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To: "McKeon, Casey" <Casey.McKeon@surfcity-hb.org>

Subject: Environmental Impact Report (EIR) violations by Bolsa Chica Senior Living Community Project
SCH No. 2022110040

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EIR Fails to Provide and Analyze an Accurate and Complete Project Description

1. Construction operations including staging have not been addressed as required under CEQA. The EIR fails to provide information about the anticipated construction equipment fleet, whether a crusher or crane will be located on the property, where construction equipment will be staged, where construction vehicles will be parked, where construction workers will park, the proposed routes for hauling demolition debris and delivery of materials, and how construction activities will be kept from physically encroaching onto adjacent properties. Draft EIR Section 3.0 and Subsection 3.5 lack this information, yielding an incomplete and unstable Project Description and depriving the public from a meaningful opportunity to comment on the environmental effects that would occur over the project's 3-year construction schedule. The Draft EIR must be revised and recirculated to include this information, address the whole of the project, and substantively evaluate the potential construction-related effects associated with construction staging and hauling.

As discussed in Section 4.2, Air Quality, of the Draft EIR, demolition, grading, and building activities would involve the use of Tier 2 construction equipment and standard earthmoving equipment such as large excavators, cranes, and other related equipment. These assumptions were used when preparing the air quality, greenhouse gas emissions, and energy analysis for construction of the proposed project. Although the Draft EIR did not explicitly state where the staging of construction equipment would occur during construction of the proposed project, it is assumed that all equipment staging would occur on site. The crane, if necessary for construction activities, would be located on the project site and no crusher would be used during project construction. Overall, no construction equipment would be located or staged on adjacent properties or within Warner Avenue or Bolsa Chica Street. Further, no temporary or permanent easements on adjacent properties are required and the Construction Contractor would be responsible to ensure that construction activities do not extend past the identified limits of disturbance or encroach on any surrounding properties, consistent with standard construction practices.

As discussed in Section 4.17, Transportation, of the Initial Study (Appendix A of the Draft EIR), although construction of the proposed project would increase the number of vehicle trips to and from the project site, the increased traffic conditions would be temporary and would cease upon the completion of project construction. As such, the Initial Study determined that the temporary increase in construction trips is not anticipated to result in permanent adverse operations to the adjacent roadways. Under CEQA, parking availability is not considered an environmental impact unless the availability of parking is connected to an impact on the environment. Construction vehicles and construction worker vehicles are anticipated to be parked either on site or in the immediate surrounding area. The temporary parking of construction vehicle or construction worker vehicles on surrounding streets would be temporary and is not anticipated to result in permanent adverse operations to the adjacent roadways.

As stated in Section 3.0, Project Description, of the Draft EIR, construction of the proposed project would require approximately 55,000 cubic yards of cut that would be exported off site for appropriate disposal. The disposal site is likely approximately 35 miles from the project site at United Rock Products Corporation in Irwindale. In addition, demolition of debris would be hauled off-site and construction building materials would be delivered to the project site during project construction. The proposed routes for hauling demolition debris and delivery of materials are not known at this time; however, as previously discussed, Section 4.17, Transportation, of the Initial Study (Appendix A of the Draft EIR) determined that the temporary increase in construction trips, including the hauling of demolition debris and the delivery of materials, is not anticipated to result in permanent adverse operations to the adjacent roadways as the increased traffic conditions would be temporary and would cease upon the completion of project construction.

The analysis within the Draft EIR included a discussion of potential impacts associated with the construction of the proposed project based upon construction equipment fleet assumptions and the estimated number of vehicle trips to and from the project site during construction, and found impacts to be less than significant. No construction equipment would be located or staged on adjacent properties or within adjacent streets and the temporary increase in construction trips, including the hauling of demolition debris and the delivery of materials, is not anticipated to result in permanent adverse operations to the adjacent roadways.

Pursuant to Section 15088.5 of the *State CEQA Guidelines*, recirculation of an EIR is required when significant new information is added to an EIR that changes it in a way that deprives the public of meaningful opportunity to comment. Significant new information can refer to a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a previously unevaluated feasible project alternative. Recirculation can also be triggered if the draft environmental document is considered fundamentally inadequate and conclusory. Because the analysis within the Draft EIR included a discussion of potential impacts associated with the construction of the proposed project to the extent possible given the information available and the construction of the proposed project would be subject to applicable City requirements, the analysis of potential construction impacts contained within the EIR is complete, adequate, and supported by substantial evidence. No significant new information or inadequacies within the Initial Study, Draft EIR, or Final EIR have been revealed that would trigger recirculation pursuant to Section 15088.5 of the *State CEQA Guidelines*. As such, the Draft EIR is considered complete and is not required to be revised or recirculated.

2. The EIR fails to disclose what other projects may be under construction at the same time as the proposed project. As such, the EIR fails to meaningfully consider cumulative

construction-related effects. The Draft EIR must be revised and recirculated to include this information to allow a meaningful evaluation of construction-related cumulative effects.

Pursuant to Section 15355 of the *State CEQA Guidelines*, an adequate discussion of cumulative impacts includes a list of past, present, and probable future projects with the potential to produce related or cumulative impacts.

Table 4.A on page 4-2 of the Draft EIR provides a list of the proposed, approved, and pending projects in the City of Huntington Beach that are within approximately 3 miles of the project site and that have been used in the cumulative impact analysis. Table 4.A includes projects that may be under construction at or around the same time as the proposed project. The list of projects in Table 4.A was developed with input from City staff and includes a mix of largely commercial, mixed-use, and multifamily residential development projects as well as programmatic updates to various planning documents. In compliance with CEQA, the analysis of cumulative impacts contained in this Draft EIR considers the location, status, and nature of other projects as they relate to the proposed project.

3. Construction phasing has not been addressed as required under CEQA. The EIR fails to include a detailed construction phasing plan including identifying the duration of street, lane, and sidewalk closures. Street, lane, and sidewalk closures can be disruptive and temporarily increase traffic congestion, leading to increased vehicle idling and short-term but significant mobile source air pollutant emissions and noise levels that exceed significance thresholds. Draft EIR Section 3.0 and Subsection 3.5 lack this information, yielding an incomplete and unstable Project Description and depriving the public from a meaningful opportunity to comment on the environmental effects that would occur over the project's 3-year construction schedule. The Draft EIR must be revised and recirculated to include this information, address the whole of the project, and substantively evaluate the potential construction-related effects associated with construction phasing including temporary street, lane, and sidewalk closures.

As discussed throughout the Draft EIR, specific construction details, including a construction phasing plan that identifies the specific durations of any required street, lane, and sidewalk closures, are not yet known. Construction of the proposed project could result in temporary, lane closures on adjacent streets (i.e., Bolsa Chica Street and Warner Avenue) related to utility connection work; however, these types of lane closures are a common construction practice in the City and would adhere to all applicable City requirements in order to complete the work quickly and efficiently and reduce potential impacts on traffic. These requirements could include, but are not limited to, proper noticing of future lane closures and traffic control measures during the lane closure. With adherence to applicable City requirements regulating the temporary lane closures, construction of utility connections within adjacent streets is not anticipated to result in permanent adverse operations to the adjacent roadways.

While it is possible that the temporary lane closures on adjacent streets (i.e., Bolsa Chica Street and Warner Avenue) could temporarily increase traffic congestion in the area, these lane closures would be temporary (no longer than 3 weeks).

Because specific construction details are not yet known, the air quality analysis in the Draft EIR relied on default assumptions from CalEEMod that provide a conservative estimate for

construction related air pollutant emissions. The air quality analysis in the Draft EIR included Microscale (CO Hot Spot) Analysis which discusses localized air quality impacts that occur when vehicle traffic increases due to congestion at intersections and along roadway segments in the vicinity of the project site. Because the proposed project does not meet the criteria for an evaluation of study area intersection or roadway segment LOS, it is assumed that the addition of the proposed project traffic would not create any significant adverse impacts to nearby intersections. Therefore, given the extremely low levels of CO concentrations in the vicinity of the project site, and lack of traffic impacts at any intersections, project-related vehicle trips are not expected to contribute significantly to or result in CO concentrations exceeding the State or federal CO standards. In addition, because the lane closures would be temporary (no longer than 3 weeks), increased traffic congestion in the area would be temporary and would not occur once utility connection construction activities are completed.

Although temporary lane closures on adjacent streets (i.e., Bolsa Chica Street and Warner Avenue) could temporarily increase traffic congestion in the area, this increase in congestion would not result in significant noise levels that exceed applicable standards. According to the California Department of Transportation (Caltrans), it can be generally understood that vehicles that are accelerating or traveling at increased speeds result in noise levels that are higher than idling cars. As such, any potential temporary increases in traffic congestion resulting from project-related lane closures would not result in significant noise levels as vehicle speeds would be reduced in such a scenario.

The analysis within the Draft EIR included a discussion of potential impacts associated with the construction of the proposed project. With adherence to applicable City requirements regulating temporary lane closures, construction of utility connections within adjacent streets is not anticipated to result in permanent adverse operations to the adjacent roadways. In addition, given the extremely low levels of CO concentrations in the vicinity of the project site and lack of traffic impacts at any intersections, project-related vehicle trips are not expected to result in significant mobile source air pollutant emissions exceeding the State or federal CO standards. Further, any temporary increase in traffic congestion would not result in significant noise levels as idling cars generally produce less noise than vehicles accelerating or moving at high speeds.

As discussed above, no significant new information or inadequacies within the Initial Study, Draft EIR, or Final EIR have been revealed that would trigger recirculation pursuant to Section 15088.5 of the State CEQA Guidelines. As such, the Draft EIR is considered complete and is not required to be revised or recirculated.

4. The EIR fails to provide a description of the services that would be provided at the facility. The EIR simply describes the project as a senior care facility with memory care, assisted living, and independent living components, with few references to services provided. The specific proposed services are relevant to the project's environmental review and permitting requirements. For example, if the facility will involve the storage, use, and disposal of hazardous chemicals and biological or medical wastes, this must be disclosed and analyzed in a revised and recirculated Draft EIR. The Initial Study did not contain sufficient information about the project or evidence to scope out the topic of Hazards and Hazardous Materials, for example. The Project Description must include the full range of services and activities contemplated by the project for the EIR to adequately review the potentially significant impacts of the project.

The EIR is adequate and complete in its disclosure of the project description. As described in Section 3.4, Project Characteristics, on page 3-7 of the Draft EIR, the proposed project includes various on-site amenities and services, including multiple restaurant-style dining venues, a fitness and wellness center, salon and studio spaces, a theater, an art room, a lounge, and several multi-purpose rooms. Outdoor spaces are anticipated to include a memory care garden, a swimming pool with outdoor exercise area, outdoor seating area with fire pit, outdoor dining areas, meditation spaces, a dog park, and roof decks. This description provides sufficient detail to describe the proposed operations of the proposed project. As stated in the Draft EIR, the proposed development would be licensed by the California Department of Social Services, Community Care Licensing Division (CCLD) per California Code of Regulations (CCR) Title 22, Division 6, Chapter 8 as a Residential Care Facility for the Elderly (RCFE). As part of this State licensing, the proposed project would be required to maintain compliance with all applicable procedures, provisions, and requirements included in this document, which can be viewed at <https://www.cdss.ca.gov/getinfo/pdf/rcfe1.PDF>. This document details the various actions and operations permitted under the RCFE designation. None of these activities would result in new or more severe environmental impacts than what was evaluated in the Draft EIR. Further, as discussed in the document, staff of the proposed facility would arrange for transportation of patients to and from external medical facilities whilst focusing on supervision and nonmedical care within the proposed facility.

As discussed in Section 4.9, Hazards and Hazardous Materials, of the Initial Study prepared for the proposed project, the proposed project would result in less than significant impacts pertaining to the routine transport, use, or disposal of hazardous materials. Project operation would involve the use and handling of potentially hazardous materials, including biomedical waste, in a manner that is typical of residential/assisted living communities that, when used correctly and in compliance with existing laws and regulations, would not result in a significant hazard to people in the vicinity of the proposed project. No other potential hazardous materials were identified in connection with operations of the proposed project, and no further discussion is required under the *State CEQA Guidelines*.

EIR Fails to Support its Findings with Substantial Evidence

EIR Fails to Use an Accurate Environmental Baseline and Trip Generation Calculations

Final EIR Fails to Adequately Respond to Public Comment in Violation of CEQA

5. It is egregious that a Traffic Impact Study, Transportation Safety Study, and Vehicle Miles Traveled (VMT) Analysis were not prepared for this project, particularly considering the number of comments and concerns raised about transportation safety in public comment submitted to the Draft EIR. The City has completely ignored compelling and substantive evidence submitted in comments to the Draft EIR demonstrating why a Traffic Study and VMT analysis should have been prepared. The Draft EIR must be revised and recirculated to include a Traffic Study and VMT analysis to allow a meaningful evaluation of transportation impacts and other potential impacts to the environment resulting from vehicles traveling to and from the project site.

- a. The topic of Transportation is dismissed in Draft EIR Subsection 2.4.15, referring readers to the Initial Study, which was buried in an Appendix to the Draft EIR. Substantive information such as a project's traffic trip generation volume, is critical piece of information and is essential to the public's understanding of a project, and cannot be hidden in an Appendix. The project's trip generation must be brought forward in the EIR's Project Description and the Draft EIR must be recirculated to include this information.

Section 15063 of the *State CEQA Guidelines* describes the purpose and requirements of an Initial Study. One purpose is to identify effects determined not to be significant that will not be discussed further in the Draft EIR. In the Initial Study prepared for the proposed project, effects to trip generation were found to be less than significant pursuant to the Institute of Transportation Engineers (ITE) *Trip Generation Manual* and the Governor's Office of Planning and Research (OPR) *Technical Advisory on Evaluating Transportation Impacts in CEQA*, and based on substantial evidence. This analysis was conducted in accordance with standard CEQA procedures and remains valid.

The Initial Study clearly states that the topic of transportation will not be analyzed further in the EIR because potential impacts to this issue area were found to be less than significant. Further, in accordance with standard practices of EIR preparation, the Initial Study has been attached as the first appendix (Appendix A) to the Draft EIR. Section 2.4, Effects Found Not to be Significant, of the Draft EIR directs readers to the Initial Study for more information regarding the proposed project's less than significant impacts to transportation. This Initial Study was made available to the public along with other appendices to the Draft EIR.

Section 15124 of the *State CEQA Guidelines* states that "The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact". Since it was determined in the Initial Study that the proposed project would not result in any significant impacts pertaining to transportation and project trip generation information is not typically included in a project description, the EIR's project description as presented satisfies the statutory processing requirements.

5.

- b. The Initial Study and EIR do not provide any substantive evidence demonstrating that the Project Trip Generation Summary (Initial Study Table B) is accurate and reliable. This one table presented in the Initial Study (Table B) is not a sound basis for dismissing serious public comments and concerns regarding the potential environmental effects associated with vehicle trip generation. Initial Study Table B is unsupported by evidence and is the sole source of conclusions reached on the topics of transportation safety, mobile source air pollutants, and vehicular noise, claiming that no impacts will occur because the project is thought to generate a lesser amount of daily traffic than the existing condition. This is unfounded and lacking evidentiary support.

As stated above, the Initial Study properly identified, analyzed, and scoped out any potentially significant impacts to transportation and traffic in accordance with *State CEQA Guidelines*. Pursuant to Section 15204 of the *State CEQA Guidelines*, in responding to public comments, a Lead Agency is required to "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". All public comments received were documented and responded to in accordance to the topic or opinions contained. No public comments were submitted that produced any new information as evidence of insufficient analysis to require new analysis and/or recirculation. The Initial Study accurately concludes that, in comparison with existing trip generation rates of the existing commercial land uses on the project site, the proposed project would result in a net reduction of peak demand daily vehicle trips utilizing a nationally accepted methodology framework (the Institute of Transportation Engineers [ITE] *Trip Generation Manual*) for comparison. The methodology that was used to develop the evidence that supports the conclusions of the Initial Study and EIR is utilized throughout the country as a basis of impact analysis and throughout California for impact analysis pursuant to *State CEQA Guidelines*. As such, Tables B and C provided in Section 4.17, Transportation, of the Initial Study represent accurate and substantial evidence to support the environmental determinations reached.

5.

- c. The data presented in Initial Study Table B, Existing Trip Generation, is not based on the existing condition, which is violation of CEQA. There is no existing driveway count information presented for the existing uses as evidence that the project site's existing uses actually generate 947 trips per day. Instead, the Initial Study relies on ITE trip generation rates for theoretical daily and peak hour trip assumptions. Given that the site is occupied by retail and office uses, there was ample opportunity for the City to collect actual trip generation data by driveway counts to use as the environmental baseline. There was a complete failure to report the actual baseline given the ability to collect driveway counts at the site. Instead, and to artificially inflate the existing trip generation reported in Table B, ITE rates were used. Substantial evidence must be provided that the ITE trip generation rates used in Table B are reflective of the existing condition baseline. Existing driveway count data must be collected and used as the baseline, and the Draft EIR must be revised and recirculated to use an accurate baseline. There is lack of substantive evidence to omit a more detailed analysis of the actual trip generation baseline. Thus, the City applied an incorrect standard in defining the baseline for purposes of impact analyses throughout the EIR. The EIR's analysis of Transportation and vehicular-related Air Quality, Greenhouse Gas Emissions, and Noise is thereby faulty, unsupported, and unreliable.

The *State CEQA Guidelines* do not set forth any statutory requirements to utilize daily trip generation data and no evidence has been submitted to refute the use of Institute of Transportation Engineers (ITE) trip generation rates. There is no requirement to provide substantial evidence that the ITE rates "are reflective of the existing condition baseline" as precedent has established the rates set forth in the *ITE Trip Generation Manual* are reliable for use in CEQA documents.. The *ITE Trip Generation Manual* is the industry (transportation planning/engineering) standard source for trip generation rates in the City, State, and throughout the rest of the country. The *ITE Trip Generation Manual* was most recently updated in 2021. Each new version incorporates the most current data based on parking generation studies submitted voluntarily to ITE by public agencies, developers, consulting firms, student chapters and associations. As such, the ITE trip generation rates

are based upon up-to-date, real-world datasets. The proposed project would generate fewer trips than the existing land uses on the project site based on a comparison of the trip rates from the *ITE Trip Generation Manual*. Because the proposed project is less intense than the approved/current uses, neither the collection nor the analysis of existing traffic counts are required for the proposed project, and the analysis of potential transportation impacts contained in the Draft EIR remains valid.

5.

- d. The data presented in Initial Study Table B, Project Trip Generation, uses ITE Codes for Congregate Care and Assisting Living, and the rates are very low compared to ITE rates for multi-family residential. There is no substantive evidence or assurance that the project will operate completely as a traditional congregate care and assisting living facility. In fact, the Project Description states that 123 of the 213 units (more than 50% of the project) will be for independent living and some of the units will be as large as 2,580 square feet. A residential unit of 2,580 s.f. is larger than many single family homes in Huntington Beach and greater Orange County. It is implausible that the independent living units, where residents can come and go at their discretion, will have the same trip generation characteristics as a congregate care or assisting living unit. The project's trip generation rates must be revised to, at minimum, calculate the independent living units as traditional low-rise multi-family housing that carries a daily ITE trip generation rate of 6.74 trips per unit based on the 11th Edition of the *ITE Trip Generation Manual*.

Congregate care land uses are not equal to multi-family residential uses in multiple aspects. For example, it is assumed that those congregate care facility residents are less likely to drive than those living in a non-congregate care setting and that a congregate care use would have more employees than a multi-family residential building because additional services/amenities would be provided to residents. Further, the proposed Conditional Use Permit (CUP), if approved, would only permit the development and operation of a Residential Care Community for the Elderly and independent living apartments on the project site as a matter of entitled land use. No other land use, commercial, residential, or otherwise would be permitted without revising the entire scope of the CUP and draft Specific Plan. Only two of the independent living units are proposed to exceed 2,000 sq. ft. /3 bedroom and many of the services that would warrant an off-site vehicle trip are provided for residents on-site through a variety of amenities (restaurants, cafes, gym, theatre, studios, and outdoor recreational areas, etc.)

5.

- e. The data presented in Initial Study Table B does not take into account that the site's existing commercial uses likely attract pass-by trips, whereas the proposed project would generate new trips. Therefore, the subtraction of existing pass-by trips (from commercial and office use) from future new trips (from senior housing residential use) cannot be used as support for screening out a VMT analysis. The trip types are for different land uses and therefore are not comparable for purposes of VMT screening. Only the new trips from the project should be considered for purposes of VMT. At 537 trips per day (assuming the congregate care and assisting living ITE rates show in Table B), there is ample evidence to suggest

that a VMT analysis must be conducted and reported in revised and recirculated Draft EIR.

The Institute of Transportation Engineers' (ITE) Trip Generation Manual, 11th Edition (2021), does not include pass-by trip percentages for office uses (ITE Land Use 710 – General Office Building) or retail uses that are less than 40,000 sf (ITE Land Use 822 – Strip Retail Plaza). Although ITE includes a 40% p.m. peak-hour pass-by trip percentage for retail uses between 40,000 and 150,000 sf (ITE Land Use 821 – Shopping Plaza), which is substantially larger than the 10,447 sf of existing retail uses on site, it does not include daily or a.m. peak-hour pass-by trip percentages.

Table B in the Initial Study indicates that the proposed project would result in a net reduction of 410 daily trips compared to the existing uses on the project site. If a 40% pass-by trip reduction was (ultra conservatively) applied to the 569 daily trips of the existing retail use on the project site, the proposed project would still result in a net reduction of 182 daily trips. Therefore, a VMT analysis would not be required, and the proposed project would be presumed to have a less than significant transportation impact.

5.

- f. The data presented in Initial Study Table B does not take into account the number of employee, vendor, and package delivery trips that will be attracted to the proposed project site on a daily basis. As one example, the response to Comment S-1-6 is inadequate and non-responsive to the comment. The response makes a circular argument based on (the faulty) Initial Study Table B that delivery trips would not cause or contribute to increased daily trips or an otherwise significant transportation impact. If each of the 213 units received just one delivery per day (parcel, food, medical supply, etc.), the number of daily trips would spike compared to what is reported in Initial Study Table B. It is reasonably foreseeable that the project's residents will be able to order and receive packages and deliveries, and these trips must be accounted for in a revised and recirculated Draft EIR.

Congregate care generation rates as published by ITE are inclusive of anticipated ancillary trips generated by on-site resident needs such as mail and goods/supply delivery in a ratio appropriate to the number of units of a proposed facility.

- g. A Draft EIR must be prepared and recirculated containing analyses based on a corrected Trip Generation Table. There is ample evidence to support that Initial Study Table B is grossly inaccurate.

Please refer to responses 5(a) through 5(f). No information has been provided to dispute the ITE generation rates beyond an objection.

- 6. The Initial Study admits that the project could have short-term and significant transportation impacts, without the conduct of any analysis. CEQA requires that temporary impacts be studied in the same manner as permanent impacts. The City has completely ignored this potential short term impact and has made no evidence-based

conclusions regarding the significance of short-term vehicle-trip based impacts as required under CEQA. As stated in the Initial Study:

Although construction of the proposed project would generate more peak-hour trips than the existing office use and the proposed senior living community, the increased traffic conditions would be temporary and would cease upon the completion of project construction. The temporary increase in construction trips is not anticipated to result in permanent adverse operations to the adjacent roadways.

The cited statement from the Initial Study acknowledges that, although more peak hour trips would occur during certain construction phases of the proposed project when compared to existing uses, the increased traffic conditions would be temporary in nature and would not result in any significant impacts to the City's existing traffic circulation system. Pursuant to Section 15063 of the State CEQA Guidelines, "all phases of project planning, implementation, and operation must be considered in the initial study of the project." As such, the Draft IS/MND evaluates construction impacts to the same extent and under the same significance thresholds as operational impacts. Potential construction and operational impacts were evaluated under applicable thresholds pertaining to transportation impacts within the Initial Study.

The City has directly identified temporary increased traffic conditions associated with construction of the proposed project as a potential short term impact and yet has also stated that it will be temporary and less than significant under applicable *State CEQA Guidelines Appendix G* thresholds. No further analysis is required.

7. The EIR fails to include substantive analysis of potential transportation safety hazards. The Draft EIR must be revised and recirculated to include exhibits showing the turning movements of all vehicle types in and out of the project's proposed driveways, including passenger vehicles, delivery vans, trash trucks, moving trucks, ambulances, fire trucks, service vehicles, vendor vehicles, and misc. emergency/medical vehicles. There was a complete failure to adequately respond to public comments and concerns regarding potential transportation safety hazards that could result from vehicles entering and exiting the project driveways. It must be shown at minimum that turning movements do not cross lane markers, that opposing vehicle turn movements for all vehicle types do not have turn movement conflicts, that there will be no vehicle queuing from the project's driveways onto the public streets, that there is adequate site distance, that there will be no unsafe pedestrian or bicycle conflicts at the site's frontages or at crosswalks, and that there is ample space for operation of emergency medical and fire vehicles, which may frequent the site given its use for congregate care housing. At present, there is no substantial evidence in the EIR to demonstrate that the project will not result in a significant transportation safety hazard. There were a substantial number of public comments made to the Draft EIR, including reports of vehicle accidents and deaths, to show by personal observation of community residents that the project's location is dangerous from a transportation safety perspective.

Turning movements of all vehicle types have been accounted for in the project layout and design to the satisfaction of City Code requirements and are not a CEQA analysis requirement. Public comments received during the circulation of the Draft EIR were documented and responded to in

accordance with the content and concern. The City understands the concerns surrounding testimony of public experiences at the intersection and support project implementation in that public ROW improvements will be provided and overall peak trip generation rates will be reduced compared to existing conditions. No existing conditions are present on or adjacent to the project site that suggest that the project would present a danger to pedestrians or motor vehicles or create new pedestrian/vehicle conflicts.

EIR Fails to Disclose Conflicts with Plans and Policies Adopted for Purposes of Reducing Environmental Effects

8. The project fails to comply with the City's governing land use policies and codes. The project applicant has proposed a Specific Plan as a creative means to overcome such non-compliances. For meaningful public input and full disclosure, the Draft EIR must be revised and recirculated including a table comparing standard City "Commercial General" zoning standards for setbacks, height, bulk, and scale, with those that will be more lenient *visa vi* the Specific Plan.

A proposal to adopt a Specific Plan that will have land use authority within a portion of the City is permissible pursuant to existing Huntington Beach Zoning and Subdivision Ordinance procedures and the staff report materials including the project plans and draft Specific Plan constitute full disclosure. The Specific Plan requests alternative baseline requirements to building height, floor area ratio, and on-site parking when compared to the existing development standards under the current CG zoning.

EIR Fails to Disclose Significant Adverse Impacts in Violation of CEQA

9. Contrary to the Initial Study's findings that habitat impacts to wildlife stemming from the Project would be considered less than significant under CEQA due to the disturbed nature of the site, there is adequate evidence to suggest that the project would result in significant impacts to biological resources requiring mitigation. The project site is located at the Pacific Flyway, a major migratory bird corridor. The project also is located in close proximity to the Pacific Ocean and the Bolsa Chica Wetlands, which are major attractors of avian species. There are no other buildings of the proposed building's height in the vicinity of the project site, so the project's building would be the tallest building in the area. The project's windows and particularly windows in the higher stories of the building would result in a significant number of bird collision deaths per year. Thus, the topic of Biological Resources should not have been scoped out of the EIR through the Initial Study. Mitigation is necessary and the following measures should be required: 1) adherence to available Bird-Safe Guidelines, recommending minimum use of glass and using glass with inherent properties to reduce collisions; 2) monitoring post-construction fatalities; 3) funding wildlife rehabilitation facilities to cover the costs of injured animals that will be delivered to these facilities for care from collisions with the building and its windows; 4) reducing the height of the proposed building. Refer to Draft EIR Comment

No. I-3-1 and the inadequate response supplied in the Final EIR based on studies conducted in a different geographic region. The Draft EIR must be revised and recirculated to include a site-specific study of bird overflights and the potential for significant impacts.

The author has not cited or provided evidence to suggest that the analysis in the Initial Study is inaccurate. The project site is not immediately adjacent to the wetlands and implementation of the proposed project would not require mitigation. Regardless, staff is recommending a Condition of Approval that requires the use of bird safe glass on all upper story windows and glass features to minimize the risk of bird collisions.

10. Final EIR Response to Comment I-16-1 and to Comment I-25-1, as well as other similar responses, state *“views of the Bolsa Chica Ecological Reserve from units on the fifth floor with windows facing to the southwest –*

creating a scenic vista

rather than diminishing one.” Clearly, the Final EIR has established that private views from the private rooms of project residents are scenic vistas. Thus, the Draft EIR must be revised and recirculated to consider the private views of existing residents and the impact that the project will have on those views. The EIR cannot treat the project one way and existing resident views the opposite way. The City has established in the record that private views are scenic views subject to consideration in the EIR.

Neither the CEQA Guidelines nor the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) regulate private views. Further, the cited statement cannot and does not describe an impact to private views that currently do not exist.

11. Comment 29 to the Draft EIR contained evidence based on personal observations that the numerical significance threshold of 80 dBA Leq used in the Draft EIR as the basis for significant construction-related noise impacts is inadequate. The Draft EIR must be revised and recirculated to use a more reasonable significance threshold considering the local context of the community and not a threshold published by the Federal Transportation Authority which is out of context for Huntington Beach and the local context of the project site. The EIR provides no credible basis for use of a 80 dBA Leq significance threshold. The City’s General Plan EIR Noise Element Table N-2, Land Use-Noise Compatibility Standards, sets forth acceptable noise levels based on land use type, which is a credible source to be used as the significance threshold for construction noise. The project’s construction phase will last years, and as such it is appropriate to evaluate years of construction noise against the land use compatibility standards given in the City’s General Plan. The revised and recirculated Draft EIR should consider construction-related noise levels falling above the “Exterior Normally Unacceptable” levels given in General Plan Table N-2 as being significant under CEQA.

The EIR’s use of General Plan noise standards is appropriate for both construction and operational anticipated noise impacts. Construction related impacts are considered temporary in that they are not permanent nor permitted to occur outside of established construction hours

which is currently limited to Monday – Saturday, 7:00 AM to 8:00 PM excluding Sundays and Federal holidays (HBMC 8.40.090).

12. Final EIR Master Response 2.1.1, Aesthetics, states that there are homes across the street from the project site that were built in the 1920's and 30's. According to Draft EIR pp. 4.3-6 and 4.3-7, buildings that are more than 50 years of age require consideration for historical significance. As the Master Response admits that the project will be out of character with the historic-age homes, the Draft EIR must be revised and recirculated to consider the potentially significant indirect impacts of the project on nearby historic-age structures in terms of loss of historical context and other potential indirect effects. Also, the revised and recirculated Draft EIR must evaluate the potential growth-inducing effects of the project that may trigger the redevelopment of these properties, including the reasonably foreseeable loss of historic-age structures.

The City of Huntington Beach has not adopted a historic preservation ordinance, and as such no historic context nor local regulations exist that, upon project implementation, would require new analysis under CEQA.

Final EIR Fails to Adequately Respond to Public Comment in Violation of CEQA

13. Final EIR Master Response 2.1.1, Aesthetics, attempts to compare the proposed project to other projects in different viewsheds as justification that project is visually compatible with the surrounding area. The Master Response is grossly inappropriate in its reliance on other areas of the city outside of the proposed project's viewshed to justify the obvious significant and unmitigable impact that would be caused by degradation of the existing visual character and quality of public views of the site and its surroundings. The Master Responses primarily focuses on architectural style, skirting the primary public concern of the project's proposed mass, bulk, and height. The Draft EIR must be revised and recirculated including an analysis of the geographic area that actually falls within the project's viewshed.

As stated earlier, there are no development regulations that require consideration of private views and the focus of analysis for aesthetics is limited to aesthetic impacts, which is inclusive of the high quality design, colors, and materials that are proposed. The proposed mass and height of the project are directly related to the provision of a high quality age-in-place convalescent facility and the achievement of project objectives as outlined in the EIR and provided for in the draft Specific Plan.

14. Final EIR Master Response 2.1.1, Aesthetics, uses other projects in different parts of the City as justification that the height, bulk, and scale of the proposed project is acceptable and does not constitute a significant direct, indirect, or cumulatively considerable aesthetic impact or land use impact under CEQA. Essentially, the City has admitted in this Master Responses that the physical character of approved development projects (their height, bulk, scale, and architectural style) in any part of Huntington Beach can be used as justification for the development of other similar projects in similar contexts (in this

case, along commercial road corridors) anywhere in the City. This is a clear admission of growth inducement. The Draft EIR must be revised and recirculated to include a robust and meaningful analysis of every commercial corridor in the City of Huntington Beach and identify every other parcel in the City that the proposed project, along with the other projects mentioned in the Master Response (such as Merrill Gardens, Beach and Ocean Project, Plaza Almeria, Jamboree Housing Project, etc.) could induce to develop or redevelop at a similar intensity. The Draft EIR has failed to analyze reasonably foreseeable growth-inducing impacts of the project. The height, bulk, and scale of proposed project was induced by (and is being justified by) past, comparable development projects and thereby there is ample evidence to suggest that the project is the continuation of, and also will set in motion, a chain of events that will result in foreseeable physical changes in the environment along commercial corridors throughout the City of Huntington Beach. Every commercial corridor must be meaningfully analyzed in a revised and recirculated Draft EIR.

The responses to comments merely outline that the proposed project is similar to other recently completed and operating senior living and mixed use projects that are provided to illustrate that these other sites can and do fit within an existing neighborhood in a compatible manner. The author has not provided any evidence or documentation to support the claim that foreseeable physical changes will occur elsewhere in the City as a result of the proposed project. The proposed Specific Plan and requested Conditional Use Permit are site-specific and could not influence private development elsewhere.

15. Final EIR Master Response 2.1.1, Aesthetics, claims without any evidence-based support, that reducing the proposed height of the project and the associated density reduction of 76 units would make the project infeasible. The City must disclose financial or other information from the applicant showing the infeasibility of a Lower Building Height Alternative in a revised and recirculated Draft EIR.

Disclosure of financial information for any reason is not a requirement of CEQA analysis. A reduced project is infeasible in that it would not achieve the project objectives as outlined in the EIR.

16. Final EIR Master Response 2.1.2, Transportation/Traffic, provides information about the amount of traffic that could be generated by maximum buildout of the site under its existing CG zoning designation (7,497 daily trips). This information is irrelevant and presents a plan-to-plan comparison that is not permitted by CEQA. CEQA requires an evaluation of a project's impact on the existing environment and not a comparison to a theoretical build out condition. *Communities for a Better Env't v South Coast Air Quality Mgmt. Dist.* (2010) 48 C4th 310, 320 Held that the environmental baseline for assessing a new project's environmental impacts must be based on existing physical conditions, not theoretical conditions allowed by an existing permit. This comparative information must be stricken from the Final EIR to avoid confusing the public.

The commenter is correct that the environmental baseline for impact analysis is existing conditions, which is how the City analyzed the project's potential environmental effects. The trip generation information based on maximum buildout of the site under existing zoning is included

in a topical response to a general comment regarding the project's potential traffic impacts for informational purposes. While environmental effects must be analyzed based on existing environmental conditions, it's entirely appropriate, in the context of project alternatives, to include plan to plan comparisons when a project is a land use plan, for instance. Because this project includes both a development project and a change in land use plan, it's not necessarily irrelevant information to include in a broad topical response what could result under an existing plan if redevelopment were to occur on the site. It is provided only as additional information and not as the basis for evaluation of environmental effects.

17. Final EIR Master Response 2.1.2, Transportation/Traffic, relies on a faulty trip generation table included as Initial Study Table B. Refer to the comments presented above regarding Table B.

See responses 5 (a) through (f) above.

EIR Fails to Report Potential Significant and Unmitigable Impacts and Consider Alternatives

18. Upon revision and recirculation of the Draft EIR as will be required to respond to the comments herein, it is likely that impacts will be determined to be significant and unavoidable. The following Alternatives are requested to be analyzed: 1) a robust evaluation of Alternative Sites; 2) a Reduced Building Height Alternative; 3) a Zoning Compliance Alternative that does not rely on a Specific Plan to achieve a denser project that the underlying zoning designation allows.

The analysis contained within the Final EIR is complete and accurate and a recirculation is not necessary or required. No new information has been presented in this comment letter that would warrant a change or revision to the analysis or conclusions contained therein. No impacts have been determined to be significant, and the alternatives analysis is appropriate and complete.

19. The proposed project claims without any evidence-based support, that reducing the proposed height of the project and the associated density reduction of 76 units would make the project infeasible. The City must disclose financial or other information from the applicant showing the infeasibility of a Lower Building Height Alternative in a revised and recirculated Draft EIR.

See response 15 above.