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Robin Estanislau  
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**RE: Conditional Use Permit 21-024**

- *Bolsa Chica Senior Living Community*

Dear Ms. Estanislau:

This letter supplements our letter of October 4, 2023 appealing the Planning Commission's approval of Conditional Use Permit 21-024 ("CUP") and objecting to the approval of the above referenced project, and is submitted on behalf of appellant Brian Thienes. Please include it in the official record and circulate it amongst the members of the City Council as soon as possible.

The Environmental Impact Report ("EIR") for the project fails to adequately identify, analyze or mitigate the many significant environmental impacts of the project as follows:

**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.
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.

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.
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.

### **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 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.
- 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.
  - c. The data presented in Initial Study Table B, Existing Trip Generation, is not based on the existing condition, which is in 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 Institute of Transportation ("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.
  - 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 11<sup>th</sup> Edition of the ITE Trip Generation Manual.
- 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.
  - 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.) or invited guests to the multiple proposed restaurants, 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.
  - 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.
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. (Emphasis added.)*

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.

#### **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 vis a vis the Specific Plan.

#### **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.

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.
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 an 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.
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.

## **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 the 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.
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, Piazza 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. Section 15064 of the CEQA Guidelines, Determining the Significance of the Environmental Effects Caused by a Project, subsection (d) (2) states, *"An indirect physical change in the environment is the physical change in the environment, which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewer treatment capacity and may lead to an increase in air pollution."* This project will be used to increase the density of other future projects as this project will be denser than most of the projects listed by reference in the EIR used to justify the mass and scale of the project. Every commercial corridor must be meaningfully analyzed in a revised and recirculated Draft EIR.

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.
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.
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.

### **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 than the underlying zoning designation allows.
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. During the Planning Commission public study session held on August 22, 2023, the applicant identified Clearwater as the proposed operator of the facility. Clearwater operates Clearwater at Southbay (Torrance) 90 units on 3.1 acres or 29 units per acre, Clearwater at Riverpark (Oxnard) 136 units on 3.8 acres or 36 units per acre, and Clearwater at North Tustin (unincorporated Orange County) 100 units on 6.6 acres of land or 15 units per acre. All these facilities operated by Clearwater appear to function at a much lower density than what is proposed in the EIR. 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.

### **EIR misrepresents the true height of the structure.**

20. Architectural plan sheet A-301 prepared by CallisonRTKL, Inc. circulated for public review indicates a first floor level of 37.5 feet above sea level, with the proposed building height of 65 feet from the first floor to the 5<sup>th</sup> floor roof, plus 4 feet to the top of the



parapet, making the overall building height 69 feet tall and making the top of parapet 106.50 feet above sea level ( $37.5+69=106.5$ ). Architectural plan sheet C-2 indicates the top of curb elevation at the corner of Bolsa Chica and Warner as being 34.46 feet above sea level; subtracting this elevation from the top of parapet at 106.50 feet above sea level makes the structure 72 feet tall at the intersection of Bolsa Chica and Warner, which is where it is most visible to the public. The true height of the structure was not adequately disclosed in the EIR as required by CEQA.

21. Furthermore, Page 24 of the Specific Plan, *4.2 Drainage*, states, *“The highest point of the property is in the southwest area of the site and the lowest point is in the northeast area of the site with a grade differential of approximately 6 feet.”* The City of Huntington Beach Municipal Code section 230.70 Measurement of Height, subsection C. states, *“Lots with a grade differential of 3 feet or greater between the high point and the low point, determined before rough grading, shall be subject to conditional use permit approval by the zoning administrator. Conditional use permit approval shall be based upon a building and grading plan which terraces the building with the grade and which is compatible with adjacent development.”* The proposed Specific Plan does not follow the City of Huntington Beach’s ordinance and guidelines, as a conditional use permit for the height of the building was not considered despite the grade differential being greater than 3 feet.
22. The proposed project also fails to adequately study and address impacts to the city sewer system, relying solely on a statement that the sewer treatment capacity has certain availability. No study was provided for the affected local sewer systems. CEQA requires identification of impacts to utility systems; however, the EIR did not provide a sewer area study, instead allowing it to be deferred to construction drawings, which would occur during the permit process. CEQA does not allow for these studies to be deferred.

Additionally, California Government Code section 65451. (a) states, *“A specific plan shall include a text and a diagram or diagrams which specify all of the following in detail: (2) the proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy and other necessary facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.”*

The EIR and proposed Specific Plan deferred the required study and did not show required facilities necessary to support the proposed project. City of Huntington Beach sewer facility design criteria indicates 2,000 gallons per day per acre for the existing commercial use and 5,400 gallons per day for high density residential use, which does not include the proposed restaurant. The sewer discharge would increase from 5,620 gallons per day to 15,174 gallons per day, which is almost 3 times the existing sewer discharge. It is not reasonable to assume that a 6-inch diameter water tap to an 8 inch water main would not cause an impact to the existing water main and it is unlikely that either the sewer or water facilities in the public right-of-way would not require upgrading. Deferring these utility analyses is not allowed by CEQA.

23. Lastly, the project's full conditions of approval were not circulated for public review. Only 10 of the approximate 145 conditions of approval were circulated for public review prior to the Planning Commission meeting and the City Council meeting, as indicated on the published agenda. The City of Huntington Beach provided a letter to the applicant December 22, 2022, outlining an extensive list of conditions of approval, but did not include these conditions at the Planning Commission hearing, with the agenda for the City Council hearing, or in response to a public records request made in August of 2023. CEQA requires project conditions to be published for public viewing.

As set forth above, it is imperative that additional studies be conducted and that a revised EIR be prepared and recirculated, and appropriate additional mitigation measures imposed before this project can be responsibly considered by the City Council. Approval of the CUP was premature and inappropriate, and the appeal should be upheld and the CUP denied until such time as the significant issues identified herein and in previous correspondence are adequately addressed.

Sincerely,

**CARMEL & NACCASHA LLP**

*Michael M. McMahon*

Michael McMahon

MMM/lmh

Cc: Brian Thienes, Appellant