

**From:** [Sarah Bova](#)  
**To:** [supplementalcomm@surfcity-hb.org](mailto:supplementalcomm@surfcity-hb.org)  
**Subject:** GPA No. 21-004, ZMA NO. 21-003, TA NO. 22-005, CUP NO. 21-024, EIR NO. 21-004 / Supplemental Letter for CC Tuesday December 19th  
**Date:** Monday, December 18, 2023 4:33:24 PM  
**Attachments:** [image001.png](#)  
[Thienes Letter to City Council.pdf](#)

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Good afternoon,

Please see attached additional Supplemental Letter for the City Council Hearing being held on December 19<sup>th</sup> 2023. Please note, this is in addition to the supplemental letters provided by two additional law firms.

Sarah Bova



**THIENES ENGINEERING, INC.**

14349 Firestone Blvd. | La Mirada, CA | 90638  
Telephone: (714) 521-4811 x246 | Fax: (714) 521-4173

[Sarah@thieneseng.com](mailto:Sarah@thieneseng.com)

December 15, 2023

Honorable City Council Members  
City of Huntington Beach  
2000 Main Street,  
Huntington Beach, CA 92648.

RE: Land Use and CEQA Analysis, Bolsa Chica Senior Living Project, Huntington Beach

Dear Honorable City Council Members,

I requested Terra Nova to complete an analysis of the land use and environmental analysis prepared by the City of Huntington Beach for the Bolsa Chica Senior Living Project. Our analysis consisted of a comprehensive review of the Planning Commission staff report and attachments for the meeting of September 26, 2023, and the project Environmental Impact Report (EIR).

### **Project Description**

The Bolsa Chica Senior Living Project (Project) would result in the development of a five story, 298,000 square foot, 202 unit senior living project on 3.1 acres at the southwest corner of Bolsa Chica Street and Warner Avenue. The project also includes 189 parking spaces (0.9 space per unit), multiple "lounges," multiple dining areas, a theater, a gym, salon and spa, offices and outdoor courtyards, including a pool. The 202 units include 102 independent living units providing 1, 2 or 3 bedrooms; 72 assisted living units providing one and two bedrooms; and 28 memory care units, one of which is a double room, and the balance are single rooms. The facility would employ 110 full time employees.

The Project site is currently designated Commercial General, and is occupied by a functioning commercial center. The Project proposes the demolition of the commercial center to make way for the mixed use development.

### **A. Land Use Analysis**

The Project cannot be constructed on the site under current City General Plan and Zoning standards. The Project therefore proposes:

1. A General Plan Amendment (GPA) from Commercial General to Mixed Use, with a Specific Plan Overlay.
2. A Zone Change from Commercial General to Mixed Use.
3. A Zone Text Amendment to add the Bolsa Chica Specific Plan to allow the development of the Project.

4. A Conditional Use Permit (CUP) to allow the use of a senior housing project.

The applications were processed concurrently, and the Planning Commission acted to approve the CUP, and recommend certification of the EIR, the GPA and the Zoning Map and Text amendments for approval by the City Council.

The analysis and conclusions of the staff report, and resulting actions by the Planning Commission are flawed, and cannot be supported.

1. The Basis for Compatibility of the Project is Flawed

The staff report uses a list of General Plan goals to support the required General Plan Amendment, without providing substantial evidence that the Project is consistent with those goals. Of particular concern is the statement that the “proposed convalescent facility is compatible in proportion, scale, and character with the surrounding land uses because the proposed building is similar in height and massing to other multi-story senior living facilities in the City that are adjacent to residential uses.” This statement in essence abandons proper land use compatibility analysis, which is by its very nature site-specific, by stating “we’ve made the mistake of putting overly large structures next to low-rise, low-intensity development in the City before, so we can do it again.” The staff report does not address the Project site and its surroundings at all. In this case, a low-rise, multi-building commercial center which is of similar scale and mass to the surrounding single and multi-family projects is being replaced by a massive, 72 foot monolithic behemoth (measured from the intersection of Bolsa Chica and Warner to the top of the building parapet) that will overshadow and overwhelm the neighborhood. The staff report simply lists convenient goals and policies, without analysis or interpretation to support a GPA. For example, the staff report lists Policy LU-1D as supporting the Project, but never addresses how the Project is “of compatible proportion, scale, and character to complement adjoining uses.” There is no analysis to explain how the Project is compatible with adjoining single-story single-family homes, or two-story multi-family units which surround the Project site on three sides. This failure to properly analyze the compatibility of the Project, and its requested GPA, make it impossible for the City to make findings in support of this proposal.

The staff report also conveniently avoids goals and policies with which the Project cannot comply, including:

Policy LU-2B.: Ensure that new and renovated structures and building architecture and site design are context-sensitive, creative, complementary of the city’s beach culture, and compatible with surrounding development and public spaces.

Policy LU-2D.: Maintain and protect residential neighborhoods by avoiding encroachment of incompatible uses.

Goal H-1: Maintain and enhance the quality and affordability of existing housing in Huntington Beach.

Policy H1.1: Preserve the character, scale and quality of established residential neighborhoods.

Clearly, the staff report ignores the General Plan's strong statements in support of the preservation and protection of existing neighborhoods because these statements do not support the proposed Project, and would undermine the findings required to approve the Project. This approach is improper and inappropriate for a thorough and comprehensive analysis of a General Plan Amendment.

Further, if the findings cannot be made for the General Plan Amendment, as is the case here, then no consideration of the Zone Change, Specific Plan or Conditional Use Permit can occur, since the GPA is the critical required approval.

## 2. The Staff Report Significantly Underestimates the Intensity of the Project.

Beyond the significant shortfall in General Plan compatibility analysis, the analysis of the Project itself is insufficient. The staff report characterizes the project as a 202-unit development, with 102 independent living units, 72 assisted living units and 28 memory care units. What the staff report fails to disclose and analyze, however, is that more than half of those units – 106 to be specific and could be increased if the developer chooses – will have multiple bedrooms. In the case of the independent living units, only 54 units will have one bedroom, while 48 will have 2 or 3 bedrooms. Of the assisted living units, 54 will be studios or 1 bedroom, and 18 will be 2 bedrooms. This underestimation leads to potentially significant under-analysis of actual Project conditions, including the need for adequate parking. This underestimation also significantly affects the environmental analysis, as described separately below.

As it relates to the land use at the site, the Project is characterized as a congregate care facility, with limited resident activity, particularly off-site. However, with 66 units having 2 or more bedrooms, this assumption is invalid. Bedrooms are provided to allow residents to accommodate roommates or guests, thereby raising the demand for parking and services at the site. The following Table illustrates the potential population at the Project under full occupancy conditions.

<b>Table 1</b>			
<b>Potential Project Population/Intensity</b>			
<b>Unit Type</b>	<b>Beds/Bedrooms</b>	<b>Persons/Bed or Bedroom</b>	<b>Total Population</b>
MC – Double	1	2	2
MC – Single	27	1	27
AL – Studio	12	2	24
AL – 1 Bedroom	42	2	84
AL – 2 Bedroom	12	2	24
AL – 2 Bedroom +	6	2	12 or 18*
IL – Studio	6	2	12

<b>Table 1</b> <b>Potential Project Population/Intensity</b>			
<b>Unit Type</b>	<b>Beds/Bedrooms</b>	<b>Persons/Bed or Bedroom</b>	<b>Total Population</b>
IL – 1 Bedroom	54	2	108
IL – 2 Bedroom	22	2	44
IL – 2 Bedroom +	18	2	36 or 48*
IL – 3 Bedroom	2	2	4
<b>Total</b>	<b>202 units</b>		<b>377 or 428</b>
MC: Memory Care. AL: Assisted Living. IL: Independent Living *2 + den can be assumed to allow a sleeper sofa for 2 additional residents/guests.			

The Memory Care units are not at issue. These residents will not drive, will be in a controlled environment, and will not impact parking or traffic in the area. However, the Assisted Living and Independent Living units will function much more like apartments than nursing home beds, given that these units offer multiple bedrooms and living configurations.

First, it must be assumed that the majority of the Assisted Living and Independent Living studios and 1 bedroom units will be occupied by 2 people. However, the 18 2 bedroom Assisted Living Units, and 42 2 and 3 bedroom Independent Living units could be occupied by 4 or even 6 people. Neither the staff report nor the Specific Plan describes any residential restrictions. There is no need for additional bedrooms if residents are not allowed roommates or guests. It must therefore be assumed that both Assisted Living and Independent Living units could be occupied by multiple persons in multiple bedrooms, with multiple vehicles requiring multiple parking spaces.

The Project provides only 189 parking spaces to accommodate both employees and residents. The staff report simply states that the parking ratio is inconsistent with the City's zoning ordinance, but that a parking study not appended to the Planning Commission materials exists, with which staff agrees. That parking study clearly does not consider the multiple bedrooms provided within the Project, the needs of roommates and guests, or the employees on-site. Although no data is provided on maximum and minimum shift employees, conservatively, the maximum shift would result in about 30 to 35 employees. Additionally, with every 2 residents, roommates and guests of the Assisted and Independent Living units having a car, there is a need for 204 (30 employees plus 348 residents divided by 2) to 235 (35 employees plus 399 residents divided by 2) parking spaces, without accounting for visitor parking for non-resident activity (friends coming for dinner or a party, for example). The parking structure is therefore deficient by 15 to 61 spaces, depending on the intensity of residency at the Project. Should any unit's residents have one car per resident, which is particularly likely in the Independent Living units, the parking shortfall will grow exponentially.

Since the site would be significantly over-built, there is no place for any additional parking within the Project site, and on-street parking will be the only option, in an area where it is not available currently. The Project plans will impact the neighborhood in a manner that

the Planning Commission did not consider or attempt to mitigate. Furthermore, as described in the analysis of the EIR provided below, the underestimation of the Project's potential population led the EIR to significantly underestimate the impacts of the Project on the environment.

### 3. The Conditional Use Permit Cannot be Approved without a Certified EIR

The Planning Commission did not have the authority to approve, or conditionally approve the CUP on September 26<sup>th</sup>. By doing so, the Planning Commission violated CEQA. As clearly stated in CEQA Guidelines Section 15004(a):

“Before granting any approval of a project subject to CEQA, every Lead Agency or Responsible Agency shall consider a final EIR or Negative Declaration...”

CEQA was established specifically to allow the public and decision makers to consider all potential impacts of a project before they determine to approve the project. In this case, the Planning Commission, which has the authority under CEQA to certify the EIR for the Project, did not do so and instead only recommended certification to the City Council. Without first determining, through certification, that the EIR addressed all environmental impacts of the Project, and that all feasible mitigation measures have been implemented, the Conditional Use Permit cannot be acted upon. This violation of CEQA is further compounded by the Planning Commission's violation of California land use law, which is separately described below.

### 4. The Conditional Use Permit Was Approved Improperly

As described in subsection A.3., the Planning Commission acted improperly under CEQA when it approved the CUP without first certifying the EIR. In addition, the Planning Commission approved a Conditional Use Permit for a use not permitted in the Commercial General land use or zoning designation, and not meeting Commercial General development standards. Instead, the Planning Commission assumed that the City Council would approve the General Plan Amendment, Zone Change and Zone Text Amendment (Specific Plan), and based its findings on those amendments. Such pre-determination is not allowed under State planning law.

The City had two options in this case:

1. If the General Plan Amendment, Zone Change and Zone Text Amendment were approved, the Planning Commission could have recommended to the City Council that the Conditional Use Permit be approved only after the Zone Text Amendment took effect (30 days after 2<sup>nd</sup> reading of the Zone Change and Zone Text Amendment ordinances, when the Specific Plan would take effect). Or,
2. The Conditional Use Permit should not have been heard until after the approval of the General Plan, and the effective date of the Zone Change and Zone Text Amendment.

In this case, the Planning Commission's approval is particularly inappropriate, because it was approving a CUP – a permit which by definition requires that land use compatibility be considered as a significant part of the process. This is not merely a review of the architecture and landscape plans, but a review of whether the Project's use is appropriate for and compatible with the location, given the designations in effect at the time the CUP is considered. In this case, a senior living facility is not compatible under the Commercial General designation, and the findings required cannot be made. The staff report admits this, for example, on page 10, where it states that the Project exceeds the Commercial General height standard of 50 feet. The only way that the Project's height can be approved is with approval of the Specific Plan, which the Planning Commission has no authority to approve. By approving the Conditional Use Permit based on findings that did not exist on September 26<sup>th</sup>, the Planning Commission invalidated its approval, and that approval must be rescinded.

## **B. EIR Analysis**

The EIR analysis of the Project suffers from the same underestimation of use as the staff report for the Project. The EIR actually worsens the underestimation, by basing its assumptions on one resident per bed. Although mentioned only in two locations in the EIR, the assumption will have made it impossible for the analysis to have been completed correctly. On the contrary, as described in the analysis provided above, it is entirely likely that the population of the project could be nearly double that considered in the EIR (278 new residents in the EIR vs. up to 428 new residents demonstrated above). Were this a congregate care facility, the EIR's assumptions might be credible, but based on the descriptions provided in the Specific Plan and the Planning Commission staff report, this is planned to be a senior apartment building with multi-bedroom units housing couples who live independently and have roommates or guests occupying their 2<sup>nd</sup> and 3<sup>rd</sup> bedrooms.

Because the EIR characterizes the Project as a nursing home or congregate care facility, rather than a senior housing project with 28 Memory Care units, the impacts have been miscalculated and mischaracterized. The results of these errors are described categorically below.

### **1. Traffic Impacts are Underestimated**

The EIR did not analyze traffic impacts at all, on the assumption the traffic generated by the Project would be almost half of what is generated by the current commercial center, as determined in the Initial Study/Notice of Preparation. However, as described above, the Project is not a congregate care facility – it is a senior apartment building with multiple bedrooms with 28 Memory Care beds. Based on the Institute of Traffic Engineers (ITE) Trip Generation Manual (11<sup>th</sup> Edition), one can accurately develop the trip generation for the Project, as shown below.

The ITE defines Senior Adult Housing, Multi-Family as:

Senior adult housing-multifamily sites are independent living developments that are called various names including retirement communities, age-restricted housing, and active adult communities. The development has a specific age restriction for its residents, typically a minimum of 55 years of age for at least one resident of the household.

The ITE further defines Congregate Care Facilities as:

A congregate care facility is an independent living development that provides centralized amenities such as dining, housekeeping, communal transportation, and organized social/recreational activities. Each individual dwelling unit often has a kitchenette. Assistance is typically available for housekeeping or minor household maintenance. Limited medical services (such as nursing and dental) may or may not be provided. The resident may contract additional medical services or personal assistance.

The ITE defines a Continuing Care Retirement Community as:

A continuing care retirement community (CCRC) is a land use that provides multiple elements of senior adult living. A CCRC enables a resident to transition in place from independent living to increased care as the medical needs of the resident change. Housing options may include various combinations of senior adult housing (both single-family and multifamily), congregate care, assisted living and nursing home.

Significantly, ITE adds to its description: "Caution should be used when applying these data. CCRC developments consist of various housing components...Therefore, the use of a single housing component may not fully represent the trip generation characteristics of these communities."

In this case, the Project is most consistent with a Continuing Care Retirement Community, as it will provide Memory Care, and Assisted Living and Independent Living units with multiple bedrooms. According to ITE, these three use types must be considered separately. The Initial Study and its traffic analysis, therefore, should have considered each of the three land uses separately, and assigned trips based on these three categories. Further, since the Assisted Living units consist of multiple beds (see Table 1 above), the trip generation for these units was under-counted.

Senior Adult Housing Multifamily: 102 units @ 3.24 trips per unit – 331 ADT  
Assisted Living: 156 beds @ 2.60 trips per bed – 406 ADT  
Nursing Home (Memory Care): 28 beds @ 3.06 trips per bed – 86 ADT

Had the trip generation been calculated correctly, it would have resulted in a total of 823 daily trips, more than double what was cited in the Initial Study/NOP. This represents a reduction of only 124 trips per day when compared to current conditions, for a use with very different travel patterns from the commercial center that currently occurs on the site.



As a result, the Initial Study did not consider the potential impacts associated with traffic from the proposed Project, and the analysis of traffic was improperly excluded from the EIR.

## 2. Air Quality Impacts

The effect of the underestimation of traffic impacts is most significantly seen in the calculation of air pollution generated by the Project. First, the California Emissions Estimator Model (CalEEMod) assumptions are based on a 0.5 acre city park, and 213 congregate care units. Why a city park would be factored into the analysis is unknown and baffling. The courtyards contained in the Project are ancillary to the use, and do not represent a city park. The mischaracterization of the units as congregate care further affects the analysis, since CalEEMod takes its definitions from ITE. Since the calculations for air emissions were based on an inaccurate assumption of congregate care, and a trip generation (537 ADT) that represents only 65% of the correctly calculated trip generation, the results of the modeling are necessarily incorrect. Without accurate inputs into the CalEEMod model, it is impossible to provide correct outputs. Therefore, the projected air emissions resulting from the Project are underestimated in the EIR, and do not correctly inform decision makers or the public of the impacts of the Project.

## 3. Energy Impacts

As with air quality impacts, the results of the analysis are only as good as the inputs into the CalEEMod model. Since the inputs were incorrect as it relates to use, unit types and trips generated, the gasoline, electricity and natural gas usage of the Project is underestimated, since it does not assume multi-bedroom apartments, but rather congregate care beds. This analysis needs to be conducted utilizing correct inputs, so that correct impacts can be assessed.

## 4. Greenhouse Gas Impacts

The analysis in the EIR relating to greenhouse gas (GHG) emissions also fails to accurately reflect the impacts of the Project, for two reasons. First, as is the case with the air quality analysis, the results of GHG modeling in CalEEMod are affected by the inaccurate and insufficient inputs into the model. The Project does not consist of a city park, and should not have been characterized as a congregate care facility. As a result, the GHG emissions contained in the EIR are lower than they should be and need to be recalculated using accurate assumptions for model inputs.

In addition, as determined by the San Bernardino Superior Court in *Upland Community First v. City of Upland*, the 3,000 ton threshold for residential development on which the EIR relies has been determined invalid, insofar as it was not adopted by the South Coast Air Quality Management District (SCAQMD), and that there is no evidence that the threshold was established based on scientific analysis. As a result, the EIR's reliance on the Project having lower than 3,000 tons in GHG emissions does not demonstrate that the impacts of the Project will be less than significant. The GHG impacts have not been

calculated correctly, and cannot be relied upon to determine that impacts of the Project will be less than significant.

## 5. Land Use and Planning Impacts

The analysis of General Plan goals and policies in the EIR's Table 4.7.B is wholly inadequate. This Table is intended to analyze whether the Project is consistent with various selected goals and policies. Instead of analysis, however, the consistency determinations are conclusionary (and conveniently positive) without providing substantial evidence. For example, in its "analysis" of the consistency of LU-D ("Maintain and protect residential neighborhoods by avoiding encroachment of incompatible land uses), the determination of consistency states:

Land uses surrounding the project site include a mix of commercial, industrial, and residential uses. The proposed project would develop a senior living community with on-site amenities, which would be compatible with surrounding land uses including adjacent residential neighborhoods. No conflict with this policy would occur.

This response provides absolutely no support for its conclusion, and actually mischaracterizes the Project's surroundings. In fact, other than a single story industrial building to the south, the Project is surrounded by residential development with single family homes and two-story multi-family units being the immediate neighbors. Based solely on this response, the EIR should have determined that the Project was inconsistent with the policy, since it did not demonstrate otherwise. This is only one example of the unsupported conclusions contained in the Land Use analysis. Other explanations are that the Project is not consistent with the General Plan, but that approval of the General Plan Amendment will make it so. This is not analysis, and does not support a finding of less than significant impacts associated with land use and planning. The EIR must accurately and completely analyze the land use impacts of the Project, and provide substantial evidence to allow decision makers and the public to make an informed decision.

## 6. Water Demand

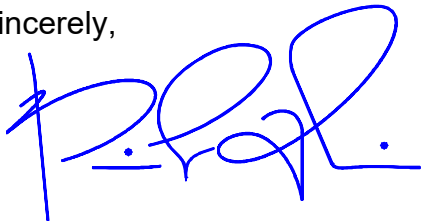
The EIR did not address the Project's water demand, on the basis that the Initial Study found impacts to be less than significant. That conclusion was erroneous. First, although the Initial Study states that the Project will require 25.85 acre feet (af) of domestic water annually, it does not explain the assumptions used for that calculation, so whether it is correct cannot be determined. The Initial Study goes on to state that because 25.85 acre feet is 0.1% of the City's total water use, the Project's impact will be negligible. What the Initial Study ignores is that the City's Urban Water Management Plan (UWMP) determined that water supply/demand in 2020 was 25,966 af, and that the supply/demand in 2045 is expected to be 26,054 af annually. This represents an increase over 25 years of only 88 acre feet. Based on the Initial Study's calculation, the Project will consume 30% of all the water supply the City UWMP determined would be available in the next 25 years. On that basis, only 400 more residential units can be constructed in the City between now and

2045, before the water runs out. The Project's water demand represents a substantial portion of the water that will be available for all new projects over the next 20 years in the City, but was dismissed as a minor contribution to water demand. The Initial Study should have found that the Project had the potential to significantly impact water resources, and the EIR must be amended to include a complete analysis of the impacts of the Project on the City's water supplies, including cumulative long-term impacts.

On the basis of the analysis that was conducted and described above, the proposed Bolsa Chica Senior Living Community cannot be approved. The City must rescind the CUP approval, revise and recirculate the EIR to reflect correct conditions, and then consider the Project again, once the public and decision makers have sufficient information to make an informed decision.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Thienes', with a stylized flourish at the end.

Brian Thienes