

October 2016 | Final Environmental Impact Report
State Clearinghouse No. 2016021023

MUSEUM HOUSE PROJECT

City of Newport Beach

Prepared for:

City of Newport Beach

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1. Introduction

1.1 INTRODUCTION

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code §§ 21000 et seq.) and CEQA Guidelines (California Code of Regulations §§ 15000 et seq.).

According to the CEQA Guidelines, Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
- (b) Comments and recommendations received on the DEIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies comments on the DEIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document contains responses to comments received on the DEIR for the Museum House Project during the public review period, which began August 17, 2016, and closed September 30, 2016. This document has been prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the Lead Agency. This document and the circulated DEIR comprise the FEIR, in accordance with CEQA Guidelines, Section 15132.

1.2 FORMAT OF THE FEIR

This document is organized as follows:

Section 1, Introduction. This section describes CEQA requirements and content of this FEIR.

Section 2, Response to Comments. This section provides a list of agencies and interested persons commenting on the DEIR; copies of comment letters received during the public review period, and individual responses to written comments. To facilitate review of the responses, each comment letter has been reproduced and assigned a number (A1 through A3 for letters received from agencies, O1 through O3 for letters received from organizations, and I1 through I23 for letters received from individuals). Individual comments have been numbered for each letter and the letter is followed by responses with references to the corresponding comment number.

1. Introduction

Section 3. Revisions to the Draft EIR. This section contains revisions to the DEIR text and figures as a result of the comments received by agencies, organizations, and interested persons as described in Section 2, and/or errors and omissions discovered subsequent to release of the DEIR for public review.

The responses to comments contain material and revisions that will be added to the text of the FEIR. The City of Newport Beach staff has reviewed this material and determined that none of this material constitutes the type of significant new information that requires recirculation of the DEIR for further public comment under CEQA Guidelines Section 15088.5. None of this new material indicates that the project will result in a significant new environmental impact not previously disclosed in the DEIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204 (a) outlines parameters for submitting comments, and reminds persons and public agencies that the focus of review and comment of DEIRs should 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 Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” 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 10 days prior to certifying the environmental impact report. The responses will be forwarded with copies of this FEIR, as permitted by CEQA, and will conform to the legal standards established for response to comments on DEIRs.

2. Response to Comments

Section 15088 of the CEQA Guidelines requires the Lead Agency (City of Newport Beach) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the DEIR and prepare written responses.

This section provides all written responses received on the DEIR and the City's responses to each comment.

Comment letters and specific comments are given letters and numbers for reference purposes. Where sections of the DEIR are excerpted in this document, the sections are shown indented. Changes to the DEIR text are shown in underlined text for additions and ~~strikeout~~ for deletions.

The following is a list of agencies and persons that submitted comments on the DEIR during the public review period.


Number Reference	Commenter	Date of Comment	Page No.
Agencies			
A1	City of Irvine	9/7/16	2-3
A2	Orange County Transportation Authority	9/27/16	2-7
A3	Airport Land Use Commission for Orange County	9/29/16	2-11
Organizations			
O1	United Coalition to Protect Panhe	9/22/2016	2-15
O2	The Irvine Company	9/28/16	2-19
O3	Stop Polluting Our Newport (Chatten-Brown & Carstens LLP)	9/30/16	2-33
Individuals			
I1	Christine Avakoff	9/7/16	2-63
I2	Noah Garrett	9/7/16	2-67
I3	Debra Klein-Sanner	9/7/16	2-71
I4	Joan Littlefield	9/7/16	2-75
I5	Dave Middlemas	9/7/16	2-79
I6	Rosalie Puleo	9/7/16	2-83
I7	Jacqueline Smiley	9/7/16	2-87
I8	Fred Stern	9/7/16	2-91
I9	Don and Doris Stoughton	9/7/16	2-95
I10	Carol Strauss	9/7/16	2-99
I11	Chris McKinley	9/10/16	2-103
I12	Susan Skinner	9/11/16	2-107
I13	Marsha Kendall	9/23/16	2-121
I14	Dorothy and Mike Kraus	9/27/16	2-127
I15	Dean Laws	9/28/16	2-137
I16	Gordon Glass	9/29/16	2-141

2. Response to Comments

Number Reference	Commenter	Date of Comment	Page No.
I17	Terry Becker	9/30/16	2-149
I18	Dennis Geiler	9/30/16	2-153
I19	Ruth Klein	9/30/16	2-157
I20	Jim Mosher	9/30/16	2-161
I21	Jim Mosher (Addendum)	10/3/16	2-175
I22	Katitza Schmidt	9/30/16	2-179
I23	Michael & Pauline Smith	9/30/16	2-183

2. Response to Comments

LETTER A1 – City of Irvine (1 page)



Community Development

1 Civic Center Plaza, Irvine, CA 92606-5208

cityofirvine.org

949-724-6000

September 7, 2016

Mr. Greg Ramirez
Senior Planner
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Review Draft Environmental Impact Report (DEIR) - Museum House Residential Project

Dear Mr. Ramirez:


City of Irvine staff reviewed the information on the referenced project and has the following comments at this time:

1. Clarify why the intersections of Macarthur Boulevard northbound and southbound at University Drive were not included as traffic study intersections. A1-1
2. Clarify if construction traffic will utilize University Drive in addition to the SR-73 from Jamboree Road and Macarthur Boulevard. A1-2

Thank you for the opportunity to review 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 949-724-6314, or at dlaw@cityofirvine.org.

Sincerely,



David R. Law, AICP
Senior Planner

ec: Barry Curtis, Manager of Planning Services
Bill Jacobs, Principal Planner
Sun-Sun Murillo, Supervising Senior Transportation Analyst
Karen Urman, Senior Transportation Analyst

2. Response to Comments

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2. Response to Comments

A1. Response to Comments from City of Irvine, David R. Law, AICP, Senior Planner, dated September 7, 2016.

A1-1 The intersection of northbound MacArthur Boulevard/University Drive is in the City of Irvine. This intersection is outside the study area. The City analyzes “primary intersections” per the City of Newport Beach Traffic Phasing Ordinance requirements. Based on the project trip generation estimates and distribution patterns, there is minimal project traffic at this intersection. Approximately 5 percent of the project traffic would enter this intersection. The resulting AM and PM peak hour trip assignment is approximately two trips per peak hour. This is a nominal increase in total intersection traffic volumes.

A1-2 As detailed in Chapter 3, *Project Description*, all construction vehicles would use regional and local trucks routes to access the project site. It is anticipated that all heavy vehicles would access the site via State Route 73 (SR-73) (North of Bison Avenue) and head south via Jamboree Road or MacArthur Boulevard. The University Drive exit from SR-73 is not expected to be used since it is a less direct access to the project site. All proposed truck routes shall be finalized and approved by the City before beginning construction.

2. Response to Comments

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2. Response to Comments

LETTER A2 – Orange County Transportation Authority (1 page)



September 27, 2016

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Mr. Gregg Ramirez, Senior Planner
Community Development Department, Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

SUBJECT: Museum House Residential Project

Dear Mr. Ramirez:

Thank you for providing Orange County Transportation Authority (OCTA) with the opportunity to review the Draft Environmental Impact Report for the Museum House Residential Project. The following comments are for your consideration:

- On Page 5.13-9, "Figure 5.13-1 – Transit Routes and Stops," please consider revisions to reflect the following changes:
 1. Route 76 service segment to end at John Wayne Airport
 2. Reposition Newport Transportation Center to Avocado Ave between San Nicolas Dr. and San Joaquin Hills Rd.
 3. Label Route 691 along SR-73 as a seasonal service for the OC Fair
- On Page 5.13-11, "Figure 5.13-2 Bicycle Facilities," please consider revision for consistency with "Figure 3-3 Existing Bicycle Network on Page 30" and "Figure 5-1 Recommended Bicycle Facilities Network" on Page 58 of the 2014 *City of Newport Beach Bicycle Master Plan*. The 2014 *City of Newport Beach Bicycle Master Plan* may be found here: www.newportbeachca.gov/home/showdocument?id=18599

A2-1

A2-2

Throughout the development of this proposed project, we encourage communication with OCTA on the matter 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

2. Response to Comments

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2. Response to Comments

A2. **Response to Comments Dan Phu, Manager, Environmental Programs, OCTA, dated September 27, 2016.**


- A2-1 Figure 5.13-1, *Transit Routes and Stops*, of the DEIR was reproduced from the 2014 City of Newport Beach Bicycle Master Plan and has been revised to reflect the requested changes to move the OCTA Transportation Center symbol to the actual location, and to include the seasonal Route 691 for the OC Fair. It has also been zoomed outward to show more northern transit routes and stops in the Airport Area and near Interstate 405 (see Section 3.3, *Revised and New Figures*). However, the map in the City's bicycle master plan does not zoom far out enough to show the end segment of Route 76 at John Wayne Airport. Therefore, this segment is not shown in the revised figure.
- A2-2 Figure 5.13-2, *Bicycle Facilities*, of the DEIR has been replaced with the two referenced figures from the 2014 City of Newport Beach Bicycle Master Plan to show both existing and recommended bicycle facilities networks. Subsequent figures in Section 5.13 are also renumbered (see Section 3.3, *Revised and New Figures*).

2. Response to Comments

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2. Response to Comments

LETTER A3– Airport Land Use Commission for Orange County (2 pages)

	AIRPORT LAND USE COMMISSION
	FOR ORANGE COUNTY
	3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012
September 29, 2016	<p>RECEIVED BY COMMUNITY OCT 04 2016 DEVELOPMENT CITY OF NEWPORT BEACH</p>
Gregg Ramirez, Senior Planner City of Newport Beach, Community Development Dept. 100 Civic Center Drive Newport Beach, CA 92660	
Subject: Museum House Project	
Dear Mr. Ramirez:	
Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the proposed Museum House Project in the context of the Airport Land Use Commission's (ALUC) <i>Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)</i> . The proposed project consists of the demolition of the existing Orange County Museum of Art building to accommodate the development of a 25-story, 100 unit residential condominium tower.	A3-1
The proposed project is located within the Federal Aviation Regulation (FAR) Part 77 Notification Area for JWA. The initial study states that the proposed maximum height for the proposed project is 295 feet. As stated in the DEIR, development proposals which include the construction or alteration of a structure more than 200 feet above ground level, require filing with the Federal Aviation Administration (FAA). Structures meeting this threshold must comply with procedures provided by Federal and State law, with the referral requirements of ALUC, and with all conditions of approval imposed or recommended by the FAA and ALUC including filing a Notice of Proposed Construction or Alteration (FAA Form 7460-1). The resulting FAA airspace determination should be included in the project submittal package to ALUC.	A3-2
The proposed project is also located within the Obstruction Imaginary Surfaces for JWA. We recommend that the DEIR discuss what the maximum height will be for the site since a General Plan Amendment and a Planned Community Development Plan Amendment is required from the City of Newport Beach.	A3-3
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. General Plan Amendment and Planned Community Development Plan Amendment) under PUC Section 21676(b). In this regard, please note that the Commission wants such referrals to be submitted and agendized by the ALUC staff	A3-4

2. Response to Comments

ALUC Comments- Museum House
9/29/16
Page 2

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 agendaing.

A3-4
(cont'd)

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

2. Response to Comments

A3. Response to Comments from Kari A. Rigoni, Executive Officer, Airport Land Use Commission for Orange County, dated September 29, 2016.

A3-1 Comment acknowledged.

A3-2 The comment is noted and also addressed in Section 5.6, *Hazards and Hazardous Materials*, of the DEIR. The project site is within the Federal Aviation Regulation Part 77 Notification Area and Obstruction Imaginary Surfaces Area for John Wayne Airport and will require approval by the Federal Aviation Administration (FAA) and Airport Land Use Commission (ALUC). The project applicant will provide the resulting FAA determination in a complete project submittal package to ALUC at the appropriate time between the City's anticipated Planning Commission and City Council hearings.

A3-3 The proposed tower would be 295 feet from finished grade of the main building entry point to the top of the tower or 482 feet above mean sea level.

A3-4 See response to Comment A3-2 above.

2. Response to Comments

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2. Response to Comments

LETTER O1 – United Coalition to Protect Panhe (1 page)

September 22, 2016

Gregg Ramirez, Senior Planner
City of Newport Beach Planning Division

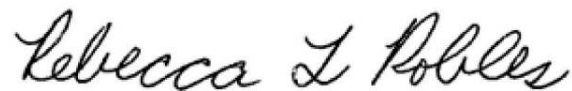
Re: Museum House Project

Thank you for the opportunity to comment on the above mentioned development. As we indicated in our letter of March 9, 2016, Newport Beach was densely occupied prior to European contact and has a high potential for buried cultural resources. Therefore, we consider any area of ground that has not been disturbed to be culturally sensitive. This includes the ground beneath structures that were constructed prior to 1970 when the California Environmental Quality Act was implemented.

O1-1

Based on this concern we concur with the mitigation measures presented in 5.3.7. As there is the potential for the discovery of human remains, we also request that the mitigation measures include a statement indicating compliance with Section 7050.5 of the California Health and Safety Code.

Sincerely,



Rebecca Robles
United Coalition to Protect Panhe

2. Response to Comments

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2. Response to Comments

O1. Response to Comments from Rebecca Robles, United Coalition to Protect Panhe, dated September 22, 2016.


O1-1 The commenter supports the inclusion of Mitigation Measures 3-1 through 3-3 in the DEIR and recommends including an additional statement related to the potential for the discovery of human remains indicating the requirement to comply with Section 7050.5 of the California Health and Safety Code. The Initial Study prepared for the project (Appendix A of the DEIR) concluded the project would have a less than significant impact on human remains based on the requirement to comply with California Health and Safety Code Section 7050.5, CEQA Section 15064.5, and Public Resources Code Section 5097.98. These provisions are state law, and compliance with them is required regardless of whether they are included in the EIR as separate mitigation measure. Thus, no changes were made.

2. Response to Comments

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2. Response to Comments

LETTER O2 –The Irvine Company (6 pages)

**IRVINE COMPANY**
Since 1864

September 28, 2016

City of Newport Beach
Attn: Gregg Ramirez, Senior Planner
Community Development Department/Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Museum House Draft Environmental Impact Report (DEIR) Comments

Dear Mr. Ramirez:

Irvine Company offers the following comments on the Draft Environmental Impact Report (DEIR) for the proposed Museum House condominium project (Project), which has been released for public review from August 17 to September 30, 2016. Included herein are comments where the DEIR was either lacking in information or did not include adequate analysis to determine whether an impact is significant, or mitigation is required to reduce Project impacts. O2-1

General Comments

There is a lack of detail regarding adjacent uses generally in either the Project Description or the Land Use chapters of the DEIR. Exhibits contained within the DEIR make it difficult to ascertain how the Project will interact with or impact adjacent uses. O2-2

Building Height

The modification to the existing building height allowance in the San Joaquin Plaza Planned Community (PC) would allow buildings up to 300 feet in height. Newport Center contains several buildings with similar height limits. The North Newport Center Planned Community Development Plan allows buildings up to 295 feet tall in Blocks 400, 500 and 600. However, none of the existing buildings are located immediately adjacent to residential areas whose maximum height is 65 feet. The same argument for the topographic difference cannot be made for immediately adjacent 65-foot structures as for 295-foot structures some distance away. While the topography difference might alter the visual perception between the structures in Blocks 500 and 600 compared to the proposed Project, the impact is significant when compared to the Villas at Fashion Island. The Project would nearly quadruple the height of adjacent uses. O2-3

In addition, each of the existing high-rise office buildings in Newport Center are surrounded by significant landscape setbacks and wide streets to separate the high-rise building from adjacent O2-4

550 Newport Center Drive, Newport Beach, CA 92660 949.720.2000

2. Response to Comments

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development. The largest buffer area on the Museum House site is located facing San Clemente and provides no relief to the Villas at Fashion Island development

O2-4
(cont'd)

In support of the impact resulting from this height differential between residential developments, we note that the Newport Beach General Plan, Land Use Element, states in LU 5.1.2 - Compatible Interfaces:

Require that the height of development in nonresidential and higher-density residential areas transition as it nears lower-density residential areas to minimize conflicts at the interface between the different types of development.

This General Plan policy suggests that the height differential between the Museum House's 295-foot tower is incompatible with the 65-foot Villas structures. Residents in the Villas, directly across the street from the Museum House tower, will be denied a view of anything but the building mass. While we understand that the City of Newport Beach Municipal Code states it is not the City's intent to protect views from private property, the City and developer have not protected adjacent development from the type of conflict noted in General Plan Policy LU 5.1.2.

O2-5

A reduced height would also improve the Project's compatibility with General Plan Policy LU 6.14.2, which calls for stepping down building height and mass in Newport Center from the northeast to the southwest. While the DEIR notes that other high-rise office buildings exist in Newport Center, these buildings comply with Policy LU 6.14.2, and are clustered together on the same street. On the other hand, the Project would be located blocks away and would be an outlier on the skyline. This is confirmed by Figure 5.1-5, which shows the view looking southwest from Jamboree Road and illustrates that the Project will be visible over adjacent rooftops, isolated from the other high-rise office buildings.

By focusing only on the office density of the adjacent residential development rather than the height, as required by the policy, the DEIR fails to appropriately analyze this General Plan policy. There is no transition in height or in setback distance between the proposed 295-foot tower and the existing 65-foot Villas and as a result the proposed Project will result in a significant impact related to land use compatibility.

Alternatives

The DEIR declined to meaningfully consider any alternative with a lesser building height which may have reduced the land use inconsistency resulting from placing high-rise residential immediately adjacent to low-rise residential and may have resulted in consistency with General Plan Policies LU 5.1.2 and 6.14.2. While the DEIR preliminarily analyzed a shorter, six-story building, the DEIR rejected that alternative from detailed analysis on the grounds that it would

O2-6

2. Response to Comments

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not meet the Project objective to “maximize the project’s view opportunities of the Pacific Ocean and Newport Harbor.” This objective is illusory, as it allows the applicant to reject *any* reduced-height alternative on the grounds that any reduction in height would not “maximize” ocean and harbor views.

O2-6
(cont'd)

We believe a reduced building height alternative would be a more compatible development, consistent with other residential development in the immediately adjacent area and providing a more appropriate height transition consistent with General Plan Policies LU 5.1.2 and 6.14.2.

Shade/Shadow Impacts

The DEIR shade/shadow analysis is inadequate for several reasons. The analysis does not properly interpret the shade standard used to make the determination that the Project’s shade impacts will be less than significant. It is disingenuous to state that a 295-foot tall building “would not cast shadows on one specific dwelling unit for more than three hours. . .” The analysis should consider an entire building for impacts, not merely one specific dwelling unit. The standard identified in the DEIR, taken from the North Newport Center PC, states:

The shade study shall demonstrate that the new development will not add shade to the designated residential areas beyond existing conditions for more than three hours between the hours of 9:00 a.m. and 3:00 p.m. Pacific Standard Time, or for more than four hours between the hours of 9:00 a.m. and 5:00 p.m. Pacific Daylight Time. (emphasis added).

O2-7

The entire Building 4 shown in the Reference Points exhibit (Exhibit 5.1-10, page 5.1-32) must be considered for impacts and not merely the noted reference point “D” at the corner of the building. When considered as a whole, the winter solstice shadow is cast on Building 4 from 11:15 a.m. through and beyond 3:00 p.m., exceeding the three hour threshold for impacts. In addition, the analysis ignores potential impacts on neighboring balconies.

During winter months, over the course of the day, a considerable number of dwelling units would be affected by the tower’s shadow, as would the Main Pool Courtyard. Our project has been designed to allow year-round resident use and enjoyment of outdoor amenities, including pool areas. The Main Pool Courtyard is a signature, community-wide amenity space that would fall within the proposed tower’s shadow for approximately three critical winter afternoon hours, significantly diminishing its effectiveness as a premium outdoor space.

Extensive internal landscape courtyard spaces surrounded by classically proportioned four story buildings create a residentially-scaled sanctuary for our residents. The startling presence of a 300 foot tower immediately beside our project will be incongruous with the scale of our project and

O2-8

2. Response to Comments

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will be disruptive to the tranquility of the internal courtyard and dwelling unit experience. Pleasing views of blue sky and the Newport Center skyline in the distance will be interrupted by the proposed tower, diminishing the overall quality of the daily resident experience. Our residents should expect to enjoy a sense of privacy and exclusivity in their community. The proposed residential tower, looming over our pools, courtyards and private terraces, will diminish the feeling of privacy, making these key outdoor amenity areas less desirable to our residents.

O2-8
(cont'd)

Construction Staging and Traffic

The DEIR states that Project construction will occur in one phase and is estimated to last for approximately 28 months. The DEIR indicates that a construction management plan will be required as a condition of approval, but no mitigation measure has been included to ensure that such condition of approval will be enforced. Therefore, we request further information regarding the elements of the proposed construction management plan that are intended to mitigate traffic impacts on adjacent roadways within Newport Center.

Due to the location of the project with respect to traffic circulation in Newport Center, Irvine Company has serious concerns about the deferral of preparation of such plan. The general public (residents and tenants in Newport Center) will have no opportunity to review the plan as part of the DEIR and approval process. Unlike the 150 Newport Center project, which provided a construction management plan as part of the DEIR, we have no specific information relative to lane closures, haul routes, construction personnel parking, vehicle queuing and construction safety.

O2-9

- Lane Closures - No information is provided regarding when the lane closures will occur in terms of timing. How often will the closures occur along roadways adjacent to the Project site? It is imperative that no closures occur during the holiday season (Thanksgiving through New Year's Day) due to the significant increase in traffic in Newport Center/ Fashion Island during that period.
 - As noted in the DEIR, San Clemente Drive will experience temporary lane closures in order to implement utility improvements. Mitigation should be included that requires any lane or street closures be conducted during off-peak hours with adequate advance notice posted for tenants and visitors to Newport Center.
- Vehicle Queuing - With respect to vehicle queuing during construction, the DEIR notes that construction trucks would be staged off-site and dispatched to the site five to ten trucks at a time. The DEIR should include a mitigation measure or condition of approval that prohibits blocking or entering any private property, including driveways, as a result of the queuing of any vehicles during construction.

2. Response to Comments

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- Off-Site Parking - The DEIR states that up to 200 construction workers would be on-site and that off-site parking locations would be negotiated with nearby owners. The DEIR must analyze whether such capacity exists. Unless analysis shows adequate parking supply, as well as documented agreements with nearby owners, parking in spaces within Newport Center/Fashion Island must be strictly reserved for tenants and visitors and prohibited for construction personnel.
- Construction Safety - The DEIR does not analyze the operation of construction equipment, most specifically cranes, as a potential safety hazard. Is there a potential that a crane swing radius could extend over adjacent building areas, sidewalks or roadways? This impact must be disclosed in light of the potential safety issues for pedestrians and private vehicles that could result from operation of construction cranes.
- Vibration Impacts – The DEIR does not analyze impacts related to vibration, which could damage adjacent structures. The construction management plan should include pre and post construction surveys and comprehensive vibration monitoring on adjacent properties in order to ensure the lengthy construction operations do not damage existing developments.

O2-9
(cont'd)

Project Plans

The DEIR presents the Project plans and several aerial photographs and graphics depicting the Project site. The actual Project plans do not depict adjacent development so the viewer can gain a better perspective of the proximity of adjacent buildings to the project. We request that updated plans show the current building orientation, adjacent development and approximate distances between the proposed tower and existing adjacent structures.

O2-10

Project Parking

The DEIR discloses that the Project will just meet the City's parking requirements for multi-family residences. However, it is not clear that these assumptions are appropriate for the Project, which will include a swimming pool, dog park, wine cellar, valet parking, and other amenities that will require building staff parking. The EIR should include more information about why the DEIR's parking assumptions are reasonable for this particular project.

O2-11

Sewer Capacity

The Sewer Analysis Report (Appendix M) indicates that the sewer capacity was calculated on the basis of adding the projected flows from the project to the existing flows measured during September, 2015. However, no mention is made of whether future flows from the Villas of Fashion Island apartment project now under construction impact the subject portion of the sewer line and, if so, whether sufficient capacity would exist.

O2-12

2. Response to Comments

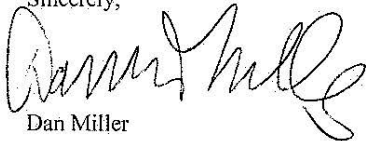
Mr. Gregg Ramirez
September 28, 2016
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Conclusion

Irvine Company appreciates this opportunity to comment on the Museum House DEIR and respectfully requests that additional analysis and mitigation be provided as detailed herein. The Project, as proposed, will have a significant impact on adjacent properties and should be analyzed with respect to the appropriateness of sitting a structure of this size adjacent to residential and other low-rise development.

O2-13

Sincerely,



Dan Miller
Senior Vice President
Entitlement and Public Affairs

2. Response to Comments

O2. Response to Comments from Dan Miller, Senior Vice President, The Irvine Company, dated September 28, 2016.

O2-1 Comment acknowledged.

O2-2 The comment suggests there is an overall lack of detail in the Project Description and Land Use chapters of the DEIR. Chapter 3, *Project Description*, is intended to provide a detailed discussion of the attributes of the proposed project, not necessarily the surrounding environment. The surrounding environment and uses are identified and thoroughly discussed in Chapter 4, *Environmental Setting*. Additionally, Figures 4-1, *Site Photographs*, and 4-2, *Surrounding Photographs*, provides photos of the project site and of the surrounding area.

The DEIR also includes discussion and depiction of adjacent uses, including the Villas at Fashion Island, in Sections 5.1, *Aesthetics*, and 5.8, *Land Use*. Page 5.1-6 of Section 5.1, for example, includes a discussion of the character and land uses, including the Villas at Fashion Island, near the project site. It also includes an aerial photograph showing the surrounding area (Figure 5.1-2, *High-Rise Buildings in the Project Area*). The DEIR then relies upon these details when analyzing the project's potential aesthetic impacts.

Likewise, Section 5.8, *Land Use*, includes discussion of the project's consistency with policies in the General Plan designed to minimize conflicts between adjacent developments. To assess compliance with these policies, the DEIR includes discussion of the details of the adjacent uses, including the Villas at Fashion Island, and potential impacts of the project.

Overall, the DEIR provides significant information about the proposed project, the project site, and surrounding uses.

O2-3 The DEIR acknowledges that the buildings immediately adjacent to the project site are primarily low-rise and mid-rise structures, and analyzes the potential of the project to impact adjacent structures by generating light and glare, shade and shadows, or by degrading the existing environment. Although the proposed building would be higher than the immediately adjacent structures, it would be generally consistent with the urban high-rise and mid-rise development throughout Newport Center. The City's General Plan describes the Newport Center/Fashion Island as a unique, cohesive area of the City (page 3-94 through 3-99 of the Newport Beach General Plan Land Use Element). The General Plan describes the area as a "regional center of business and commerce that includes major retail, professional office, entertainment, recreation, and residential" uses in a master-planned district (page 3-94 of the Newport Beach General Plan Land Use Element). It also notes that the north area of Newport Center consists of high-rise buildings. Consistent with these characteristics, the General Plan includes policies to guide development, including Policy LU 6.14.4, which provides that development should "[r]einforce the original design concept for Newport Center by concentrating the

2. Response to Comments

greatest building mass and height in the northeasterly section along San Joaquin Hills Road...”

Thus, it is reasonable to use an area beyond just the immediately adjacent buildings to discuss consistency with the existing environment for purposes of determining potential aesthetic impacts. This is also consistent with the general CEQA rule that the pertinent question is whether the project would affect the environment of persons in general, not whether a project would affect particular persons. Nevertheless, to the extent the project could result in significant impacts on adjacent uses (e.g., noise, traffic, air quality, shade/shadow), including the Villas at Fashion Island, those potential impacts are discussed throughout the DEIR.

- O2-4 The commenter questions the distance the proposed project is set back from the Villas at Fashion Island, as compared to high-rise office buildings in Newport Center. It should be noted that office uses are generally considered more intensive than residential uses, so a comparison of the proposed project to office uses is not appropriate. Additionally, while the commenter questions the setbacks, commenter does not specifically identify any alleged inadequacy of the analysis in the DEIR or provide any evidence of a potential impact.

Pursuant to the proposed revisions to PC-19 (Appendix C of the DEIR), the project requires a five-foot setback from the northern property line, which is adjacent to the Villas at Fashion Island. However, as shown on Figure 3-6, *Proposed Planting Plan*, the majority of the northern boundary of the project site would include a setback of approximately 10 feet. Moreover, as shown on Figure 3-4, *Proposed Site Plan*, the proposed tower would not be constructed immediately next to this setback, but would include substantial greenspace with various landscaping features. With the proposed landscaping, which features trees and other vegetation, the proposed building would actually be set back from the northern property line by approximately 50 feet. As noted in Draft EIR Section 5.9, *Noise*, the boundary of the project site would be approximately 100 feet from the nearest sensitive receptor at the Villas at Fashion Island. Therefore, with the setback and landscaping proposed by the project, the project’s residential building would be approximately 150 feet from the nearest receptor at Villas at Fashion Island. This actual setback (the distance between the project’s residential tower and the nearest receptor at the Villas at Fashion Island) is, as described in the DEIR, consistent with the General Plan and would not result in significant impacts.

- O2-5 The commenter alleges a significant impact resulting from an inconsistency with General Plan Policy LU 5.1.2. As discussed in Table 5.8-1 of the DEIR, lower density areas near the project site include the Harbor Cove and Big Canyon single-family residential communities to the northwest and northeast, respectively. However, these developments are located across major roadways, and thus physically divided from the project site. Moreover, they are separated from the project by intervening higher-density

2. Response to Comments

developments – the Villas at Fashion Island (32.6 dwelling units/acre) and The Colony Apartment (38 dwelling units/acre). These developments have maximum heights of approximately 65 feet, which results in a height and density transition between the lowest density developments (Harbor Cove and Big Canyon), to higher density developments (Villas at Fashion Island and The Colony), to the highest density development (the proposed project – 50 dwelling units/acre). This stepping/transition of density and height complies with General Plan Policy LU 5.1.2.

With respect to consistency with Policy LU 6.14.2, the existing high-rise buildings are not considered “clustered” such that the project would be considered an outlier. For example, the distance between 660 Newport Center Drive, the high-rise building closest to the project site, and 520 Newport Center Drive, the high-rise building farthest from the project site, is approximately 2,050 feet. Moreover, the distance between the southernmost high-rises (520 Newport Center Drive and 610 Newport Center Drive) is approximately 930 feet. This is only approximately 80 feet closer than the distance between the project site and 660 Newport Center. Thus, the high-rise buildings within Newport Center cannot be considered clustered such that the proposed project would be an outlier.

To the extent the commenter is alleging an impact to views from the Villas at Fashion Island, the commenter also acknowledges that impacts to private views are not an aesthetic impact under CEQA. Furthermore, it is unclear what, if any, views future residents of the Villas at Fashion Island would have of the adjacent area, as views to the south already consist of structures such as The Colony Apartments and other significant structures such as 840 Newport Center Drive.

- O2-6 The comment suggests that the DEIR declined to meaningfully consider a reduced height alternative that could reduce alleged inconsistencies with General Plan Policies LU 5.1.2 and 6.14.2. As discussed in response to Comment O2-5, the project is consistent with Policies LU 5.1.2 and 6.14.2.

Additionally, the DEIR does meaningfully consider the Reduced Height Alternative, including approximately 13 pages of detailed analysis of its ability to reduce significant impacts of the proposed project, any potential new significant impacts, and a general comparison with the proposed project (see Section 7.3.2 of the DEIR). The Reduced Height Alternative was not summarily rejected because it failed to comply with Objective No. 3. The Reduced Height Alternative failed to satisfy multiple project objectives, would not avoid the project’s significant and unavoidable noise impact, and would create a new significant and unavoidable impact (shading at the Villas at Fashion Island). These are reasonable bases for eliminating the Reduced Height Alternative from further consideration.

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The commenter alleges that Objective 3 is illusory because it ensures that the project would be a building of great height. This is incorrect, as evidenced by the discussion of alternatives in the DEIR. First, it should be noted that a lead agency has broad discretion to formulate project objectives. *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 14 found that CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives.

Second, Objective 3 does not preclude consideration of a reasonable range of alternatives. For example, the DEIR analyzed and considered multiple alternatives that would not achieve Objective 3, such as the Existing General Plan Alternative and the No Project/No Development Alternative. Thus, Objective 3 did not preclude consideration of a reasonable range of alternatives. See CEQA Guidelines Section 15126.6(a).

O2-7 The commenter states that the DEIR's shade and shadow analysis is inappropriate, and should have considered whether shadows created by the project would add shade to an entire residential building (rather than individual dwelling units) at the Villas at Fashion Island for more than the threshold period. A lead agency is entitled to substantial deference when determining the appropriate threshold of significance against which to judge a project's potential impacts.

It would be unreasonable to interpret the PC-56 standard (the threshold) as suggested by commenter. First, it would ostensibly necessitate a finding of a significant impact whenever there was an adjacent building of substantial length. For example, if the adjacent Villas at Fashion Island were designed as a single continuous building rather than six separate buildings, the commenter's suggested interpretation would require a finding of significance if shadows were cast on any area of the building for a period exceeding the threshold. Second, the commenter's interpretation is also untenable because it fails to account for the fact that the shadow impacts would be compartmentalized to individual apartments. For instance, it would be unreasonable to combine the shadow periods of Shadow Coverage Reference Points C and D in Figure 5.1-10 because those individual units would not experience the same periods of impact – the shadows created by the project would impact Reference Point C first and recede at that unit first. The way the threshold was applied in the DEIR is the most reasonable.

The project would not significantly impact the pool at the Villas at Fashion Island by creating substantial shadows. As depicted in Figures 5.1-12a and 5.1-12b of the DEIR, the Villas at Fashion Island itself would shade the pool area. Any project-related shade is minimal compared to the Villas at Fashion Island's own shading impacts.

O2-8 The proposed project would not degrade the existing environment such that significant environmental impacts would result. For instance, although the project's residential building would be taller than the adjacent Villas at Fashion Island, the scale and height of the proposed project is generally consistent with the General Plan. Moreover, the

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DEIR evaluates the potential for the project to significantly impact the Villas at Fashion Island, including with respect to shade and shadow, noise, and traffic impacts. Those issues are discussed throughout the DEIR.

Under CEQA, the significance of an environmental impact is measured in light of the context where it occurs. This is especially true with respect to land use consistency and aesthetic impacts. The relevant question, under CEQA, is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. Here, the context against which to measure potential project impacts is Newport Center/Fashion Island. As discussed in the DEIR, the Newport Center area is a “regional center of business and commerce that includes major retail, professional office, entertainment, recreation, and residential uses in a master planned mixed-use” district. It is comprised of multiple high-rise buildings, especially in the north area of Newport Center, in which the project site is located.

The commenter presents no evidence that the proposed project would result in privacy concerns from future residents of the Villas at Fashion Island. Regardless, potential resident privacy concerns are not a physical change in the environment and, therefore, shall not be treated as a significant effect.

Please also refer to response to Comment O2-7 and Section 5.1.3.2 of the DEIR for a discussion of potential shading and shadow impacts on the Villas at Fashion Island.

O2-9 It is standard policy for the City to require Construction Traffic Management Plans and to enforce this requirement under standard conditions of approval as described in the DEIR. Nevertheless, per the commenter’s suggestion, a mitigation measure has been added to the EIR to assure that the plan addresses the specific concerns identified in this comment. The additional mitigation measure (“Mitigation Measure 13-1”) is included in Section 3.2, *Revisions to the Draft EIR*, and requires the project applicant to prepare a construction traffic management plan for review and approval by the City’s Traffic Engineer prior to issuance of building permits. At a minimum, the construction traffic management plan shall include the following:

- Provide detail on planned lane closures, including scheduling and duration;
- Detail applicable lane closure restrictions during peak hours and holiday periods and noticing to surrounding property owners and tenants;
- Provide measures to prevent blocking of surrounding property access points (due to construction vehicle queuing, etc.);
- Document specific off-site parking locations for construction workers;
- Project phasing;

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- Parking arrangements for off-site parking location and on-site during construction;
- Anticipated haul routes; and
- All materials transported on and offsite shall be securely covered to prevent excessive amounts of dust or dirt.

The commenter mentions concerns about construction equipment safety (i.e., cranes). Construction equipment operation safety is regulated by the Occupational Safety and Health Administration (OSHA). OSHA has specific crane operations standards that construction workers are required to adhere to, including inspection of all machinery and equipment before and during each use; posting recommended operating speeds, rated load capacities, and other instructions near the operator; positioning cranes appropriately; maintaining a 10-foot working clearance from power lines; using hand signals; and clearing pathways. OSHA also has work zone safety standards to ensure the areas near construction areas are not subject to potential construction activity hazards. CEQA mitigation, therefore, is not required to address this concern.

The commenter also suggests that the DEIR does not analyze potential vibration impacts. However, page 5.9-26 in Section 5.9, *Noise*, of the DEIR includes a detailed analysis of the potential for the project to generate vibration that could result in either (1) damage to nearby buildings or (2) disturbances to people, and concludes that impacts are less than significant.

O2-10 Although the project plans do not depict surrounding development, the DEIR includes numerous figures and discussions depicting and describing adjacent development and the larger surrounding area. For example, Draft EIR Section 5.1, *Aesthetics*, includes a number of figures depicting the Villas at Fashion Island and its proximity to the proposed project. These figures were included for purposes of analyzing whether the proposed project could have a significant shade/shadow impact on the Villas at Fashion Island (see Figures 5.1-10, 5.1-11a through 5.1-12b). Moreover, Figure 3-3, *Aerial Photograph*, of the DEIR provides an aerial overview of the project site that shows the general locations of the buildings at the Villas at Fashion Island. Finally, various figures in Chapter 4, *Environmental Setting*, depict the project site and adjacent development (see Figures 4-1 and 4-2).

The project plans in the Draft EIR show the project building's orientation. Please refer to response to Comment O2-4 for a discussion of the distance between the project's residential building and the nearest sensitive receptors at the Villas at Fashion Island.

O2-11 Parking is not an environmental topic considered under CEQA. The DEIR only describes the project as being consistent with the City's parking requirement, which requires 2 spaces per unit and 0.5 guest spaces per unit. Therefore, the 100-unit tower

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would be required, and does propose, to provide 200 resident spaces and 50 guest spaces.

All employees would park on-site. As discussed in the DEIR, the project would include valet parking for all residents and guests. With valet parking, the valet operators would be able to over-park the project site by an additional 51 vehicles (using a stacking method). Thus, the garage and valet operation would be capable of accommodating a total of approximately 301 vehicles. This is more than sufficient to accommodate project employees, estimated to be in the range of the current number of employees at the OCMA.


- O2-12 The two projects connect to two different outlets. The Villas at Fashion Island is directly connected to the Orange County Sanitation District (OCSD) main along Jamboree Road. The proposed project connects to a City sewer main along Santa Clemente Drive, which eventually connects to the OCSD main line.
- O2-13 The comment is general and a summation of comments previously provided, no further response is required.

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LETTER O3 – Stop Polluting Our Newport (17 pages)

<p>Hermosa Beach Office Phone: (310) 798-2400 Fax: (310) 798-2402</p> <p>San Diego Office Phone: (858) 999-0070 Phone: (619) 940-4522</p>	 Chatten-Brown & Carstens LLP 2200 Pacific Coast Highway, Suite 318 Hermosa Beach, CA 90254 www.cbcearthlaw.com	<p>Michelle Black Email Address: mnb@cbcearthlaw.com</p> <p>Direct Phone: 310-798-2400 Ext. 5</p>
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September 30, 2016

Via Email gramirez@newportbeachca.gov

Planning Commission
City of Newport Beach

Gregg Ramirez, Senior Planner
Community Development Department
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Draft Environmental Impact Report for the Museum House Residential
Project, PA2015-152

Dear Mr. Ramirez:

These comments are submitted on behalf of Stop Polluting Our Newport (SPON) regarding the Museum House Residential Project (“Project”). Founded in 1974, SPON is a non-profit public education organization dedicated to protecting and preserving the residential and environmental qualities of Newport Beach. The Project would construct a 25-story (295 feet high), 100-unit residential condominium tower with two levels of subterranean parking on approximately two acres (86,942 square feet) and replace the existing single-story 23,632-square foot Orange County Museum of Art (OCMA) building. As proposed, the Project would conflict with the General Plan’s designation of Private Institutional and the zoning code’s height limits. O3-1

Consequently, the Project cannot be built unless the City grants amendments to the City of Newport Beach General Plan and the applicable zoning, the San Joaquin Plaza Planned Community Development Plan. A grant of those approvals would set a precedent for changing, rather than respecting, the City’s governing land use plans set in place by the voter-approved 2006 General Plan.

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 O3-2

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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 (EIR) 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.) SPON is concerned that the draft environmental impact report (DEIR) fails to adequately disclose, analyze, and mitigate the Museum House Project’s significant adverse environmental impacts. Instead, the EIR discounts the Project’s potential for significant impacts. The EIR also fails to satisfy its core purpose of identifying and analyzing feasible alternatives to the Project that would avoid its significant environmental impacts.

O3-2
(cont'd)

SPON respectfully requests that these deficiencies be corrected and that a revised draft EIR be recirculated before the City continues its consideration of the Project.

I. The Project is Inconsistent with the City of Newport General Plan and the San Joaquin Plaza Planned Community Development Plan.

The Project’s proposal to construct 100 residential units is fundamentally inconsistent with the City of Newport Beach General Plan, which designates the project site as “Private Institutional.” This designation exists, in part, to promote cultural uses and is not common in Newport Center. All projects approved in a city must be consistent with the general plan and its elements. “The general plan is atop the hierarchy of local government law regulating land use.” (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) The General Plan has been described “the constitution for future development.” (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773, internal citations omitted.) The DEIR recognizes this, noting, “Future development of all land in the City of Newport Beach is guided by the City’s General Plan.” (DEIR p. 5.8-3.) Due to the Project’s inconsistency with the General Plan, the Project would require the approval of General Plan Amendment No. 2015-001.

O3-3

The State Planning and Zoning Code permits general plan amendments but explicitly limits their frequency to facilitate orderly development and to prevent spot-zoning.

[T]he keystone of regional planning is consistency-between the general plan, its internal elements, subordinate ordinances, and all derivative land-use decisions. Case-by-case reconsideration of regional land-use policies, in the context of a project-specific EIR, is the very antithesis of that goal.

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(*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 572–73.) The City of Newport Beach General Plan was adopted to guide planning decisions through the year 2025. The grant of amendments to development projects such as the Museum House Project undermines this worthy goal. The City should instead consider uses of the Project site that meet the General Plan’s institutional designation and that would contribute cultural experiences after the departure of the Orange County Museum of Art. This would support the General Plan’s Arts and Cultural Element, instead of subverting its goal of providing improved and expanded arts and cultural facilities and programs to the community.

O3-3
(cont'd)

Additionally, the Project would construct 100 condominium units in the Newport Center statistical area, far more units than remain eligible for construction pursuant to the limits adopted by City voters in 1996.

O3-4

The Project is also grossly inconsistent with the site’s underlying zoning. The San Joaquin Plaza Planned Community Development Plan designates the Project site for Civic/Cultural/Professional/Office uses. The intent of the district is “to provide a combination of civic, cultural, business, and professional office uses.” (DEIR p. 5.8-5.) Residential uses are not permitted. To get around this, the Project proposes San Joaquin Plaza Planned Community Development Plan Amendment No. 2015-001. The Amendment would change the Project site’s zoning to Multi-Unit Residential, and would increase the site’s height limit from 65 feet to 300 feet.

O3-5

The Project’s required land use amendments are substantial changes that would forever change the carefully-considered land uses enshrined in the City’s General Plan and in the San Joaquin Plaza Planned Community Development Plan. Amendments to these plans should not be granted lightly.

O3-6

II. The City Cannot Make the Required Site Development Review Findings.

The Museum House Project requires the approval of Site Development Review No. SD2016-001 because the Project involves a tentative map and would construct more than five residential units. In order to grant the Project’s application for a site plan, the City must find that the Project (1) is allowed within the subject zoning district; (2) is in compliance with the applicable criteria of Municipal Code section 20.52.080 (C)(2)(c); and (3) is not detrimental to the harmonious and orderly growth of the City. The Project currently fails to meet all three requirements. Even if the City were to approve the Project’s requested zone change to satisfy the first requirement, the Project would still fail to meet the second two requirements. Pursuant to Municipal Code section 20.50.080(C)(2)(c), site plan review cannot occur unless the Project complies with the General Plan and the Zoning Code; the Project has a harmonious relationship with

O3-7

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adjacent developments; the Project is compatible in terms of bulk and scale; and the Project protects significant views from public rights of way. The Project does not meet any of these criteria. Finally, the approval of a Project that requires so many deviations from the General Plan and other governing documents would be “detrimental to the harmonious and orderly growth of the City.” The Project must be revised before the City may legally consider approval.

O3-7
(cont'd)

III. The Project Requires a Vote Pursuant to the Greenlight Initiative.

The City’s Greenlight Initiative permits the construction of 100 dwelling units in Newport Center beyond those contained in the General Plan without a vote. Hundreds of dwelling units are under construction. The Project proposes 100 units. Thus, a Greenlight Initiative vote is required.

In 2012, the City approved reallocation of 430 dwelling units to the San Joaquin Plaza from block 500 and 600, as well as reallocation of 15 additional residential units from the MU-H3 area to the San Joaquin Plaza. These represented allowable reallocations of previously approved dwelling units under city rules.

In other arenas, the City has claimed that additional dwelling units above 100 are permissible without a vote because there are unconstructed hotel rooms at the Marriott Hotel site. However, residential “dwelling units” and visitor-serving commercial “hotel rooms” are not the same thing as defined and regulated by the City’s governing documents. In order for the City’s claim to have support, these hotel rooms would first need to be legally converted into dwelling units and then be transferred to some project site. The existing planning documents for these sites prohibit these results.

O3-8

The land use plan for the Marriott Hotel site does not permit residential uses, and while the Newport North Planned Community text governing San Joaquin Plaza permits the transfer of development rights among sub-areas, “Residential use may be relocated, *but may not be converted to or from another use.*” (emphasis added.) Therefore, the City must rely on its implementation procedures for the Greenlight Initiative, which provide that the City Council shall submit an Amendment to the voters if “[t]he Amendment authorizes an increase in the number of dwelling units for the property or area that is the subject of the Amendment that exceeds one hundred (100) dwelling units when compared to the General Plan *before approval of the Amendment.*” The Project would itself add 100 residential units. The properly-transferred dwelling units have already been allocated. Compliance with the Greenlight Initiative is required.

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IV. The DEIR Does Not Satisfy the California Environmental Quality Act.

A. The Alternatives Analysis is Inadequate.

CEQA provides, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Resources Code § 21002.) To that end, CEQA requires an EIR to contain an alternatives analysis that examines feasible alternatives to a proposed project that would “avoid or substantially lessen” the significant impacts. (*Ibid.*) The alternatives analysis is the “core of the EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 564.) CEQA imposes a high standard when a lead agency is proposing to reject an alternative considered in an EIR. “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* (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.) The adoption of a less damaging feasible alternative is the equivalent of the adoption of feasible mitigation measure. (*Laurel Heights, supra*, 47 Cal. 3d at 403.) Such an alternative or mitigation measure *must* be adopted by the lead agency unless the lead agency can demonstrate that the mitigation is “truly infeasible.” (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal. 4th 341, 368.)

O3-9

1. The Alternatives Analysis is Artificially Constrained.

What constitutes a reasonable range of alternatives is determined by the project objectives (CEQA Guidelines § 15126.6(a)), but the alternatives analysis of this DEIR is constrained by artificially narrow project objectives. As written, in order to satisfy most of the Project objectives, any alternative studied in the EIR must be residential project of great height. (DEIR pp. 3-1, 3-2.) In fact, 4 of the 9 project objectives require construction of a residential project. (Objectives 1, 2, 4, 8.) Residential use of the site is not currently permitted and requires approval of both an amendment to the General Plan land use designation and a zoning change. However, the objectives presented in the DEIR prevent serious consideration of a non-residential project alternative. The objectives are impermissibly narrow in violation of 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 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);

O3-10

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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.)

O3-10
(cont'd)

Three of the Project objectives are aimed at ensuring that the Project is a building of great height, despite the San Joaquin Plaza Planned Community Development Plan limit of 65 feet. Objective (3) is to “maximize the project’s view opportunities of the visual resources of the City of Newport Beach, including the Pacific Ocean and Newport Harbor.” (DEIR p. 3-1.) Due to its location, the Project could only maximize views of the Pacific Ocean and Newport Harbor if it exceeds the height limitation of the underlying zoning. The benefits of these “view opportunities” would be limited to the 200 future residents, rendering this objective a self-serving justification for the building’s excessive height. Objective (4) is to “implement the Newport Beach General Plan Policy LU 6.14.4 by developing a residential project that would reinforce the original design concept for Newport Center by concentrating the greatest building mass and height in the northeastern section along San Joaquin Hills Road.” (DEIR p. 3-1.) This objective is internally inconsistent. While General Plan Policy LU 6.14.4 does discuss concentrating height along San Joaquin Hills Road, the policy does not contemplate high-rise residential uses. On the contrary, Policy LU 6.14.2 is to “Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2.” (DEIR p. 5.8-15.) This Project is neither “limited residential” nor consistent with the limits specified in Tables LU1 and LU2. Objective (5) is “To create a landmark structure... that is compatible and complementary with the project’s location.” (DEIR p. 3-2.) While this objective appears aimed at ensuring a highly-visible (tall), “landmark” building, a building that is truly compatible with the site would be one that complies with the underlying zoning and height restrictions, a sub-65-foot-tall structure.

O3-11

A Project’s objectives should not exclude the consideration of alternatives that are **consistent** with existing land use plans and zoning. Accordingly, the DEIR’s rejection of feasible alternatives for the failure to meet these objectives is improper.

2. The DEIR Improperly Rejects Alternatives to the Project.

The DEIR acknowledges that the Project would have significant and unavoidable impacts with regard to construction noise and nearby residents. (DEIR p. 1-21). Accordingly, the DEIR should focus on analyzing an alternative that would reduce the Project’s need for construction. The DEIR should also evaluate moving the proposed Project off-site. Off-site alternatives should be considered when “significant effects of the project would be avoided or lessened by putting the project in another location.” (Guidelines §15126.6(f)(2)(A).)

O3-12

O3-13

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Instead of providing true consideration of off-site alternatives, however, the DEIR “assumed that the project would be developed based on the same plans” and limited itself to consideration of sites that could accommodate a 295-foot-tall residential tower. (DEIR p. 7-4.) This is improper for several reasons. First, there is no reason that the Project could not provide less than 100 dwelling units, or configure the dwelling units in several buildings of shorter height. Second, the Project site itself forbids both residential uses and a 295-foot-tall tower. Thus, the Applicant’s control of the Project site is not dispositive.

O3-13
(cont'd)

Due to the assumption that an off-site Project would be a 295-foot-tall tower, the DEIR limits its consideration of off-site alternatives to only infeasible locations, Banning Ranch, near John Wayne Airport, and Newport Center (where the DEIR properly notes that the planned residential projects already exceed the future development capacity). (DEIR p. 7-5.) The DEIR must be revised to include analysis of off-site alternatives that would accommodate residential units in configurations other than a 100-unit, 295-foot-tall tower.

The Reduced Height Alternative was designed in response to scoping comments concerned with the proposed Project’s height. The Reduced Height Alternative would construct a 65-foot-tall residential project of 100 dwelling units, consistent with the existing height limit for the site (if not the use designations). Although the Reduced Height Alternative could satisfy the developer’s goal of providing 100 dwelling units, the DEIR finds that the alternative would only marginally reduce the Project’s construction-related impacts and would increase shade and shadow impacts because it would have to be placed nearer to existing buildings. (DEIR p. 7-18.) The DEIR rejects the alternative because it would decrease the amount of open space amenities that would be provided to residents, would not be a “fully amenitized residential community with state-of-the-art facilities to the same degree,” would not maximize views of the Pacific Ocean and Newport Harbor, would not generate as much temporary construction labor, and would not contribute the same property tax revenue to the City. (DEIR p. 7-18.)

O3-14

These conclusions lack substantial evidence. There is no reason that the Project could not be designed to contain fewer dwelling units in order to provide the same amount of outdoor space and limit lot coverage, while decreasing shade and shadow impacts. Moreover, there is no reason that a reduced-dwelling unit alternative could not provide the same amenities and state-of-the-art facilities. Any construction Project that provides new residential units would contribute to temporary construction employment and to property tax revenue. The reliance on the objective of maximizing views (which requires construction of an impermissible tower) is also improper to reject the alternatives, but, alternatives are not required to meet all project objectives, and in reality

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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.)

O3-14
(cont’d)

The DEIR considered an “Existing General Plan Alternative” that assumed continued use of the institutional uses of the site with expansion of the square footage permitted for the property. (DEIR p. 7-18.) The DEIR found that this alternative would reduce the Project’s impacts in a number of areas, and designated it as the “environmentally superior alternative.” (DEIR p. 7-28, p. 7-38.) However, instead of selecting this alternative, which is consistent with the General Plan and the Planned Community designation, the DEIR rejected this alternative for failing to meet the Project’s impermissibly constrained alternatives related to the provision of residences, views, and construction of a tall building. This rejection violates CEQA. The “Existing General Plan Alternative” respects both the existing height limit and the underlying institutional and cultural zoning designations. It would also avoid the precedential effect of the Project. SPON urges the City to consider an alternative that avoids the Project’s inconsistencies with City land use policies.

O3-15

B. The DEIR Fails to Mitigate the Project’s Inconsistencies with City Land Use Policies.

CEQA requires discussion of any inconsistencies between a proposed project and applicable land use plans in an EIR. (CEQA Guidelines § 15125(d); *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project’s inconsistencies with local plans and policies constitute significant impacts under CEQA that must be disclosed, analyzed, and mitigated or avoided. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177.)

O3-16

The DEIR purports to use the correct threshold of significance for determining whether an impact on land use is significant. The threshold adopted by the DEIR is whether the Project or any component of the Project would “[c]onflict with an 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.” (DEIR p. 5.8-7.) Here, the Project conflicts with several policies and designations of the City’s General Plan, as well as its zoning ordinance. Yet the DEIR fails to deem these impacts significant so that they can be mitigated or eliminated with redesign of the Project.

O3-17

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As described above, the Project is inconsistent with the land use designations of the General Plan, and with the land use designations and the height restrictions contained in the San Joaquin Plaza Planned Community Development. The Project is also inconsistent with:

- LU Policy 1.1, "Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts..." The Project would convert private institutional use to residential use, preventing another cultural or institutional use from using the site after the departure of the Orange County Museum of Art. The Project does not provide any offset for the loss of cultural uses in the area.
- LU Policy 1.6, "Protect, and, where feasible, enhance significant scenic and visual resources that include open space, mountains, canyons, ridges, ocean, and harbor from public vantage points." At 295 feet tall, the Project would block views of the Pacific Ocean from inland of the site and views of Saddleback Mountain from the seaward side of the Project. The DEIR claims that "Most of the existing skyline near northern Newport Center is already partially obstructed by high rise office buildings..." but this is not a reason to complete the obstruction. The Project contributes to the "walling off" of Newport Center, a direct, indirect, and cumulative aesthetic impact that is not disclosed or mitigated in the DEIR.
- LU Policy 2.1, "Accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces." The Project converts private institutional uses to residential uses, thereby removing the "balance" of recreation, education, culture, and entertainment uses that currently exists with the Orange County Museum of Art building and that could occupy the site after the museum's departure.
- LU Policy 3.2, "Enhance existing neighborhoods, districts, and corridors... Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth..." The Project site is not currently economically underperforming. Further, Newport Beach's share of projected regional population growth is minimal, and will be met from other planned projects. The Project is not necessary to satisfy the City's RHNA allotment, and is therefore inconsistent with this policy of the General Plan.
- LU Policy 3.3 describes expanding retail uses, hotel rooms, and residential uses in proximity to jobs and services in the Newport Center Area, but any such development must remain consistent with the limits on residential development in

O3-17
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each statistical area. Since the statistical area in which the site is proposed has few residential units remaining, the Project's 100 residential units are inconsistent with the General Plan.

- LU Policy 4.1, "Accommodate land use development consistent with the Land Use Plan." The Project is facially inconsistent with the General Plan's land use designation of private institutions, as well as with the use and height limits of the applicable zoning, the San Joaquin Plaza Planned Community Development. The Project requires spot-zoning-style amendments to these plans to achieve the consistency claimed in the DEIR.
- LU Policy 4.2, "Prohibit new residential subdivisions that would result in additional dwelling units unless authorized by an amendment of the General Plan." As described above, the Project is inconsistent with this policy and therefore requires a General Plan Amendment.
- LU Policy 5.1.2, "Require that the height of development in nonresidential and higher-density residential areas transition as it nears lower-density residential areas..." The DEIR claims consistency with this policy because lower density residential areas are located across Jamboree and San Joaquin Hills Road, and because nearer residences at The Colony and Villas are planned to reach 65 feet in height. However, the Project would reach 295 feet in height, 230 feet taller than these lower-density residential uses. The Project fails to maintain a transition, and is inconsistent with the General Plan.
- LU Policy 5.6.1, "Require that buildings and properties be designed to ensure compatibility within and as interfaces between neighborhoods..." The DEIR claims consistency with this policy because nearby buildings, such as the PIMCO building, are tall, but nearby residences at The Colony and Villas are planned to reach 65 feet in height. However, the Project would reach 295 feet in height, 230 feet taller than these lower-density residential uses. The claimed compatibility does not exist.
- LU Policy 6.2.3, "Encourage the development of residential units that are affordable for those employed in the City." The Project would provide 100 luxury condominiums with ocean views. The Project is not proposing any affordable housing and is therefore inconsistent with the General Plan.
- LU Policy 6.14.2, "Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2." At 100 residential units, the Project plans neither "limited" residential development, nor compliance with the Tables. The DEIR claims that the General Plan Amendment would achieve consistency with this goal, but fails to account for the fact that nearly all of the statistical area's allotted dwelling units are already under construction.

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- LU Policy 6.14.4, “Reinforce the original design concept for Newport Center by concentrating the greatest building mass and height...along San Joaquin Hills Road.” The Project site has never been proposed for uses exceeding 65 feet in height. Such use is inconsistent with all past and existing design concepts for Newport Center.
- Policy R1.1, provide 1.1 acres of parkland. The Project claims to provide 1.2 acres of open spaces, but only some of these spaces are on the ground floor, and it is unknown how much of this space would be publicly available. For the Project to satisfy the City’s goal of providing park lands for its residents, the ground floor dog run, lawns, gardens, pools, cabanas, and outdoor living spaces at the Project would have to be made available and *welcoming* to the public.
- Policy NR 20.1, “Protect and, where feasible, enhance significant scenic and visual resources...” At 295 feet tall, the Project would block views of the Pacific Ocean from inland of the site and views of Saddleback Mountain from the seaward side of the Project. The DEIR claims that “Most of the existing skyline near northern Newport Center is already partially obstructed by high rise office buildings...” but this is not a reason to complete the obstruction. The Project contributes to the “walling off” of Newport Center, a direct, indirect, and cumulative aesthetic impact that is not disclosed or mitigated in the DEIR.
- Policy NR 20.3, “Protect and enhance public view corridors from” Avocado Avenue, Jamboree Road, MacArthur Boulevard, and Newport Center Drive. The DEIR admits that the Project will be visible from these protected roadway segments, but claims that the tower “would not introduce a new significant obstruction in the existing skyline and would instead integrate well with the existing cluster of high rise buildings in northern Newport Center.” (DEIR p. 5.8-22.) The Project would admittedly contribute to the wall of tall buildings forming in Newport Center, blocking the Pacific Ocean and views of Saddleback Mountain. This is a significant cumulative impact on views that is not mitigated in the DEIR.

The DEIR must be revised to disclose these inconsistencies and to include mitigation measures or alternatives that result in a Museum House Project that respects the City’s governing land use documents.

C. Growth-Inducing and Precedent-Setting Impacts are Omitted from the DEIR Analysis.

Pursuant to CEQA Guidelines sections 15126(d) and 15126.2(d), the DEIR includes a discussion of the Project’s likely growth-inducing and precedent-setting impacts. Unfortunately, the DEIR’s conclusions with regard to these impacts lack substantial evidence. For example, the DEIR claims that the Project “will not remove

O3-17
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O3-18

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obstacles to growth” such as “through changes in existing regulations pertaining to land use development” because the Project site is already developed, and land use plans would permit greater development on-site than currently exists. (DEIR p. 9-3.) However, the existing permitted land use is not residential, but “private institutional.” The Project’s change to residential use increases the intensity and daily duration of the use, a definite growth-inducing impact. The Project would also increase the allowable height at the project site from 65 feet (of institutional uses) to 300 feet, thereby drastically increasing the amount of development permissible. By removing the institutional designation and the 65-foot height limit, the Project would, in fact, have growth-inducing impacts.

O3-18
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The DEIR also claims that the Project’s deviation from General Plan and Zoning Code requirements would not set a precedent for future growth because all future developments in the area would require City approval. (DEIR p. 9-4.) However, contrary to the DEIR’s conclusion, the approval of this Project would “make it more likely for other projects to gain approval of similar applications.” (*Ibid.*) Once the City stops requiring developers to respect the voter-approved General Plan and existing zoning designations, it will be much harder for the City to disapprove future projects that fail to comply with the City’s governing land use plans. The DEIR must disclose the Project’s growth-inducing and precedent-setting impacts and be recirculated.

O3-19

D. Adverse Cumulative Impacts of the Project’s Precedent-Setting Nature are Not Analyzed.

Cumulative impact analysis is important because “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.) While the City has included a list of cumulative projects in the DEIR, this list is limited to those that are foreseeable under the current zoning and General Plan. As discussed above, the DEIR’s analysis fails to recognize the precedent-setting nature of this Project, which would permit spot-zoning to evade height and use limitations that would otherwise apply to the Project site. If approved, the Project would set a precedent for amending the General Plan and Planned Community Development Plans to permit developments not contemplated when the voters approved the General Plan in 2006. Such a precedent could result in the lifting of height limits and prohibitions on residential development in Newport Center – and throughout the City – at any time, resulting in significant new growth, mass, bulk and height inconsistent with surrounding neighborhoods that has not been analyzed under CEQA or in connection with the City’s Land Use Element or other planning documents. The cumulative impacts analysis is therefore incomplete, as there is substantial likelihood that the Project’s proposal to use multiple land use plan amendments would set a precedent for ignoring the City’s well-considered land use plans.

O3-20

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In *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, the Court of Appeal found that, absent meaningful cumulative analysis, there would never be any awareness or control over the speed and manner of development in downtown San Francisco. In that case, the court found the city's refusal to take into account other similar development projects to be a violation of CEQA. (*Id.* at 634.) "Without that control, 'piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment.'" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.) Similarly, without adequate cumulative analysis of the Project's disregard for existing height and use limitations in Newport Center, the City will lose control over development of the area. The DEIR's conclusion that the Project has no potential to contribute to cumulatively significant impacts through its precedent-setting nature lacks substantial evidence.

O3-20
(cont'd)

E. The Air Quality Analysis Fails to Incorporate a Health Risk Analysis that Employs the Newest Standards to Analyze Potential Impacts on Sensitive Receptors.

In 2015, 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). The South Coast Air Quality Management District (SCAQMD) adopted the Guidance Manual on June 5, 2015. (<http://www.aqmd.gov/home/library/public-information/2015-news-archives/airtoxics-release-061815>.) As acknowledged in the DEIR, the new OEHHA standards acknowledge that air toxics much more dangerous to infants, children, and the elderly than previously believed. Accordingly, the new standards are 2.7 times more protective than those previously used in risk assessments. (DEIR p. 5.2-13.)

The DEIR admits that construction impacts will be significant (DEIR p. 5.2-21) and that they may exceed localized significance thresholds for particulate emissions (DEIR p. 5.2-25). Thus, "project-related construction activities would expose sensitive receptors to substantial pollutant concentrations unless mitigated." (DEIR p. 5.2-25.) Even so, the DEIR fails to provide a Health Risk Assessment (HRA) that incorporates the new OEHHA Guidance.

O3-21

In lieu of providing an HRA, the DEIR states, "SCAQMD does not currently require health risk assessments to be conducted for short-term emissions from construction equipment." (DEIR p. 5.2-26.) However, SCAQMD adopted the Guidance Manual on June 5, 2016, and its use is appropriate here. The DEIR alternately claims that the Project's 28-month construction timeline is too short to have significant health impacts, but this claim is based on existing thresholds and not those contained in the

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more protective OEHHA Guidance. (DEIR p. 5.2-26.) Alternately, the DEIR states that “construction activities would not exceed LST significance thresholds with mitigation.” (DEIR p. 5.2-26.) The DEIR contradicts this statement two sentences later, noting, “Project-related construction health impacts would be less than significant *and no mitigation measures are required.*” (DEIR p. 5.2-26, emphasis added.)

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 estimates that a six-month construction project for a typical one-acre office project could cause a significant HRA impact. The Project will require subsurface excavation and recompaction on two acres, and therefore would likely have significant impacts if a conforming HRA were prepared. Thus, the DEIR likely understates the Project’s potential construction impacts on nearby sensitive receptors. This would also result in the Project’s failure to fully mitigate these potential adverse health impacts. An HRA must be prepared that satisfies the standards of the new OEHHA Guidance, and the DEIR must be revised to include the results and sufficient mitigation for any newly-disclosed impacts.

O3-21
(cont'd)

F. The DEIR Does Not Disclose or Analyze All Foreseeable Traffic Impacts.

As the City is well-aware, traffic is of great concern to residents and visitors to Newport Beach. The Project will contribute the trips of 200+ residents, employees, and visitors to an already-congested region. The DEIR fails to disclose and mitigate all of the Project’s significant traffic impacts, as required.

For example, the Traffic Phasing Ordinance (TPO) has been amended to exclude certain congested intersections and roadways, such as those that pass through the Corona del Mar business district. The City’s voters have accepted higher traffic congestion in this area in order to preserve the charm and existing road configuration. For this reason, SPON does not dispute the DEIR’s finding that Project satisfies the TPO. However, the DEIR fails to disclose the degree to which the Project’s trip generation will adversely affect traffic in Corona del Mar. While this data may be disclosed in the charts and appendices, courts have concluded that burying information in an appendix frustrates the legally required informational purposes of an EIR. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.) This is precisely the type of omission from the DEIR that precludes informed decision-making and violates CEQA.

O3-22

Additionally, the DEIR’s analysis is based on the trip generation rates for high-rise residential buildings rather than the higher trip generation rate attributable to the “luxury

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condominiums” that are proposed. The DEIR must be revised to include traffic analysis based on the correct trip generation rates.

The DEIR’s traffic analysis also fails to account for the trip generation of City Hall in the Section 423 tracking tables. Since the vote to move the city hall was an advisory vote, not a Section 423 vote, the traffic added by city hall must count in the calculations for a Section 243 vote. If the Project’s trip generation meets the thresholds, a vote of the people must be held pursuant to the Greenlight Initiative before this Project may be implemented.

O3-22
(cont'd)

G. The Project’s Height Will Contribute to the Newport Center Wall of Buildings.

CEQA requires consideration of impacts to public views. (*Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396.) The Project’s height in excess of 295 feet would result in diminished public views of Saddleback Mountain looking inland and of the Pacific Ocean looking seaward. Despite these potential impacts to public views, which require disclosure, analysis, and mitigation in an EIR, the DEIR fails to acknowledge that the Project will have any significant impacts on views or aesthetic values. (DEIR p. 1-15.) This conclusion is not supported by substantial evidence and is contrary to that of residents who are concerned that the Project’s height is incompatible with surrounding development and that it will interrupt the skyline. The courts have recognized that aesthetic impact analysis is inherently subjective. (*Ocean View Estates Homeowners Ass’n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402)

O3-23

The DEIR fails to consider the Project’s contribution to the wall of buildings emerging from Newport Center that will obscure public views of the mountains inland and of the ocean looking seaward. The loss of these treasured, public views will not be offset by the Project’s provision of private views to Project residents. These impacts must be properly analyzed and mitigated in a recirculated DEIR.

H. Mitigation for the Project’s Significant Noise Impacts is Inadequate.

The DEIR acknowledges that the Project will have significant and unavoidable impacts with regard to construction noise. (DEIR pp. 1-21 to 1-23.) CEQA requires the incorporation of all feasible mitigation measures. (Pub. Resources Code § 21002.)

O3-24

Mitigation Measure (MM) 9-5 states, “Electrically powered equipment instead of pneumatic or internal combustion powered equipment shall be used *to the extent feasible*” but provides no standard for determining what is feasible. CEQA mitigation measures

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must be concrete and enforceable. (Pub. Res. Code § 21081.6(b); *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445.) The mitigation measure should be revised to require the use of electrically powered equipment.

O3-24
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MM 9-8 provides for the use of smart back-up alarms, which automatically adjust the alarm level based on existing ambient noise levels, or human spotters. MM 9-8 should also provide that the smart back-up alarms emit multi-frequency sounds, which are much better tolerated by neighbors than high frequency alarms.

V. The Development Agreement Must Be Made Publicly Available.

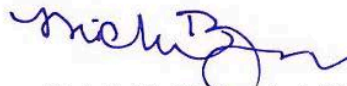
Pursuant to Section 15.45.020 of the Municipal Code, the Project requires approval of a development agreement. Accordingly, the development agreement must be part of the project studied in the DEIR. However, the development agreement has not been released for public review. The development agreement must be released for public review so that the public and City decision makers can ensure that the EIR has disclosed, analyzed, and mitigated all aspects of the Project – including those negotiated in the development agreement – before it is considered for approval.

Conclusion

Due to the Museum House Project's failure to comply with the City's General Plan and other governing land use documents and the DEIR's failure to adequately disclose, analyze, and mitigate the Project's likely significant impacts, SPON asks the City to revise and recirculate the DEIR. Compliance with CEQA will require additional analysis of the Project's direct and cumulative impacts, the development of effective mitigation measures, and the analysis of feasible alternatives that are directed at reducing the Project's significant impacts while respecting the General Plan. The City must also analyze and disclose the Project's compliance with the Greenlight Initiative, since the election requirement will affect further processing of the Project. SPON looks forward to reviewing the revised DEIR for the Project. Thank you for your consideration of these comments.

O3-25

Sincerely,



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

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cc: Kimberly Brandt AICP, Community Development Director
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O3. Response to Comments from Michelle N. Black, on behalf of Stop Polluting Our Newport, dated September 30, 2016.

O3-1 As noted by the commenter, the proposed project would require a General Plan amendment and zoning change. These requests are detailed in Chapter 3, *Project Description*, and Section 5.8, *Land Use and Planning*, of the DEIR.

The degree to which the proposed land use changes would be precedent setting is speculative. As discussed in the DEIR, any future projects that would require entitlements similar to the project (i.e., General Plan amendment and zoning amendment) would be subject to environmental review under CEQA. Moreover, the commenter provides no evidence to support the conclusion that approval of the project would have any precedent-setting effects. It would also be unreasonable for the DEIR to attempt to speculate as to possible future approvals/entitlements that could be approved by the City.

O3-2 This comment alleges noncompliance with CEQA, but does not specifically identify any issues with the DEIR. The subsequent responses address the specific issues raised by this commenter. No further response is required for this comment.

O3-3 Commenter alleges that the project would be inconsistent with the General Plan. However, as discussed in the DEIR, and acknowledged by the commenter, the project includes a General Plan Amendment to redesignate the project site to Multiple Residential (RM). With this amendment, the project would be consistent with the General Plan.

The commenter's citation to *Citizens of Goleta Valley v. Board of Supervisors* is presented out of context. When making that decision, the California Supreme Court was considering whether a project-level EIR had to consider alternative locations that were not designated for a major resort-hotel project. Importantly, the court was not declaring that site-specific amendments to the General Plan were, by nature, inconsistent with the State Planning and Zoning Law. Any such ruling would have been fundamentally at odds with the State Planning and Zoning Law, which expressly addresses amendments to the General Plan per Government Code Section 65358 stating that, "If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan." Moreover, as a charter city, the City is not limited in the number of times it may amend its General Plan.

As described in Section 3.2, *Revisions to the DEIR*, the project would also include the donation of a parcel of land containing the existing OCMA administrative offices to the City of Newport Beach. This parcel would remain designated for Private Institutions use under the General Plan, but ownership would be vested with the City. Thus, the project would not subvert the General Plan's Arts and Cultural Element.

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- O3-4 The commenter indicates the requested units are more than approved by the voters in 1996. However, amendments to the General Plan to increase dwelling units may be approved beyond what was approved by the voters.
- O3-5 As discussed in DEIR Chapter 3, *Project Description*, the project would require a Zoning Amendment to amend PC-19 to allow for residential uses. With this amendment, the project would be consistent with the underlying zoning. The project would not change the underlying zoning of the project site to Multi-Unit Residential, as suggested by commenter.
- O3-6 The DEIR thoroughly analyzes the project's proposed entitlements, including the General Plan amendment and zoning amendment, for consistency with the General Plan and existing zoning. The comment is noted and included as part of the FEIR, and is therefore before the decision makers for their consideration prior to taking any action on the project. However, as the comment is general, no further response is required.
- O3-7 The comment concerns the findings required pursuant to the project's Site Development Review approval. This comment does not specifically reference any section of the DEIR or allege any inadequacy in the DEIR's analysis. Therefore, no further response is required.
- O3-8 As stated by the commenter, the City's "Greenlight Initiative", or Charter Section 423, requires a vote to authorize the more than 100 dwelling units in the Newport Center statistical area beyond those contained in the General Plan. While there are other residential units under construction in Newport Center, none required a General Plan amendment. Therefore, the General Plan may be amended to create 100 additional residential units in Newport Center, as requested by the subject application.
- O3-9 Comment provides an overview of the CEQA requirements for consideration of project alternatives. This comment does not specifically reference any section of the DEIR or allege any inadequacy in the DEIR's analysis. Therefore, no further response is required.
- O3-10 The commenter alleges that the project's objectives make the DEIR's discussion of project alternatives inadequate. Specifically, the commenter asserts that the project objectives effectively require that any alternative studied in the DEIR be a residential project of great height. However, this contention is inaccurate. DEIR Chapter 7, *Alternatives*, considered a wide array of alternatives to the proposed project, including (1) the No Project/No Development Alternative, (2) the Existing General Plan Alternative, and (3) the Reduced Density Alternative. It also analyzed a fourth alternative – the Reduced Height Alternative – but rejected that alternative from further consideration because that alternative would not avoid or lessen the project's significant and unavoidable noise impact, would result in a new significant and unavoidable aesthetic

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impact, and would fail to achieve a significant number of the project objectives. All of the alternatives included in the DEIR were thoroughly evaluated as required by CEQA.

Given the scope of analysis for each alternative in the DEIR, it is unclear why the commenter believes that the objectives “prevent serious consideration” of a non-residential project alternative. As discussed above, the DEIR included two non-residential alternatives – the No Project/No Development Alternative and the Existing General Plan Alternative. To the extent those alternatives are inconsistent with certain project objectives, the DEIR notes such inconsistencies. Importantly, however, those non-residential alternatives were not eliminated from further consideration, but will be before the City Council for their deliberation, thus contributing to a reasonable range of alternatives. *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981 ruled that the decision-making body may adopt or reject as infeasible project alternatives that were identified in the EIR as potentially feasible.

- O3-11 The commenter alleges that certain project objectives – Objective 3 and Objective 4 – are improper because they ensure that the project would be a building of great height. This is incorrect, as evidenced by the discussion of alternatives in the DEIR. First, it should be noted that a lead agency has broad discretion to formulate project objectives. *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 14 found that CEQA does not restrict an agency’s discretion to identify and pursue a particular project designed to meet a particular set of objectives.

Second, Objective 3 and Objective 4 did not preclude consideration of a reasonable range of alternatives. For example, the DEIR analyzed and considered multiple alternatives that would not achieve Objective 3, such as the Existing General Plan Alternative and the No Project/No Development Alternative. Thus, Objective 3 did not preclude consideration of a reasonable range of alternatives. See CEQA Guidelines Section 15126.6(a).

The commenter also alleges that Objective 3 (maximizing views of visual resources) is “self-serving” because it would only benefit future residents and, therefore, is improper. CEQA does not include a prohibition on objectives that benefit the project or future residents. As discussed above, lead agencies have broad discretion in formulating project objectives.

Commenter asserts that Objective 4, which seeks to implement General Plan Policy LU 6.14.4, is internally inconsistent. However, commenter’s inconsistency argument is without support and appears to rely on a separate General Plan policy independent of Policy LU 6.14.4. Policy LU 6.14.4 provides that development in Newport Center should reinforce the “original design concept for Newport Center by concentrating the greatest building mass and height in the northeasterly section” of Newport Center. The proposed project is consistent with this objective. See DEIR Section 5.8, *Land Use and*

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Planning. The commenter, however, argues that Policy LU 6.14.4 does not contemplate high-rise residential uses. This is incorrect and not based on the plain language of Policy LU 6.14.4, which does not differentiate between types of uses when describing the general development pattern for Newport Center. Also, Policy LU 6.14.2 does not relate to development scale or the pattern of development in Newport Center. Therefore, Objective 4 is reasonable and proper.

The commenter misconstrues the purpose of Objective 5. First, the commenter presents no evidence to support the assertion that the only possible project that would be compatible with the site is one that is consistent with existing, underlying zoning. Second, the commenter misreads Objective 5, which is focused on consistency with the project's location, not necessarily its existing zoning.

The commenter is incorrect that the DEIR failed to include alternatives that are consistent with existing land use plans and zoning. As a matter of fact, two alternatives – the Existing General Plan Alternative and the No Project/No Development Alternative – would both be consistent with existing planning and zoning.

O3-12 The commenter contends that the DEIR should focus on an alternative that would reduce the need for construction. The DEIR does contain two such alternatives, (1) the No Project/No Development Alternative, which would not include any construction, and (2) the Existing General Plan Alternative, which would allow for minor expansion consistent with the General Plan.

O3-13 The commenter suggests that the DEIR's analysis of off-site alternatives is invalid because it failed to consider off-site locations capable of handling an alternative to the project. CEQA does not require this analysis. First, CEQA does not contain a categorical imperative requiring the consideration of off-site alternatives, let alone a requirement that off-site locations be coupled with project alternatives (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 993). This is consistent with the well-accepted principle that an EIR's discussion of alternatives is governed by the rule of reason, per CEQA Guidelines Section 15126.6(a). Moreover, a lead agency's section 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).

Second, an EIR need not consider multiple variations of different alternatives. What is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1029). Here, the DEIR includes a thorough discussion of alternatives to the proposed project, including off-site alternative locations, sufficient to satisfy the rule of reason. Therefore, the DEIR was not required to consider alternative locations coupled with alternative project designs.

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Moreover, the commenter has not provided any evidence that such an alternative location exists.

- O3-14 The commenter argues that the DEIR's conclusions for eliminating the Reduced Height Alternative from further consideration are without substantial evidence. However, this is incorrect. The Reduced Height Alternative was eliminated from further consideration in the DEIR because it failed to satisfy multiple project objectives, would not avoid the project's significant and unavoidable noise impact, and would create a new significant and unavoidable impact (shading at the Villas at Fashion Island) (see page 7-18 of the DEIR). These are reasonable bases for eliminating the Reduced Height Alternative from further consideration, and they are supported by substantial factual evidence in the DEIR's detailed analysis of the Reduced Height Alternative.

The commenter contends that the DEIR lacks substantial evidence because the Reduced Height Alternative could be redesigned to contain fewer dwelling units, which would allow for more open space and would decrease shade/shadow impacts. Although a design with a greater setback from the Villas at Fashion Place could potentially eliminate the significant shade/shadow impact associated with the Reduced Height alternative, it would not eliminate the significant construction noise impact (demolition of the existing museum alone will result in significant, unavoidable noise impacts). The required setback to both avoid significant shade/shadow impacts and meaningfully reduce construction noise impacts would substantially limit the development boundary and potential units for the project site. Such an alternative would not eliminate significant impacts of the project and would not achieve the majority of the project objectives. Moreover, CEQA does not require consideration of multiple variations of different alternatives to the project. What is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. The revised Reduced Height Alternative hypothesized by the commenter would not substantially deviate from the Reduced Height Alternative already discussed in the DEIR. Therefore, under CEQA, it is not required.

The commenter also states that there is no reason that a reduced dwelling unit alternative could not be designed to provide the same amenities and facilities as the proposed project. With this comment, the commenter appears to be combining Objectives 1 and 7. The commenter is correct, and the DEIR included such an alternative as the Reduced Density Alternative. As discussed in the DEIR, the Reduced Density Alternative would meet both Objectives 1 and 7. This alternative contributes to a reasonable range, as commenter appears to suggest it would.

Please see response to Comment O3-11 for a discussion of why Objective 3 is reasonable and proper.

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- O3-15 The commenter states that the Existing General Plan Alternative was improperly “rejected” in the DEIR. First, the Existing General Plan Alternative was not rejected, but was thoroughly analyzed in the DEIR, including whether the alternative would achieve the project objectives. The Existing General Plan Alternative remains part of the DEIR and will be before the City Council for their deliberation, thus contributing to a reasonable range of alternatives (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981 [the decision-making body may adopt or reject as infeasible project alternatives that were identified in the EIR as potentially feasible]).

The DEIR includes a reasonable range of alternatives to foster informed decision making and public participation, consistent with CEQA Guidelines Section 15126.6(a). Moreover, as noted by the commenter in a previous comment, a project alternative generally will not attain all of the project’s objectives (*Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087).

The commenter is incorrect that the DEIR failed to include alternatives that are consistent with existing land use plans and zoning. As a matter of fact, two alternatives – the Existing General Plan Alternative and the No Project/No Development Alternative – would both be consistent with existing planning and zoning.

- O3-16 The commenter provides an overview of the CEQA requirements for consideration of a project’s potential land use impacts. This comment does not specifically reference any section of the DEIR or allege any inadequacy in the DEIR’s analysis. Therefore, no further response is required.

- O3-17 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 proposition, the DEIR thoroughly identified and analyzed consistency with the General Plan and other applicable plans in DEIR Section 5.8, *Land Use and Planning*.

The commenter also again asserts that the project is inconsistent with the land use designations of the General Plan and the underlying zoning. However, as discussed in the DEIR, with the requested entitlements, including a General Plan amendment and zoning amendment, the project would be consistent with the General Plan’s land use designation and zoning.

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 (*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.*).

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As discussed above, the DEIR included a thorough General Plan consistency analysis in Table 5.8-1. The commenter is referred to that table, which includes substantial evidence of consistency with various General Plan policies.

- O3-18 The commenter asserts that the DEIR's analysis of the project's growth-inducing impacts is inappropriate. However, commenter's assertion is based upon the premise that the project itself would be "growth inducing" by constructing a 100-dwelling unit, 295-foot tall development. To the extent the project would, in fact, be growth inducing and result in impacts, those impacts are evaluated throughout the DEIR.

The DEIR also considers the potential for the proposed project to result in additional growth inducement (CEQA Guidelines Section 15126.2(d) [EIR must include a discussion of "the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment"]). This analysis complies with CEQA (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265 [EIR must evaluate reasonably foreseeable growth-inducing impacts of a project, but not speculative effects]).

- O3-19 See response to Comment O3-1 above. As discussed in the DEIR, any future projects that would require entitlements similar to the project (i.e., General Plan amendment and zoning amendment), would be subject to environmental review under CEQA. The commenter provides no evidence to support the conclusion that approval of the project would have any precedent setting effects. Also, it would be unreasonable for the DEIR to attempt to speculate as to possible future approvals/entitlements that could be approved by the City. *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 227 [the detail required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment]. The DEIR's discussion of potential growth-inducing impacts, in Section 9.2, *Growth-Inducing Impacts of the Proposed Project*, is appropriate and complies with CEQA. Recirculation is not required.

- O3-20 See response to Comments O3-1 and O3-19 above. Again, the commenter asserts that approval of the project would have a precedent-setting effect such that other, currently unforeseeable projects must be approved by the City. The commenter provides no evidence to support this assertion, particularly that the City will "lose control" over development in Newport Center. Furthermore, it is generally undermined by the State Planning and Zoning Law, which expressly contemplates amendments to the General Plan.

It would be unreasonable, and not in accord with CEQA, to impute future projects that may include similar entitlements (i.e., a General Plan amendment and zoning

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amendment) to the project. An EIR is not required to speculate about the environmental consequences of future development that is unspecified or uncertain.

The DEIR analysis of cumulative impacts complies with CEQA's requirements because it contains an evaluation of the cumulative impacts caused by other past, present, and reasonably foreseeable probable future projects, including those projects outside the control of the agency.

The commenter's reliance on *San Franciscans for Reasonable Growth v. City and County of San Francisco* and *Kings County Farm Bureau v. City of Hanford* is misplaced and misconstrues the holdings of those cases. In *San Franciscans for Reasonable Growth*, the court concluded that an EIR's cumulative impacts analysis was inadequate when it failed to include closely related projects that were currently under environmental review. Here, the Museum House DEIR included an exhaustive cumulative projects list, inclusive of projects under environmental review and not yet approved by the City.

- O3-21 As stated in the DEIR, the proposed project would be required to comply with Mitigation Measures 2-1 and 2-2, which would reduce concentrations from project-related construction emissions to off-site sensitive receptors.

During the August 31, 2016 annual South Coast Air Quality Management District (SCAQMD) CEQA Update Workshop, SCAQMD stated that they currently do not require the evaluation of long-term excess cancer risk or chronic health impacts for a short-term project and instead use the construction localized significance threshold (LST) analysis as an indicator of potential health risk. An LST assessment of the project's construction emissions conducted by PlaceWorks identified that localized construction emissions with mitigation would not substantially elevate pollutant concentrations during construction to pose a health risk to adjacent residents (see Table 5.2-15 of the DEIR).

The Office of Environmental Health Hazards Assessment (OEHHA) adopted new guidance for the preparation of health risk assessments issued in March 2015. Although SCAQMD has adopted the new OEHHA guidance for the AB2588 Air Toxics "Hot Spots" Program and for permitting purposes (SCAQMD Air Toxics Release June 18, 2015), the SCAQMD has not formally adopted the guidance for short-term construction evaluations. Furthermore, emissions from construction equipment primarily consist of diesel particulate matter (DPM). OEHHA has developed a cancer risk factor and non-cancer chronic reference exposure level for DPM, but these factors are based on continuous exposure over a 30-year time frame. No short-term acute exposure levels have been developed for DPM. Therefore, the short-term nature of construction activities associated with development of the proposed project would limit the exposure to off-site receptors.

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The comment regarding the contradiction in text on page 5.2-26 of the DER is noted, and the text has been revised in Section 3.2, *Revisions to the DEIR*, of this FEIR to state that “Project-related construction health impacts would be less than significant with mitigation.”

O3-22

The commenter generally alleges the DEIR’s traffic analysis fails to comply with CEQA, but does not specifically identify any issues with the DEIR. The comment is noted and included as part of the FEIR, and is therefore before the decision makers for their consideration prior to taking any action on the project. However, the comment is general and does not reference a specific discussion in the DEIR, no further response is required.

The commenter also asserts that the DEIR fails to disclose the traffic and transportation impacts to the Corona del Mar area, if any, and alleges that any information contained in the DEIR is buried in an appendix.

The commenter presents no evidence that any potential traffic impacts to Corona del Mar would result from the project. The DEIR analyzes impacts at various intersections throughout Newport Beach, including at (1) Marguerite Avenue and East Coast Highway and (2) Goldenrod Avenue and East Coast Highway, which are in the Corona del Mar area. These 18 study intersections represent a range of intersections that could be impacted by project traffic, based upon the project’s trip distribution patterns.

The Institute of Traffic Engineers (ITE) trip generation rates in the ITE Trip Generation Manual (9th edition) are commonly used to estimate the expected trips associated with a given project, and are widely used in CEQA documents to assess potential traffic impacts. The High Rise Condominium designation from the ITE Trip Generation Manual was used to estimate the trips associated with the proposed project because there is no daily trip rate for Luxury Condominium. Trip generation rates used in a traffic analysis should be consistent throughout. Thus a combination of a daily rate for High Rise Condominium and peak hour rates for Luxury Condominium would not be appropriate. In addition, as discussed in the DEIR, Fashion Island/Newport Center is identified in the Southern California Association of Government’s 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) as a High Quality Transit Area (HQTA). As described in the RTP/SCS, HQTAs are places where people live in compact communities and have ready access to a multitude of safe and convenient transportation alternatives to driving alone, including walking and biking and other shared mobility options. Together, considering these characteristics of the proposed project and the trip rates available in the ITE Manual, the use of the High Rise Condominium designation is reasonable and appropriate for purposes of trip generation.

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In approving the land use amendment to establish the Civic Center (Council Resolution No. 2008-97 Finding #4), the City Council found that “the proposed amendment was not subject to Charter Section 423 because any increase in vehicle trips or intensity from the City Hall facility will not result from the proposed amendment. Rather these increases in traffic and intensity will result from and have been mandated by voter approval of Measure B and the resulting additional of Charter Section 425.” In other words, it was determined that Charter Section 423 did not apply because Charter Section 425 essentially required that the Civic Center be located on the site.

- O3-23 The commenter asserts that the project would result in significant aesthetic impacts because it would diminish public views of Saddleback Mountain and the Pacific Ocean. The potential for the project to result in such impacts was thoroughly analyzed in DEIR Section 5.1, *Aesthetics*.

The commenter is correct that courts have recognized that an aesthetics impacts analysis is inherently subjective. However, while recognizing that subjectivity, courts have also concluded that where an EIR contains factual evidence supporting the conclusion that aesthetic impacts will be less than significant, that conclusion must be upheld (*North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614, 627). Here, the DEIR includes substantial factual evidence, including view simulations, supporting the conclusion that the project will not significantly impact public views.

The commenter’s assertion that the project would create a “wall of buildings” and thus result in a significant impact is a re-characterization of the general argument regarding impacts to views. As discussed above, the DEIR analyzed the potential for such impacts and concluded, based upon substantial evidence, that impacts to public views would be less than significant.

- O3-24 Mitigation Measure 9-5 requires the use of electrically powered equipment instead of pneumatic or internal combustion powered equipment to the extent possible. The commenter argues that the inclusion of the phrase “extent possible” makes the mitigation invalid and should be revised to mandate the use of electrically powered equipment.

Mitigation Measure 9-5, even with the “to the extent possible” language, complies with CEQA’s requirement to adopt all feasible mitigation measures. Mitigation Measure 9-5 would be incorporated as a condition of approval of the project, and therefore compliance is required (*Anderson First Coalition v. City of Anderson* (2005) 120 Cal.App.4th 1173, 1187). Here, it is feasible to require the use, to the extent possible, of electrically powered equipment instead of pneumatic or internal combustion powered equipment. However, as discussed above, it is infeasible to mandate the use of only electrically powered equipment. For instance, not all construction equipment items that are typically

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engine-powered have electrically-powered counterparts. Others that do, such as jack-hammers, would not be quieter since jack-hammering noise is primarily from the impacts on the work-piece (and not the noise from the unloaded hammering mechanism; be it air-driven or electrically-driven). Overall, mandating the use of electrically powered equipment presumes that (1) the equipment type needed to construct the proposed project would have electrically-powered counterparts, (2) that such electrically-powered counterparts are readily available in the southern California area, (3) that enough of the equipment could be obtained by the contractor to facilitate a reasonable construction schedule using reasonable construction processes, and (4) that the costs to rent and/or buy such counterparts would fit into the CEQA definition of “feasible” (when taking into account both economic and technological factors).

Moreover, it should be noted that the DEIR’s analysis of the ability of mitigation measures to reduce the significant noise impact did not rely on Mitigation Measure 9-5. Thus, the conclusions of the DEIR are still valid, and a statement of overriding consideration is required.

The cost of smart back-up alarms are more expensive than smart-only alarms (already more expensive than non-smart alarms) and it would be difficult to insure that the alarms are installed on all construction trucks and equipment (e.g., graders, excavators, and dozers), which could potentially come from a host of independent hauling entities or equipment rental companies. Additionally, the commenter provides no evidence that the use of smart back-up alarms that use multi-frequency sounds would reduce the significant and unavoidable construction noise impact of the proposed project.

Overall, implementing the changes to Mitigation Measures 9-5 and 9-8 would not demonstrably lessen the construction noise impact, would not change the significance determination, and would not fit into CEQA’s definition of “feasible mitigation” to allow for a reasonable construction phase.

- O3-25 There is nothing in CEQA that requires the public disclosure of a development agreement prior to approval. DEIR Chapter 3, *Project Description*, identifies the development agreement as a required approval for the project. This complies with CEQA Guidelines Section 15124, which requires the project description to identify, to the extent known, a list of permits and other approvals required to implement the project. To the extent the development agreement includes aspects of the project that could significantly impact the environment, those aspects of the project are evaluated in the DEIR.

The comment summarizes the other comments in the letter and alleges general noncompliance with CEQA. The comment does not specifically identify any issues with the DEIR. The comment is noted and included as part of the FEIR, and is therefore before the decision makers for their consideration prior to taking any action on the

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project. However, as the comment is general and does not reference a specific discussion in the DEIR, no further response is required.

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LETTER I1 – Christine Avakoff (1 page)

Ramirez, Gregg

From: Christine Avakoff <cavakoff@sbcglobal.net>
Sent: Wednesday, September 07, 2016 3:21 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: museum house

am distressed that we lost our only museum but that said that this land is will not be available for the residents of the city. City hall its adjoining buildings will not be a substitute for the loss of this public land. Clearly there is not enough parking at this structure and they even offered valet parking. The set back on the project isn't adequate considering the height of the structure. It is a pity that the architect did nothing to reduce the stark vertical nature of the building . In many areas of the world different elevated terraces more subterranean parking and originality in design is being done. It is a pity that this project will not improve access for middle class income buyers. These condos are clearly marketed to the upper middle class with more than one car per person. At best it may give a temporary boost to the inevitable death of fashion island. cavakoff@sbcglobal.net

I1-1

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2. Response to Comments

11. Response to Comments from Christine Avakoff, dated September 7, 2016.

I1-1 The comment states that the Newport Beach City Hall and adjoining buildings will not be a substitute for the loss of public land (i.e., the Orange County Museum of Art). This comment does not focus on the adequacy of the DEIR in identifying and analyzing potential environmental impacts of the proposed project.

The comment also suggests that there is not enough parking at the site and thus, the developer is offering valet parking. To clarify, the project would be completely valeted with no self-parking available. Although parking is not considered an environmental issue under the California Environmental Quality Act, the project does meet the City's parking requirement of 2 spaces per unit and 0.5 space per unit for guest parking. In total, the 100-unit tower would provide 200 resident spaces and 50 guest spaces.

The commenter is concerned about the stark vertical nature of the building and notes that other towers in the world are designed with more appropriate design. This comment is related to the building design and not related to the adequacy of the DEIR in analyzing potential environmental impacts of the proposed project. However, Chapter 3, *Project Description*, and Section 5.1, *Aesthetics*, of the DEIR detail the architectural features of the tower and the proposed hardscape and landscaping improvements. Compared to the existing high-rise office buildings within Newport Center, the proposed Museum House tower would have more architectural details and design components that create a landmark feature for Newport Center.

Lastly, the commenter states that the proposed condominiums are marketed for upper middle class homebuyers rather than middle class buyers. This is not related to the adequacy of the DEIR analysis.

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2. Response to Comments

LETTER I2 – Noah Garrett (1 page)

Ramirez, Gregg

From: Noah <noah.garrett@gmail.com>
Sent: Wednesday, September 07, 2016 5:46 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: Museum House Project - DO NOT BUILD

Hello,

As a third generation Newport Beach resident, property owner and business person, I am writing to voice my opposition to the Museum House high rise project.

I have seen increased traffic, strains on resources (water, wildlife space, etc), and overcrowding as a result of excessive development and increased density.

Please do not approve this project. Keep Newport Beach reasonably built, not like Miami.

Thank you for your consideration.

Sincerely,
Noah Garrett

I2-1

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2. Response to Comments

I2. Response to Comments from Noah Garrett, dated September 7, 2016.

I2-1 Traffic and water supply impacts of the proposed project are evaluated in Sections 5.13, *Transportation and Traffic*, and 5.14, *Utilities and Service Systems*, of the DEIR, respectively. As detailed in these sections, the project and cumulative impacts of the project with other foreseeable development projects in Newport Beach would not result in significant impacts to traffic or water supply services.

Wildlife space, or biological resources, were not analyzed in the DEIR because the project site is already developed and in an urban area of Newport Beach. It was concluded in the Initial Study (Appendix A of the DEIR) that the site does not have any sensitive habitat or species and is not used as a wildlife movement corridor.

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LETTER I3 – Debra Klein-Sanner (1 page)

Ramirez, Gregg

From: Debra Klein <debklein1@yahoo.com>
Sent: Wednesday, September 07, 2016 1:31 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Cc: Debra Klein
Subject: Museum House

Hi! As a long time resident of Corona Del Mar (first in my college years and now as a homeowner since 2009), I really want to express my opinion that I am truly saddened to see what has happened to our town in the past 8 years. I've seen traffic on PCH increase exponentially since we purchased and remodeled our home. We live off of Morning Canyon Rd (south CDM), so what used to be a five minute drive to Fashion Island often takes 25 minutes now. During most hours of the day (not just rush hour or the summer season), traffic is bumper to bumper on PCH. This is definitely due to the influx of apartment buildings that have overcrowded and burdened our city. I don't know if we will ever get the Corona Del Mar I knew and loved back in my college years, but I do know that it will only get worse by allowing huge high rise projects to be allowed to progress. Please respect the city we all chose to buy homes in and raise our children in and do not allow high rise buildings/apartment buildings to overpopulate Corona Del Mar/Newport Beach. We chose to live here and not Los Angeles or Miami for a reason. | 13-1

Best Regards,

Debra Klein-Sanner
440 Mendoza Terrace
Corona Del Mar, CA 92625

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2. Response to Comments

13. Response to Comments from Debra Klein-Sanner, dated September 7, 2016.

I3-1 Traffic impacts of the proposed project and cumulative development in the City are evaluated in Section 5.13, *Transportation and Traffic*, of the DEIR. As detailed in this section, traffic generated by the proposed project would not significantly contribute to the study area intersections in a manner that would adversely impact levels of service.

The comment also suggests that the project would significantly impact population growth in Newport Beach. As stated in Section 5.10, *Population and Housing*, the Southern California Association of Governments (SCAG) forecasts that the City's population will increase by 7,514 residents between 2010 and 2040 based on a combination of recent and past trends, technical assumptions, and local and regional growth policies. The 224 residents generated by the proposed tower would fall within SCAG's population projections, and represents approximately 3.0 percent of Newport Beach's expected population by 2040. Thus, population growth is not a significant impact of the Museum House project.

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2. Response to Comments

LETTER I4 – Joan Littlefield (1 page)

Ramirez, Gregg

From: JOANLIT@aol.com
Sent: Wednesday, September 07, 2016 4:36 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: Museum House - no!

Don't build this building, Museum House.. Our neighborhood is becoming ugly. Please don't build any more tall, sun blocking buildings. This is not the Fashion Island we moved here to enjoy. I am very opposed this. | I4-1
Joan Littlefield

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2. Response to Comments

14. Response to Comments from Joan Littlefield, dated September 7, 2016.

I4-1 The comment suggests the Museum House project would block sunlight and adversely impact the visual character of Newport Center. The project's impacts on visual character and shading on adjacent properties are analyzed in Section 5.1, *Aesthetics*, of the DEIR. Based on the analysis, it was concluded that shadow impacts of the proposed tower would not exceed the applicable shade standard.

The comment stating that the Newport Center neighborhood is becoming "ugly" does not focus on the sufficiency of the DEIR analysis. However, Chapter 3, *Project Description*, of the DEIR does provide detail on the tower's architectural features and building material, which includes a textured stone base, masonry frames and pilasters, stone/masonry exterior with large window openings, French balconies and inset terraces, etc. The site would also include a number of hardscape and landscaping improvements, including outdoor patios, water features, a dog run, pools and garden areas, outdoor fireplaces, and drought-tolerant plants and trees.

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2. Response to Comments

LETTER I5 – Dave Middlemas (1 page)

Ramirez, Gregg

From: Dave Middlemas <davemiddlemas@gmail.com>
Sent: Wednesday, September 07, 2016 1:24 PM
To: Dept - City Council; City Clerk's Office; info@lineinthesandpac.com
Subject: Public Comments: 150 Newport Center

This to inform you that I am opposed to the 2 residential projects that developers are trying to get approved in Newport Center . Furthermore , I have talked to many of my friends and neighbors , and not one of them is in favor of either project .

We as citizens of Newport Beach do not want another Century City in our town --- we like it the way it is, and see absolutely no reason to change existing zoning to permit more residential development in Newport Center .

All of us certainly hope and expect you to see things in the same light .

thanks for your service to our city !!

Dave Middlemas
5 Inverness Lane
Newport Beach

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2. Response to Comments

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2. Response to Comments

15. Response to Comments from Dave Middlemas, dated September 7, 2016.

I5-1 The comment is a general opposition to the proposed project and is not related to the sufficiency of the DEIR in identifying and analyzing potential environmental impacts.

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2. Response to Comments

LETTER I6 – Rosalie Puleo (1 page)

Ramirez, Gregg

From: Rosalie Puleo <rpuleo@sbcglobal.net>
Sent: Wednesday, September 07, 2016 10:40 PM
To: Ramirez, Gregg; %20kbrandt@newportbeachca.gov
Subject: Public Comments: Museum House Draft EIR

Do you ever want anyone to drive into Fashion Island??? No one will be able to with all of these buildings !
Enough!!!
It looks awful and too dense!

| 16-1

*Rosalie Puleo
RMP Insurance Services
Independent Career Agent
714-292-3796*

2. Response to Comments

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2. Response to Comments

16. Response to Comments Rosalie Puleo, dated September 7, 2016.

I6-1 The comment is a general opposition to the proposed project and suggests the project would significantly impact existing traffic conditions. According to the traffic impact analysis summarized in Section 5.13, *Transportation and Traffic*, of the DEIR, the project itself and cumulatively with other foreseeable developments in the area would not cause a significant impact on study area intersections and roadways.

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2. Response to Comments

LETTER I7 – Jacqueline Smiley (1 page)

Ramirez, Gregg

From: Jackiesmileybyc@aol.com
Sent: Wednesday, September 07, 2016 11:58 AM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: Museum House

Please stay within the General Plan. It was devised with careful study and should be upheld. | 17-1

Jacqueline Smiley

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2. Response to Comments

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2. Response to Comments

17. Response to Comments from Jacqueline Smiley, dated September 7, 2016.

- I7-1 The comment does not focus on the adequacy of the DEIR in identifying and analyzing potential environmental impacts. However, developing the site consistently with the City's existing general plan is analyzed as a project alternative in Chapter 7, *Project Alternatives*, of the DEIR.

2. Response to Comments

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2. Response to Comments

LETTER I8 – Fred Stern (1 page)

Ramirez, Gregg

From: Ann Stern <faastar6@gmail.com> on behalf of Fred and Ann Stern <faastar@cox.net>
Sent: Wednesday, September 07, 2016 2:20 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: 26 story building

I want more information on the high rise building being proposed. Fred Stern

| 18-1

2. Response to Comments

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2. Response to Comments

18. Response to Comments from Fred Stern, dated September 7, 2016.

I8-1 The comment does not focus on the adequacy of the DEIR in identifying and analyzing the project's potential environmental impacts. However, information on the proposed project can be found in Chapter 3, *Project Description*, of the DEIR.

2. Response to Comments

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2. Response to Comments

LETTER I9 – Don and Doris Stoughton (1 page)

Ramirez, Gregg

From: Don & Doris <ddstoughton@roadrunner.com>
Sent: Wednesday, September 07, 2016 3:06 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: Museum House

We are DEFINITELY AGAINST the development "The Museum House"!!!! Newport Beach and Fashion Island have enough high rise building and development!!! If put to a vote we would MOST DEFINITELY vote AGAINST this project. | 19-1
Don and Doris Stoughton 3708 Ocean Blvd., Corona del Mar, Ca. 92625

2. Response to Comments

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2. Response to Comments

19. Response to Comments from Don and Doris Stoughton, dated September 7, 2016.

I9-1 The comment is a general opposition to the proposed project and does not focus on the adequacy of the DEIR in analyzing the project's potential environmental impacts.

2. Response to Comments

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2. Response to Comments

LETTER I10 – Carol Strauss (1 page)

Ramirez, Gregg

From: Carol Strauss <mcstrauss@usa.net>
Sent: Wednesday, September 07, 2016 12:43 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: 150 Newport Center and the Museum House

This monstrosity (Museum House) should NOT be allowed. The 524 apartments being readied in Newport Center are MORE than enough and we have an on-going drought. Most people who have lived in Newport Beach for some time do not want the zones changed and the atmosphere of the city changed. It seems like the developers can do whatever they want, change zoning and make Newport look like a big city. They should go some place else to do their damage.

I10-1

Please also adhere to the Planning Commission's recommendation about the 150 Newport Center...if you go against their decision, then why even have a planning commission?

I10-2

Please listen to the residents of the city and try to HEAR what they are saying....thank you....

2. Response to Comments

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2. Response to Comments

I10. Response to Comments from Carol Strauss, dated September 7, 2016.

I10-1 The comment is a general opposition to the Museum House project and zone changes, and does not focus on the adequacy of the DEIR in identifying and analyzing potential environmental impacts of the proposed project.

However, the existing drought condition mentioned by the commenter is addressed in the DEIR in Section 5.14, *Utilities and Service Systems*. The mandated water reduction targets are required of existing and future developments. The City and Orange County region are on their way to meet their 2020 reduction targets set by the Department of Water Resources. Additionally, based on the City's recently approved 2015 Urban Water Management Plan, the City does have adequate water supply to support existing development, the proposed project, and all cumulative foreseeable projects through 2040.

I10-2 This comment is related to the City's Planning Commission decision on another project and does not relate to the adequacy of the environmental analysis of the Museum House project.

2. Response to Comments

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2. Response to Comments

LETTER I11 – Chris McKinley (1 page)

Ramirez, Gregg

From: Chris Mckinley <christeach@cox.net>
Sent: Saturday, September 10, 2016 6:40 PM
To: Ramirez, Gregg; Brandt, Kim; Wisneski, Brenda; info@spon-newportbeachca.gov
Subject: Museum House

Stop this project.... Way too large for the area to absorb - both in population and traffic.
Chris Mckinley
Resident since 1968.

Sent from my iPhone

I11-1

1

2. Response to Comments

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2. Response to Comments

I11. Response to Comments from Chris McKinley, dated September 10, 2016.

I11-1 Population and traffic impacts of the proposed project are analyzed in Sections 5.10, *Population and Housing*, and 5.13, *Transportation and Traffic*, of the DEIR. The estimated population growth due to project buildout (224 residents) is well within SCAG's forecast population increase for the City of Newport Beach (7,514 residents) between 2010 and 2040 (see Table 5.10-2 of the DEIR) and would represent approximately 3.0 percent of the expected growth. Therefore, population growth impacts would be less than significant.

Based on the traffic impact analysis for the proposed project, all study intersections currently operate at adequate levels of service in both morning and evening peak hours. The project would generate approximately 310 daily trips, including 30 AM peak hour trips and 33 PM peak hour trips. The existing (2016) plus project conditions and future (2021) plus project, approved projects cumulative projects, and growth conditions would both result in less than significant impacts to study area intersections. All intersections would continue to operate at adequate levels of services; thus, traffic impacts are less than significant.

2. Response to Comments

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2. Response to Comments

LETTER I12 – Susan Skinner (8 pages)

September 11, 2016

Dear City of Newport Beach,

The following are comments regarding the “Museum House” project in Newport Center:

1) Noise. Because this is a residential building, windows will open and the building will be in use 24 hours/day. Noise generated within the building while the windows and patio doors are open will propagate over a wide area and may disturb neighbors. Because the sound will be generated from high above ground level, it would be expected that it will travel further with less diminution

I12-1

2) Traffic. Newport Center traffic is already unacceptable by the resident’s standards, if not the city’s standards. Adding another 100 dwelling units will only increase the problem. Because of its location, it will have a disproportionate effect on the residents of Big Canyon, whose only exit is onto San Joaquin Hills Road. This will also make it harder for emergency vehicles to get in/out of Big Canyon during peak traffic hours, potentially putting the health of the residents of Big Canyon at risk.

I12-2

The DEIR uses the high rise condo (232) category to calculate the trip generation rate, but this is substantially lower than the trip generation rate for luxury condos (233). This project should more appropriately use the luxury condo rate instead.

I12-3

I would also like to point out that the city has allowed The Irvine Company to move entitlements around in the Newport Center area, but has not recalculated the cumulative traffic effects as far as I can see. This means that these will all need to be calculated to determine if the traffic will exceed the Greenlight and (TPO standards). For example, if retail square footage is converted into office tower square footage, the traffic demands will be different. In this example, retail would have a very low AM peak traffic trip generation rate, while a business office tower has a very high rate. As there will be a net traffic increase for the Museum House condos, the other entitlement switches previously made may, by themselves, trip a Greenlight election for traffic.

I12-4

2. Response to Comments

Finally, the traffic from the city hall is erroneously left out of the Section 423 tracking tables. The vote to move the city hall was an advisory vote, not a Section 423 vote. Thus, the traffic added by the city hall must count in the calculations for a Section 243 vote as a Section 423 vote never occurred regarding the city hall General Plan Amendment.

Policy A-18 clearly states:

“Calling an Election. In the event the City Council determines that the Amendment requires voter approval, the City Council shall, at the noticed public hearing at which the Amendment was approved or a subsequent noticed public hearing held no more than sixty (60) days after making the determination, adopt a resolution calling an election on the Amendment. The City Council shall schedule the election on the Amendment at the next regular municipal election (as specified by the City Charter) or at a special election if the City and the proponent of the Amendment have entered into a written agreement to share the costs of the special election. The City Council shall, at the time the election is called, direct the City Attorney to prepare an impartial analysis of the Amendment. The impartial analysis shall contain information about the Amendment, any related project or land use approval, and the environmental analysis conducted of the Amendment that will help the electorate make an informed decision on the Amendment. In the absence of an ordinance or Charter provision that establishes a procedure for submittal of arguments or rebuttals relative to City measures, the City Council shall, at the time a decision is made to submit an Amendment to the voters, adopt a resolution that authorizes the filing of arguments and rebuttals in accordance with the general procedures specified in the Elections Code.

112-5

Exclusive Method. Effective November 3, 2004, in the absence of a mandatory duty arising from an initiative petition, referendum petition, court order or other mandatory legal obligation, Section 423 and the procedures outlined in these Guidelines represent the sole and exclusive method by which the City Council considers, approves and submits for voter approval an Amendment that is subject to Section

2. Response to Comments

423. The City Council has also determined that nothing in Section 423 prevents the City Council from submitting any matter other than an Amendment to the voters as an advisory measure.”

(Emphasis added)

Measure B did not include the required information to qualify it as a Section 423 vote and was not put on the ballot as a result of a General Plan Amendment as the required procedure dictates. The impartial analysis of Measure B, as an advisory vote that moved the city hall, reads as follows:

“IMPARTIAL ANALYSIS BY CITY ATTORNEY MEASURE B

The Charter is the constitution for the City of Newport Beach. A “yes” vote would amend the Charter to add Section 425 to require City Hall, including City administrative offices and relating parking, to be located on City property located adjacent to the Newport Beach Central Library in the Newport Center area of the City. Specifically, the property is a 12.82 acre unimproved parcel bounded by Avocado Avenue on the west, San Miguel Drive on the north and MacArthur Boulevard on the east with the Newport Beach Central Library to the south.

112-5
cont'd

The City’s General Plan designates the property as open space and identifies it as a site for development of a future passive park to be called Newport Center Park. The zoning regulations identify the property as open space, including a 4 acre public park as a permitted use. Neither the General Plan nor zoning regulations authorize construction of a city hall on the property.

If this Charter amendment is approved, it can only be changed by future voter approval. The Initiative states that its provisions shall supersede any conflicting provisions of the General Plan or Municipal Code, and to the extent permitted by law, authorizes and directs the City to amend the General Plan, Municipal Code and other policies and regulations to implement the Initiative as soon as possible to ensure consistency and correlation between the Initiative, General Plan and Municipal Code.

If the measure is defeated, the City would not be required to move City Hall from its current location at 3300 Newport Boulevard on the

2. Response to Comments

Balboa Peninsula to the property in Newport Center. City Hall and City administrative offices could stay in the current location, or be moved to another location as may be later identified by the City.”

There is no mention that this would potentially be considered a Section 423 vote nor does it follow the required election procedure of policy A-18 in which the additional entitlements are explicitly stated.

The Section 423 tracking tables attempts to address this, saying “Council resolution No 2008-097 includes the following finding: The proposed amendment is not subject to Charter Section 423 because any increase in vehicle trips or intensity from the City Hall facility will not result from the proposed amendment. Rather, these increases in traffic and intensity will result from and have been mandated by the voter approval of Measure B and the resulting addition of Charter Section 425.”

112-5
cont'd

However, Measure B was not a Section 423 vote. In fact, when the General Plan Amendment was done for the city hall, it included 17,000 sq ft of additional space for the Newport Beach Library, which was clearly not included in Measure B and supports the fact that Measure B was not a de facto Greenlight vote.

- 3) Water. This project will add to the water deficit that already exists within the city, putting pressure on other residents to save more during this drought and future droughts. This project should not consider that the Poseidon Water Desalination plant is a source of potable water, as this plant has not yet even been approved to be built and may never be constructed.

112-6

In the Los Angeles Time on September 11, 2016, Bill Hasencamp, manager of the Colorado River resources for the Metropolitan Water District of Southern California, is quoted as saying that “[water] shortages are going to be a way of life.” Although the Urban Water Management Plan was recently adopted by the City of Newport Beach and contains the legally enabling statement that the Metropolitan Water District assures Newport Beach that it will have enough water for any new development it wishes to approve, it is morally incumbent upon Newport Beach decision makers to recognize that this is a

112-7

2. Response to Comments

politically expedient statement and that any forward thinking person can see that there is not going to be enough water for continued development. Although the water that the Museum House will use will not ‘break the bank’, the cumulative effect of the already approved development in Newport Beach has a high likelihood of extending water shortages throughout Newport Beach. A responsible Planning Commissioner or City Council person would take this fact seriously.

I12-7
cont'd

4) View. This project adds to the ‘wall of buildings’ that are emerging from Newport Center and will block views of Saddleback Mountain looking inland and views of the ocean looking seaward.

I12-8

5) Light. Because this building will be occupied as dwelling units, it is reasonable to expect that the lights will be on more than the business towers nearby. This increase in light may be disturbing to local residents.

I12-9

6) Cell phone reception. The emergence of a ‘wall of buildings’ has disrupted cell phone reception for other neighborhoods. When the Irvine Company building reached its full height, Verizon reception in the Port Streets was degraded. This additional building might reasonably be expected to do the same thing and disrupt nearby cell phone service.

I12-10

7) Greenlight election. Despite the claims of the City representatives, this development is required to have a Greenlight. In 2012, the City approved reallocation of 430 dwelling units to the San Joaquin Plaza from block 500, 600 and the San Joaquin Plaza as well as reallocation of 15 addition residential units from the MU-H3 area to the San Joaquin Plaza. These represented allowable reallocations of previously approved dwelling units under city rules.

I12-11

However, the city also converted 79 unbuilt hotel rooms into residential units as well. The 79 hotel rooms were originally located at the Marriott Hotel, which is listed in the General Plan as visitor serving commercial and is not allowed to have residential units at its site. The hotel rooms could not have been converted to dwelling units at the site of the hotel for this reason.

2. Response to Comments

The San Joaquin Plaza site was not allowed to accept anything except dwelling units based on the Planned Community text for the Newport North PC, which clearly states:

“C. Transfer of Development Rights

The transfer of development rights among sub-areas of this Planned Community **and to/from other areas in the Newport Center/Fashion Island District** identified in the General Plan is allowed in accordance with the General Plan.

Development rights may be transferred through a change in location of use(s) and/or a conversion of non-residential use to any other non-residential use allowed by the General Plan and this Planned Community Development Plan or applicable zoning at the receiving site(s). **Residential use may be relocated, but may not be converted to or from another use.** (Emphasis added.)

As Planned Community rules currently supersede zoning laws, a transfer was not allowed. It should also be noted that although the city claims that they have the legal justification to have transferred unbuilt hotel rooms to this site as dwelling units by converting the units “in the cloud”, they do not. In fact, this action should have required a General Plan Amendment as additional entitlements were being added to San Joaquin Plaza, but this was not done. Had a General Plan Amendment been done, such a conversion would have been explicitly forbidden under the Greenlight implementation guidelines. Regardless of how it got there, it represents the addition of 79 new units (not reallocated units) into San Joaquin Plaza. Thus, the additional 79 dwelling units that have been built in the San Joaquin Plaza must be counted against the section 423 limits defined by Greenlight.

This is confirmed by the city’s own implementation procedures for Section 423 which states: “The City Council shall determine at the noticed public hearing at which any Amendment is approved if, based on the administrative record for the Amendment including any testimony presented at that hearing, the Amendment requires voter approval pursuant to Section 423. The City Council shall submit an Amendment to the voters if: ... The Amendment authorizes an

112-11
cont'd

2. Response to Comments

increase in the number of dwelling units for the property or area that is the subject of the Amendment that exceeds one hundred (100) dwelling units **when compared to the General Plan** before approval of the Amendment. (Emphasis added.)

The city has erred in converting hotel units to dwelling units. This did not affect the San Joaquin Plaza development under Section 423, because the increase in units was below the 100 dwelling unit trigger for an election, but it does impact the Museum House project.

Greenlight uses 80% of the prior project's overage to calculate the remaining balance. In this case, 79 units times 80% equals 63 units carried forward. Therefore, the Museum House project could develop an additional 37 dwelling units, but the 38th unit will trigger a vote.

When the concept of converting hotel rooms to dwelling units was first brought up in 2006, it was widely recognized and agreed that making such a conversion would not be allowed by Section 423 and by implication, would need to count in the Section 423 tracking tables.

I direct your attention to the following:

At 04:16:20 in this Council video from June 27, 2006, City Attorney Robin Clausen is heard acknowledging that a conversion of hotel rooms into dwelling units would be inappropriate under Section 423 rules: http://newportbeach.granicus.com/MediaPlayer.php?publish_id=904a2417-7379-11e5-8170-f04da2064c47

At 1:46:50 in the Council video of the July 11, 2006, Mr. Selich is recorded as agreeing with this interpretation: http://newportbeach.granicus.com/MediaPlayer.php?publish_id=14b4c633-737a-11e5-8170-f04da2064c47

In addition, the wording of the original Greenlight initiative clearly indicates that square footage of dwelling units is covered by the 40,000 sq foot limits. The original petition for Greenlight stated that a vote was required when significant increases over the General Plan occurred. Significant increases were defined as: “ ‘Significantly

I12-11
cont'd

2. Response to Comments

increases' means over 100 peak hour trips (traffic) **or** over 100 dwelling units (density) **or** over 40,000 sq ft of floor area (intensity).” Based on this language, the 504,000 sq ft of the Museum House far exceeds the 40,000 sq ft allowed in Greenlight and by itself, requires a Section 423 vote. I recognize that this is not how the limits have been applied up until this point, but as the language of Greenlight is unequivocal in its statement, I believe that it must be applied in this case.

I12-11
cont'd

I also incorporate by reference the comments of Jim Mosher and SPON.

Thank you,

Susan Skinner, MD
2042 Port Provence Place
Newport Beach, CA 92660

This letter is submitted both as an individual and also as a representative of Newport 1st (formerly Stop The Dunes Hotel).

2. Response to Comments

112. Response to Comments from Susan Skinner, dated September 11, 2016.

I12-1 The commenter is concerned about future residents making too much noise that it propagates to neighboring homes. The commenter also states that noise coming from the units farther above ground level would travel further with less diminution.

The City of Newport Beach Municipal Code regulates noise standards under Sections 1026.025 (Exterior Noise Standards) and 10.26.030 (Interior Noise Standards). Specifically, it states that it is unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which cause the noise level when measures on any other property, to exceed either of the following:

- The noise standard for the applicable zone for any fifteen-minute period;
- A maximum instantaneous noise level equal to the value of the noise standard plus twenty (20) dBA for any period of time (measured using A-weighted slow response).

Additionally, Chapter 10.28 of the City's municipal code details the City's loud and unreasonable noise policy. The City's peace and code enforcement officers would regulate these noise policies, and future residents of the Museum House project would be required to comply. This would also hold true for any future residents at the adjacent (currently under construction) Villas at Fashion Island housing complex or for existing residences in the Big Canyon community to the northeast of the project site. Moreover, it is not reasonable to assume that the building's future residents would keep their windows open, or that such residents would generate noise 24 hours per day.

From a physics standpoint, the decibel level from a given sound source decreases as the distance from that source increases. Specifically, sound dissipates exponentially with distance from the noise source. Therefore, the comment about loud noise coming from residential units higher from the ground being less reduced is incorrect. An equal noise source occurring at a grade-level residential unit would actually result in louder noise since the propagation distance to a grade-level receptor would be shorter. Moreover, the DEIR thoroughly evaluated the operational noise impacts of the proposed project in Section 5.9, *Noise*. For example, the DEIR concluded that roof-top equipment such as HVAC units and other mechanical equipment that generated noise would not result in any significant impacts to nearby receptors (with noise levels of approximately 35 to 40 dBA, which is well below ambient noise. To assess such impacts, the DEIR assumed that noise emanating from such equipment would generate noise levels of approximately 85 dBA at 10 feet. This analysis accounted for noise attenuation from the roof edge to the nearest sensitive receptor and concluded that such mechanical equipment would not result in significant impacts. The DEIR provides a sufficient degree of analysis to

2. Response to Comments

provide decision makers with information which enables them to make a decision which intelligently accounts of environmental consequences.

- I12-2 Based on the traffic impact analysis for the proposed project, all study intersections would operate at adequate levels of service in both morning and evening peak hours under future conditions, which include development of the proposed project, other City-approved projects, cumulative projects, and growth.

The commenter is specifically concerned about traffic flow for drivers going in and out of Big Canyon community along San Joaquin Hills Road. Four intersections were analyzed in the traffic study along San Joaquin Hills Road—Jamboree Road/San Joaquin Hills Road (No. 7), MacArthur Boulevard/San Joaquin Hills Road (No. 12), Santa Cruz Drive/San Joaquin Hills Road (No. 16), and Santa Rosa Drive San Joaquin Hills Road (No. 17). According to the study, these intersections would continue to operate at adequate levels of service and would not require any mitigation. Therefore, residents of Big Canyon and emergency vehicles driving to and from Big Canyon would not be significantly impacted.

- I12-3 The Institute of Traffic Engineers (ITE) trip generation rates in the ITE Trip Generation Manual (9th edition) are commonly used to estimate the expected trips associated with a given project, and are widely used in CEQA documents to assess potential traffic impacts. the High Rise Condominium designation from the ITE Trip Generation Manual was used to estimate the trips associated with the proposed project because there is no daily trip rate for Luxury Condominium. Trip generation rates used in a traffic analysis should be consistent throughout. Thus a combination of a daily rate for High Rise Condominium and peak hour rates for Luxury Condominium would not be appropriate.

In addition, as discussed in the DEIR, Fashion Island/Newport Center is identified in the SCAG 2016-2040 RTP/SCS as a High Quality Transit Area (HQTAs). As described in the RTP/SCS, HQTAs are places where people live in compact communities and have ready access to a multitude of safe and convenient transportation alternatives to driving alone, including walking and biking and other shared mobility options. Together, considering these characteristics of the proposed project and the trip rates available in the ITE Manual, the use of the High Rise Condominium designation is reasonable and appropriate for purposes of trip generation.

- I12-4 The City's general plan and zoning code govern the procedures for transferring of development within the same statistical area. In addition, the transfer of development within Newport Center is governed by a unique General Plan policy:

“LU 6.14.3 Transfers of Development Rights

2. Response to Comments

Development rights may be transferred within Newport Center, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts.”

All transfers conducted to date within Newport Center have complied with the above policy and did not require a General Plan amendment. Furthermore, a traffic analysis was conducted for each transfer to confirm that they did not generate any adverse traffic impacts. Therefore were no effects on the AM and PM hour trips calculated for Charter Section 423 (Greenlight).

I12-5 In approving the land use amendment to establish the Civic Center (Council Resolution No. 2008-97 Finding #4), the City Council found that “the proposed amendment was not subject to Charter Section 423 because any increase in vehicle trips or intensity from the City Hall facility will not result from the proposed amendment. Rather these increases in traffic and intensity will result from and have been mandated by voter approval of Measure B and the resulting additional of Charter Section 425.” In other words, it was determined that Charter Section 423 did not apply because Charter Section 425 essentially required that the Civic Center be located on the site.

I12-6 Water demand of the proposed project is addressed in Section 5.14, *Utilities and Service Systems*, of the DEIR. The City’s Utilities Department states that the City would have adequate water supply to meet the project’s needs. And, according to the City’s recently approved 2015 Urban Water Management Plan (UWMP), the proposed project’s water demands (48 acre-feet per year [afy]), in combination with other water demands throughout the City, would be adequately accommodated with existing water supplies during normal, single-dry, and multiple-dry water years. Table 2-1 of the 2015 UWMP, for instance, notes that projected population of the City’s service population is expected to increase by approximately 12.5 percent from 2015 to 2040 (from 66,219 to 74,921) based upon land uses and population increase assumptions. These projections were then used to estimate increased demand during the same timeframe. Thus, as discussed in the DEIR, the project’s estimated demand is accounted for in the 2015 UWMP projections, which are based upon projected land uses and population growth. This analysis complies with CEQA’s informational disclosure requirements. *Al Larson Boat Shop v. Board of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 748 [EIRs should be “analytic rather than encyclopedic” and should emphasize analyses useful to decisionmakers and the public]; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 902 [under the substantial evidence standard, an agency is required to make a reasonable and good faith effort to disclose the analytic route the agency traveled from evidence to action].

Moreover, as noted in the 2015 UWMP, the City receives its imported water supplies, which currently constitutes approximately 26.5 percent of its overall water supply, from the Municipal Water District of Orange County (MWDOC). MWDOC receives its

2. Response to Comments

water from the Metropolitan Water District of Southern California (Metropolitan), a regional water wholesaler. Metropolitan conducts its own evaluation of supply reliability by projecting supply and demand conditions, which is contained in its own regional Urban Water Management Plan. As discussed in Metropolitan's UWMP, Metropolitan estimates that it will have a sufficient supply (including a surplus) to serve its total demands for average, single-dry, and multiple-dry years. The 2015 UWMP incorporates and relies upon the findings of Metropolitan's UWMP to support its conclusions that there is sufficient supply to serve the estimated demand within the jurisdiction of the City.

Also, as discussed in the DEIR, the City is currently in compliance with both the 2015 and 2020 water usage reduction requirements of SB X7-7. SB X7-7, the Water Conservation Act of 2009, established a target of a 20 percent reduction in water use by 2020 compared to the state's 2005 baseline use. Currently, the City's per capita water usage is 176 gallons per day (gpcd) compared to the 2005 baseline of 253 gpcd. This represents an approximately 30.5 percent reduction in per capita water use from 2005 to present, which is attributable to a number of factors including those reduction measures within the City's Urban Water Management Plan. Thus, the City has undertaken significant steps reduce overall water usage and ensure an adequate supply exists for the future. Consistent with these actions, the project would include installation of water-efficient fixtures in each unit to provide an overall 20 to 30 percent reduction in water use and landscape irrigation systems designed with weather sensors, timers, and low-flow irrigation devices.

Additionally, as part of the project, the tower would be commissioned and certified as a LEED for New Construction Silver building. Several water efficiency features of the project include installation of water-efficient fixtures for each unit to provide an overall 20 to 30 percent reduction in water use and landscape irrigation systems designed with weather sensors, timers, and low-flow irrigation devices. Due to newer building codes, new residences are more efficient at conserving water than homes built in the past. Further, as with all existing and future development in the City, the project would be required to comply with water conservation and supply level regulations and water efficient landscaping design standards under Chapters 14.16 and 14.17 of the City's municipal code.

The water supply analysis in the DEIR does not assume the Huntington Beach Seawater Desalination Project (currently being developed by Poseidon Resources LLC) would provide potable water to the project. The City's 2015 UWMP only discusses the potential for future water supply through desalination opportunities (i.e., Huntington Beach, Doheny Beach, and Camp Pendleton Seawater Desalination Projects), but does not rely upon these future water sources that are currently still in the planning phases.

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I12-7 Cumulative water demands in Newport Beach are analyzed in Section 5.14.2.4 of the DEIR. In total, these cumulative projects within the City of Newport Beach Municipal Operations Department water service area would generate a demand of 790 afy. According to the City's 2015 UWMP, the City would increase its water supply from 2020 to 2040 by 1,288 afy during normal years and 1,365 afy during single- and multiple-dry water years. Thus, cumulative water demands would represent only 61.3 and 57.9 percent of the City's increase in water supply through 2040.

Future projects are also required to implement state- and locally mandated water conservation measures and to undergo future environmental review through the CEQA process to determine whether existing water facilities and sources can adequately serve future projects. Similarly, future projects are also required to comply with water conservation and supply level regulations and water efficient landscaping design standards under Chapters 14.16 and 14.17 of the City's municipal code.

Moreover, CEQA does not require speculation of the potential impacts of future unknown development that is not part of the project. *Environmental Protection Info. Ctr. v. Department of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 502 [an EIR is not required to speculate about the environmental consequences of future development].

I12-8 The commenter is concerned about blocking views toward Saddleback Mountain and the Pacific Ocean.

Saddleback Mountain is a saddle-shaped landmark formed by the two highest peaks in the Santa Ana Mountains (Santiago Peak and Modjeska Peak). These two peaks are approximately 5,689 feet and 5,496 feet, respectively, and are about 21 miles northeast of the project site in the Cleveland National Forest. Generally, although views of Saddleback Mountain may be possible from Newport Center, given Newport Center's topography and built-out nature, views of the mountain peaks from the ground (street view) are likely either partially or completely obstructed by existing trees, slopes, rooflines, or other structures in a person's immediate vicinity. Therefore, views of Saddleback Mountain from the general vicinity of Newport Center would not be affected.

The City of Newport Beach General Plan and Municipal Code do not protect private residential views. However, they do protect public view points and coastal view roads as established in the City's general plan and illustrated in Figure 5.1-1, *Coastal View Roads*, of the DEIR. As shown, all the coastal view points and roads are located southerly of the project site. Therefore, development of the proposed tower would not impact views of the Pacific Ocean or Newport Bay from these view points and roads.

I12-9 As analyzed in Section 5.1, *Aesthetics*, of the DEIR, the proposed project would introduce new sources of lighting in the project area. However, compared to other developments in the area, the project's outdoor lighting fixtures would not represent a

2. Response to Comments

significant lighting increase in the overall Newport Center/Fashion Island area. Adjacent uses with lighting fixtures include office and residential buildings, surface parking lots, and parking garages. Street lighting along Newport Center roadways also contributes to the area's lighting conditions.

The interior of the tower is designed so that over half of its 100 units are oriented toward the Pacific Ocean, in a direction away from the neighboring residences of Big Canyon, Harbor Cove, and the future Villas at Fashion Island Apartments. The units would be designed with traditional residential window openings that are inset into the building's exterior. These traditional residential window openings provide natural light into individual rooms in the homes. The building's solid exterior of stone and masonry and the residential characteristics of the building are in sharp contrast to the all-glass, floor-to-ceiling windows that wrap around the entire perimeter of many of Newport Center's office towers. The containment of the residential windows and compartmentalization of uses within a home (i.e., separate rooms for kitchen, dining, bedroom, bathroom, etc.) further reduces the amount of light produced when compared to the surrounding office towers, which often have open floor plans with lights turned on throughout the night.

Additionally, all outdoor lighting associated with the project would be required to comply with Section 20.30.070 of the City's municipal code, which requires all outdoor lighting fixtures to be designed, shielded, aimed, located, and maintained to shield adjacent properties and not produce glare onto adjacent properties or roadways. Also, the project must comply with General Plan Policy LU 5.6.2, which requires that outdoor lighting be located and designed to prevent spillover onto adjoining properties or significantly increase the overall ambient illumination of their location.

- I12-10 Cell phone reception is not an environmental topic of consideration under the California Environmental Quality Act.
- I12-11 The commenter asserts that past transfers of development were conducted in error. We respectfully disagree. The procedures for transferring development are addressed in the response above and state that transfers do not require a General Plan amendment. Charter Section 423, requires a vote to authorize the more than 100 dwelling units in the Newport Center statistical area beyond those contained in the General Plan. While there are other residential units under construction in Newport Center, none required a General Plan amendment. Therefore, the General Plan may be amended to create 100 additional residential units in Newport Center, as requested by the subject application.

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LETTER I13 – Marsha Kendall (1 page)

Ramirez, Gregg

From: Marsha Kendall <pmd81@aol.com>
Sent: Friday, September 23, 2016 6:54 AM
To: Ramirez, Gregg
Subject: Museum house environmental issues

Good morning,

I have a few comments regarding the Museum House project.

I lived at 1404 Colony Plaza Drive for a year and half and during that time, I watched the buildout of the new Irvine Company 500 plus apartments. For the first few months of the construction, the trucks would take out dirt, dropping dirt on the road and on the cars following the trucks. The street sweepers would be there, but at times, caused just more of a muddy mess and they too jockeyed for the lane that everyone was competing to get in to turn south on to Jamboree. The truck drivers would cut off drivers while pulling out with their rigs and narrowly missed causing accidents that I saw. The corner of Santa Barbara and Jamboree are highly congested especially at the morning peak hours. There is only one turn lane to go toward the 405 freeway from the construction development and cars back up on Santa Barbara. The loud noise, the dirt and the air quality of the construction impacted many of the apartment residents. The entrance to the Colony is off San Clemente and that is the proposed street for the Museum house entrance. The traffic gets loud starting at 6 AM when workers are coming to Fashion Island offices as they turn on to San Clemente and speed to their offices. With the proposed site, the back up of cars as they are turning on San Clemente from Jamboree could be tremendous and cause much of a traffic jam. Getting into the Colony would be congested and not pleasant for those who have lived there for years. Pedestrians have to watch out for speeding cars who do not always yield to them when the cars are quickly turning on to Jamboree right in front of the police station. We have not even seen the traffic impact that the new Irvine Company 500 +units will cause. Turning left out of the Colony on to San Clemente has had close calls with cars accidents and this is "pre the new apartment complex." It is human nature to find the fastest way around the Fashion Island area and all streets will be impacted with these new 500 apartment residents. We cannot even begin to compare what it would be like if the Museum House is built.

The Museum house is projected to be a very high skyscraper and it does not go with the landscape of the area around it. It would tower over all the buildings. The noise and extra traffic could impact Santa Barbara Street which I now live on at the Meridian. I have seen two accidents in the past 6 months on Santa Barbara with cars going very fast from and towards Fashion Island. There are not enough lanes for the cars that are moving around this area with the new density in residential living.

Water is at a premium and I do not understand the construction of housing that will take more water needs while the existing Big Canyon homes and all around Newport are subject to water restrictions.

Thanks for allowing me to express my thoughts as a resident in the Fashion Island area for over 2 years.

Marsha Kendall
1441 Santa Barbara Drive
Newport Beach CA 92660

I13-1

I13-2

I13-3

I13-4

I13-5

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2. Response to Comments

113. Response to Comments from Marsha Kendall, dated September 23, 2016.

I13-1 The commenter describes existing construction activities associated with the Villas at Fashion Island Apartments, including loud construction noise, excessive dirt falling off of haul trucks onto City streets, speeding construction drivers, and poor construction air quality. That project is not part of the proposed project and, therefore, comments related to that project are not comments on the adequacy of the analysis in the Draft EIR. Nevertheless, it is assumed that the commenter is concerned these construction activities would also occur during development of the Museum House project.

Construction noise from vehicles and equipment is analyzed in Section 5.9, *Noise*, of the DEIR. The DEIR finds that the worst-case flow of construction vehicle trips would occur during the soil haul period, which can include up to 153 truckload trips per day over a 30-day soil haul period. This number of truckload trips would be an increase of much less than 10 percent in total daily vehicle flows currently along Santa Barbara Drive and Santa Cruz Drive. This would result in a noise level increase of much less than 0.5 dB and would have a less than significant impact.

Additionally, per the City of Newport Beach, the project is required to prepare a construction traffic management plan that outlines items such as construction hours and truck routes. Mitigation Measure 13-1 has been added to the DEIR to assure that specific construction traffic concerns as identified in comment letters are addressed in the required construction traffic management plan (see *Chapter 3.0, Revisions to the DEIR*). Construction trucks would be staged at an offsite location acceptable to the City and would be dispatched to the site five to ten trucks at a time to prevent truck queuing at inappropriate locations. Additionally, noise from idling construction trucks would be overshadowed by normal traffic flow noise on nearby streets, particularly from daytime traffic flows on San Clemente Drive. Further, according to the California Air Resources Board, construction trucks are prohibited from non-essential idling longer than five minutes. Therefore, idling trucks would not substantially add to the overall noise environment.

Construction noise generated from equipment was determined to be a significant and unavoidable impact given its proximate location to the Villas at Fashion Island Apartments currently under construction. Mitigation Measures 9-1 through 9-9 are included to reduce impacts to the extent feasible; however, construction noise impacts specifically to future residents of the southeast units in the Villas at Fashion Island complex would remain significant and unavoidable.

As required by Mitigation Measure 13-1, the project's construction management plan will require all materials transported on and offsite to be securely covered to prevent excessive amounts of dust or dirt.

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The comment related to speeding construction worker drivers is not related to the DEIR's adequacy in analyzing the project's environmental impacts. This would be under the control of the Newport Beach Police Department.

Lastly, the commenter's concern about construction air quality impacts is analyzed in Section 5.2, *Air Quality*, of the DEIR. As concluded in the DEIR, construction activities would generate short-term volatile organic compound (VOC) emissions exceeding South Coast Air Quality Management District's regional significance threshold and would expose sensitive receptors to substantial coarse inhalable particulate matter (PM₁₀) concentrations without mitigation. However, implementation of mitigation measures related to the use of interior paint with 0 grams per liter of VOC content and limiting total daily haul truck miles traveled would reduce VOC emissions and PM₁₀ concentrations to less than significant levels. Therefore, construction air quality impacts would be less than significant.

I13-2 Based on the traffic impact analysis for the proposed project, all study intersections currently operate at adequate levels of service in both morning and evening peak hours. The project would generate approximately 310 daily trips, including 30 AM peak hour trips and 33 PM peak hour trips. The "existing (2016) plus project" conditions and "future (2021) plus project, approved projects cumulative projects, and growth" conditions would both result in less than significant impacts to study area intersections. All intersections would continue to operate at adequate levels of services; thus, traffic impacts are less than significant.

Note that the traffic impact analysis takes into account not only the traffic generated by the Museum House project, but all other foreseeable cumulative projects in the study area, which include the Villas at Fashion Island Apartments currently under construction. Moreover, as noted in Appendix L2 of the DEIR, a previous traffic analysis prepared for the Villas at Fashion Island project concluded that the intersections around Newport Center Drive operated at an adequate level of service (LOS A) under existing and future conditions.

Additionally, the commenter is concerned about traffic flow for drivers going in and out of The Colony Apartments located near the intersection of Santa Barbara Drive and San Clemente Drive. This intersection was analyzed in the traffic impact analysis, which concluded that levels of service at this intersection would remain adequate through 2021 under existing plus project conditions and future plus project, approved projects, cumulative projects, and growth conditions. To the extent traffic accidents are caused by individuals not abiding by traffic regulations, those are not environmental impacts caused by the proposed project that require discussion in the DEIR.

The potential of the project to generate significant noise impacts at sensitive receptors, including The Colony, was also evaluated in the DEIR. As discussed in DEIR Section

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5.9, *Noise*, the ambient noise near the intersection of San Clemente Drive and Santa Barbara Drive (near The Colony) was measured to be approximately 62.1 dBA. The addition of the project's vehicular trips would not increase noise at this intersection such that it should be considered significant.

- I13-3 The commenter suggests that the proposed tower would not go with the landscape of Fashion Island and would tower over existing buildings. While the tower would be tall, there are other high-rise buildings in the project area, as shown on Figure 5.1-2, *High-Rise Buildings in Project Area*, and detailed in Table 5.1-1 of the DEIR. The highest buildings in Fashion Island/Newport Center are the office building at 520 Newport Center Drive (315 feet above ground surface/540 feet above mean sea level [amsl]) and the PIMCO building at 650 Newport Center Drive (298 feet above ground surface/528 feet amsl). In comparison, the proposed Museum House tower would be 295 feet above ground surface and 482 amsl.

The site is also located in the City's High Rise Height Zone, which has a maximum height limit of 300 feet. The proposed amendment to the San Joaquin Plaza Planned Community Development Plan further limits the maximum height of all structures to be 295 feet as measured from finished grade to the roof of the highest appurtenance. Therefore, the proposed high-rise tower would generally be located appropriately in Fashion Island.

- I13-4 The commenter is concerned about increased traffic and traffic noise on Santa Barbara Drive near the Meridian residences. The proposed project would not substantially increase trips in the project area. As detailed in the traffic impact analysis, the project would generate approximately 310 daily trips with 30 AM peak hour trips and 33 PM peak hour trips, and study area intersections would all continue operating at adequate levels of service during existing (2016) and future (2021) conditions, which cumulatively consider traffic generated by other approved City project, cumulative projects, and growth. Additionally, Figure 5.13-4, *Project Trip Distribution*, of the DEIR shows the expected inbound and outbound trips from the project site. No operational traffic is expected to travel southerly along Santa Barbara Drive near the Meridian residences. Therefore, the potential for adverse traffic noise southerly along Santa Barbara Drive is less than significant.

Additionally, all construction vehicles would use regional and local trucks routes to access the project site from the north. It is expected that all heavy vehicles would most likely access the site via State Route 73 (SR-73) (North of Bison Avenue) and head south via Jamboree Road or MacArthur Boulevard. Once in the vicinity of the project site, heavy vehicles would access the project site from the north via Santa Barbara Drive and Santa Cruz Drive (no construction traffic would come from the south along Santa Barbara Drive near the Meridian residences). Therefore, potential construction traffic noise along Santa Barbara Drive near the Meridian residences would be less than

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significant. Further, all proposed truck routes would be approved by the City before beginning construction, and a construction management plan is required as part of the development to address any short-term queuing at the project site.

- I13-5 The project's water supply demand is addressed in the DEIR in Section 5.14, *Utilities and Service Systems*. The mandated water reduction targets are required of existing and future developments. The City and Orange County region are on their way to meet their 2020 reduction targets set by the Department of Water Resources. Additionally, based on the City's recently approved 2015 Urban Water Management Plan, the City does have adequate water supply to support existing development, the proposed project, and all cumulative foreseeable projects through 2040.

Further, as part of the project, the tower is expected to be commissioned and certified as a LEED for New Construction Silver building. Several water-efficiency features of the project include installation of water-efficient fixtures for each unit to provide an overall 20 to 30 percent reduction in water use and landscape irrigation systems designed with weather sensors, timers, and low-flow irrigation devices. As with all development in the City, the project would be required to comply with water conservation and supply level regulations and water efficient landscaping design standards under Chapters 14.16 and 14.17 of the City's municipal code.

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LETTER I14 – Dorothy and Mike Kraus (5 pages)

Attention: Mr. Gregg Ramirez
Community Development, City of Newport Beach
Subject: Comments Museum House dEIR

Dear Mr. Ramirez,

Please see our comments below. Thank you.

Sincerely,

Dorothy and Mike Kraus
10 Wild Goose Court
Newport Beach, CA 92663

1. Inconsistency with General Plan: The proposed project calls for 100 condominium units for the Newport Center statistical area. There are not 100 dwelling units remaining in the Newport Center statistical area per the 2006 voter approved General Plan.

The proposed project requires amendments to the General Plan and the San Joaquin Plaza Planned Community (PC) plan to allow for residential in an area designated commercial and cultural, in addition to introducing a new residential height limit of 300 feet.

I14-1

The General Plan states that it will remain in effect and carry the community to the year 2025. This project is another example of spot zoning and piecemeal planning in our city.

2. Number of residents: There are different assumptions used for the number of residents the proposed development will house. In the Housing and Population section, 2 residents per unit are assumed (200 residents). In the Recreation section, 2.24 residents per unit are assumed for a total of 224 residents. There may be other assumptions and additional inconsistencies elsewhere in the dEIR; but in any event this is a significant deficiency and could result in the failure to adequately assess overall impacts.

I14-2

3. Parking: The dEIR parking analysis that assumes 200 residents and thus 200 parking spaces (not 224) and 50 guest parking spaces is profoundly inadequate. This is a high-end luxury condominium project with occupants who rely on a variety of services such as installers of all kinds, dog walkers, housekeepers, personal assistants, personal trainers, house plant upkeep services, and window washers to name only a few for 200 people occupying 100 condos. That the “*project therefore would meet the City’s Municipal Code parking requirements*” is short sighted and irresponsible. A broader-based, cumulative analysis to incorporate the current parking (and parking issues) for surrounding residential and business

I14-3

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<p>land uses would be a much more realistic analysis than summarily concluding that parking is sufficient by virtue of the fact that it conforms to the City’s zoning code.</p>	I4-3 (cont'd)
<p>4. Executive Summary Chapter 1, 1.5.1.2 Reduced Height Alternative, PDF page 8 states: <i>“The Reduced Height Alternative would decrease the proposed tower height from 295 feet to 65 feet (from podium to roof of last occupied space) to be consistent with the underlying zoning of the project site—San Joaquin Plaza Planned Community Development Plan (PCDP; PC-19).”</i></p>	I14-4
<p>The statement above is factually incorrect. The reduced height alternative of 65’ is inconsistent with the San Joaquin Plaza Planned Community Development Plan since the 65’ height applies to the <u>current land use designation</u>, which is Civic/Cultural/Professional/Office.</p>	
<p>The proposed luxury condominium project, in fact, requires an amendment to the San Joaquin Plaza PCDP, PC-19 as stated in the February 5, 2015 NOP below:</p>	
<p><u>“Planned Community Development Plan Amendment – To change the San Joaquin Plaza Planned Community (PC) land use designation from Civic/Cultural/Professional/Office to Multi-Unit Residential. The PC amendment also includes new residential development standards including a 300-foot height limit.</u></p>	
<p>Additionally, the statement that the 65’ alternative height <i>“would be in keeping with the adjacent Villas at Fashion Place project and <u>essentially extend the character of that development</u>”</i> has no basis whatsoever.</p>	
<p>5. Project Description, Section 3.2, Statement of Objectives</p>	
<p>Objective number 3: <i>“To maximize the project’s view opportunities of the visual resources of the City of Newport Beach, including the Pacific Ocean and Newport Harbor.”</i></p>	I14-5
<p>This objective limits the benefactors of the purported “view opportunities” to 200 (or 224 depending on which calculation is used) people expected to reside in this condominium tower. This is a self-serving and narrowly defined project objective to justify the excessive height for the proposed Museum House residential tower project. It should be eliminated.</p>	
<p>Objective number 4 references General Plan Land Use Element policy 6.14.4 as follows:</p>	
<p><i>“To implement Newport Beach General Plan Policy LU 6.14.4 by developing a residential project that would reinforce the original design concept for Newport Center by concentrating the greatest building mass and height in the northeastern section along San Joaquin Hills Road.”</i></p>	I14-6
<p>2</p>	

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However the above project objective is negated by General Plan Land Use Element Policy LU 6.14.2 that states:

“Newport Center [“MU-H 3,” “CO-R,” “CO-M,” and “RM” designations] Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2. (Imp 2.1)”

I14-6
(cont'd)

Therefore, objective number 4 is irrelevant since per the General Plan (which was intended to carry the City to the year 2025), there are only 5 remaining residential units remaining in Newport Center.

Objective number 5 states: *“To create a landmark structure with architectural features and materials that is compatible and complementary with the project’s location.”*

I14-7

How is this objective # 5 going to the *“aid decision makers in their review of the project and associated environmental impacts...”* when it is a completely subjective?

Objective number 6 states: *“To contribute significant property tax revenue to the City of Newport Beach.”*

I14-8

What has this to do with a CEQA analysis? The proposed project (or project alternatives) should not be measured by the proposed project achievement of this objective. This objective is simply not in scope for this CEQA analysis.

Objective number 7 states: *“To generate temporary employment in the construction industry.”*

I14-9

Same comment as above. Irrelevant to a CEQA analysis.

Objective number 8 states: *“To improve the job-housing balance in Newport Beach by providing new housing within a major employment center.”*

I14-10

What is the basis for this objective? Please provide fact-basis data and analysis to prove this objective is valid. To my knowledge, the job-housing balance in Newport Beach does not need improvement.

Objective number 9 states: *“To maximize onsite open space and provide a variety of onsite outdoor open space amenities.”*

I14-11

This is another example of a self-serving, narrowly defined objective. What is the purpose of making a project objective one that affords no one but the inhabitants of the proposed project their own private “open” space amenities? Despite the applicant’s offer of in-lieu fees to offset lack of public open space, this is a ridiculous objective and should be dismissed.

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6. Chapter 5-10 Population and Housing, 5.10.4 Cumulative Impacts,

PDF page 8, first paragraph stating that incremental population and home increases exceed SCAG projections (underlined for emphasis):

"The estimated buildout population and households from the cumulative projects, in addition to the proposed project, would introduce approximately 9,722 residents and 4,340 units (households). These incremental increases would exceed the SCAG projections for incremental increases between 2012 and 2040 (7,514 residents and 2,900 household)."

PDF page 8, 2nd paragraph goes on to state (underlined for emphasis):

"However, the project itself would only develop 100 residential units—2 percent of the 4,340 total cumulative residential units. Therefore, the project's minor contribution toward the overall cumulative impact to population and housing in the City of Newport Beach is not cumulatively considerable. Additionally, SCAG regularly updates the RTP/SCS every four years and includes population, households, and employment projections based on each jurisdiction's general plan updates."

114-12

This is a contrived statement that fails to "wish away" this cumulative impact. The "cumulative impacts analysis" is just that --- cumulative; not an arbitrary fractional breakdown of the proposed project. The dEIR needs to be revised to correct this cumulative analysis.

PDF page 8, second paragraph (underlined for emphasis):

"Therefore, the General Plan amendments required by the proposed project and cumulative projects listed in Table 4-1 would be accounted for in the next Newport Beach General Plan Update and in the subsequent update to SCAG's RTP/SCS, making the Museum House and cumulative projects consistent with SCAG's population and housing projections. The project's cumulative impact to population and housing, therefore, would not be cumulatively considerable and would be less than significant."

This is an outrageous attempt to resolve the cumulative incremental increases in residents and dwelling units resulting from the proposed project. To rely on some in-the-future General Plan Amendment or future updated SCAG projections to determine that the cumulative effect would be less than significant is unacceptable and grossly misleading.

7. Executive Summary Chapter 1, 1.5.1.2 Alternative Project Location

The EIR evaluates alternative project locations, including Newport Center (where the proposed project is to be located) to determine if "*any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location.*" (PDF page 6).

114-13

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Pdf page 7 and 8 states (underlined for emphasis):

“The following residential cumulative projects are currently proposed in Newport Center— Villas at Fashion Island (524 units under construction) and the Meridian (Santa Barbara) Condominiums (79 units completed); only 5 units remain that are unbuilt. It should be also noted that a General Plan Amendment is proposed for 150 Newport Center (49 units) in Newport Center. In total, these cumulative projects would exceed the residential development capacity stated in the housing element. This supports the conclusion that there is a lack of alternative site locations in Newport Center that have the appropriate land use entitlements to support the proposed project.”

The Museum House project itself is located in Newport Center. If approved, it would also exceed the number of units remaining that are unbuilt for Newport Center. Furthermore, with or without the 49 units proposed for 150 Newport Center the residential cumulative projects exceed the residential development capacity stated in the General Plan Housing Element for Newport Center. Therefore, that Newport Center is included as an “alternative project location” is completely irrelevant to this analysis.

114-13
(cont'd)

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2. Response to Comments

I14. Response to Comments from Dorothy and Mike Kraus, dated September 27, 2016.

I14-1 The City’s “Greenlight Initiative”, or Charter Section 423, requires a vote to authorize the more than 100 dwelling units in the Newport Center statistical area beyond those contained in the General Plan. While there are other residential units under construction in Newport Center, none required a General Plan amendment. Therefore, the General Plan may be amended to create 100 additional residential units in Newport Center, as requested by the subject application.

The commenter is correct that approval of the project requires both (1) a General Plan Amendment and (2) an amendment to the San Joaquin Plaza Community Development Plan. Please refer to the DEIR Chapter 3, *Project Description*, for a discussion of the required approvals.

Spot zoning is the process of redesignating a small parcel of land for a designation that is entirely different from and incompatible with the surrounding area. The proposed project is not considered spot zoning because there are other nearby residential uses, such as the Villas at Fashion Island apartments abutting the northern project site and The Colony Apartments to the southwest across San Clemente Drive. There are also other residential communities across Jamboree Road and San Joaquin Hills Road.

I14-2 This statement is incorrect. The estimated number of residents generated by the proposed project is 224 and is based on 2015 data from the Department of Finance that states that the City of Newport Beach has an average household size of 2.24. Sections 5.10, *Population and Housing*, and 5.12, *Recreation*, and all other sections throughout the DEIR analyze a population buildout of 224 residents.

I14-3 The commenter appears to conflate the discussion of compliance with the Newport Beach Municipal Code Section 20.40.010 parking requirements and assumptions regarding the approximate number future residents. As discussed in the DEIR, to comply with the City’s parking standards, the project is required to provide 200 resident parking spaces and 50 guest parking spaces. The City standard was adopted to ensure that sufficient parking is provided to meet the needs generated by specific uses. Thus, it is reasonable for the DEIR to conclude that sufficient parking would be provided at the project.

Moreover, the commenter’s assertion that the project would require additional parking based upon potential services provided to future residents is unsupported conjecture. A comment that consists exclusively of mere argument and unsubstantiated opinion does not constitute substantial evidence. *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580. Similarly, the commenter’s suggestion that compliance with the City’s parking standards is insufficient and a cumulative analysis of current area parking is required is not supported by evidence. As discussed above, the parking standard was adopted by the City Council to ensure that sufficient parking is provided

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for new development projects. The project complies with these standards. CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project.

It should also be noted that parking is not environmental impact that require analysis under CEQA. *San Franciscan Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656.

I14-4 The commenter is incorrect in stating that the Reduced Height Alternative would not be consistent with the San Joaquin Plaza Planned Community Development Plan (PCDP; PC-19). Page 5 of the San Joaquin Plaza PCDP states, “All buildings and appurtenant structures shall be limited to a maximum height of sixty-five (65) feet.” The commenter is incorrect regarding the current land use designation of the project site. As discussed in the DEIR, the General Plan currently designates the project site as PI – Private Institutions.

However, the commenter is correct in stating that the proposed project would require an amendment to the San Joaquin Plaza PC to allow residential development and include a 300-foot height limit. This discretionary approval is listed in the Notice of Preparation (dated February 5, 2015) and in Section 3.4, *Intended Uses of the EIR*, of the DEIR.

Note that the Reduced Height Alternative is an alternative to the proposed project and is defined by the City of Newport Beach. As such, the buildout and required approvals of project alternatives are not required to have the same buildout or required approvals as the Museum House project. Additionally, CEQA requires the DEIR to define project alternatives in order to properly analyze its relative impacts compared to those of the proposed project. Therefore, the City defines the Reduced Height Alternative as a 65-foot residential building similar in character to the adjacent Villas at Fashion Island project.

I14-5 Pursuant to CEQA Guidelines 15124(b), the DEIR includes a list of the objectives sought by the City, as lead agency for the project. 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.

Moreover, it should be noted that the DEIR analyzed and considered multiple alternatives that would not achieve Objective No. 3 (providing future residents with views of the ocean and harbor). Thus, Objective No. 3 did not preclude consideration of a reasonable range of alternatives.

I14-6 Objective No. 4 is appropriate. Policy LU 6.14.2 does not relate to development scale or the pattern of development in Newport Center, and, as discussed throughout the DEIR,

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the project includes a General Plan Amendment that would specifically allow for the development of 100 dwelling units on the project site.

Please see response to Comment I14-1 for a discussion of why the project would not violate Greenlight.

I14-7 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 15124(b). This is precisely how the project objectives, including Objective No. 5, were used in the DEIR—to develop a reasonable range of alternatives. For example, under Objective No. 5, redesignating the project site as open space would not comply with the objective. Moreover, CEQA does not impose any prohibition on the inclusion of project objectives that have any level of subjectivity.

I14-8 See response to Comment I14-7 for a discussion of the purposes of project objectives. Like Objective No. 5, Objective No. 6 is relevant to determine the scope of alternatives to the proposed project. Moreover, 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. Objectives Nos. 6 and 7 were adopted to guide consideration of the project and alternatives, consistent with CEQA.

I14-9 See response to Comment I14-8.

I14-10 According to the Southern California Association of Governments' 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy, the jobs-housing balance in Newport Beach is forecast to slightly decrease between 2012 and 2040, from 1.96 to 1.90, and would remain jobs-rich. Incorporating the 100 units into SCAG's projected household number by 2040 would slightly decrease the City's jobs-housing ratio from 1.90 to 1.89, which would move the City closer to achieving a healthy jobs-housing ratio of 1.50. While jobs-housing goals and ratios are advisory and will vary from jurisdiction to jurisdiction, the American Planning Association states that an appropriate jobs-housing ratio is 1.5, with a recommended range of 1.3 to 1.7

I14-11 See response to Comment I14-5 for a discussion of the discretion afforded to lead agencies in crafting project objectives. Please refer to response to Comment I14-7 for a discussion of the purposes of project objectives.

Objective No. 9 is a reasonable project objective as it reflects a desire to maximize the amount of open spaces provided to future residents of the project. The commenter does not provide any evidence as to why Objective No. 9 is inappropriate or undermines the analysis in the DEIR. This objective does not eliminate the requirement that the

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project applicant pay in-lieu fees for public open space, as discussed in Section 5.12, *Recreation*, of the DEIR.

I14-12 The DEIR analysis of cumulative population and housing impacts complies with CEQA. 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 DEIR analysis complies with this directive, determining that the project's marginal contribution to the cumulative effect (2 percent of the 4,340 total cumulative units) should not be considered cumulatively considerable.

I14-13 The alternatives site analysis for Newport Center included in the DEIR was based upon the City's General Plan Housing Element. The analysis was based upon Housing Element Table H32, which summarizes the total residential development capacities for sites identified as potential housing opportunity areas in the Sites Analysis and Inventory. The Sites Analysis and Inventory identifies sites that are currently available and unconstrained so as to provide realistic housing opportunities prior to October 2021. Importantly, however, given the Housing Element's narrow focus on unconstrained sites, it should not be considered an exhaustive declaration of sites available for residential development with additional entitlements. Thus, the 608 units identified for Newport Center is based upon those sites that were identified in the Sites Analysis and Inventory.

The use of the Housing Element as a means to identify possible alternative sites was reasonable given the scope of its prior analysis. The DEIR was not required to speculate as to the development potential of other sites in Newport Center not identified as a potential site for residential development. Any such analysis would require significant speculation, and would not contribute to informed decisionmaking. *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].

The residential potential of Newport Center, as discussed in the Housing Element, does not limit the number of residential units that could be developed in Newport Center. As discussed above, it was based upon existing General Plan designations and entitlements. Here, the proposed project includes a General Plan amendment to redesignate the site Multiple Residential (RM) and amend Anomaly 49 to allow for 100 units. Upon approval of the GPA, the project would be consistent with the permitted densities detailed in Table LU1 of the City's General Plan.

2. Response to Comments

LETTER I15 – Dean Laws (1 page)

Ramirez, Gregg

From: Dean Laws <stelmosfire@cox.net>
Sent: Wednesday, September 28, 2016 3:52 PM
To: Ramirez, Gregg
Subject: Museum House Project

Good afternoon,

My wife, Christine Laws, and I are opposed to the museum house project as it is proposed. Our concerns lie in three primary areas:

1. Traffic....Anyone who drives the streets and highways of Newport Beach and Orange County knows that the congestion is already making a dramatic change to the area we all cherish and enjoy. I cringe when I think how much worse it will get when the 500+ Irvine Company project begins to fill. Anyone who could propose another 100 units at Museum House must not live in Newport or, perhaps, is driven around by a chauffeur in a limousine. Clearly, they have no concern about the impact of a project of this size on our traffic and community. Add this project to the rampant development going on in Costa Mesa and Irvine (see the Jamboree Tunnel!) and one can only forecast regional gridlock. Yet we insanely seem to keep moving in that direction.

I15-1

2. Mass....the hulking mass and volume of this project, adjacent to the unbelievable mass of the 500+ Irvine project, is unthinkable. Soon fashion island will resemble Manhattan. It is simply too big for our community.

I15-2

3. Water....Southern California is in a serious drought with catastrophic potential consequences. Yet we continue to invite people into the region. Irresponsible is the only word one can use! Just last night the city council discussed the seriousness of this issue. Yet we are considering adding 600 new units in Fashion Island alone? Lunacy!

I15-3

I am told that my concerns and efforts are moot given our development-friendly city council. I am told that Donald Bren wants Fashion Island to be a city and nothing can stop big money. I am told that the developers on Museum House do not live in Newport Beach and therefore care not a bit about the project's effect on the community or it's residents. I am told that no one wants any of these projects to go to a vote of the people, because everyone involved knows that the people don't want this kind of development and will vote it down if given a chance. I am told that there is "huge" money behind the museum house project and they will stop at almost nothing to get it approved.

I15-4

I hope they are wrong. I hope none of those things are true. I hope our city government is more responsible than that. I hope the wishes of the community are respected more than that.

Thank you for your time.

Dean R. Laws
2 Barrier Reef Dr.
Corona del Mar, CA 92625
949-718-0144
stelmosfire@cox.net

2. Response to Comments

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2. Response to Comments

I15. Response to Comments from Dean Laws, dated September 28, 2016.

I15-1 Based on the traffic impact analysis for the proposed project, all study intersections currently operate at adequate levels of service in both morning and evening peak hours. The project would generate approximately 310 daily trips, including 30 AM peak hour trips and 33 PM peak hour trips. The “existing (2016) plus project” conditions and “future (2021) plus project, approved projects, cumulative projects (including the Villas at Fashion Island apartments), and growth” conditions would both result in less than significant impacts to study area intersections. All intersections would continue to operate at adequate levels of services; thus, traffic impacts are less than significant

I15-2 As detailed in Section 5.1, *Aesthetics*, of the DEIR, the mass of the proposed tower is similar to a number of high-rise office buildings in Newport Center (see Figure 5.1-2, *High-Rise Buildings in Project Area*). However, given that the proposed project is a residential development, the tower includes architectural details and features that the other neighboring, mostly rectangular, office buildings do not have, and which give the tower a more residential character. For example, the proposed tower would have multistory bay windows with French balconies and inset terraces, multistory window groupings, and large terraces at the uppermost floors to create a finished cap. Hardscape and landscaping improvements on the ground level of the site, including water features, garden trellis, fountain plaza, sculpture garden, olive allee, lawns, and perimeter landscaping, also differentiate the project from neighboring office buildings. The proposed height of the tower is also generally consistent with General Plan Policy LU 6.14.4, which states that development in Newport Center should reinforce the “original design concept for Newport Center by concentrating the greatest building mass and height in the northeasterly section along San Joaquin Hills Road, where the natural topography is highest and progressively scaling down building mass and height to follow elevations toward the southwesterly edge along East Coast Highway.” Further, the site is located in the City’s High Rise Height Zone, which has a maximum height limit of 300 feet.

I15-3 Water demand of the proposed project is addressed in Section 5.14, *Utilities and Service Systems*, of the DEIR. The City’s Utilities Department states that the City would have adequate water supply to meet the project’s needs. And, according to the City’s recently approved 2015 Urban Water Management Plan (UWMP), the proposed project’s water demands (48 acre-feet per year [afy]) in combination with other water demands throughout the City would be adequately accommodated with existing water supplies during normal, single-dry, and multiple-dry water years.

Additionally, as part of the project, the tower is expected to be commissioned and certified as a LEED for New Construction Silver building. Several water efficiency features of the project include installation of water-efficient fixtures for each unit to provide an overall 20 to 30 percent reduction in water use and landscape irrigation

2. Response to Comments

systems designed with weather sensors, timers, and low-flow irrigation devices. Due to newer building codes, new residences are more efficient at conserving water than homes built in the past. Further, as with all existing and future development in the City, the project would be required to comply with water conservation and supply level regulations and water efficient landscaping design standards under Chapters 14.16 and 14.17 of the City's municipal code.

I15-4 These comments are not related to the DEIR's adequacy in analyzing the project's environmental impacts.

2. Response to Comments

LETTER I16 – Gordon Glass (6 pages)

Mr. Gregg Ramirez, Senior Planner
City of Newport Beach, Planning Division, Community Development
100 Civic Center Drive Newport Beach, Ca .92660

SUBJECT: Comments on Museum House draft EIR

Dear Gregg:

I would like to comment on a potential negative effect upon the nearby rooftop Police Department heliport, posed by the extreme height of the proposed Museum House tower. This does not appear to have been taken into consideration in the draft EIR.

I16-1

BACKGROUND

There are two heliports in Newport Beach, one on the roof of Hoag Hospital's Emergency Room and the other on the roof of the Police Department, which is the subject of my concern. It is shown on Exhibit A, with it's proximity – 720' - from the proposed tower. Also shown is a temporary heliport in the intersection of Jamboree Road and Santa Barbara Drive, which will be discussed later.

There are no emergency heliports – for firefighting and occupant rescue – on the top of any of the high rise towers surrounding Newport Center, including the proposed Museum House.

In the event of a major disaster - earthquake, storm, plane crash, etc. - the Police Department becomes the lead City Department manning the Emergency Operations Center in City Hall, and on the streets throughout the city. Helicopters would play a vital role in spotting, rescues, and transport.

I16-2

FAA RULES

The FAA (Federal Aviation Administration) rules and recommendations regarding heliports are found in their Advisory Circular AC 150/5390 – 2C. It may be found at <faa.gov>.

The Police Department heliport is labeled a PPR (Prior permission required) heliport, because “the operator ensures pilots are thoroughly familiar with the heliport, its procedures, and any facility limitations.” (paragraph 203) . One of those limitations would be the “Obstruction” (paragraph 109. b.) of the nearby Museum House tower.

The heliport is surrounded by an imaginary navigational air space floor plane, radiating up and out at 1' in each 8', for 4000' on all sides. All Approach/Departure paths must be able to follow this slope(Figure 2 – 9), shown on Exhibit B.

2. Response to Comments

Also, those paths are recommended to be as directly into the wind as possible (paragraph 109.a.). Local wind directions are shown on Exhibit A. Therefore, depending upon the wind direction, some approaches and departures would apparently have to contend with the Museum Tower Obstruction.

The magnitude of this Obstruction is best illustrated in Exhibit C.

POLICE HELICOPTORS USE OF AIRSPACE

An early September telephone interview with Lt. Thomas Fischbacher - a Police Department helicopter pilot and one of the administrators of the helicopter program - provided valuable information about their operations.

First of all, the rooftop helipad has a limited structural weight capacity: only 2 person patrol copters can use it. Heavier craft, such as Medevac (Medical Evacuation) copters would have to land elsewhere. Lt. Fishbacher suggested temporarily stopping traffic at the adjacent Jamboree Road/Santa Barbara Drive intersection, which makes sense because of the adjacent Police manpower and vehicles required. Therefore, that temporary heliport has been included in Exhibit A, for evaluation in the final EIR. Also, that location would be more efficient at transferring victims from vehicles into a Medevac, than getting them up to the rooftop pad.

I16-2
(cont'd)

Though the Department is familiar with it's air traffic operations - as denoted by the PPR label - it is possible that during a major disaster, helicopters and pilots coming from other, perhaps far flung, agencies would not be familiar with our obstructions and limitations, given possible storm or power blackout conditions, so mitigation of at least one of the obstructions, the Museum House Tower, would be prudent.

MITIGATION

This is best answered by the FAA paragraph 111.b :

“ b. Mitigation of hazards. You may mitigate the adverse effect of an object presumed or determined to e a hazard by:

- (1) Removing the object.
- (2) Altering the object, for example, reducing its height
- (3) Marking and/or lighting the object, provided an FAA

aeronautical study has determined that the object would not be a hazard to air navigation if it were marked and/or lighted. Find guidance on marking and lighting objects in AC 70/7460-1, Obstruction Marking and Lighting.”

Comments on Museum House draft EIR page 2

2. Response to Comments

CONCLUSION

This potential hazard should be addressed in the final EIR. And at the very least, if the City insists on ignoring the General Plan, and spot-zoning that parcel for multi-unit residential use, it absolutely must require adherence to it's accompanying height limit, and not a ridiculous 300'.

I16-2
(cont'd)

Sincerely,

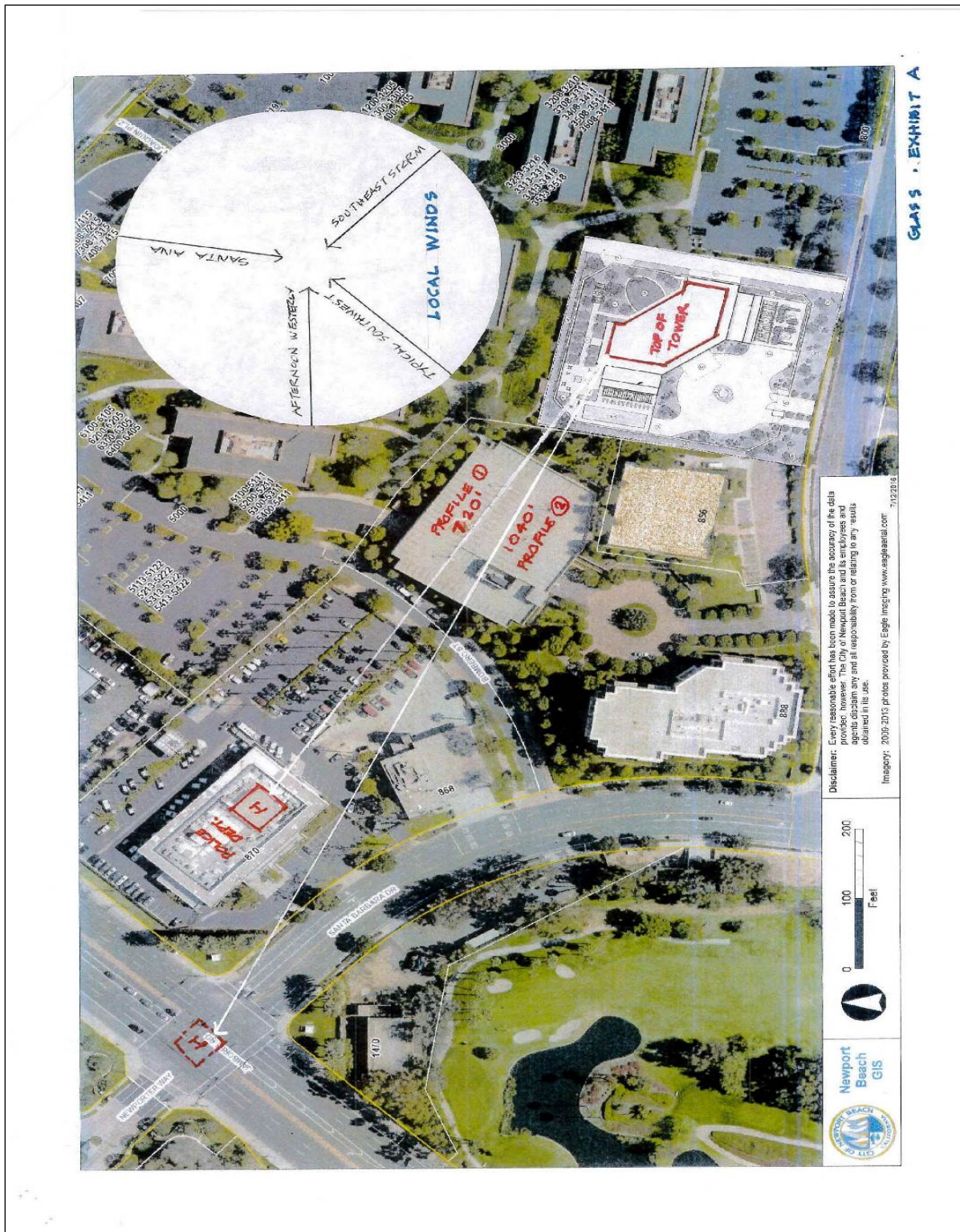


Gordon Glass
4 Pine Valley Lane, Newport Beach 92660
949.644.1954 ghgmlg@yahoo.com

September 29, 2016
Attachments

Comments on Museum House draft EIR page 3

2. Response to Comments



2. Response to Comments

4/24/2012

AC 150/5390-2C

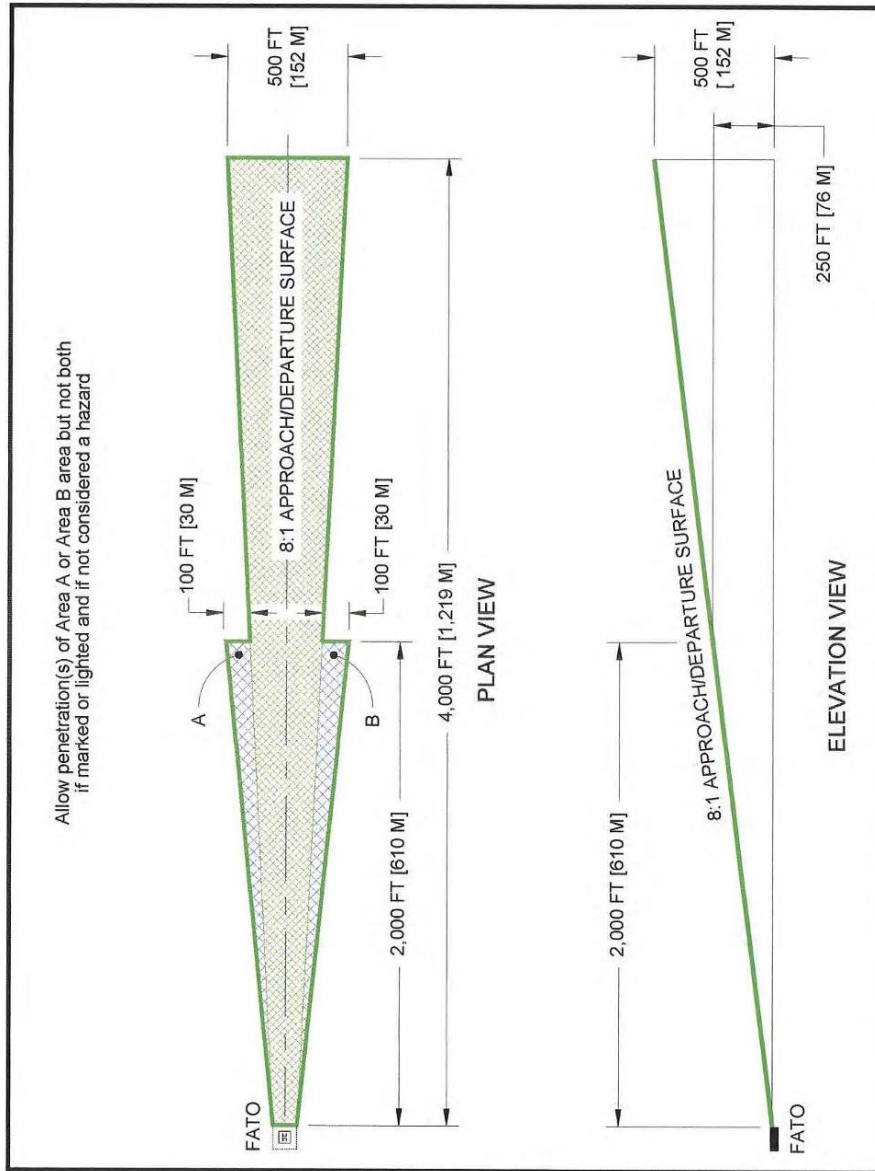
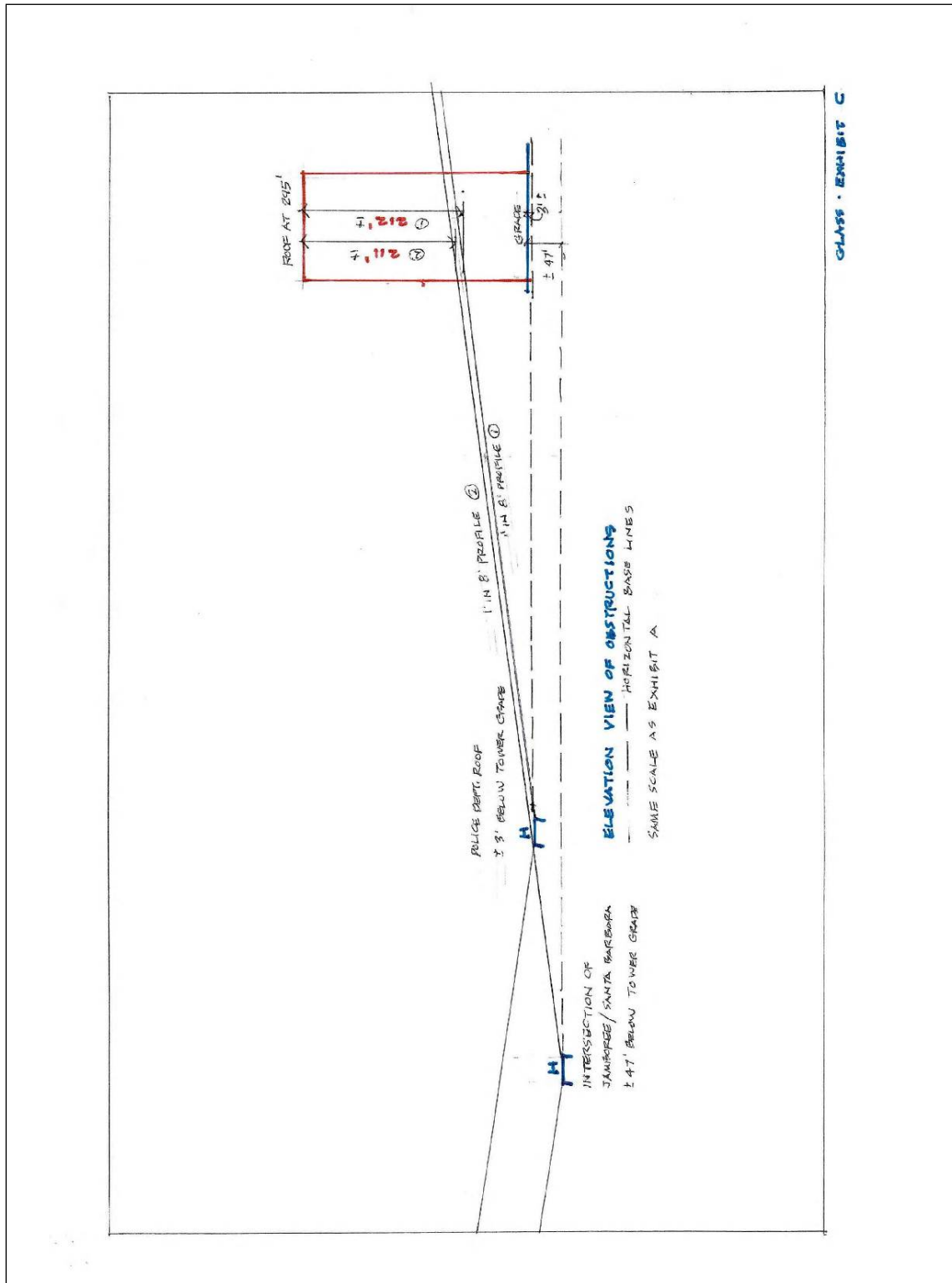


Figure 2-9. VFR PPR Heliport Lateral Extension of the 8:1 Approach / Departure Surface: General Aviation

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GLASS · EXHIBIT B

2. Response to Comments



2. Response to Comments

116. Response to Comments from Gordon Glass, dated September 29, 2016.

I16-1 This comment is an introductory paragraph for the commenter's concerns about adverse impacts to the Newport Beach Police Department heliport near the project site. No response is required.

I16-2 The commenter is correct in locating the Newport Beach Police Department heliport approximately 720 feet from the proposed tower. However, the commenter misconstrues the Federal Aviation Administration (FAA) rules and recommendations regarding heliports in Advisory Circular AC 150/5390-2C. This advisory circular includes guidelines (not mandates) related to the design and siting of heliports, not the assessment of new project impacts on existing heliports. As stated in the advisory circular, "The Federal Aviation Administration (FAA) recommends the guidelines and specifications in this AC for materials and methods used in the construction of heliports. In general, use of this AC is not mandatory."

Regardless, Section 5.6, *Hazards and Hazardous Materials*, of the DEIR details the FAA requirements applicable to the proposed 295-foot tower given the project's location within the Notification Area and Imaginary Surfaces Area of John Wayne Airport (JWA). Per Federal Aviation Regulation (FAR) Part 77, Section 77.13(a), notice to the FAA is required for any proposed structure more than 200 feet above the ground level (AGL) of its site. Notices to the FAA provide a basis for evaluating project impacts on operational procedures and air navigation. Coinciding with the FAA regulation, the Airport Land Use Commission (ALUC) also requires notification of all such proposals. Upon notification, the FAA would conduct an aeronautical study to determine whether the proposed structure would pose a hazard to air navigation. The proposed residential building would be 295 feet AGL; therefore, separate from the CEQA environmental clearance process, the project applicant will be required to notify both the FAA and ALUC.

The commenter includes additional information related to police helicopter use, helipad weight capacities, and major disaster/emergency situations. These comments are speculative and beyond the scope of this EIR.

The final comment also suggests the proposed General Plan amendment and zone change is considered spot zoning. Spot zoning is the process of redesignating a small parcel of land for a designation that is entirely different from and incompatible with the surrounding area. The proposed project is not considered spot zoning because there are other nearby residential uses, such as the Villas at Fashion Island apartments abutting the northern project site and The Colony Apartments to the southwest across San Clemente Drive. There are also other residential communities across Jamboree Road and San Joaquin Hills Road.

2. Response to Comments

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2. Response to Comments

LETTER I17 – Teresa Becker (1 page)

Ramirez, Gregg

From: Terry Becker <hiccupoo@yahoo.com>
Sent: Friday, September 30, 2016 12:09 PM
To: Ramirez, Gregg; Dixon, Diane; Petros, Tony; Duffield, Duffy; Muldoon, Kevin; Selich, Edward; Peotter, Scott; Curry, Keith
Subject: Museum House Residential Tower

To our City Council -

I as a citizen and tax payer in Newport Beach do not want further damage to our city by allowing the Museum House Residential Tower to go through approval by the city. The Fashion Island area is already starting to look like downtown Los Angeles while developers are making millions to the detriment of the citizens. The traffic will be horrible and it will take our beautiful city from a great place to live to a high density mess. | I17-1

Please do not allow this project to go through. Only those making money off the deal want it. The rest do not.

Teresa Becker
Newport Beach CA 92660

2. Response to Comments

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2. Response to Comments

I17. Response to Comments from Teresa Becker, dated September 30, 2016.

I17-1 The comment is a general opposition to the project and does not address any inadequacies with the DEIR analysis. However, the commenter does mention concerns about traffic generated by the proposed project. Section 5.13, *Transportation and Traffic*, of the DEIR evaluates the potential for the proposed project to result in transportation and traffic impacts within the City of Newport Beach. To assess potential impacts, the DEIR identified the number of trips anticipated to be generated by the project during both construction and operation phases, and analyzed whether those trips would create significant environmental impacts. As thoroughly discussed in Section 5.13, the proposed project would not generate substantial traffic and would not result in any significant impacts.

2. Response to Comments

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2. Response to Comments

LETTER I18 – Dennis Geiler (1 page)

Ramirez, Gregg

From: Dennis Geiler <Denny@poloproperties.com>
Sent: Friday, September 30, 2016 11:25 AM
To: Ramirez, Gregg
Subject: Museum Development

Dar Mr. Ramirez,

Please register my "vote" against the museum project.

That property was given to the museum in order to add some culture to the Newport Beach area. Now that the property is worth a lot of money, the museum is going to take the money and the "culture" and move it to Costa Mesa. A residential tower does nothing to add culture to our area. Would you rather show your grandchildren an art museum or a private residential tower?

I18-1

We have a General Plan for a good reason. It was a compromise among many parties and interests and there is no good reason to change it now.

I18-2

I attended one of the hearings and the rationalization that this project will develop less traffic than the art museum is hilarious. In addition, you have to take into consideration the neighboring residential project at San Joaquin and Jamboree when you are considering increased traffic congestion. The combination of the two projects will create a major distraction. Let's now let Newport Beach become another Beverly Hills.

I18-3

Thank you for considering my views,

Denny Geiler
6 Rue Deauville
Newport Beach

Dennis L. Geiler
Polo Properties, LLC
359 San Miguel Dr., Suite 304
Newport Beach, CA 92660
Tel: 949.729.2230
Fax: 949.729.2254
denny@poloproperties.com



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2. Response to Comments

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2. Response to Comments

I18. Response to Comments from Dennis Geiler, dated September 30, 2016.

I18-1 This comment is a general opposition to the proposed project and does not address any inadequacies of the DEIR environmental analysis. No further response is required.

I18-2 The State Planning and Zoning Law expressly contemplates amendments to the General Plan per Government Code Section 65358, which state, “If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan.” Moreover, as a charter city, the City is not limited in the number of times it may amend its General Plan.

The comment does not specifically address any inadequacies of the DEIR environmental analysis. No further response is required.

I18-3 It is unclear at which hearing and from whom the commenter heard that the project would generate less traffic than the existing museum. The traffic study clearly states that the OCMA museum generates approximately 108 daily trips, and the proposed project would generate approximately 418 trips, resulting in a net increase of 310 daily vehicle trips. The traffic study also takes into account cumulative projects in the City, including the Villas at Fashion Island apartments currently under construction. Section 5.13, *Transportation and Traffic*, of the DEIR summarizes the traffic study findings and concludes that project area intersections and roadways would continue operating at acceptable levels of service and impacts would be less than significant.

2. Response to Comments

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2. Response to Comments

LETTER I19 – Ruth Klein (1 page)

Ramirez, Gregg

From: Ruthie <ruthielaughs@yahoo.com>
Sent: Friday, September 30, 2016 5:30 PM
To: Ramirez, Gregg
Subject: Museum House

Dear City of Newport Beach,

Please do not allow another high density project to be developed such as the Museum House. Our beach community is already impacted and the quality of life not what Newport is known for. | I19-1

Please vote no.

Thank you,
Ruth Klein
Dover Shores Area

1

2. Response to Comments

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2. Response to Comments

I19. Response to Comments from Ruth Klein, dated September 30, 2016.

I19-1 This comment is a general opposition to the proposed project and does not address any inadequacies of the DEIR environmental analysis. No further response is required.

2. Response to Comments

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2. Response to Comments

LETTER I20 – Jim Mosher (7 pages)

Museum House DEIR Comments

From: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

The following written comments are submitted regarding the Museum House Project ([PA2015-152](#)) Draft Environmental Impact Report (State Clearinghouse No. 2016021023).

1. 1.3 PROJECT LOCATION (Page 1-4):

This appears to be the first substantive project-specific section of the DEIR, and if it's any sample of what's to come, the first paragraph is not an auspicious start.

Describing Newport Beach as being "*in the western part of Orange County*" may be technically correct, but why is that more important than telling decision makers it is "*in the southern part of Orange County*"? (and in both cases, "*half*," meaning on which side of the geographic centerline the city falls, would be less misleading than "*part*" – which at least to me implies a location well past the centerline, which Newport Beach is not in either case)

Likewise, why are decision makers being told "*Costa Mesa to the north*" and "*Irvine to the northeast*"? From every map I've seen, Costa Mesa is just as much on the *northwest* border of Newport Beach as Irvine is on the *northeast*.

Much more importantly, the description entirely leaves out single most significant aspect of the City's setting, and the one probably most driving the project design and the desirability of the location (see Project Objective 3, Page 3-1): namely that the City is on one edge of the County and bordered on the south (or more accurately south-southwest) by the Pacific Ocean.

I would suggest describing Newport Beach as being a coastal city on the southwest edge of Orange County, bordering the Pacific Ocean.

The second paragraph is similarly inaccurate and misleading in describing the project site as being "*bounded by Santa Cruz Drive to the east, Santa Barbara Drive to the west, San Joaquin Hills Road to the north, and San Clemente Drive to the south.*" While those may indeed be the nearest major public roads in those directions, the only one that acts in any way as a boundary to the project site is San Clemente Drive. Yet wouldn't a person reading this summary in the DEIR, but unfamiliar with the area, conclude the 2-acre parcel must be the area between the four streets mentioned?

I would suggest saying the parcel is a small area within the larger area (block ?) bounded by the streets mentioned.

Note: The sentence in question appears to have been created by copying and pasting a portion of a sentence from Section 3.1, where it made more sense because it was being used to identify the project location on illustrative maps. Removed from that context, the meaning changes. That the DEIR authors and City staff reviewers would not have noticed this and exercised due diligence in reviewing what they have produced is disturbing.

I20-1

2. Response to Comments

September 30, 2016, Museum House DEIR Comments - Jim Mosher

Page 2 of 7

When a DEIR is unable to accurately and efficiently convey the most basic of information the usefulness and integrity of the entire rest of it, likely written with the same cavalier attitude, is, at least in my mind, highly suspect. And I am discouraged from reading any further.

I20-1
(cont'd)

2. 1.4 PROJECT SUMMARY (Page 1-4):

"From finished grade of the main building entry point at approximately 187 feet above mean sea level (amsl) to the roof of the highest portion of the tower, which includes the mechanical equipment and elevator overrun, the tower is expected to be approximately 482 feet amsl. Therefore, the tower itself, from finished grade of the main building entry point to the top of the tower would be 295 feet." I believe the current OCMA building is on a step substantially below the level of San Clemente Drive. This Project Summary does not make clear if the starting point for the current measurements of 187 feet amsl is above or below the level of San Clemente Drive. It is also unclear from at least the most prominently featured site plans in the DEIR if part of the project is to raise the building site to the level of San Clemente Drive, or if the entry drive will slope down from that road to a building pad at the current museum elevation. Since height is such an issue with this project, that information would seem very basic to understanding the proposal.

I20-2

3. 1.5.1.1 ALTERNATIVE PROJECT LOCATION

Page 1-7: *"Based on the development limit and allowable density in the available areas, the proposed 100-unit condominium tower could be sited in Banning Ranch, John Wayne Airport Area, or Newport Center."*

This is inaccurate and misleading. The referenced Table H32 of the Newport Beach 2014-2021 Housing Element lists a potential for 608 dwelling units in Newport Center. But as acknowledged at the bottom of this page, the body of the Housing Element indicates all but 5 of these have been built or are currently under construction. And the 5 are the subject of a Development Agreement attached to the Tennis Club portion of the Newport Beach Country Club. Nothing in the General Plan identifies Newport Center as a more suitable site for the proposed project. Indeed, of the sites mentioned, it is the one with the least identified potential.

I20-3

Page 1-8: *"This supports the conclusion that there is a lack of alternative site locations in Newport Center that have the appropriate land use entitlements to support the proposed project."* But the proposed site lacks the appropriate entitlements, as well. Why is one inappropriate location better than another?

4. 1.5.1.2 REDUCED HEIGHT ALTERNATIVE

Page 1-8: *"The Reduced Height Alternative would decrease the proposed tower height from 295 feet to 65 feet (from podium to roof of last occupied space) to be consistent with the underlying zoning of the project site—San Joaquin Plaza Planned Community Development*

I20-4

2. Response to Comments

September 30, 2016, Museum House DEIR Comments - Jim Mosher

Page 3 of 7

Plan (PCDP; PC-19)." This is misleading since residential use is not consistent with PC-19 and if it were added, no standard has been established for how tall it should be.

Page 1-9: "Also, the Reduced Height Alternative would result in a new significant and unavoidable aesthetic (shade/shadow) impact that was not generated by the proposed project." Shouldn't the building bulk and mass required to accommodate 100 dwellings in 65 feet suggest to decision makers that 100 units is too dense a proposal for the site size?

I20-4
(cont'd)

5. 1.5.2.1 NO PROJECT/NO DEVELOPMENT ALTERNATIVE (Page 1-10)

"Objective No. 4 also provides a goal of implementing General Plan Policy LU 6.14.4 by developing a residential project that would reinforce the original design concept of Newport Center." This strikes me as a very peculiar reason for rejecting the no development alternative. The current development on the site is fully consistent with the General Plan. The proposal is obviously not since it requires a General Plan Amendment. It escapes me how deviating from the General Plan could do more to "implement" the General Plan than working within it.

I20-5

Moreover this description of General Plan Policy LU 6.14.4 is highly misleading. Policy LU 6.14.4 sets limitations on "Development Scale." Nothing in it demands new development, let alone high-rise residential.

6. 1.5.2.3 REDUCED DENSITY ALTERNATIVE (Page 1-11)

This alternative appears to consist of removing two stories out of the mid-section of the tower. The Executive Summary provides no explanation of why this alternative was selected. Why not remove three stories? Or five? Or twenty?

I20-6

7. 1.7 AREAS OF CONTROVERSY (Page 1-12)

"Comments received were primarily related to the project's potential impacts on aesthetics, air quality, noise, traffic, parking, and water supply." This fails to convey to decision makers the repeated and intense concerns about the project being incompatible with existing land use policies. Indeed, one of the areas of greatest controversy is whether project approval would require a Charter Section 423 ("Greenlight") vote. Greenlight requires citizen approval, among other things, when the accumulation of non-voter-approved housing unit increases for the whole of Newport Center exceeds 100 in 10 years. As the DEIR acknowledges on page 5.8-3, housing numbers for Newport Center were last approved by voters on November 7, 2006. Since then, with the amendment of the General Plan Housing Element on September 24, 2013, the City Council acknowledged (see amended Housing Element, page 5-51) adding 79 units above the number of units last approved by voters. By adding another 100 to that, if not approved by voters this project clearly exceeds the Greenlight threshold, making it inconsistent with the City Charter. On page 2-13, the DEIR, possibly correctly, dismisses this controversy as "not an environmental concern pursuant to CEQA." The expanded description of the Greenlight process on page 5.8-6 notwithstanding, I am unable to find any explanation in the DEIR of why this potential Land

I20-7

2. Response to Comments

September 30, 2016, Museum House DEIR Comments - Jim Mosher

Page 4 of 7

Use incompatibility is not a CEQA concern while other potential Land Use incompatibilities are. The DEIR assures decision makers of what other legislative and regulatory hurdles need to be crossed. Is this not equally important?

I20-7
(cont'd)

8. **3.1 PROJECT LOCATION** (Page 3-1):

To the inaccurate and misleading information copied from this section into the Executive Summary (see comments on Section 1.3, above), the expanded description adds more.

Since residents successfully fought to block the Pacific Coast Freeway project in the late 1960's/early 1970's, it is disturbing, in the second paragraph, to find State Highway 1 being elevated to the status of one of "various freeways" serving Newport Beach. Since when is a road with stop signals called a freeway? And why is "EastWest Coast Highway" being described as something that "runs near the southeastern boundary of Newport Beach" as, apparently, depicted on Figure 3-1? That figure indeed shows an orange line labeled "1" (which it indeed appears to imply is part of the local freeway system) running southeast from the MacArthur and connecting to Interstate 5 through Dana Point. But since when was any part of the orange "1" line shown Figure 3-1 called "West Coast Highway"? And why is the part of PCH to the west of MacArthur not part of "1"? What is different about it?

I20-8

9. **5.1 AESTHETICS -- 5.1.1.1 REGULATORY BACKGROUND** (Page 5.1-1)

This page provides what purports to be a description of "Chapter 20.30 (Property Development Standards), Section 20.30.060 (Height Limits and Exceptions)" of the City of Newport Beach Municipal Code, but fails to explain with any clarity how those limits apply to the proposed project, or how a 295 foot tall residential tower could be compatible with them. The description establishes the project parcel lies in the High Rise Height Zone, but notes the limits in that zone are applicable only to nonresidential zoning districts, while it is clearly being requested to create a residential district. But whatever the parcel's status may be, the description ends with the conclusion that "Height limits established as part of an adopted planned community are not limited to the maximum heights in Section 20.30.060."

That conclusion, which is apparently based on the last sentence of NBMC Subsection 20.30.060.C.1, is clearly erroneous since the purpose of Subsection 20.30.060.C is to establish base height limits and discretionary maximum height limits for various land uses, and a preceding sentence establishes "the adoption of a Planned Community District" as one method available to go from the base height limit to the maximum height limit.

Reading the final sentence of Subsection 20.30.060.C.1 ("Height limits established as part of an adopted planned community shall not be subject to this subsection") as exempting planned communities from the limits is legally impermissible since it would make the previous sentence useless and superfluous. Instead, it can much more reasonably be read as a grandfathering clause saying the limits in Subsection 20.30.060.C do not override or replace the limits specified in a planned community adopted prior to the adoption of Subsection 20.30.060.C. The legislative history of Subsection 20.30.060.C supports this interpretation (see former Section 20.02.050 EXISTING STRUCTURES AND PERMITS

I20-9

2. Response to Comments

September 30, 2016, Museum House DEIR Comments - Jim Mosher

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from the 1976 Zoning Code adopted by Ordinance 1657: "*C. Proposed structures within a Planned Community District adopted prior to the effective date of this ordinance may be constructed in accordance with the height limits contained within the Planned Community Text; provided, however, that a Use Permit shall be required for any structure which exceeds the height limits established by this Chapter.*"). It may be noted it also clarified with Section 20.02.035 PLANNED COMMUNITY DISTRICTS that "*In each Planned Community District established subsequent to the adoption of Chapter 20. 02, the height limits shall be established as part of the Planned Community Development Plan; provided, however, that in no event shall the development exceed the height limits permitted in the height limitation zones as set forth under Section 20.02.030.*"

Moreover, and equally importantly, it needs to be recognized that however the City's height limits apply to "properly" created planned communities, PC-19 is not a proper PC. Instead, it is the grandfathered remnant of a once much larger PC that include a mix of office and cultural uses. Neither in its present state, nor with the proposed land use does it meet the definition of a PC Zoning District, which per the present NBMC Section 20.26.010 (Purposes of Special Purpose Zoning Districts) "*is intended to provide for areas appropriate for the development of coordinated, comprehensive projects that result in a superior environment; to allow diversification of land uses as they relate to each other in a physical and environmental arrangement while maintaining the spirit and intent of this Zoning Code; and to include a variety of land uses, consistent with the General Plan, through the adoption of a development plan and related text that provides land use relationships and associated development standards.*" It longer has either the size nor the logically planned diversity of uses, and it certainly doesn't maintain the spirit the Zoning Code which limits RM development to a roof height of 28 (flat)/ 33 (sloping) feet with the adoption of a Planned Community allowing a discretionary increase of 5 feet if certain findings can be made.

Among the findings, which explicitly apply to all Planned Communities are that "*The structure will have no more floor area than could have been achieved without the approval of the height increase*" (NBMC Sec. 20.30.060.C.3.d) – something I'm not sure is addressed in the DEIR. Even if the 5 foot limitation on the permissible height increase is ignored, it seems to me the proposed 295 foot tall building has substantially more floor area than would have been possible in a 28 foot tall residential structure.

I20-9
(cont'd)

10. Viewsheds from Coastal View Road (Page 5.1-14, shouldn't that be "Roads"?)

The DEIR authors appear unaware of the range over which the Newport Center towers are visible. Newport Center is, for example, prominently visible from the designated Coastal View Road segment of Irvine Avenue on the west side of the Upper Newport Bay Ecological Reserve. The two high-rise office towers that have been added since 2006 (contrary to the spirit of the 2006 Land Use Element, which called for no new office structures in Newport Center), have already significantly altered that view, and this proposed new tower will alter it even more. Yet the DEIR does not appear to have assessed that impact.

I20-10

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For the locations that have been evaluated, to someone unfamiliar with the area the extreme wide-angle simulations reproduced in the DEIR provide laughably inadequate and misleading representations of the true visual impression Newport Center creates.

For example, Figure 5.1-8 gives a completely inaccurate impression of how Newport Center appears from Upper Castaways – making one think the entirety of the Center is barely visible, when in fact it is a dominating feature from there, from Galaxy View Park, or looking east from most anywhere in Dover Shores. The same can be said for views from PCH between Dover Drive and Jamboree, and from many other areas of the city.

In my view, any conclusion about visual impacts based on this kind of information is not only suspect, but likely to be false. One may or may not like the changed view, but it will certainly be changed.

I20-10
(cont'd)

11. San Joaquin Plaza Planned Community Development Plan (Page 5.8-5)

"PC-19 encompasses approximately 2.9 acres and is bounded by Santa Cruz Drive on the east, San Clemente Drive on the south, and Santa Barbara Drive on the west." Again (see comment on page 1-4, above), it is unclear why Santa Cruz and Santa Barbara Drives are cited as "bounding" streets. They are not contiguous with PC-19 and no more bounding streets than San Joaquin Hills Road.

I20-11

The original intent of PC-19, as described in the second paragraph on page 5.8-5, did not include residential uses, and since the surviving fragment no longer meets the standards of size or diversity for a PC, repurposing that grandfathered tiny piece as an entirely new stand-alone PC seems contrary to the intent and spirit of the Zoning Code (see comments on page 5.1-1, above).

12. Charter Section 423/City Council Policy A-18 (Page 5.8-6)

See comments on Page 1-12, above.

I20-12

13. Table 5.8-1 General Plan Consistency Analysis

LU 6.14.4 (Page 5.8-15): *"The project site itself and adjacent parcel currently occupied by the OCMA administrative building are both within the 300-foot high-rise height area."* See my extended comment about page 5.1-1, above. As acknowledged on page 5.1-1, the 300-foot limit applies only to nonresidential. The proposed project is acknowledged to be residential. The DEIR does not appear to address this inconsistency. Nor does it adequately explain how adding high-rise in the northwest is consistent with a policy encouraging it to be concentrated in the northeast. Perhaps the zoning map the DEIR relies on for justification is inconsistent with the General Plan? Additionally, see comment on page 1-10, above.

I20-13

NR 20.3 (Page 5.8-22): See my comments on page 5.1-14, above. If built, the project will be visible from a great many of the locations listed in the left-hand column, not just the four mentioned on the right.

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14. Zoning Code Consistency (Page 5.8-27)

While it may be true that the project might be consistent after changing the Zoning Code, it's not at all clear the findings for changing it can be made (for example, for increasing the height).

I20-14

15. 5.8.4 Cumulative Impacts (Page 5.8-27)

"Similar to the proposed project, cumulative projects are subject to compliance with the regional and local plans reviewed in this section. Therefore, implementation of cumulative development projects would not combine with the proposed project to result in cumulatively considerable land use impacts." It sounds like the authors are saying that because projects in Newport Beach are consistent with the General Plan they can have no cumulative impacts – yet I thought the DEIR had previously established this project (and possibly some of the others) is not consistent with the existing General Plan and will require an amendment to it. The logic by which this conclusion was reached escapes me.

I20-15

16. 5.8.5 Existing Regulations and Standard Conditions (Page 5.8-28)

"There are no specific City-adopted standard operating conditions of approval related to land use and planning that are applicable to the proposed project at this time." Again, I am unable to fathom what the authors are trying to say. Every project approval I have seen has numerous standard conditions attached to it.

I20-16

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I20. Response to Comments from Jim Mosher, dated September 30, 2016.

I20-1 The commenter suggests particular revisions to identify the precise geographic location of Newport Beach within Orange County and the specific project site within Newport Center. The current descriptions of the project site and figures in Chapters 3, *Project Description*, and 4, *Environmental Setting*, clearly indicate where Newport Beach is located in the county and where the project site is located within the City. The suggested revisions would not affect the conclusions of the environmental impacts and does not preclude understanding of the project location or the project's environmental impacts.

I20-2 The finished grade of the main building entrance would be roughly the same elevation as San Clemente Drive (187 feet above mean sea level is approximately 3.8 to 6.4 feet above the sidewalk at San Clemente Drive). Therefore, the entry driveway would not slope down from San Clemente Drive to the existing museum elevation.

I20-3 The DEIR evaluated a reasonable range of alternatives to the proposed project, including whether there were reasonable alternative locations. To identify potential alternative locations, the DEIR utilized the City's General Plan Housing Element. The analysis was based upon Housing Element Table H32, which summarizes the total residential development capacities for sites identified as potential housing opportunity areas in the Sites Analysis and Inventory. The Sites Analysis and Inventory identifies sites that are currently available and unconstrained so as to provide realistic housing opportunities prior to October 2021. The use of the Housing Element as a means to identify possible alternative sites was reasonable given the scope of its prior analysis. The DEIR was not required to speculate as to the development potential of other sites in Newport Center not identified as a potential site for residential development. Any such analysis would require significant speculation, and would not contribute to informed decisionmaking. *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].

The fact that the proposed site currently lacks the required entitlements is not relevant to the discussion of alternatives. The project applicant, Related California, has a legal interest in the project site and has applied to obtain the required entitlements. The proposed project includes a General Plan Amendment to redesignate the site Multiple Residential (RM) and amend Anomaly 49 to allow for 100 units. This is consistent with general planning principles, the State Planning and Zoning Law, and the Newport Beach Municipal Code. Upon approval of the GPA, the project would be consistent with the permitted densities detailed in Table LU1 of the City's General Plan..

I20-4 The quote taken from the DEIR is misconstrued by the commenter. The Reduced Height Alternative would decrease the height of the proposed tower from 295 feet to 65 feet to be consistent with the height limit of the underlying zoning for the project site,

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not the permitted use. It is already acknowledged throughout the DEIR that the project would require an amendment to the San Joaquin Plaza PCDP to allow the development of residential use. Nevertheless, the statement is revised in Section 3.2, *Revisions to the DEIR*, to provide clarity.

The commenter's suggestion that the Reduced Height Alternative's required building bulk and mass to accommodate 100 dwelling units in a 65-foot structure would be too dense is subjective. However, the relative aesthetic impacts of this alternative in comparison to the proposed project area evaluated in the DEIR, which concludes impacts to scenic vistas and light and glare would be reduced, overall impacts to visual character would be similar, and impacts to shade and shadow would be greater and result in a significant unavoidable impact.

I20-5 The commenter is incorrect in suggesting that the DEIR states that the proposed project would do more to implement General Plan Policy LU 6.14.4 than the existing museum. The DEIR only states that the project would be consistent with this land use policy. Further, the policy does not demand nor preclude new development from occurring. It simply states the original design concept of Newport Center.

I20-6 CEQA requires consideration of a reasonable range of alternatives that would avoid or lessen the significant and unavoidable impacts of the proposed project. Removing three, five, or twenty stories under the Reduced Density Alternative would not reduce the project's significant and unavoidable construction noise impact more than the Reduced Density Alternative as currently defined in the DEIR. Moreover, pursuant to CEQA Guidelines Section 15126.6(a), an EIR need not consider every conceivable alternative to a project. CEQA demands that a reasonable range of alternatives is considered. The DEIR satisfies this standard.

I20-7 The City's general plan and zoning code govern the procedures for transferring of development within the same statistical area. In addition, the transfer of development within Newport Center is governed by a unique General Plan policy:

“LU 6.14.3 Transfers of Development Rights

Development rights may be transferred within Newport Center, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts.”

All transfers conducted to date within Newport Center have complied with the above policy and did not require a General Plan amendment. Furthermore, a traffic analysis was conducted for each transfer to confirm that they did not generate any adverse traffic impacts. Therefore were no effects on the AM and PM hour trips calculated for Charter Section 423 (Greenlight).

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I20-8 The commenter questions the terminology used in describing State Highway 1, which is commonly known as East/West Coast Highway or Pacific Coast Highway. These terminologies are used interchangeably and have no impact on the DEIR's analysis and environmental impact conclusions. The use of State Highway 1, East/West Coast Highway, or Pacific Coast Highway in the DEIR also does not preclude understanding of the project location or the project's environmental impacts.

I20-9 Section 5.1.1.1, *Regulatory Background*, provides an overview of existing regulations that may be applicable to the proposed project. Section 20.30.060 of the City's municipal code is an appropriate regulation to reference in the Aesthetics section of the DEIR even if the regulation states that height limits established as part of a planned community are not limited to the maximum heights detailed in Section 20.30.060. It provides the reader context regarding the City's height limits even if not applicable to the San Joaquin Plaza PC.

The commenter proposes interpreting the municipal code section in a different manner to suggest that height limits established in Section 20.30.060(c)(1) do not override or replace the height limits specified in PCs only if the PC was adopted prior to the adoption of Section 20.30.060(c)(1) of the City's municipal code. However, this is not how the section was written. The commenter goes on to cite Section 20.02.035, "In each Planned Community District established subsequent to the adoption of Chapter 20.02, the height limits shall be established as part of the Planned Community Development Plan; provided, however, that in no event shall the development exceed the height limits permitted in the height limitation zones as set forth under Section 20.02.030." The proposed amendment to the San Joaquin Plaza PC would not exceed the height limitation zone requirement, which is 300 feet within the City's High Rise Height Zone.

The comment also includes discussion related to the existing San Joaquin Plaza PC as not being a "proper" PC. This is not related to the adequacy of the DEIR analysis and no further response is required.

Lastly, the commenter cites Section 20.30.060(c)(3)(d) of the City's municipal code, which states several required findings, one of which is that "the structure have no more floor area than could have been achieved without the approval of the height increase." The commenter excludes the statement above this section in Section 20.30.060(c)(1), which states, "Height limits established as part of an adopted planned community shall not be subject to this subsection." The proposed project is part of an adopted planned community; therefore, Section 20.30.060(c)(3)(d) of the City's municipal code does not apply to the project.

I20-10 The DEIR evaluates the project's potential impacts to views, evaluating whether the project would have a significant impact on any scenic vistas. To assess any such impacts, Section 5.1, *Aesthetics*, includes view simulations from six locations: (1) Avocado Street,

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(2) Jamboree Road, (3) MacArthur Boulevard, (4) Newport Center Drive, (5) Castaways Park, and (6) the Big Canyon neighborhood. These simulations represent views from various locations looking toward the project site and include coastal view roads and other views of concern brought up by attendees of the project's public scoping meeting to determine whether the project would introduce a structure that would significantly impact views. The view simulations were prepared by the applicant and peer reviewed by PlaceWorks' in-house visual design experts.

As discussed in the DEIR, the proposed project would introduce a high-rise building that is consistent with other high-rise buildings in the vicinity. It would not be the first building of its kind in Newport Center. It is also important to note that although the tower would be seen from different vantage points, including from Irvine Avenue on the west side of the Upper Newport Bay Ecological Reserve, it would not, by itself, cause a considerable aesthetic impact to the existing skyline since there are already existing high-rise buildings in the project area. Moreover, from many view locations, the proposed project would be largely or entirely obstructed by existing infrastructure and natural features. From view locations where the proposed project can be seen, the project would not obstruct views of potential scenic resources, including the Pacific Ocean, Newport Bay, and Saddleback Mountain. Thus, based upon the visual simulations included in the DEIR, which highlight existing development in the area and the project's lack of intrusion into views of a scenic resource, the DEIR reasonably concluded that the proposed project would not have a significant impact on scenic views.

I20-11 See response to Comment I20-1 and I20-8. The general location description of the PC-19 as bounded by Santa Cruz Drive on the east, San Clemente Drive on the south, and Santa Barbara Drive on the west is accurate and gives the reader an understanding of its geographic location. Santa Cruz Drive and Santa Barbara Drive are mentioned as general east and west bounding streets because there are no official roadways adjacent to PC-19's eastern and western boundaries. This comment does not focus on the DEIR's adequacy in evaluating the project impacts and no further response is required.

The commenter reiterates a previous statement about PC-19 not being a "proper" PC because it used to be part of a larger PC. This is not related to the adequacy of the DEIR analysis and no further response is required.

I20-12 See response to Comment I20-7.

I20-13 The statement that the project site, not the proposed residential use, is within the 300-foot high-rise height zone is correct. Although this statement applies to nonresidential uses, the need for a General Plan amendment and zone change to allow development of the residential tower is clearly acknowledged throughout the DEIR. See response to Comment I20-9 above.

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As stated in Table 5.8-1, the project is consistent with General Plan Policy LU 6.14.4. This policy encourages the concentration of buildings with the greatest mass and height in northeast Newport Center, but does not explicitly restrict or limit development of these types of buildings to the northeast area. As shown in Figure H-1, *High Rise and Shoreline Height Limit Areas*, of the City's municipal code, northern areas of Newport Center in addition to the northwesterly portions are also included in the high-rise height zone with an allowed height of 300 feet and also include residential uses (i.e., the Meridian residences).

Lastly, see response to Comment I20-10 pertaining to aesthetic impacts to coastal view roads.

- I20-14 It is acknowledged that the project would require a zone change to allow for the increased height limit, and it is anticipated that the City will make the required findings for the zone change.
- I20-15 The commenter is misinterpreting the cumulative land use impacts analysis. Similar to the proposed project, all cumulative projects are subject to compliance with regional and local land use plans. Therefore, the proposed project and cumulative projects would not cumulatively contribute to considerable land use impacts.
- I20-16 The statement is correct. The City is currently drafting and finalizing project-specific conditions of approval. It is anticipated that the final conditions of approval will be ready for review and approval by the City Council at a later date.

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LETTER I21 – Jim Mosher (1 page)

Museum House DEIR Comments -- addendum

From: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Subsequent to submitting my September 30, 2016, written comments on the Museum House Project Draft Environmental Impact Report (State Clearinghouse No. 2016021023), it occurred to me that the project involves a very important objective with potentially significant environmental impacts not disclosed or discussed in the DEIR. Namely, it has been repeatedly stated at public meetings that one of the primary reasons for the project is to raise money to enable the construction of a larger and more popular *new* OCMA building on a currently vacant property at the Segerstrom Center, roughly six miles to the north, in Costa Mesa.

In other words, the Museum House Project has been very clearly and publicly identified as part of a two-part proposal involving: (1) the removal of OCMA from the Museum House site, followed by the enlargement and rebuilding of OCMA at the new site, *and* (2) the construction of the Museum House on the site vacated by OCMA. Yet despite this intended connection, which is not mere speculation, but a fundamental stated reason for the project, the DEIR analyzes only the second part.

I'm not sure how CEQA is supposed to handle such dual projects, but it seems to me this needs to be disclosed as a project objective, with whatever ramifications follow from that. In particular, it occurs to me that some predicted impacts, such as changes in water, energy or traffic use at 850 San Clemente Drive may be accurate when considered very locally, but not when considered slightly more globally: removal of the existing OCMA building may cause certain impacts to disappear at 850 San Clemente Drive, but they will, if the project meets its announced objectives, be reappearing with even greater intensity six miles away.

An EIR that does not consider the combined impact of the Museum House plus the planned new enlarged OCMA facility which it is intended to enable seems both misleading and inadequate to me.

I21-1

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I21. Response to Comments from Jim Mosher, dated October 3, 2016.

I21-1 It is not clear at which public meetings the commenter heard “that one of the primary reasons for the project is to raise money to enable the construction of a larger and more popular new OCMA building on a currently vacant property at Segerstrom Center.” The proposed Museum House project objectives are detailed in Section 3.2, *Statement of Objectives*, in the DEIR and do not include any objectives related to raising money for an expanded OCMA facility in Costa Mesa.

The relocation of OCMA to Costa Mesa would be an independent project by another applicant, is not necessitated by the proposed project, serves a different purpose, and is within another jurisdiction. Therefore, it is outside of the City of Newport Beach’s purview under CEQA and irrelevant to review of the proposed project. *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222 [no piecemealing when the project was just a minor step to another project and significant steps still remained, did not induce the project, and served independent purposes]. It would also be subject to its own CEQA review.

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LETTER I22 – Katitza Schmidt (1 page)

Ramirez, Gregg

From: Katitza Schmidt <katzschmidt@gmail.com>
Sent: Friday, September 30, 2016 1:09 PM
To: Ramirez, Gregg
Subject: Museum House

Dear Mr. Ramirez

I have grown up in Newport Beach, and have seen many changes. Some have been positive others not. We have established planning rules and regs. for a reason; Museum House is just such a case. Newport Beach has never been a town which is intended to have a 27 story building, let alone a residential complex of such magnitude. The profile of our community has been and should remain Carmel like. Newport Beach residents would live in Santa Monica or San Diego, if that was the city environment they wanted. The residents want to retain our small town charm, of varying villages around the bay. As citizens of Newport Beach, for whom this community exists, I ask that we be represented by our city council, whom we elect and who's salary we pay. The Museum Project is not in the best interest of the citizens. It is for the benefit of developers.

I22-1

Sincerely,
Katitza Schmidt
14 Gleneagles Dr, 92660

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2. Response to Comments

I22. Response to Comments from Katitza Schmidt, dated September 30, 2016.

I22-1 The comment states a general opposition to the proposed project and does not focus on any inadequacies of the DEIR environmental analysis. However, the commenter does bring up concerns about the visual character and quality of Newport Beach. This is analyzed in Section 5.1, *Aesthetics*, of the DEIR. The project would be located in an urban, built out area of Newport Beach with other existing high-rise buildings in Newport Center (see Figure 5.1-2, *High-Rise Buildings in Project Area*). It would not impact the visual quality of the City's "small town charm of varying villages around the bay" as the commenter suggests.

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LETTER I23 – Michael and Pauline Smith (1 page)

Ramirez, Gregg

From: mike.cdm@gmail.com
Sent: Friday, September 30, 2016 9:46 PM
To: Ramirez, Gregg
Subject: Museum House

Mr Greg Ramirez, Sr Planner

Dear Mr Ramirez:

My wife and I oppose the Mission House project as far outside the intent of the General Plan which:

1. limits high rise to the area north of Fashion Island and
2. because it adds traffic to an already burdened road system around Newport Center and
3. because it seeks to not only change the zoning but create yet another Planned Community on a site of less than the ten acre minimum.

I23-1

Museum House is an assault on the the clear wishes of the citizens who reject high rise structures that distort the unique character of Newport Beach.

We are told that this project will somehow foster walking to stores and restaurants in the area. This is a wonderful hope but one that has little basis in reality. The prospective residents are going to travel by car to shop for anything weighing more than a few pounds.

Respectfully,

Michael C Smith

Pauline L Smith
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mike.cdm@gmail.com
polly-smith@pacbell.net

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I23. Response to Comments from Michael and Pauline Smith, dated September 30, 2016.

I23-1 The commenter states that the City's general plan limits high rise development to the area north of Fashion Island. This is generally correct, but the City's general plan does not explicitly preclude high rise development from occurring elsewhere in Newport Center. Regardless, the project site is located north of Fashion Island and is also within the City's High Rise Height Zone.

Traffic impacts are analyzed in Section 5.13, *Transportation and Traffic*, and conclude that all study area intersections currently and would continue operating at adequate levels of service during existing (2016) and future (2021) conditions, which cumulatively consider traffic generated by other approved City project, cumulative projects, and growth.

The commenter is incorrect in stating that the project would create a new Planned Community (PC). This project would amend the existing San Joaquin Plaza PC, which already encompasses an area of less than 10 acres.

The last comment related to future residents traveling by car to shop (rather than walking to stores and restaurants in the Fashion Island area) is speculative and beyond the scope of this EIR.

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3. Revisions to the Draft EIR

3. Revisions to the Draft EIR

3.1 INTRODUCTION

This section contains revisions to the DEIR based upon (1) additional or revised information required to prepare a response to a specific comment; (2) applicable updated information that was not available at the time of DEIR publication; and/or (3) typographical errors. Changes made to the DEIR are identified here in ~~strikeout text~~ to indicate deletions and in underlined text to signify additions.

3.2 REVISIONS TO THE DEIR

The following text has been revised in response to comments received on the DEIR or applicable updated information.

Page 1-8, Chapter 1, *Executive Summary*. The following text has been revised in response to Comment I20a-4 from Jim Mosher, dated September 30, 2016.

The Reduced Height Alternative would decrease the proposed tower height from 295 feet to 65 feet (from podium to roof of last occupied space) to be consistent with the height limit of the underlying zoning of the project site—San Joaquin Plaza Planned Community Development Plan (PCDP; PC-19).

Page 3-4, Chapter 3, *Project Description*. The following text includes clarifications to the project's development agreement and has been added to provide a more complete project description. The draft development agreement of the property donation is also included as an appendix to the FEIR.

- **Tentative Tract Map No. NT2016-001.** To establish a 100-unit condominium tower on a two-acre site.
- **Development Agreement No. DA2016-001.** To provide the project applicant with assurance that development of the proposed project may proceed subject to the rules and regulations in effect at the time of project approval. The Development Agreement would also provide the City of Newport Beach with assurance that certain obligations of the project applicant will be met, including but not limited to, the specified construction schedule, the required timing of public improvements, the applicant's contribution toward funding improvements, and other conditions.

Additionally, the development agreement includes terms related to the 0.9-acre parcel west of the Museum House site, located at 856 San Clemente Drive. This adjacent site, owned by the Orange County Museum of Art (OCMA), would be donated to the City of Newport Beach and be leased back to OCMA for a period of time, after which, the City would utilize the site in a manner that is consistent with the General Plan and zoning for the property.

3. Revisions to the Draft EIR

- **Traffic Study No. TS2015-004:** To comply with Chapter 15.40 (Traffic Phasing Ordinance) of the Newport Beach Municipal Code because the proposed project would generate vehicle trips and may impact the City's circulation network.

Page 5-1, Chapter 5, *Environmental Analysis*. The following text discloses the potential impact of the additional development agreement terms related to the transfer of property ownership of the 0.9-acre parcel onsite.

Sections 5.1 through 5.14 provide a detailed discussion of the environmental setting, impacts associated with the proposed project, and mitigation measures designed to reduce significant impacts where required and when feasible. The residual impacts following the implementation of any mitigation measure are also discussed.

Impacts Found to be Less than Significant

As detailed in Chapter 8, *Impacts Found Not to Be Significant*, the Initial Study also determined that certain issues under an environmental topic would not be significantly affected by implementation of the project; these issues are not discussed further in this EIR.

Development Agreement – Donation Property

Chapter 3, *Project Description*, describes the donation of the adjacent 0.9-acre parcel located at 856 San Clemente Drive from OCMA to the City of Newport Beach, and subsequent leaseback to OCMA. The property donation and leaseback is a transfer of ownership, and would not result in any physical change to the existing environment, including impacts to aesthetics, cultural resources, geology and soils, hazards, hydrology, population and housing, public services, recreation, and utilities and service systems. Given that the existing use of the parcel as an OCMA administration building would remain as is for the foreseeable future, there would be no operational changes that may impact air quality, greenhouse gas emissions, or transportation and traffic modeling for existing and future use of the parcel. The Private Institutional land use designation and San Joaquin Plaza Planned Community zoning for this parcel would also be maintained, allowing the City to utilize the parcel consistent with the zoning after the leaseback to OCMA ends. Thus, the property donation and leaseback would have no impact on land use and planning. Overall, the transfer in property ownership would have no environmental impact and therefore, is not discussed further in this EIR.

Page 5.2-26, Section 5.2, *Air Quality*. The following text has been revised in response to Comment O3-21 from Michelle N. Black on behalf of Stop Polluting Our Newport, dated September 30, 2016.

SCAQMD currently does not require health risk assessments to be conducted for short-term emissions from construction equipment. Emissions from construction equipment primarily consist of diesel particulate matter (DPM). The OEHHA has recently adopted new guidance for the preparation of health risk assessments issued in March 2015. OEHHA has developed a cancer risk factor and non-cancer chronic reference exposure level for DPM, but these factors are based on continuous exposure over a 30-year time frame. No short-term acute exposure levels have been developed for DPM. Nevertheless, the proposed project would be developed in approximately 28 months, far less than the 30-year exposure period for DPM

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and which would limit the exposure to onsite and offsite receptors. In addition, construction activities would not exceed LST significance thresholds with mitigation. For the reasons stated above, it is anticipated that construction emissions would not pose a threat to onsite and offsite receptors at or near the condominium tower. Project-related construction health impacts would be less than significant ~~and no~~ with mitigation measures are required.

Page 5.13-7, Section 5.13, *Transportation and Traffic*. The following text has been revised to reference an additional figure in response to Comment A2-2 from Dan Phu, Manager, Environmental Programs, OCTA, dated September 27, 2016.

On the City's Bikeways Master Plan, San Clemente Drive is a Class III bikeway. Class III bicycle routes provide for a shared use of the roadway with automobiles and are usually identified by signage. Other existing bicycle facilities in the project vicinity include Class II bikeways on San Miguel Road and Santa Cruz Drive. Bicycles are allowed to ride on sidewalks on the north side of San Joaquin Hills Road east of Santa Cruz Drive. Figures 5.13-2, *Existing Bicycle Facilities Network*, and 5.13-3, *Recommended Bicycle Facilities Network*, shows the existing and planned bicycle facilities in the vicinity of the project site.

Page 5.13-30, Section 5.13, *Transportation and Traffic*. The following mitigation measure has been added in response to Comment O2-9 from Dan Miller, Senior Vice President, The Irvine Company, dated September 28, 2016. As discussed in the DEIR, the project's transportation and traffic impacts would be less than significant without mitigation. Therefore, Mitigation Measure 13-1, while included in the FEIR in response to Comment O2-9, is not required to reduce impacts to a less than significant level and the conclusions of the DEIR regarding the significance of impacts remain unchanged.

5.13.7 Mitigation Measures

~~No mitigation measures are required.~~

13-1 Prior to issuance of building permits, the project applicant shall prepare a construction traffic management plan to be submitted and approved by the City of Newport Beach Traffic Engineer. At a minimum, the construction traffic management plan shall include the following:

- Provide detail on planned lane closures, including scheduling and duration;
- Detail applicable lane closure restrictions during peak hours and holiday periods and noticing to surrounding property owners and tenants;
- Provide measures to prevent blocking of surrounding property access points (due to construction vehicle queuing, etc.);
- Document specific off-site parking locations for construction workers;

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- Project phasing;
- Parking arrangements for off-site parking location and on-site during construction;
- Anticipated haul routes; and
- All materials transported on and offsite shall be securely covered to prevent excessive amounts of dust or dirt.

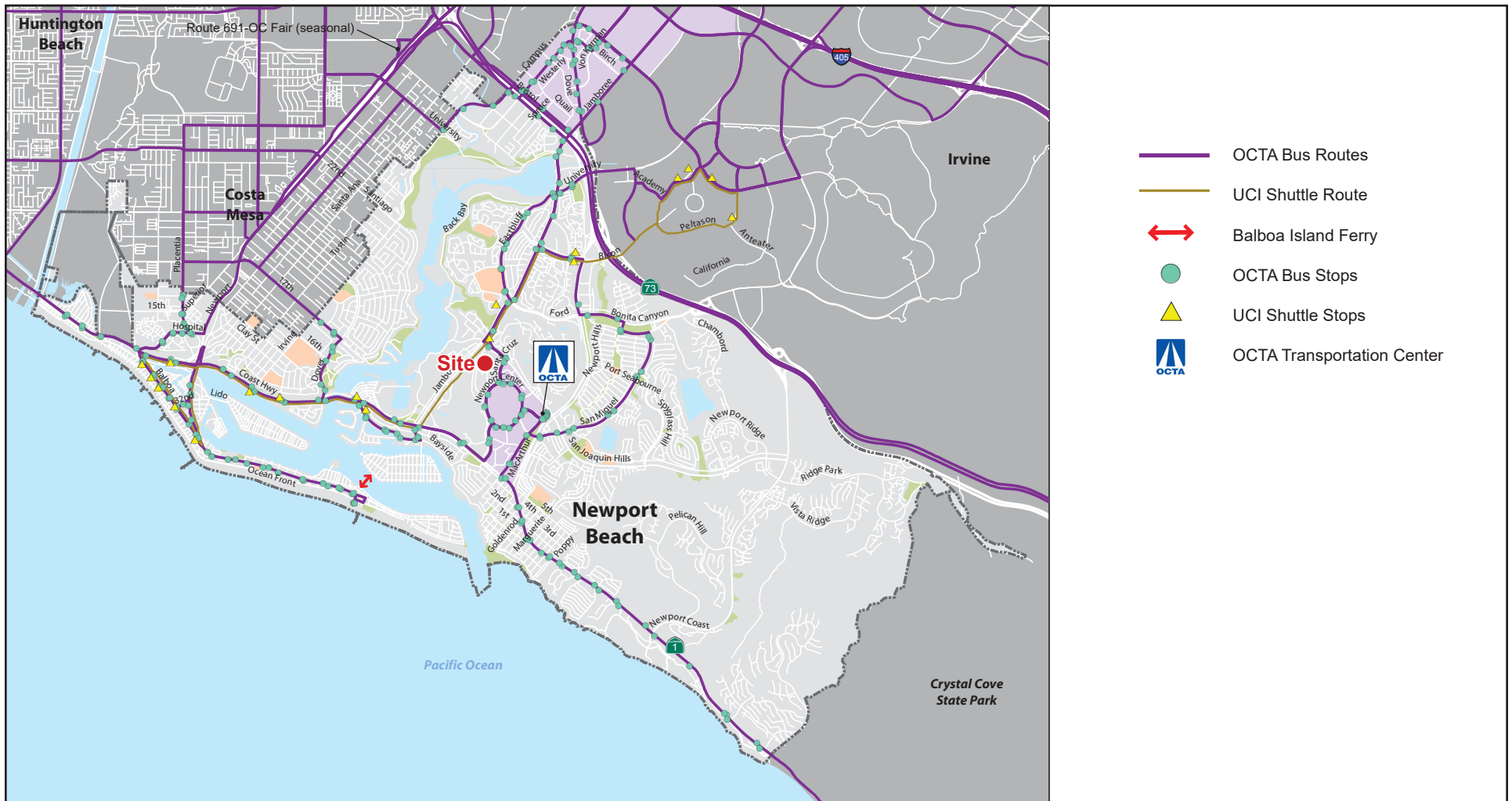
5.13.8 Level of Significance After Mitigation

Upon implementation of Mitigation Measure 13-1, impacts would be less than significant.

3.3 REVISED AND NEW FIGURES

The report figures that follow are revisions of figures that already appear in the DEIR (as indicated) or new figures provided for clarification to respond to comments.

Figure 5.13-1 - Transit Routes and Stops
5. Environmental Analysis



Base Map Source: Alta Planning and Design, 2014

0 1
Scale (Miles)



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Figure 5.13-2 - Existing Bicycle Facilities Network
5. Environmental Analysis



- Off-Street Bike Path (Class I)
- Sidewalks-Bicycle Riding Allowed
- On-Street Bike Lane (Class II)
- Designated Bike Route (Class III)

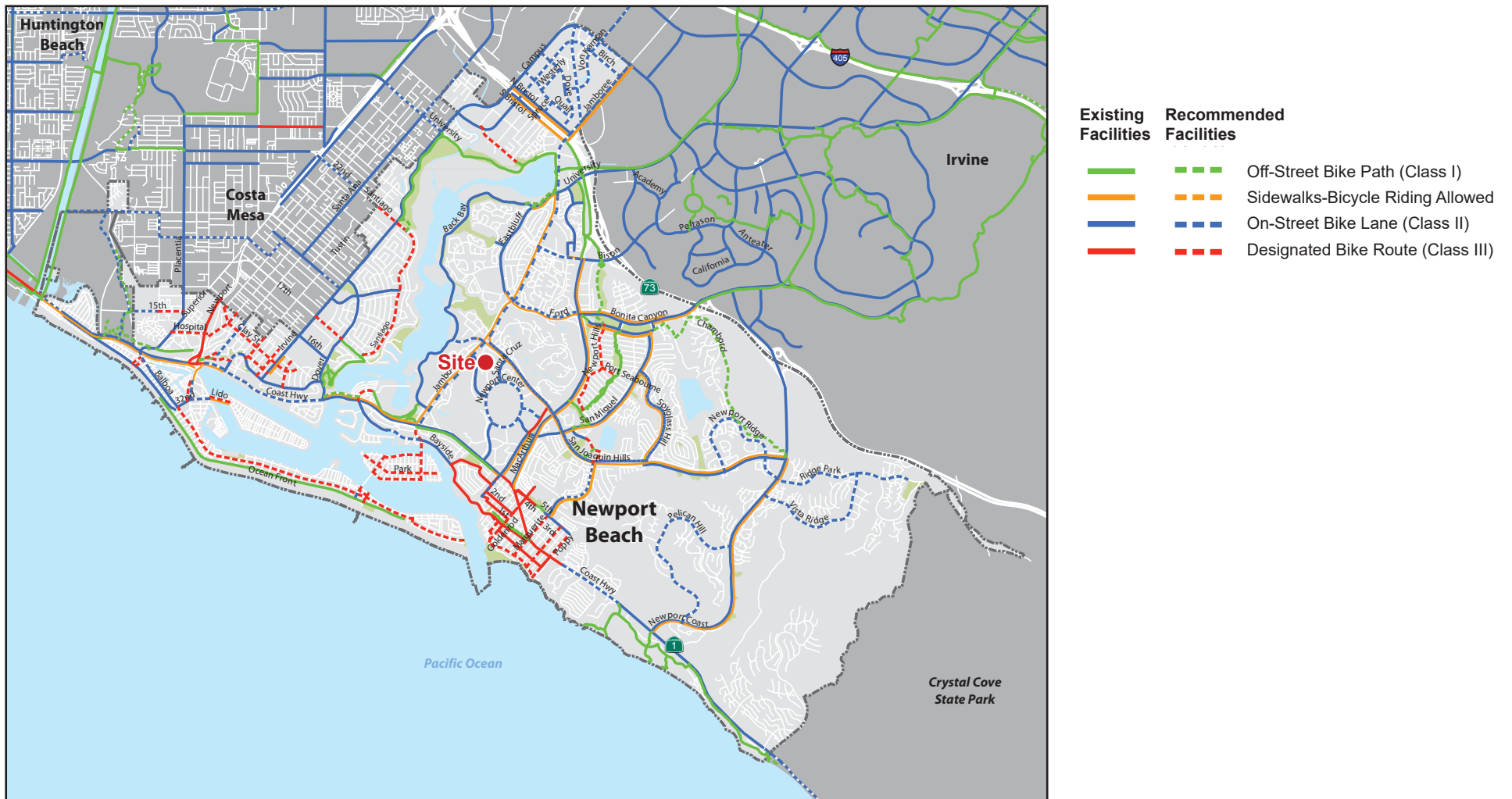
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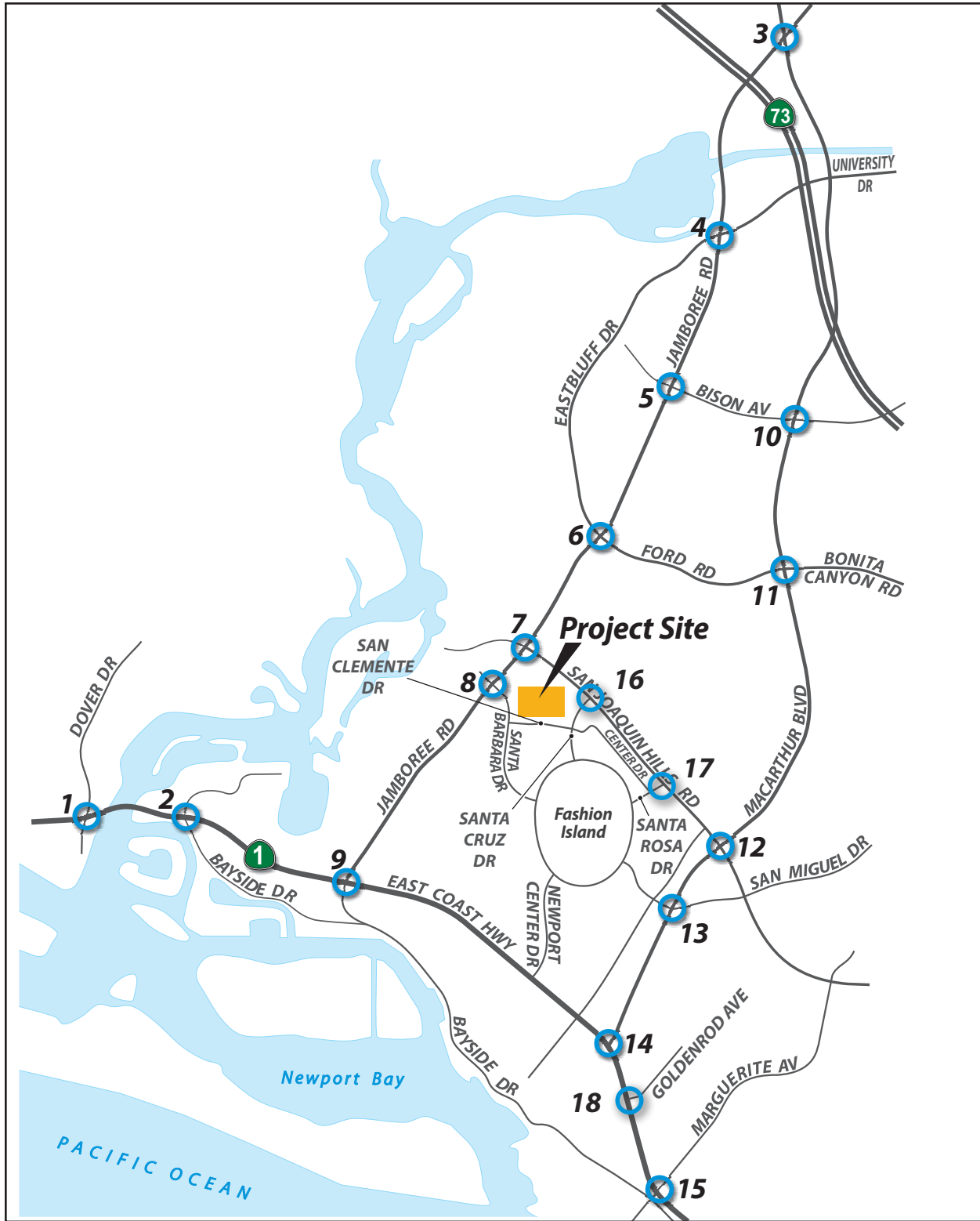
Figure 5.13-3 - Recommended Bicycle Facilities Network
5. Environmental Analysis




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Figure 5.13-4 - Study Intersections
5. Environmental Analysis



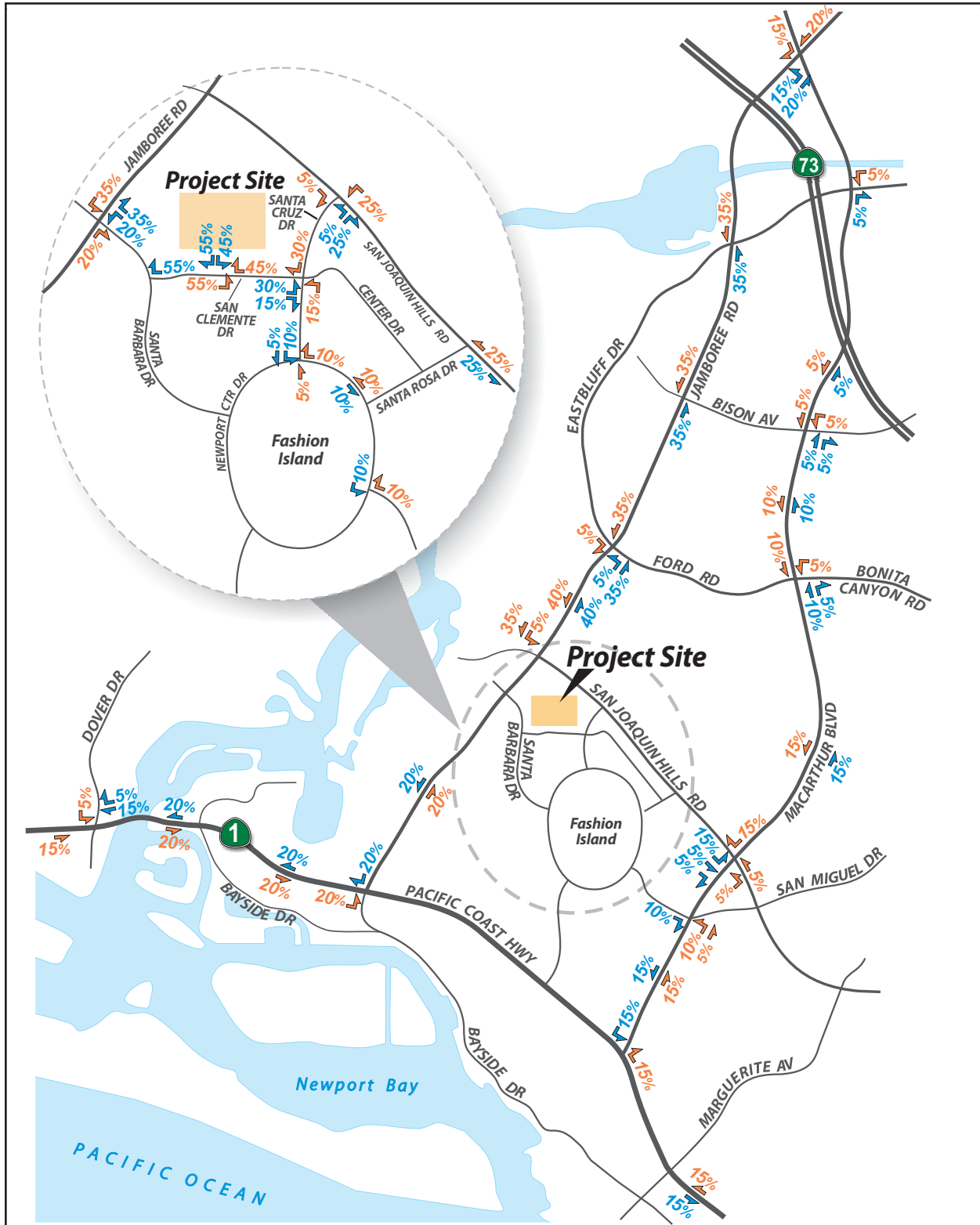
 Study Intersection



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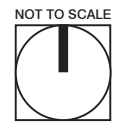
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Figure 5.13-5 - Project Trip Distribution
5. Environmental Analysis



0% ➔ Inbound Trip Distribution Percentage
 ← 0% Outbound Trip Distribution Percentage

Base Map Source: DKS, 2016



PlaceWorks

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