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January 18, 2018

Via Email rung@newportbeachca.gov

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

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

Dear Ms. Ung:

SPON submits these comments on the final environmental impact report (FEIR) prepared for the Koll Center Residences Project (Project). Based on its review of the document, SPON believes the EIR remains an inadequate basis for approval and must be revised and recirculated before the Project may proceed.

CEQA requires the City to respond to the public's comments and questions with "reasoned, good faith analysis." (CEQA Guidelines § 15088). When a comment raises a significant environmental issue, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted." (*Ibid.*) "Conclusory statements unsupported by factual information will not suffice." (*Ibid.*; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124.) The level of detail of responses to comments must be commensurate with the level of detail of the comments. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 878 ["the determination of the sufficiency of the agency's responses to comments on the draft EIR turns upon the detail required in the responses"].)

This requirement for good faith, reasoned analysis "ensures that stubborn problems or serious criticism are not swept under the rug." (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal. App. 4th 715, 732.) The courts have held that inadequate responses to comments – alone – can be grounds for voiding a project's approval. (*See, Env. Protection Information Center. v. Johnson* (1985) 170 Cal. App. 3d 604, 627.) Failure to respond to a single comment is sufficient to invalidate approval of a FEIR. (*Flanders Foundation v. City of Carmel by-the-Sea* (2012) 202 Cal. App. 4th 603.)

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The Koll Center Residences FEIR failed to respond adequately to comments raised in SPON's past comments, including, but not limited to:

- Comment B-3b(3) pointed out the DEIR's shifting description of the Project as either "condominiums" or "luxury condominiums." The comment also pointed out that the 3,000 square foot retail use was only likely large enough for a coffee shop, but not large enough for the amenities that would be needed to create the walkable residential neighborhood that is the basis for the EIR's analysis. In response, the FEIR states that SPON is incorrect about the Project including affordable units, noting, "Because the commenter's understanding of the Project is incorrect, the commenter has not raised issues that would render the EIR deficient." SPON never asserted the Project planned to include affordable units. The response also states, "The commenter's opinion on the definition of a neighborhood, mixed-use development, and walkability are noted but do not raise an environmental issue." No information is provided about how the Project would satisfy the definition of a mixed use Project or contribute to a walkable neighborhood as claimed throughout the DEIR. The comment is non-responsive and fails to satisfy CEQA.
- Response 4 states that CEQA does not require disclosure of Development Agreements because they are not associated with environmental impacts. This is incorrect. Development Agreements often contain vital information about Project phasing that impact the accuracy of the environmental analysis contained in the EIR. Development Agreements also may contain information about funding of Project mitigation that is vital to decisionmakers in determining whether a Project's mitigation measures are concrete and enforceable, or merely speculative.

SPON will supplement these comments as it continues its review of the FEIR and Responses to Comments. However, it is clear the EIR remains inadequate. The FEIR does not correct the DEIR's failure disclose, analyze, and mitigate the Project's likely impacts related to airport safety, noise, and the inconsistency of the Project with City land use plans. As described further in SPON's previous letters, the Project is incompatible with the General Plan and the Airport Area's Integrated Conceptual Development Plan.

Finally, SPON notes that the agenda prepared for the Planning Commission study session directs staff to prepare any resolutions that will be needed for Project approval. However, the City has not yet made the required Development Agreement public. Without the Development Agreement, the Planning Commission and the public will be denied the opportunity to evaluate the whole of the Project, as required by CEQA. The Development Agreement must be made available to the public.

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Conclusion

Thank you for your consideration of these comments. SPON respectfully requests that the City revise and recirculate the EIR once adequate responses have been provided to all comments submitted by the public on the Project, including recent supplemental comments that have raised important issues. SPON further urges the City to carefully consider the Project's compatibility with the City's General Plan and Integrated Conceptual Development Plan. Please contact me if you have any questions.

Sincerely,



Michelle N. Black