



SPON, P.O. Box 102, Balboa Island, CA 92662

February 10, 2016

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

mnova@newportbeachca.gov

RE: Comments on NOP for Newport Center residential condominium project
(PA 2014-213)

Dear Ms. Nova:

Please include in our comments on the NOP the attached comments from Michelle Black of Chatten-Brown & Cartens LLP (October 6, 2015). These comments, which were sent in regard to the proposed Mitigated Negative Declaration, incorporate the primary issues we believe should be studied in the DEIR.

Specific issues of concern are aesthetics, land use including cumulative impacts, and changed character of the neighborhood including views and sight planes.

Planned Community Development

We have objected to the use of a Planned Community Development (PCD) for such a small parcel (1.26 acres) with a waiver of the usual requirement of 10 acres. A Planned Community Development is intended to identify land use relationships among other things. This project, in our view, can be called spot zoning or piecemeal planning. The increase in heights from 32 feet to 85 feet is inexplicable and sets a precedent for a total change in the character and impact of growth in this neighborhood. In addition to the change in height, this project is much bulkier and provides for less open space and smaller setbacks than surrounding parcels. The result is that the Project would change the visual characteristics of the area from low-rise office/commercial space with considerable landscaping and large setbacks to an area more representative of big city mass, bulk and heights. We believe that if the City intends to increase the intensity and density of uses in the southern portion of Newport Center, they should only do so with a full-scale General Plan Land Use Amendment for the southerly portion of Newport Center between Newport Center Drive and Pacific Coast Highway. This Project's application for a PCD should be denied as the impacts including cumulative impacts are

not definable and thus not mitigatable unless the EIR fully discloses the impacts associated with increased heights, increased bulk as a result of underground parking, population changes associated with change of use, and change in visual characteristics of the whole southerly portion of Newport Center.

Population and growth inducing impacts

City approval of the Newport Center Villas project would set a precedent for a change of use to high-density housing in the area. This may have a significant effect if surrounding property owners seek permits for similar projects with increased height, bulk, mass and change of use. The Project's population and growth-inducing impacts must be analyzed in the EIR.

Alternatives

In addition to the no-project alternative, an alternative that would maintain the 32 foot height limit should be considered.

Thank you very much for the opportunity to comment on preparation of this EIR.

SPON Board of Directors
Jean Watt, Board Member
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949-673-8164

Subject: Additional Materials Received - 10/08/2015 PC Meeting
Attachments: SPON comments on NPT Center Villas -Final.pdf

From: Cynthia Kellman [<mailto:cpk@cbcearthlaw.com>]
Sent: Wednesday, October 07, 2015 11:38 AM
To: Nova, Makana
Subject: Mitigated Negative Declaration for the Newport Center Villas Residential Project; (PA2014-213), etc.

Dear Ms. Nova,

Attached please find a letter from Michelle Black, regarding the above-listed subject, for your review.

Please feel free to contact me with any questions or concerns.

Very truly yours,
Cynthia Kellman
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October 6, 2015

Via Email mnova@newportbeachca.gov

Planning Commission
City of Newport Beach

Makana Nova, AICP, Associate Planner
Community Development Department
Planning Division
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Mitigated Negative Declaration for the Newport Center Villas Residential Project; (PA2014-213); General Plan Amendment No. GP2014-003; Zoning Code Amendment No. CA2014-008; Planned Community Development Plan No. PC2014-004; Site Development Review No. SD2014-006; Tract Map No. NT2015-003

Dear Ms. Nova and Honorable Members of the Planning Commission:

These comments are submitted on behalf of Stop Polluting Our Newport (SPON) regarding the Newport Center Villas 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 49 condominiums in a single seven-story building with three levels of subterranean parking on 1.26 acres located at the southwest corner of Newport Center Drive and Anacapa Drive. As proposed, the Project would conflict with the General Plan’s designation of Regional Commercial Office, the Zoning Code district designation of Office Regional Commercial, the requirement that a Planned Community Development Plan cover 10 acres, and the existing height limit for the site. Consequently, the Project cannot be built unless the City grants amendments to both the General Plan and Zoning Code as well as a waiver of the Planned Community Development Plan requirements.

Despite these conflicts with the City’s governing planning documents and code, the mitigated negative declaration (MND) prepared for the purpose of complying with the California Environmental Quality Act (CEQA) inexplicably finds that the Project will not

have significant impacts on land use or any other potential area of environmental impact. (See, e.g, MND pp. 4-58 to 4-63.) The MND also fails to adequately disclose and mitigate the Project's likely impacts on aesthetics, nighttime lighting and glare, traffic, and air quality, and land use. As a fair argument exists that the Project will cause significant environmental impacts, the City must prepare an EIR that provides alternatives to the Project.

The Newport Center Villas Project fails to comply with the City's governing land use plans and policies, and SPON respectfully requests that the Planning Commission withhold approval of the MND and deny the applicant's request for a Planned Community Development waiver for the Project.

I. A Planned Community Development Plan is Inappropriate and Unnecessary for the Project.

Planned Community Development Districts (PCDs) are governed by Newport Beach Zoning Code section 2.56.010, and exist to "provide for the development of land as coordinated, comprehensive projects in order to take advantage of the superior environment resulting from large-scale community planning." Further, "A Planned Community is intended to include various types of uses, consistent with the General Plan through the adoption of a development plan that identifies land use relationships." Thus, the PCD should be used to ensure consistency with existing land use plans and to provide more cohesive community planning in compliance with SB 375. For this reason, PCDs must exceed 10 acres in size.

The Newport Center Villas Project application claims to "ensure substantial compliance with the spirit and intent of the Zoning Code," but fails utterly to do so. While a 10-acre or larger parcel may require planning flexibility to achieve feasibility and consistency with surrounding land uses, there is no reason why a **1.26-acre parcel** needs to employ the PCD to provide for a coordinated, comprehensive Project. Instead, the Applicant appears to be misusing the PCD designation to skirt regulations of the Newport Beach Municipal Code intended to provide consistency in land use planning. Although the Project is located in the southern section of Newport Center, which is governed by height limits, the Project would be seven stories tall and reach a height of 83 feet, 6 inches once rooftop appurtenances are included. An additional two feet in height are permissible for "architectural rooftop features." Allowing an 83-foot-tall building in the southern section of Newport Center would create a significant change to the existing overall plan for Newport Center. Such a large change, which no doubt would become precedent for future developments in the area, should not be undertaken with a waiver of the area limits for a PCD and a Mitigated Negative Declaration.

The Project also fails to fulfill the purpose of the PCD, Zoning Code section 20.56.010 and other zoning laws that require consideration of the relationship of the proposed development plan to the goals, policies, and actions of the General Plan because the Project is inconsistent with the General Plan. The applicant proposes a Planned Community Development District for the Project in an “effort to ensure broader coordination and consistency with the surrounding neighborhoods, and to include a higher level of architectural quality supporting the Newport Center environment with pedestrian connectivity.” This language is meaningless, misleading, and misrepresents the Project contained in the application.

Instead of providing for greater consistency, this Project would be five to six stories higher than surrounding buildings; it could not be less consistent with its surroundings. The Project would also completely change the appearance of the neighborhood. In addition to the change in height, the building is much bulkier and provides for less open space and smaller setbacks than surrounding parcels. The result is that the Project would change the visual characteristics of the area from an area of low-rise commercial and office space with considerable landscaping and large setbacks to an area more representative of central city mass, bulk, and height. An example of the change in building intensity is the Project’s proposal for three stories of underground parking. Underground parking has not yet been requested in the southern, low-rise section of Newport Center because it is not needed under the existing lower-intensity land uses provided by the City’s governing land use plans. If the City intends to increase the intensity and density of uses in the southern portion of Newport Center, it can only do so with the adoption of a full-scale General Plan Land Use Amendment for the southerly portion of Newport Center between Newport Center Drive and Pacific Coast Highway.

Granting the Project’s application for a PCD for a Project that is up to six stories higher and much more intense in use than surrounding properties, based on a policy of ensuring land use consistency, undermines the integrity of the PCD District and the Newport Beach Zoning Code. The Project’s application for a PCD must be denied.

II. The Project is Inconsistent with the General Plan’s Land Use Element.

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.) For this reason, the General Plan has been described “the constitution for future development.” (*DeVita v. Napa* (1995) 9 Cal.4th 763, 773, internal citations omitted.) The Newport Center Villas Project is inconsistent with several policies of the City’s Land Use Element and cannot be approved.

Policy LU 1.6 of the Land Use Element requires the City to “Protect and, where feasible, enhance significant scenic and visual resources that include open space, mountains, canyons, ridges, ocean, and harbor from public vantage points.” Regarding the Project’s 83-foot-plus height, the MND states, “The Project’s architectural design is complementary in type, form, scale, and character with existing and proposed surrounding land uses.” (MND p. 4-59.) In support, the MND points to the high-rise buildings in the upper/northerly portion of Newport Center. However, these taller buildings with which the Project would be consistent are not actually located near the Project. In order to protect views consistent with the policies of the Land Use Element, the plans for Newport Center have always provided for higher rise buildings to the north along San Joaquin Hills Road with gradually decreasing heights toward the ocean and low-rise buildings abutting Pacific Coast Highway and nearby neighborhoods. The placement of an 83-foot-tall building in an area of low-rise development would block important public views of scenic resources. For example, views of the Pacific from Fashion Island would be compromised. Thus, the Project is inconsistent with General Plan policies designed to protect and enhance such views.

Policy LU 6.14.4 of the Land Use Element is focused on reinforcing “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 the lower elevation toward the southwesterly edge along Pacific Coast Highway.” (MND p. 4-61.) However, as described above, the Project proposes to place a seven-story building in the southwesterly section of Newport Center. At this site, only a low-rise Project would be consistent with the City’s Land Use Element and General Plan.

As proposed, the Newport Center Villas Project is inconsistent with at least two policies of the City’s Land Use Element and General Plan and cannot be approved in its current form.

III. The Project Will Have Significant Adverse Impacts Not Disclosed in the Mitigated Negative Declaration (MND), in Violation of CEQA.

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.) In connection with the Project’s review under CEQA, the City has prepared an initial study and mitigated negative declaration. A lead agency prepares an initial study in order to determine whether an EIR, a negative declaration, or an MND is the appropriate environmental review document. (14 CCR § 15365, herein “CEQA Guidelines”.) The initial study must consider whether any aspect of a project, either

individually or cumulatively, may cause a significant adverse impact. (CEQA Guidelines § 15063(b)(1).) The purpose of the initial study is to provide the lead agency with adequate information regarding a project to determine the appropriate environmental review document and “documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment.” (*Ctr. for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1170, citations omitted.) There must be a basis within the record to support the conclusions reached by the initial study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1201.) “Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate.” (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project’s potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with the law.

Further, when a fair argument exists that a Project will have a significant environmental impact, an environmental impact report (EIR) must be prepared.

With regard to the Newport Center Villas Project, the City has failed to prepare a legally adequate initial study, improperly omitting consideration of potentially significant Project impacts and lacking evidentiary support for claims that Project impacts would be insignificant. This is particularly true regarding the Project’s impacts on land use and aesthetics as a fair argument exists that the Project will have significant impacts on land use and other areas, and an EIR is required.

1. Adverse Impacts on Land Use.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable land use plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (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. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

As discussed above, the Newport Center Villas Project conflicts with at least two policies of the Land Use Element of the General Plan, Policies LU 1.6 and LU 6.14.4. However, instead of properly admitting these inconsistencies and redesigning the Project for consistency, the MND distorts its description of the existing conditions at Newport Center in order to claim consistency. This violates the spirit of CEQA. “The fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability.” (*Lincoln Place Tenants Assn. v. City of L.A.* (2007) 155 Cal.App.4th 425, 443-444.) These significant environmental impacts on land use require preparation of an EIR. CEQA requires full disclosure of a project’s significant environmental effects so that decision-makers and the public are informed of these consequences before the project is approved, to ensure that government officials are held accountable for these consequences. (*Laurel Heights Improvement Ass’n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) Moreover, these significant land use impacts trigger the threshold for requiring preparation of an EIR. This EIR must properly disclose, analyze, and mitigate the Project’s significant impacts on land use.

As mentioned briefly above, the Project’s proposal to use a Planned Community Development District to provide for changes in zoning that include changes in use and increased height and mass is inappropriate. At 1.26 acres in size, the Project is less than the 10 acres in size required for use of a PCD. Additionally, the Project fails to meet the requirements for a waiver of the 10-acre minimum. Therefore, any proposed use of the waiver and PCD for this Project would create a significant land use impact that must be analyzed in an EIR.

By applying zone and other land use changes to a small, 1.26-acre area within the City, the Project is also an example of “spot zoning.” This applicant requests a land use change to a land use that differs from that provided for surrounding parcels. Spot zoning is discouraged by the courts because it thwarts comprehensive land use planning. “Case-by-case reconsideration of regional land-use policies, in the context of a project-specific EIR, is the very antithesis of that goal.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 572 -573.) This spot zoning is another significant land use impact that must be considered in an EIR.

The Proposed spot-zoning also implicates the Project’s potentially significant cumulative impacts. An EIR is required to analyze the Project’s potential for cumulative impacts related to land use planning in the Newport Center region. As defined by CEQA, “The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts

can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines § 15355(b).) The cumulative impacts analysis exists to prevent cities from considering projects in a vacuum and to avoid a piecemeal approach to project decision-making. The Court of Appeal has stated that an improper cumulative impact analysis “avoids analyzing the severity of the problem and allows approval of projects which, when taken in isolation, appear insignificant but when viewed together, appear startling.” (*Kings County Farm Bureau, supra* 221 Cal.App.3d at pp. 739-740).

This Project sets a precedent for relaxing height limitations in an area that has been developed with primarily two-story buildings. If approved, the Project would also set a precedent for permitting use of PCDs to avoid existing land use restrictions for parcels as small as 1.26 acres in size. An EIR is required to analyze the impacts of relaxed height limits, spot zoning, and increases in bulk, mass, and resulting population growth in the Newport Center area.

2. Adverse Impacts on Aesthetics.

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 83 feet would result in blocked views of the Pacific Ocean from Fashion Island, as well as likely cumulative impacts as nearby properties seek to use PCDs and other means to evade height and bulk restrictions in the area.

Despite these potential impacts to public views, which require disclosure, analysis, and mitigation in an EIR, the MND fails to acknowledge that the Newport Center Villas Project will have any significant impacts on views. (MND p. 4-4.) This conclusion is not supported by substantial evidence. Rather, a fair argument exists that the Project will result in significant adverse impacts to views. This project will affect public and private views from Harbor View neighborhoods situated along MacArthur Blvd. as well as public roadways. Those situated in these areas will see lighted buildings and a much taller skyline when looking toward the ocean, resulting in obscured ocean views.

In order to protect the City’s treasured views, the City of Newport Beach adopted a Sight Plane Ordinance in 1971 (Ordinance 1371) which provided height limitations for buildings within the Civic Center sites, known as the “Civic Center Sight Plane.” The Corporate Plaza Planned Community, Ordinance 1496, was adopted in 1975 for the Civic Center site, bounded by Pacific Coast Highway, Avocado Avenue, Farallon Drive, and Newport Center Drive. Pursuant to this Sight Plane, buildings within this area are limited to 32 feet in height. The Project site is immediately adjacent to the Corporate Plaza Planned Community subject to the Sight Plane Ordinance. In addition to providing for

inconsistent land use, the Project's 83-foot-height will also result in impacts to these Sight Planes.

The MND repeatedly compares the Project to buildings located in taller portions of Newport Center in order to obscure its inconsistency with the heights of other buildings in the southern portion of the development. The height of existing structures in the vicinity of this Project are:

- Office buildings to the southwest: approximately 24 feet to 27 feet;
- Buildings directly across Anacapa Drive to the east: 2-3 stories;
- Buildings located to the north across Newport Center Drive: 23 -25 feet;
- Height limits for Block 100 are 50 feet although current buildings are lower.

Thus, the MND's comparison to the higher-rise buildings located in the northern part of Newport Center is misleading, at best. The Newport Center Villas Project is proposed for the southerly section of Newport Center heretofore planned as low-rise in order to maintain a Sight Plane consistent with views toward the ocean and surrounding neighborhoods. Any development to the contrary will result in significant adverse impacts on both aesthetics and land use that must be disclosed, analyzed, and mitigated in an EIR.

The MND further fails to provide view simulations from public viewpoints that could be adversely impacted by the Project. A view simulation from the public park next to Macy's (and the escalators) in Fashion Island should also be provided. The public view south from this outlook, toward the ocean and directly over the existing carwash, would be dominated by the proposed Project's 83-foot-tower. This significant aesthetic impact must be disclosed to the public.

Finally, the Project will create new sources of substantial light and glare which would adversely affect day and nighttime views in areas surrounding Newport Center. Nighttime lighting emanating from the building and its condominiums will be the first nighttime lighting to impact residents living east and west of the Project site. An EIR must also study the cumulative impacts of nighttime lighting if other neighboring parcels follow the City's proposed precedent of increased height and change of use in and around Newport Center.

3. Adverse Impacts on Traffic.

Although construction of the Project would generate traffic associated with grading and workers, the MND contains no discussion of what these traffic impacts might be, whether they are significant, or whether they require mitigation. Considering that the

MND estimates over 250 workers would be required and 51,600 cubic yards of soil would be removed for the subterranean garage, this is a significant omission. (*See MND p. 3-1.*) If trucks with a capacity of 10 cubic yards are used to remove soil, 5,160 two-way trips to the site would be required. These traffic impacts may adversely affect air quality. Most large trucks used to haul dirt and demolition debris are fueled by diesel. Diesel particulate matter has been recognized as a probably carcinogen by the California Air Resources Board and is correlated with premature death, heart attacks, and acute pulmonary distress. Although temporary, these impacts must be evaluated and would likely be considered significant. CEQA requires the analysis of temporary construction impacts. (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1425.)

4. Adverse Impacts on Air Quality.

The Air Quality analysis prepared for the Project and enclosed as Appendix B to the MND is based on inaccurate information and an underestimation of the truck trips required to construct the Project, the Project's floor surface area, and the presence idling mobile sources. This underestimation results in the MND's failure to adequately disclose, analyze, and mitigate the Project's adverse impacts on air quality.

The number of haul truck trips required for the demolition of the existing carwash, entered into the CalEEMod model to estimate construction air quality impacts is understated. The MND states that demolition would produce approximately 80 tons of debris, 240 cubic yards of concrete, and 620 cubic yards of asphalt that would need to be hauled away. Assuming a weight of 1 ton per cubic yard and 20 yards per truck, the demolition would require approximately 47 truck trips, far in excess of the 8 truck trips assumed by the air quality analysis. If 10 cubic yard trucks are used to remove debris, the demolition would require 94 truck trips. The air quality analysis must be revised to accurately account for the environmental impacts of debris removal. If these impacts are significant, an EIR is required.

Additionally, the "Floor Surface Area" used in CalEEMod to calculate the Project's emissions is incorrect. The MND states that the gross floor area of the proposed project is 163,260 square feet. (MND p. 3-1.) However, the surface area used in the CalEEMod analysis was 50,400 square feet, a much smaller number. The erroneous inclusion of this smaller number in the CalEEMod analysis cascades to inaccurate estimates of emissions from construction, architectural coatings, and operations and results in the MND's underestimation of the Project's overall construction and operational emissions. Thus, the air quality mitigation measures proposed in the MND are insufficient to mitigate the Project's emissions. An EIR should be prepared that thoroughly analyzes the Project's construction and operational emissions using accurate

inputs. Further, feasible, enforceable, and effective mitigation must be provided for all of the construction and operation emissions identified in the revised analysis.

The air quality analysis concludes that the proposed Project does not include stationary sources and mobile sources that may idle for long periods of time. (Appendix B, p. 29.) Consequently, the MND and air quality analysis provide no operational Localized Significance Threshold (LST) analysis. Regardless, operational LST is required for this Project. Condo/Townhouse projects are listed in the South Coast Air Quality Management District's (SCAQMD's) Final Localized Significance Threshold Methodology LST guidance document (Table 3.1) (revised July 2008) as projects which require LST analysis. (See, SCAQMD LST document, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf?sfvrsn=2>.)

Given the air quality analysis' underestimation of Project emissions, the MND's conclusion that the Project will not have an adverse impact on air quality lacks substantial evidence. Instead, it is likely that the Project will exceed SCAQMD thresholds of significance for significant air quality impacts. An EIR that fully evaluates and mitigates the Project's air quality impacts is required.

5. Population and Growth-Inducing Impacts.

City approval of the Newport Center Villas Project would set a precedent for a change of use to high-density housing in the area. This may have a potentially significant effect if surrounding property owners seek permits for similar projects with increased height, bulk, mass and change in use. The MND's failure to analyze this change is unsupported. The Project's population and growth-inducing impacts must be analyzed in an EIR.

6. Adverse Cumulative Impacts.

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 MND, this list is limited to those that are foreseeable under the current zoning and General Plan. This analysis omits any discussion of the precedent-setting nature of this Project, which would permit spot-zoning and use of a PDC to evade height and other limitations that would otherwise apply to the Project site. The Project sets a whole new precedent for heights in the lower Newport Center area. The adjacent properties in Block 100 are limited to 50 feet in height but are currently only 22 feet tall.

City of Newport Beach

October 6, 2015

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The properties immediately adjacent to Block 100 to the south are currently limited in height by the Sight Plane Ordinance. The City's proposed precedent could result in these height limits being lifted at any time, resulting in significant new growth, mass, bulk and height inconsistent with surrounding neighborhood 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 increase in bulk, mass and heights of the Project will set a precedent for new applications of similar size and impact.

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 City's disregard for existing height and bulk limitations in Newport Center, the City will lose control over development of the area.

Conclusion

Thank you for your consideration of these comments. Due to the Newport Center Villas Project's failure to comply with the City's General Plan and other governing land use documents and the MND's failure to adequately disclose, analyze, and mitigate the Project's likely significant impacts on land use, aesthetics, traffic, and air quality, among others, we respectfully request that the Commission reject this Project until it is revised to comply with CEQA and the governing land use plans and policies. Compliance with CEQA will require preparation of an adequate EIR that analyzes alternatives to the seven-story residential building proposed. We look forward to reviewing the applicant's revised plans for this Project and to the Commission's action to preserve the integrity of the City of Newport Beach's planning process.

Sincerely,



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