associated with office and commercial uses. The introduction of additional light sources would not be a significant impact. Building materials would minimize the potential for glare. MM 4.10-~~6~~7 in Section 4.10, *Noise*, would mitigate potential lighting impacts associated with the free-standing parking structure to a less than significant level.

Section 4.2, Air Quality

The CalEEMod run has been revised to incorporate the parking structures for Buildings 1, 2, and 3 and to incorporate the residential square footage. Additionally, refinements were made to the construction acreage assumptions. Refinements to operational assumptions also included incorporating improvements from regulatory requirements such as the Renewable Portfolio Standards, and accounting for the Project’s density and proximity to jobs. These model updates and refinements would not change the magnitude of impacts or the conclusions and mitigation in the Draft EIR.

Table 4.2-6. Unmitigated Construction-Related Emissions

Construction Year	Pollutant (pounds per day) ^{2a, b}					
	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
2018	5.22 <u>6.69</u>	47.13 <u>65.90</u>	35.14 <u>44.03</u>	0.14 <u>0.17</u>	8.02 <u>8.67</u>	2.73 <u>3.46</u>
2019	10.05 <u>10.10</u>	66.44 <u>66.41</u>	71.23 <u>71.55</u>	0.24	16.93 <u>16.92</u>	5.83
2020	9.17 <u>9.23</u>	74.02 <u>72.68</u>	66.72 <u>67.06</u>	0.24	16.66	5.57
2021	17.99 <u>17.65</u>	142.43 <u>135.08</u>	136.81 <u>129.05</u>	0.41 <u>0.40</u>	33.65 <u>30.61</u>	13.56 <u>12.86</u>
2022	9.83 <u>9.89</u>	79.08 <u>79.68</u>	76.81 <u>77.61</u>	0.27	26.03 <u>23.45</u>	9.67 <u>9.42</u>
Highest of all Years	17.99 <u>17.65</u>	142.43 <u>135.08</u>	136.81 <u>129.05</u>	0.41 <u>0.40</u>	33.65 <u>30.61</u>	13.56 <u>12.86</u>
SCAQMD Potentially Significant Impact Threshold	75	100	550	150	150	55
Exceed SCAQMD Threshold?	No	Yes	No	No	No	No

a. Emissions were calculated using CalEEMod, as recommended by the SCAQMD.
 b. Construction emission incorporate reductions/credits in CalEEMod that are required by the SCAQMD. The credits include the following: replace ground cover in disturbed areas quickly; water exposed surfaces two times daily; cover stock piles with tarps; water all haul roads twice daily; and limit speeds on unpaved roads to 15 miles per hour.

Source: Michael Baker International, 2017a

Table 4.2-7. Mitigated Construction-Related Emissions

Construction Year	Pollutant (pounds per day) ^{a, b, c}					
	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
2018	3.55 <u>4.33</u>	44.24 <u>57.87</u>	40.90 <u>52.59</u>	0.14 <u>0.17</u>	6.29 <u>6.57</u>	2.24 <u>2.80</u>
2019	7.62 <u>7.61</u>	60.08 <u>59.72</u>	71.99 <u>71.59</u>	0.24	13.31 <u>13.30</u>	4.75 <u>4.74</u>
2020	7.08 <u>7.06</u>	62.86 <u>62.17</u>	67.83 <u>67.44</u>	0.24	13.33 <u>13.32</u>	4.67 <u>4.66</u>
2021	11.17 <u>11.06</u>	118.47 <u>113.15</u>	145.25 <u>135.09</u>	0.41 <u>0.40</u>	23.64 <u>22.11</u>	10.03 <u>9.50</u>
2022	7.25 <u>7.28</u>	69.88 <u>70.50</u>	85.09 <u>85.93</u>	0.27	17.42 <u>16.35</u>	6.64 <u>6.57</u>
Highest of all Years	11.17 <u>11.06</u>	118.47 <u>113.15</u>	145.25 <u>135.09</u>	0.41 <u>0.40</u>	23.64 <u>22.11</u>	10.03 <u>9.50</u>
SCAQMD Threshold	75	100	550	150	150	55
Exceed SCAQMD Threshold?	No	Yes	No	No	No	No

a. Emissions were calculated using CalEEMod, as recommended by the SCAQMD.
 b. Construction emission incorporate reductions/credits in CalEEMod that are required by the SCAQMD. The credits include the following: replace ground cover in disturbed areas quickly; water exposed surfaces two times daily; cover stock piles with tarps; water all haul roads twice daily; and limit speeds on unpaved roads to 15 miles per hour.
 c. Mitigation includes the use of CARB certified Tier 3 engines.

Source: Michael Baker International, 2017a

Table 4.2-9. Operational Emissions						
Source	Pollutant (pounds per day)					
	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
Summer Emissions						
Area	6.89 <u>16.31</u>	4.13	23.19 <u>23.40</u>	0.03	0.43	0.43
Energy	0.09 <u>0.08</u>	0.77 <u>0.71</u>	0.33 <u>0.30</u>	0.00	0.06	0.06
Mobile	1.66 <u>1.97</u>	6.41 <u>6.72</u>	20.69 <u>20.50</u>	0.08 <u>0.06</u>	7.20 <u>4.77</u>	1.96 <u>1.32</u>
Total Summer Emissions	8.64 <u>18.37</u>	11.31 <u>11.56</u>	44.21 <u>44.20</u>	0.11 <u>0.09</u>	7.69 <u>5.26</u>	2.45 <u>1.81</u>
Winter Emissions						
Area	6.89 <u>16.31</u>	4.13	23.19 <u>23.40</u>	0.03	0.43	0.43
Energy	0.09 <u>0.11</u>	0.77 <u>0.71</u>	0.33 <u>0.30</u>	0.00	0.06	0.06
Mobile	1.63 <u>1.95</u>	6.57 <u>6.89</u>	19.90 <u>20.21</u>	0.08 <u>0.06</u>	7.20 <u>4.77</u>	1.96 <u>1.32</u>
Total Winter Emissions	8.61 <u>18.35</u>	11.47 <u>11.73</u>	43.42 <u>43.91</u>	0.11 <u>0.09</u>	7.69 <u>5.26</u>	2.45 <u>1.81</u>
SCAQMD Threshold	55	55	550	150	150	55
Exceed SCAQMD Threshold?	No	No	No	No	No	No
Note: emissions rates differ from summer to winter because weather factors are dependent on the season, and these factors affect pollutant mixing/dispersion, ozone formation, etc. Source: Michael Baker International, 2017a						

Section 4.4, Cultural Resources

Mitigation Measure (MM) 4.4-1 has been expanded to reflect the directives of CEQA with respect to archaeological resources, and is incorporated into the Final EIR as follows:

MM 4.4-1 The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical resources of an archaeological nature, preferably by preserving the resource(s) in place. Preservation in place options suggested by the State CEQA Guidelines include (1) planning construction to avoid an archaeological site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement. Prior to the issuance of a grading permit and/or action that would permit project site disturbance (whichever occurs first), the Applicant shall provide written evidence to the City that the Applicant has retained a qualified archaeologist and Native American monitor to observe grading activities and if preservation in place is not feasible, to salvage and catalogue historic and archaeological resources, as necessary. The selection of a qualified Gabrieliño Band of Mission Indians Native American monitor shall be made by the archaeologist subject to the approval of the City....

Section 4.6, Greenhouse Gas Emissions

The CalEEMod run has been revised to incorporate the parking structures for Buildings 1, 2, and 3 and to incorporate the residential square footage. Additionally, refinements were made to the construction acreage assumptions. Refinements to operational assumptions also included incorporating improvements from regulatory requirements such as the Renewable Portfolio Standards, and accounting for the Project's density and proximity to jobs. These model updates and refinements would not change the magnitude of impacts or the conclusions and mitigation in the Draft EIR.

Construction Year	CO ₂ e
2018	1,142 <u>1,140</u>
2019	2,058 <u>2,061</u>
2020	1,555 <u>1,549</u>
2021	2,872 <u>2,693</u>
2022	926 <u>927</u>
Total Construction	8,553 <u>8,370</u>

Source: Michael Baker International, 2017b.

Emissions Source	CO ₂ e
Construction Amortized over 30 Years	285 <u>279</u>
Area Source	61
Energy	163 <u>987</u>
Mobile	1,282 <u>962</u>
Waste	31
Water and Wastewater	116
Total	1,938 <u>2,157</u>
SCAQMD Bright-line threshold	3,000
Exceeds threshold?	No

Source: Michael Baker International, 2017b.

Section 4.9, Land Use and Planning

The analysis for General Plan LU Policy 6.2.1 has been revised as follows:

Consistent: The Project is consistent with this policy. The General Plan Housing Element identifies five locations—Newport Banning Ranch, Airport Area, Newport Center, Mariners' Mile, and the Balboa Peninsula—as key sites for future housing opportunities. The General Plan designates these areas as appropriate for development of up to ~~5,025~~ 4,446 new dwelling units (source: Table H32 *Site Analysis and Inventory Summary*). The project site is in the Airport Area and 260 units are identified as additive units for the site.

Section 4.14, Traffic and Transportation

Table-4.14-18. Intersection Operation – CEQA Analysis Year 2022 Without Project					
No.	Intersection	Without Project			
		AM Peak Hour		PM Peak Hour	
		ICU/ Delay	LOS	ICU/ Delay	LOS
1	MacArthur Blvd. at Campus Dr. ^a	0.610	B	0.832	D
2	MacArthur Blvd. at Birch St.	0.474 <u>0.493</u>	A	0.570 <u>0.589</u>	A
3	MacArthur Blvd. at Von Karman Ave.	0.632 <u>0.653</u>	B	0.597 <u>0.635</u>	A-B
4	MacArthur Blvd. at Jamboree Rd. ^a	0.756 <u>0.806</u>	C <u>D</u>	0.821 <u>0.866</u>	D
5	MacArthur Blvd. SB at University Dr.	0.563	A	0.514	A
6	Von Karman Ave. at Michelson Dr. ^a	0.619	B	0.839	D
7	Von Karman Ave. at Campus Dr. ^a	0.650	B	0.742	C
8	Von Karman Ave. at Birch St.	0.365 <u>0.376</u>	A	0.388 <u>0.408</u>	A
9	Teller Ave. at Campus Dr. ^a	0.435	A	0.522	A
10	Teller Ave. at Birch St.	13.4	B	13.2	B
11	Jamboree Rd. at I-405 NB Ramps ^a	0.800	C	0.916	E
12	Jamboree Rd. at I-405 SB Ramps ^a	1.133	F	1.019	F
13	Jamboree Rd. at Michelson Dr. ^a	0.901	D	1.079	F
14	Jamboree Rd. at Dupont Dr. ^a	0.704	B	0.729	C
15	Jamboree Rd. at Campus Dr. ^a	0.677	B	0.762	C
16	Jamboree Rd. at Birch St. ^a	0.643	B	0.610	B
17	Jamboree Rd. at Fairchild Rd. ^a	0.643	B	0.779	C
18	Jamboree Rd. at Bristol St. N	0.408 <u>0.422</u>	A	0.590	A
19	Jamboree Rd. at Bristol St. S	0.757 <u>0.762</u>	C	0.753 <u>0.780</u>	C
20	Jamboree Rd. at Bayview Way	0.503 <u>0.508</u>	A	0.525 <u>0.542</u>	A
21	Jamboree Rd. at University Dr.	0.687 <u>0.710</u>	B <u>C</u>	0.688 <u>0.711</u>	B <u>C</u>
22	Carlson Ave. at Campus Dr. ^a	0.522	A	0.734	C
23	University Dr. at Campus Dr. ^b	0.841	D	0.869	D
24	Bristol St. N at Campus Dr.	0.598 <u>0.620</u>	A <u>B</u>	0.746 <u>0.786</u>	C
25	Bristol St. S at Campus Dr./Irvine Ave.	0.761 <u>0.844</u>	C <u>D</u>	0.643 <u>0.718</u>	B <u>C</u>
26	Irvine Ave. at Mesa Dr.	0.474	A	0.690 <u>0.697</u>	B
27	Bristol St. N at Birch St.	0.680 <u>0.687</u>	B	0.642 <u>0.665</u>	B
28	Bristol St. S at Birch St.	0.505 <u>0.528</u>	A	0.593 <u>0.606</u>	A <u>B</u>
29	Bristol St. S at Bayview Pl.	0.443 <u>0.460</u>	A	0.494 <u>0.504</u>	A

Notes:

Bold and shaded values indicate intersections operating at an unacceptable Level of Service.

Intersection operation is expressed in volume-to-capacity (v/c) ratio for signalized intersections using the ICU Methodology, and average seconds of delay per vehicle during the peak hour for unsignalized intersections using the HCM Methodology.

a. Level of Service E is acceptable at this intersection.

b. A 5% capacity credit is applied at this intersection to reflect implementation of the Advanced Transportation Management System (ATMS).

Source: Kimley-Horn, 2017.

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Source: BrightView Design Group, 2017

FIGURE 3-14: Conceptual Landscape Plan
The Koll Center Residences Project



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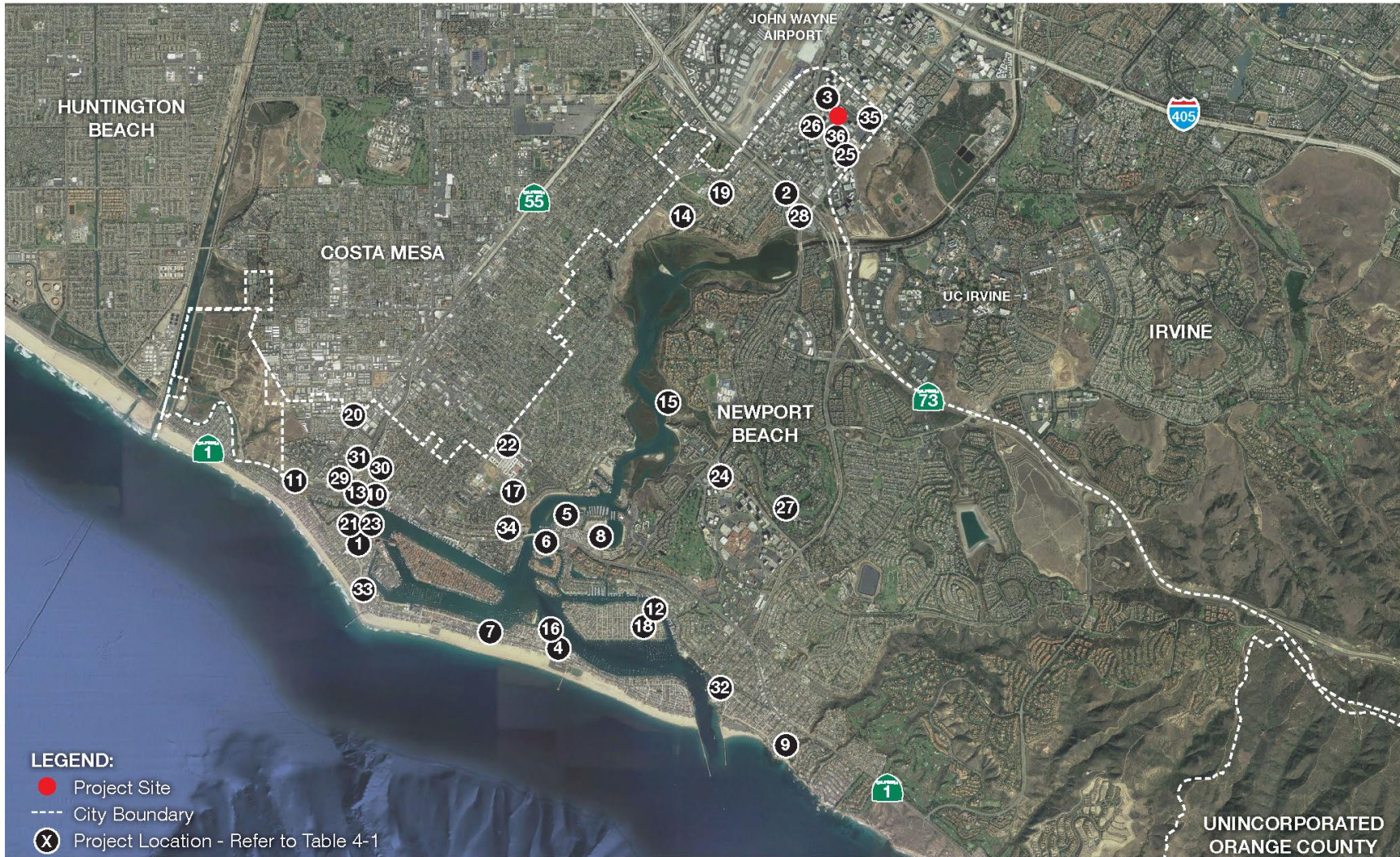
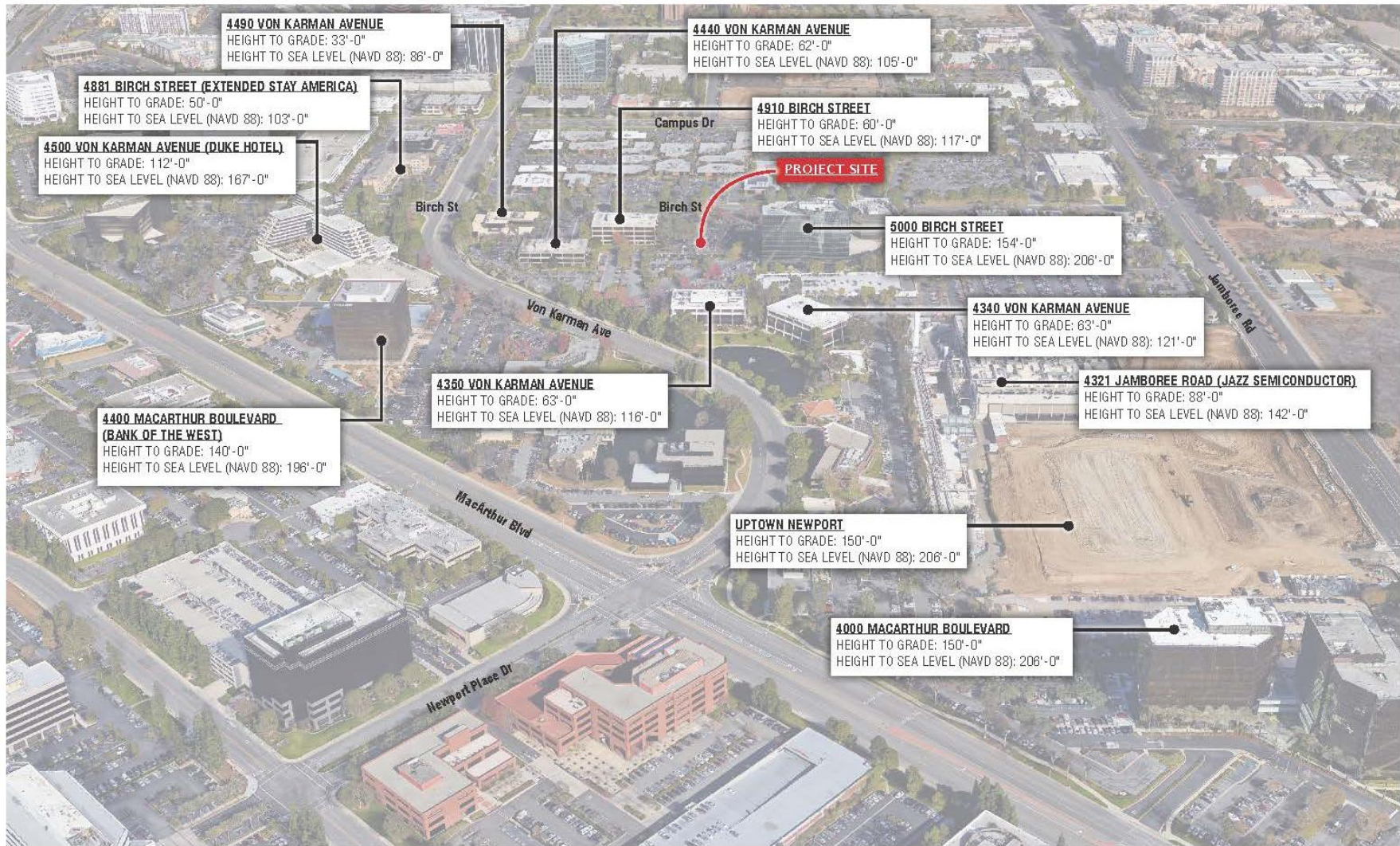


FIGURE 4-1: Development Activity in the City of Newport Beach
The Koll Center Residences Project



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Source: MVE + Partners, 2017

FIGURE 4.1-1: Contextual Building Heights
The Koll Center Residences Project



Not to scale



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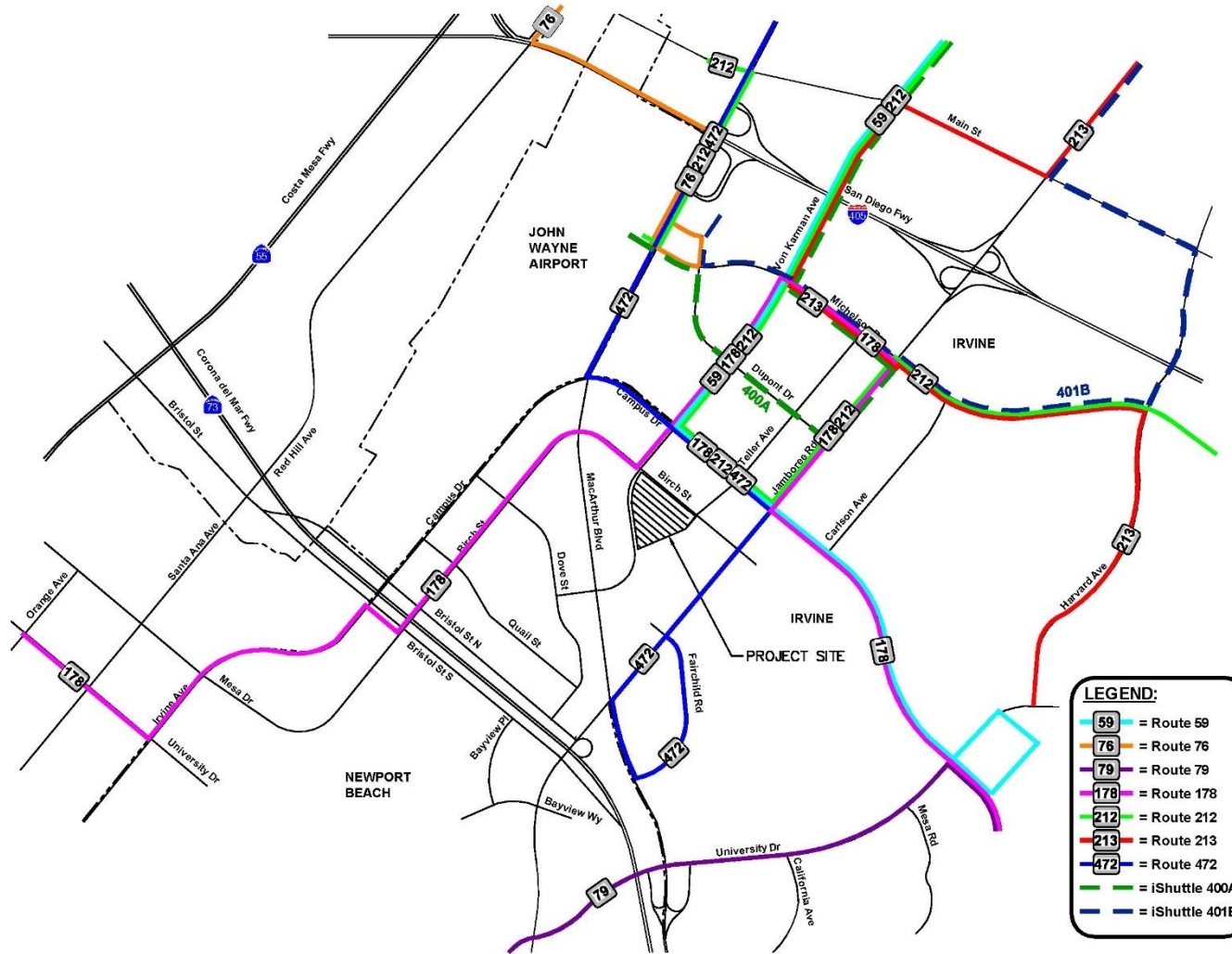
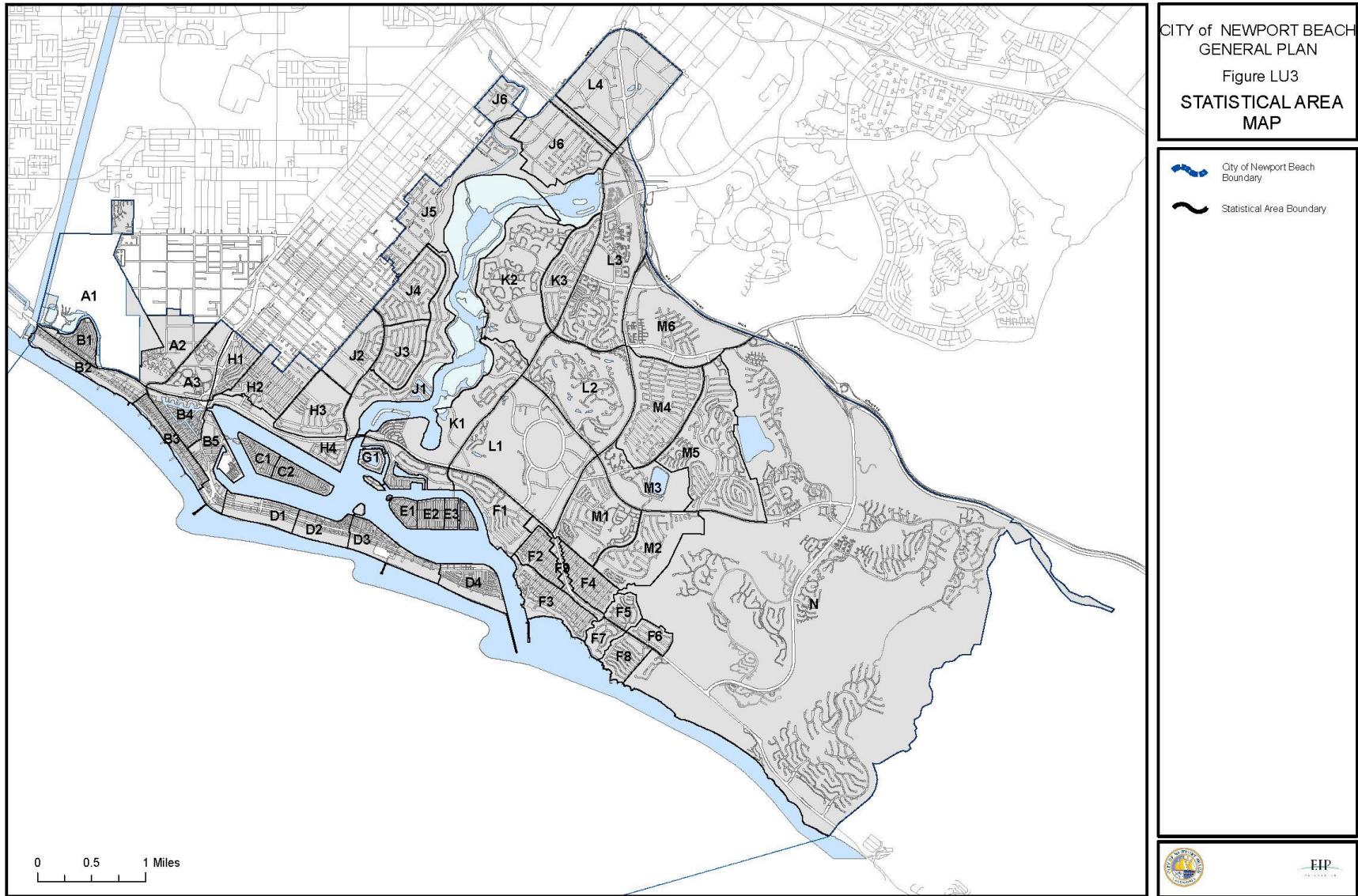


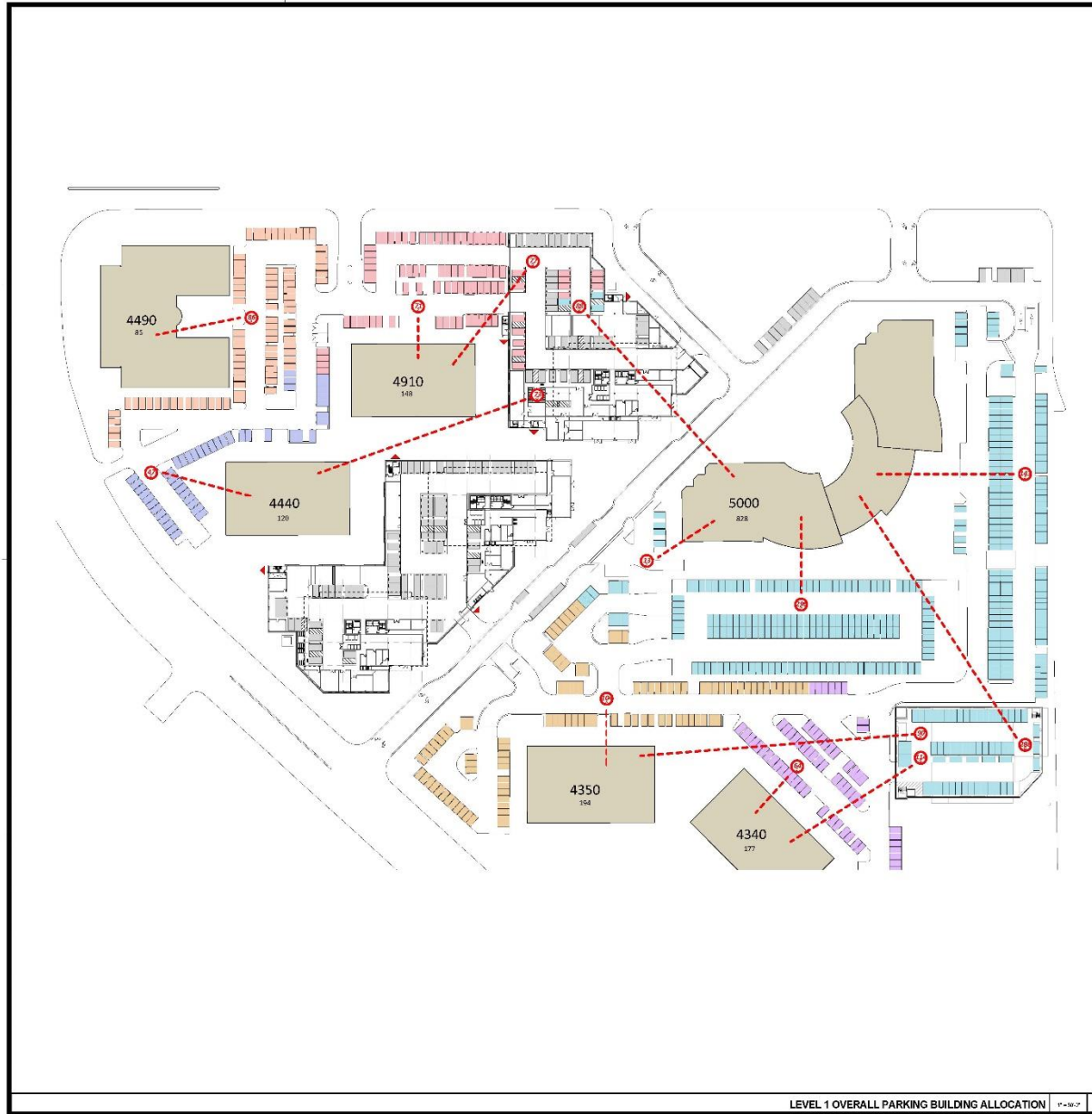
FIGURE 4.14-3: Existing Transit Routes
The Koll Center Residences Project



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ALLOCATED PARKING PER BUILDING (SUMMARY)			
BUILDING STREET	BUILDING ADDRESS	BUILDING AREA (SQ FT)	% OF TOTAL BUILDING AREA
Van Kester	4490	42,000	17%
	4910	48,000	19%
	4440	42,000	17%
	4440	37,000	15%
Buck	5000	57,471	23%
	5000	250,000	100%
TOTAL		248,000	100%

PARKING STALLS PER BUILDING (SQ FT)	COL. 4"
4490	70
4910	91
4440	73
4440	86
5000	135
5000	170
TOTAL	534

(S) - STALL COUNT
 (G) - STALL LOCATION
 (S) - GARAGE
 (S) - SURFACE

SHOPOFF
 REALTY INVESTMENTS
 PARKING CONSULTING GROUP
 TELEPHONE: 949.471.0005

THE KOLL CENTER RESIDENCES
 CITY OF NEWPORT BEACH

REVISIONS	DESCRIPTION	DATE

SHEET TITLE
PARKING TITLE BUILDING ALLOCATION OVERALL DIAGRAM

SHEET NUMBER
A-01.6

MVE
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CONCEPTUAL DESIGN

LEVEL 1 OVERALL PARKING BUILDING ALLOCATION 11-16-21 1

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APPENDIX A
