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Planning Commission
City of Covina
Covina City Hall
125 E College Street
Covina, CA 91723
Email: planning@covinaca.gov

Brian K. Lee, AICP, Director of Community Development
City of Covina
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Covina, California 91723
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Re: Oakmont Senior Living and Park View Hotel Project Mitigated Negative Declaration – Request for EIR

Dear Planning Commission and Mr. Lee:

This letter is submitted on behalf of Laborers International Union of North America, Local Union 300, and its members living in Los Angeles County and the City of Covina (collectively, "LIUNA" or "Commenters") regarding the Mitigated Negative Declaration ("MND") prepared for the Project known as Oakmont Senior Living/Memory Care Facility: southeast corner of East Holt Avenue and Park View Drive (Assessor Parcel Numbers 8848-019-044 and 8848-019-045) and the Park View Hotel Project: Park View Drive, near its termination at I-10 (Assessor Parcel Numbers 8448-019-052 and 8448-019-041) in the City of Covina ("Project").

These comments have been prepared with the assistance of Francis "Bud" Offermann, PE, CIH, a Certified Industrial Hygienist; and Matt Hagemann, P.G., C.Hg., QSD, QSP, an expert hydrogeologist; and Hadley Nolan, air quality specialist from the environmental consulting firm, Soil Water Air Protection Enterprise (SWAPE). Their comments and curriculum vitae are attached as Exhibit A, and Exhibit B, and are incorporated by reference in their entirety.

LIUNA asks the City to prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have significant unmitigated impacts, including impacts on air quality, greenhouse gas impacts, indoor air quality impacts, and traffic. An EIR is required to analyze these and other impacts and to propose mitigation measures to reduce the impacts to the extent feasible.

PROJECT DESCRIPTION

The proposed Project involves two components: the Oakmont Senior Living/Memory Care Facility ("Oakmont Site") and the Park View Hotel ("Park View Site"). The Oakmont Senior Living/Memory Care Facility and the Park View Hotel would be constructed and operated on specific development sites. The Oakmont Senior Living/Memory Care Facility is separated from the Park View Hotel site by an existing office building and a vacant property. However, the two Project sites have been evaluated together as one project within the IS/MND. The Oakmont Site proposes to construct a 94-unit assisted living facility with 103 beds, as well as 39 subterranean parking spaces and 8 surface parking lot spaces on the approximately 1.46-acre site. The Park View Site proposes to construct a 120-room hotel 50,000-square foot hotel with 120 associated parking spaces on the approximately 2.55-acre site.

STANDING

Members of LIUNA Local Union No. 300 live, work, and recreate in the immediate vicinity of the Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. Many LIUNA Local Union No. 300 members live and work in areas that will be affected by air pollution, traffic and cancer risks generated by the project. Therefore, LIUNA Local Union No. 300 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

Pursuant to CEQA, LIUNA Local Union No. 300 submits these comments in response to the City's proposed IS/MND. Under the circumstances presented here, CEQA clearly requires the preparation of an EIR and accordingly, the City should decline to adopt the proposed IS/MND.

LEGAL STANDARD

As the California Supreme Court recently held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 ["*CBE v. SCAQMD*"], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109 ["*CBE v. CRA*"].)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens*, *supra,* 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, *supra,* 124 Cal.App.4th at 927.)

An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." (Pub. Resources Code, § 21080(d); see also *Pocket Protectors*, *supra,* 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs., § 15371 ["CEQA Guidelines"]), only if there is not even a "fair argument" that the project will have a significant environmental effect. (Pub. Resources Code, §§ 21100, 21064.) Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or

mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (Public Resources Code §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, "may" means a *reasonable possibility* of a significant effect on the environment. (Pub. Resources Code, §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zischke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a ***preference for resolving doubts in favor of environmental review***." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928 [emphasis in original].)

As a matter of law, "substantial evidence includes . . . expert opinion." (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 15064(f)(5.)) CEQA Guidelines

demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, *supra*,124 Cal.App.4th at 935.) "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Resources Code, § 21068; see also CEQA Guidelines, § 15382.) An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." (*No Oil, Inc., supra,* 13 Cal.3d at 83.) In *Pocket Protectors*, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. (*Pocket Protectors*, *supra,* 124 Cal.App.4th at 935.) In the context of reviewing a negative declaration, "neither the lead agency nor a court may 'weigh' conflicting substantial evidence to determine whether an EIR must be prepared in the first instance." (*Id.*) Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the Court explained, "[i]t is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." (*Id.*)

DISCUSSION

An EIR is required whenever substantial evidence in the entire record before the agency supports a fair argument that a project may have a significant effect on the environment. (*CBE v. SCAQMD, supra,* 48 Cal.4th at 319-20; Public Resources Code § 21080(d); *see also, Pocket Protectors, supra,* 124 Cal.App.4th at 927.) As set forth below, there is a fair argument supported by substantial evidence that the Project may result in significant environmental impacts from the operation of the Project. Therefore, the City is required to prepare an EIR to evaluate the Project's impacts and analyze mitigation measures needed to reduce such impacts to a less than significant level.

A. The IS/MND Relies On Unsubstantiated Input Parameters to Estimate Project Emissions And Thus Fails to Adequately Analyze The Project's Air Quality Impacts.

The IS/MND for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod".) This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that several of the values input into the model were inconsistent with information provided in the IS/MND. This results in an underestimation of the Project's emissions, and requires an EIR to properly analyze the Project's potential impacts. The following sections highlight SWAPE's findings.

- The CalEEMod for the project contains an obvious typo. The Oakmont Senior Living/Memory Care Facility would be a 90,734-square foot building (IS. p. 22). However, review of the CalEEMod output files demonstrates that the Project Applicant inputted a building size of only 90,374 square feet – understating square footage by 360 square feet.

- According to the Oakmont of Covina Traffic Impact Study conducted by Hartzog & Crabill, Inc., the proposed Project's assisted living land use would generate 274 vehicle trips per day. However, the CalEEMod assumes 250 trips per day. The CalEEMod underestimates the number of vehicle trips generated by the proposed Project by 24 trips per day, or 8,760 trips per year. Therefore, the operational mobile-source emissions from the proposed assisted living facility are potentially significantly underestimated.

- According to the Covina Park View Hotel Traffic Impact Study, the proposed hotel land use would generate a total of 1,062 daily vehicle trips (see excerpt below) (Table 2.4-2, Appendix G, pp. 1,212). Review of the output files for the Park View CalEEMod model, however, demonstrates that the Project Applicant modeled existing emissions assuming that the Project would generate approximately 531 trips per day (see excerpt below) (Appendix B, pp. 397), resulting in an underestimation of 530 vehicle trips per day – fully half.

An EIR is required to remedy these serious calculation errors, and to properly analyze and mitigate the Project's air quality impacts.

B. Proximity to I-10.

The Project places sensitive receptors (elderly residents with compromised health) 300 feet from the 10-lane Interstate 10 Freeway. The Initial Study states that there will be no impact from the I-10 on residents, but has no evidence to support this assertion. The recent case of *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 392 held that a CEQA document generally need not consider the impacts of the environment – such as existing freeway emissions – on a project, but only of the Project on the environment. However, that decision did not authorize a CEQA document to provide false or unsubstantiated information to the public. The instant CEQA document falsely states that there will be no impact on the residents from the I-10 freeway, with absolutely no evidence to suppor that claim.

CEQA is first and foremost a law of public information and government accountability. The primary goal of CEQA is to provide the public with accurate information about a project and its environmental impacts. The EIR process "protects

not only the environment but also informed self-government." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.) By providing false and unsubstantiated information to the public on the health risks of the I-10 freeway, the Oakmont IS/MND fails to meet the fundamental requirements of CEQA. The *CBIA v. BAAQMD* case did nothing to change these basic informational requirements of CEQA.

Furthermore, CBIA v. BAAQMD held that it is still necessary to analyze the impacts of freeways if the proposed Project contributes or exacerbates those impacts. The Supreme Court held, "when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users." *CBIA v. BAAQMD,* 62 Cal.4th 369, 392. Here, the proposed Project –both the hotel and the Oakmont project, will add additional traffic to the I-10. This will exacerbate traffic congestion and related air pollution impacts from the I-10 on the Project. Thus, pursuant to CBIA v. BAAQMD, an EIR is required to analyze and mitigate the impacts of air pollution from the I-10 on the proposed Project.

Finally, both the California Air Pollution Control Officers Association (CAPCOA) and the California Air Resrouces Board (CARB) advise against locating sensitive receptors within 500 feet of large freeways. CARB, in its *Air Quality and Land Use Handbook: A Community Health Perspective* released in April of 2005.[1] Table 1-1 in the ARB handbook advises project applicants to "avoid siting new sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day."[2] The ARB states that elderly individuals are sensitive receptors and that nursing homes are sensitive land uses.[3] Review of the IS/MND reveals that the Project Applicant fails to justify the placement of the assisted living facility sensitive land use only 300 feet from the I-10 freeway. By failing to address or evaluate the potentially exacerbated health risk impacts resulting from the proposed Project location, the IS/MND fails to demonstrate a less than significant health risk impact. A DEIR must be prepared which adequately determines and mitigates the freeway DPM emission impacts on the proposed on-site sensitive receptors.

C. The IS/MND Fails To Adequately Evaluate Health Risks From Diesel Particulate Matter Emissions

With hardly more than a couple sentences of explanation, the IS/MND inexplicably concludes that the health risk posed to nearby sensitive receptors from

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[1] "Air Quality and Land Use Handbook: A Community Health Perspective," California ARB, April 2005, available at: https://www.arb.ca.gov/ch/handbook.pdf
[2] "Air Quality and Land Use Handbook: A Community Health Perspective," California ARB, April 2005, available at: https://www.arb.ca.gov/ch/handbook.pdf, p. 4
[3] "Air Quality and Land Use Handbook: A Community Health Perspective," California ARB, April 2005, available at: https://www.arb.ca.gov/ch/handbook.pdf, p. 2

exposure toxic air contaminant ("TAC") emissions and diesel particulate matter ("DPM") from the Projection would be less than significant. No effort is made by the applicant to justify this conclusion with a quantitative health risk assessment ("HRA".) The IS/MND's back-of-the envelope approach to evaluating a Project's health impacts to existing nearby multi-family residences is inconsistent with the approach recommended by Office of Environmental Health Hazard Assessment ("OEHHA") and CAPCOA.

OEHHA guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." (OEHHA, February 2015, *available at:* http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18.) The Project's proposed construction schedule extends for 30 months. IS/MND, Appendix A., pp. 9, 41. OEHHA also recommends a health risk assessment of a project's operational emissions for projects that will be in place for more than 6 months. (OEHHA, February 2015, pp. 8-6, 8-15; SWAPE, p. 8.) Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident ("MEIR.") *Id.* The Project would last at least 30 years and certainly much longer than six months.

In order for the IS/MND to be reasonable under CEQA, the cavalier assertions regarding the Project's health impacts on nearby residences must be substantiated with a thorough health risk assessment. Based on all of the guidance available from the expert agencies, a health risk assessment should have been prepared for the Project. The City and IS/MND's conclusory assertions fail to rebut the expert guidance.

SWAPE prepared a HRA to evaluate potential impacts from the Project. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. SWAPE analyzed impacts to individuals at different stages of life based on OEHHA and South Coast Air Quality Management District ("SCAQMD") guidance and relied on Diesel Particulate Matter ("DPM") emissions data gleaned from SWAPE's CalEEMod model.

- SWAPE concluded that the cancer risks posed to sensitive receptors over the course of construction and operation of the Oakmont Senior Living Facility are approximately **110 and 610 in one million**, respectively, which greatly exceed the SCAQMD's significance threshold of 10 in one million.

- SWAPE concluded that the cancer risks posed to sensitive receptors over the course of construction and operation of the Park View Hotel are approximately **130 and 63 in one million**, respectively, which exceed the SCAQMD's significance threshold of 10 in one million.

- SWAPE concluded that the excess cancer risks to nearby sensitive receptors due to Project construction and operation are approximately 240 and 670 in one million, respectively. Furthermore, combining the Project's construction and operation-related risks demonstrates that the excess cancer risk over the course of a residential lifetime (30 years) is approximately **910 in one million.**

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes a fair argument that the project will have a significant adverse environmental impact and an EIR is required. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"). The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Since expert evidence demonstrates that the Project will exceed the SCAQMD's CEQA significance threshold, there is a fair argument that the Project will have significant adverse impacts and an EIR is required.

As demonstrated by SWAPE's analysis, the Project will result in a severe health risk impact, whether the health impacts resulting solely from construction or operation of each project individually, combined, or whether the additive impacts from emissions generated by both projects together are evaluated. As such, an HRA must be prepared in a DEIR in order to adequately and comprehensively evaluate the health-related impacts that the Project will pose to nearby sensitive receptors. Since much of the health risk is created from construction equipment emissions, this is of particular concern to the members of LIUNA, which is composed of construction workers.

D. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts

Francis "Bud" Offermann, P.E., concludes that it is likely that the Project will expose future residents of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. See Ex. B.

Mr. Offermann is one of the world's leading experts on indoor air quality and has published extensively on the topic.

Mr. Offermann explains that many composite wood products typically used in residential building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Ex. B, p. 3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that residents at the Project will be exposed to a cancer risk from formaldehyde of approximately **180 per million**. *Id.*, p. 2. This is **18 times the SCAQMD CEQA significance threshold for airborne cancer risk of 10 per million.** Even if the Project uses materials that comply with the recent California Air Toxics Control Measure (ATCM) for formaldehyde, cancer risk will be **125 per million**, or 12 times the CEQA significance threshold. (Id. p. 3). Employees at the hotel and senior living center will also face significant cancer risks of cancer risk of **18.4 per million**, which exceeds the CEQA cancer risk of 10 per million. Mr. Offermann also conducted a time-limited analysis for future residents of the senior living center. Even assuming a lifespan of 30 years (rather than 70 years which is standard for health risk assessments), senior residents will experience a cancer risk of **53.6 per million**, which is 5.36 times the CEQA significance threshold.

Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.* at p. 6. Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. *Id.* Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id.* Since the MND does not analyze this impact at all, none of these or other mitigation measures are considered.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists from vehicle emissions from nearby roadways. As the comments submitted by SWAPE point out, however, the applicant and City have not estimated the cumulative health risk impacts of the Project on nearby sensitive receptors at the Project. See Ex. A., pp. 10-14. Consistent with SWAPE's observations, Mr. Offermann notes:

> The [IS/MND] does not assess the impact of existing or future traffic related emissions of $PM_{2.5}$ upon the outdoor or indoor air concentrations. The air quality analyses in this MND focuses only on the emissions (pounds/day) of air contaminants from construction and operation and compares these emissions to the requirements established by the South Coast Air Quality Management District (SCAQMD). The MND contains no air dispersion calculations of the cumulative impact these project related emissions and existing emissions have upon the concentrations of air contaminants in the outdoor and indoor air that people inhale each day.

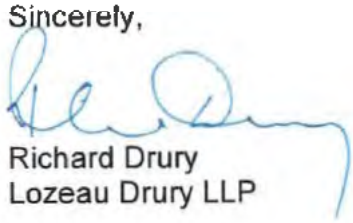
Ex. B, pp. 4-5.

Thus, an EIR must be prepared that analyzes indoor air quality impacts and also includes feasible mitigation measures.

CONCLUSION

For the foregoing reasons, the IS/MND for the Project should be withdrawn, an EIR should be prepared and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering our comments.

Sincerely,



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