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February 14, 2012

**Via Email**

Gregg Yamachika  
Contract Planner  
Development Services Department  
City of Sierra Madre  
Sierra Madre, CA 91024

Re: Revised Mitigated Negative Declaration for the  
Fountain Square Development West  
Kensington Assisted Living Facility

Dear Mr. Yamachika:

Given the issues with the original Mitigated Negative Declaration, I was pleased that the City of Sierra Madre revised and recirculated it for this project. However, the revised version does no better job of evaluating the adverse environmental impacts of the project. In fact, because the scope of the project has expanded and its concomitant environmental impacts increased, the Revised Draft Neg Dec is even more inadequate than the original. In order to comply with CEQA, a full environmental impact report should be prepared which includes proper analysis of appropriate alternatives.

The handling of the environmental review of this project hardly complies with the spirit of CEQA. CEQA is often referred to as the “full disclosure law”. Its job is to shine a light on potential environmental impacts of a project and evaluate them for decision makers. Here, the Neg Dec was revised supposedly to clarify certain items; however, the full 108 page document was recirculated without an errata or redline showing which changes were made. So in order to discover what was clarified, one would have to read and compare the complete original document versus the complete revised document. Recently a redline was included in the materials for the upcoming Planning Commission meeting (although it is fair to question whether this redline may be relied upon given the inaccuracies with other redlines on this project as discussed in detail below). This document was available for all of one day of the 20-day public review period. This seems a lot more like obfuscation than clarification.

Further, the responses to comments to the original Neg Dec were grossly inadequate. Many commenters pointed out that the project exceeds the dwelling unit density limit under Measure V. The original Neg Dec summarily dismissed these comments claiming that “traditional residential development standards such as density associated with dwelling units per acre do not apply.” It then stated that it will put the question of applicability of Measure V density limits to the Planning Commission and the Neg Dec “may be revised” if the Planning Commission determines Measure V’s density limit applies to the project. In fact, at its January

19<sup>th</sup> meeting, the Planning Commission did exactly that. The Revised Neg Dec, however, completely ignores this issue and continues to pretend that Measure V doesn't apply. Clearly in this case, "may" means "will not".

Many additional comments were deemed mere opinion and summarily dismissed, based upon the "disagreement among experts" concept under CEQA Guideline 15151. But this same guideline requires "adequacy, completeness, and a good faith effort at full disclosure." A perfect example of this is the response regarding whether the project is pedestrian-friendly, which is important to the evaluation of the project's aesthetics and land use compatibility. In my first comment letter I devoted a full paragraph explaining why the project is pedestrian unfriendly, as well as separate discussions of how this renders the Neg Dec's evaluations of aesthetics and land use inadequate. The City's response is that I stated my opinion and it "would be forwarded to decision-makers for their consideration." I guess that is supposed to count as full disclosure as required under CEQA Guideline 15151.

If the City had attempted a good faith effort for complete, or at least adequate, evaluation of this issue, then they could have explained what expert would consider a residential/institutional use in a commercial area perched high above the street and cut off from the sidewalk by a retaining wall to be pedestrian friendly. More important, however, than any expert's opinion (or mine for that matter), is what the City of Sierra Madre General Plan views as pedestrian friendly. I direct your attention to General Plan Objective L27 and its implementing policies:

**Objective L27:** Ensure that the commercial area be designed to enhance pedestrian activity, preserve historic patterns of development and foster community values.

**Policies:** **L27.1** Require that the ground floor elevation of a commercial space (storefront or professional) facing the sidewalk must be visibly and physically penetrable placing windows and doorways at the street elevation.

**L27.2** Encourage professional and personal service businesses and other non-retail uses to locate on second floors or to the rear of commercial properties allowing for retail uses along the street frontage.

**L27.3** Encourage the use of awnings, overhangs, porticoes, trellises, and other design elements which provide protection to pedestrians.

**L27.4** Encourage the use of architectural design elements such as showcase windows, cornices, and columns to provide interest along the sidewalk.

**L27.5** Require that front elevations be designed to mimic small individual storefronts even if one tenant intends to use the space. This may be accomplished using vertical design elements to break up the façade.

These provisions spell out the importance of enhancing pedestrian activity in the commercial area, calls for placing windows and doorways at street elevation, lists the types of architectural design elements that are pedestrian friendly (hint: not retaining walls or fields of parking), and shows its clear preference for retail uses on the ground floor facing the street with other uses (even office uses, let alone residential/institutional uses) behind or above the retail space. Clearly by this standard the project is pedestrian unfriendly and inconsistent with the General Plan.

The Revised Draft Neg Dec also avoids fulsome evaluation of environmental impacts by playing the shell game. When commenters point out that the project exceeds residential density limits, the Revised Neg Dec claims the project is institutional. Raise the fact that the project is incompatible with General Plan institutional provisions, and the Neg Dec says that the project is in a commercial zone, so those provisions don't apply. How about the General Plan provisions which prohibit new or expanded institutional uses in commercial area? The Neg Dec relies on the fact that an arcane bit of zoning code allows similar uses in any zone with a conditional use permit. Of course the findings for a CUP require that the project be consistent with the General Plan, and the General Plan (which was adopted after and supersedes the zoning code in question) clearly intends to prohibit institutional uses from taking over commercial areas. Despite the Neg Dec's attempts to dodge a holistic review of the project, it is fundamentally a residential/ institutional use in the middle of the town's commercial core.

Following are my detailed concerns with the Revised Neg Dec's review of relevant environmental factors:

**Section 3.1 Aesthetics.** This section is unchanged in the Revised Neg Dec, and as discussed above, the responses to prior comments are inadequate. As pointed out in my first comment letter, this is a pedestrian unfriendly, residential/institutional use which is out of place in the town's commercial core. During the recent Planning Commission hearing, even the project's architect described the project as having a "residential cottage-like feel". The Revised Neg Dec inadequately evaluates the aesthetic impacts of the project, which are significant. The only way these impacts could be mitigated to an insignificant level is to redesign the project to include active commercial uses at street level and to move the parking behind and/or underneath the buildings.

**Section 3.3 Air Quality.** This section is also unchanged, and remains inadequate to evaluate the air quality impacts of the project.

**Section 3.7 Greenhouse Gas Emissions.** This section is also unchanged, and remains inadequate to evaluate the greenhouse gas impacts of the project.

**Section 3.10 Land Use and Planning.** Not only is this section of the Revised Neg Dec unchanged, the project scope has expanded, so the evaluation is even more inadequate than in the original Neg Dec. The land use impacts of the project fall into two categories. First, the impacts of the building itself, and second, the wider impacts of the proposed General Plan amendment.

The building-specific impacts detailed in my first comment letter remain. These impacts alone are significant, and their evaluation in the Neg Dec inadequate. Additionally, as discussed above, the Planning Commission's determination that Measure V's density limits apply to the project means that the Revised Neg Dec's evaluation of land use impacts is even more inadequate and needs to be further revised.

Equally, if not more important, is the fact that the General Plan Amendment now contemplated as part of the project has application beyond the proposed building. During the Planning Commission's hearing, the City's environmental consultant stated that no separate environmental analysis of the General Plan Amendment was necessary because it was site specific. Even though it is contemplated that General Plan Policies L29.1 and L45.2 would be amended to allow institutional uses in all commercial areas in the City, the Revised Neg Dec nonetheless fails to perform any evaluation of the environmental impacts of this General Plan Amendment.

The Revised Neg Dec claims that no environmental review of the General Plan Amendment is necessary because there are currently no other institutional projects proposed and future projects would be subject to site-specific environmental review. This is the ultimate shell game. "Don't worry about the City-wide or cumulative impacts, we'll catch them later." Of course later when another project comes along, the project proponent will point to the General Plan Amendment and say you should have done proper environmental review then. In fact, because a General Plan-consistent project requiring only a CUP will typically be categorically exempt from CEQA, no environmental review will be performed at all. The warped logic of the Revised Neg Dec would allow institutional uses to gut the town's commercial areas without any CEQA ever. Let's extend this logic to an extreme hypothetical. There are currently no ten story buildings proposed in town. Hence amending the General Plan to allow ten story buildings with a CUP would have no impacts and need not be analyzed under CEQA. Ridiculous example to be sure, but exactly the same logic. Clearly the environmental impacts of the proposed General Plan Amendment must be analyzed. Currently the City is in the process of updating its General Plan, and contemplates doing a full EIR as part of the update process. The same should be the case here.

The Revised Neg Dec makes another half hearted attempt to avoid proper environmental review: it claims that the proposed General Plan Amendment is not providing for any new use, but is only intended to clarify the General Plan to reflect consistency with Section 17.60.030 of the Municipal Code. Just as with the definition of "dwelling unit" under Measure V, this is another attempt to effect significant change through clarification. This claim is fraught with numerous errors.

First, if there is an inconsistency between zoning and the General Plan, why is the General Plan being amended to conform to zoning? General plans supersede zoning. Typically, it is zoning that should be brought in conformance with the General Plan, not the other way round. It is even more the case here. The City has for many years had serious concerns with institutional uses supplanting commercial uses, eviscerating the town's commercial core and potentially decimating the City's economic viability. In order to address these concerns, when the General Plan was last updated in 1996, numerous provisions were included to encourage retail and other commercial uses while limiting institutional uses in commercial areas. The one line of zoning code in question, on the other hand, predates the current General Plan and may well have been boilerplate from adoption of that portion of the zoning code.

Second, the proposed General Plan Amendment modifies two policies in such a way as to be inconsistent with the objectives they are supposed to implement. Compare page 6 of the Revised Neg Dec (a copy of which is attached), the Planning Commission Resolution adopting the proposed General Plan Amendment (a copy of which is also attached), and the following redline of the complete General Plan provisions in question (proposed new text underlined):

**Objective L29:** Provide for a mix of uses which accomplishes a healthy balance of local services and visitor attraction while maximizing the City's revenues from property and sales taxes.

**Policies:** **L29.1** Limit institutional uses in the commercial business district but authorize uses such as convalescent homes, rest homes, and assisted living facilities if they have been granted conditional use permits.

**L29.2** Accommodate a diversity of commercial uses intended to meet the needs of local residents, including retail, offices, food sales and service, general merchandise apparel and accessories, dry goods, home improvement, gardening, financial services, personal services, entertainment and cultural uses.

**L29.3** Accommodate commercial uses intended to attract visitors such as gift shops, specialty shops, antiques, retail sales and rental of outdoor and recreational equipment, art galleries, sales of local art and crafts.

**L29.4** Allow for residential uses at the rear and above the first floor on commercial properties.

**Objective L45:** Maximize retail opportunities

**Policies:** **L45.1** Provide incentive for the location of retail on the first floor of commercial buildings.

**L45.2** Prohibit any new and the expansion of existing institutional facilities in the commercial area, except uses such as convalescent homes, rest homes, and assisted living facilities if they have been granted conditional use permits.

The first thing to notice is the redlining in the Planning Commission Resolution is wrong. Rather than show the proposed changes from the existing General Plan, it appears a redline interim versions of the proposed General Plan Amendment. As such it grossly underplays the importance of the amendment. This isn't a question of word choice as suggested ("obtained" versus "been granted") – the proposal changes General Plan policy to allow institutional uses in commercial areas.

At least the Revised Neg Dec correctly lists the text changes. But what it doesn't do is provide the whole provisions to show how the proposed modifications fit into context. How does the revised Policy L29.1 help implement Objective L29? How does allowing institutional uses to supplant commercial uses accomplish a mix of uses with a healthy balance of local services – even more important from a fiscal perspective, how does it maximize the City's revenues from property and sales taxes? How does the revised Policy L45.2 help implement Objective L45? How does allowing institutional uses to supplant commercial uses maximize retail opportunities? The obvious answer is that they don't. The revised Policies L29.1 and L45.2 are inconsistent with the objectives they are meant to implement and with the spirit of the General Plan as a whole.

Finally, the cumulative effect of allowing institutional uses to invade commercial areas and supplant retail uses would be catastrophic on the community. Sierra Madre has long struggled to attract retail uses, to generate sales tax to ensure the City's fiscal stability, and to provide commercial services for its residents. The City has had to adopt one of the highest utility taxes in the state in order to meet its budget obligations as it currently does not have a sufficient commercial tax base. There are a number of vacant or under utilized commercial properties in town (including on East Montecito where zoning allows commercial uses in addition to industrial uses and is considered part of the commercial core under Measure V). There are also a number of institutional uses that have previously sought to expand in downtown or have been contemplated. There are good and important reasons why the current General Plan encourages retail and other commercial uses and discourages institutional uses in commercial areas. It is telling as well that the General Plan update currently in progress contemplates strengthening these provisions rather than gutting them as this project proposes.

**Section 3.14 Public Services.** As the revised General Plan Amendment would allow institutional uses to overtake commercial areas, the fiscal impact on the City and its public services would be even more pronounced than with the original project. Nonetheless this section remains unchanged. Residential and institutional uses are generally net fiscal drains on municipal finances, especially those which would call for high demand for paramedic and other emergency services. Commercial uses tend to be net fiscal positives for cities. The proposed project reduces the City's supply of land used for commercial purposes and substitutes a residential/institutional use. Additionally, the cumulative effects of the General Plan

Amendment would result in many more institutional uses in place of commercial uses, further exacerbating the project's fiscal impacts on the City and its provision of public services.

**Section 3.16 Transportation and Traffic.** Again, unchanged and still inadequate.

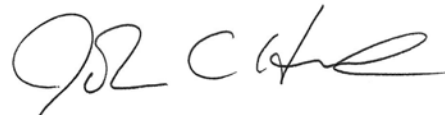
**Section 3.18 Mandatory Findings of Significance.** The Revised Neg Dec includes no discussion or evaluation of the cumulative impacts of the proposed General Plan Amendment, and as such Section 3.18(b) is inadequate. As discussed above, the General Plan Amendment would allow institutional uses to overtake commercial areas resulting in numerous environmental impacts that cumulatively would be significant and adverse.

In summary, the proposed project would have significant, adverse environmental impacts. A complete environmental impact report should be prepared to evaluate such impacts. Additionally, the EIR should include analyses of the following alternatives/mitigation measures:

- No project with demolition of the existing dilapidated building and site clean up. The simplest and most cost effective way to remedy the aesthetic concerns with the existing eyesore is to demolish it and clean up the site rather than approve a project that will have long lasting adverse impacts on the community.
- Commercial project which includes ground floor, street facing retail, restaurants, lodging, and other pedestrian-friendly uses. Such project should be redesigned to eliminate the need for sidewalk-adjacent retaining walls and to locate parking behind or underneath the buildings. No General Plan Amendment.
- Mixed use project with assisted living facilities located above and/or behind ground floor, street facing retail, restaurants, lodging, and other pedestrian-friendly uses. Such project should also be redesigned to eliminate the need for sidewalk-adjacent retaining walls and to locate parking behind or underneath the buildings. Includes a General Plan Amendment that only allows institutional uses as part of mixed use projects with retail as described in this paragraph.

Thank you for your consideration. Should you have any questions, please feel free to contact me.

Very truly yours,



John C. Hutt

Attachments:

Page 6 of the Revised Draft Mitigated Negative Declaration  
Planning Commission Resolution adopting the proposed General Plan Amendment

### **Project Entitlements**

In addition to the Specific Plan and Conditional Use Permit required for the proposed project, as described above under *Project Overview*, the City has determined that a General Plan Amendment is required to ensure consistency between General Plan land use policies and existing zoning regulations regarding institutional uses. The City has also determined that a Municipal Code text amendment is required to create the Specific Plan overlay zone.

**General Plan Amendment:** The General Plan Amendment is proposed to clearly indicate that assisted living facilities are a permitted use in the *Commercial* General Plan land use category. The General Plan Amendment serves to provide consistency with Title 17-Zoning of the Municipal Code; “homes for the aged” and “hospitals and sanitariums, rest homes, guest homes, convalescent hospitals and similar institutions” are permitted with a Conditional Use Permit in all zones in the City, with the exception of the *Residential Canyon* zone (see Section 17.60.030). The proposed General Plan Amendment would achieve General Plan/Municipal Code consistency with regard to the treatment of assisted living facilities. The proposed General Plan Amendment reads (new language italicized):

“L29.1. Limit institutional uses in the commercial business district *but authorize uses such as convalescent homes, rest homes, and assisted living facilities if they have been granted conditional use permits.*”

“L45.2. Prohibit any new and the expansion of existing institutional facilities in the commercial area, *except uses such as convalescent homes, rest homes, and assisted living facilities if they have been granted conditional use permits.*”

The General Plan Amendment would apply not just to the subject application and properties but to all properties in the City of Sierra Madre’s commercial business district.

**Municipal Code Amendment:** The proposed Municipal Code text amendment would allow for the establishment of an overlay zone to be implemented via a Specific Plan, the provisions of which would supersede the regulations of the underlying C and R-3 zones for the two subject properties. The proposed text amendment would add Chapter 17.41 to the Municipal Code to be entitled “Congregate Care Overlay Zone.” The new Chapter would include in particular the following:

#### 17.41.010 Development Regulations

A. Development of rest homes, guest homes, convalescent facilities, assisted living facilities and similar uses, and all development accessory thereto, shall occur in accordance with the Kensington Specific Plan adopted by Resolution No. 12-\_\_.

B. Any development not described in Subsection A shall instead comply with all requirements of the underlying zone.

## **1.9 – Project Objectives**

The project applicant desires to accomplish the following objectives:

- Provide a range of services and care for senior citizens.



**PC RESOLUTION NO. 11-20**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SIERRA MADRE, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF GENERAL PLAN AMENDMENT NO. 11-01 TO EXPRESSLY PERMIT THE ESTABLISHMENT OF CONVALESCENT HOMES, REST HOMES, AND ASSISTED LIVING FACILITIES AND SIMILAR INSTITUTIONS IN COMMERCIAL DISTRICTS WITH CONDITIONAL USE PERMITS**

THE PLANNING COMMISSION OF THE CITY OF SIERRA MADRE DOES HEREBY RESOLVE:

WHEREAS Fountain Square West, 12701 Treeridge Terrace, Poway, CA 92064 filed requests for approvals of a Conditional Use Permit and a Specific Plan to construct and operate a two-story, 58,000-square-foot assisted living facility on a 1.84 acre property located at 235 W. Sierra Madre Boulevard;

WHEREAS, Section 17.60.030 of the Sierra Madre Municipal Code permits "hospitals and sanitariums, rest homes, guest homes, convalescent hospitals and similar institutions" in any zone, except the R-C Zone, with the approval of a conditional use permit;

WHEREAS, Objective L29 of the Land Use Element of the General Plan encourages Commercial land uses to "provide for a mix of uses which accomplishes a healthy balance of local services and visitor attraction while maximizing the City's revenues from property and sales taxes";

WHEREAS Policy L29.1 states that institutional uses in the Commercial land use designation should be limited but provides no direction as to how such uses should be limited;

WHEREAS, in order to provide guidance and consistency as to the manner in which hospitals and sanitariums, rest homes, guest homes, convalescent hospitals and similar institutions can be permitted, but limited, in areas designated for Commercial uses by the Land Use Element of the General Plan, an application for General Plan Amendment No. 11-01 was filed by:

City of Sierra Madre  
Development Services Department  
232 W. Sierra Madre Boulevard  
Sierra Madre, CA 91024

WHEREAS, a General Plan Amendment is necessary in order to provide consistency between the General Plan and the Municipal Code by clarifying that while institutional uses may be permitted in areas designated in the Land Use Element of the General Plan for Commercial uses, they must be limited through the discretionary conditional use permit process;

WHEREAS, an environmental initial study for the Conditional Use Permit and the Specific Plan was performed pursuant to the California Environmental Quality Act ("CEQA") and the City staff has recommended that a Mitigated Negative Declaration be adopted indicating that the project will not have a significant adverse effect on the environment with the implementation of mitigation measures;

WHEREAS, a public hearing was held before the Planning Commission at the January 19, 2012 meeting, with all testimony received being made part of the public record;

WHEREAS, all necessary public hearings and opportunities for public testimony and comment have been conducted in compliance with California state law and the Municipal Code of the City of Sierra Madre.

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

**NOW THEREFORE**, based upon substantial evidence presented to this Commission during the January 19, 2012 public hearing, including public testimony and written and oral staff reports, the Planning Commission resolves as follows:

- (a) Based upon the findings noted above, the Planning Commission recommends the City Council revise General Plan Policies L29.1 and L45.2 (which changes shall be known as "General Plan Amendment No. 11-01") to provide as follows:

"L29.1. Limit institutional uses in the commercial business district but authorize uses such as convalescent homes, rest homes, and assisted living facilities if they have ~~obtained~~ been granted conditional use permits."

"L45.2. Prohibit any new and the expansion of existing institutional facilities in the commercial area, except uses such as convalescent homes, rest homes, and assisted living facilities ~~permitted by~~ if they have been granted conditional use permits."

- (b) The Planning Commission finds the proposed General Plan Amendment No. 11-01 is consistent with the goals and objectives of the City's General Plan and simply clarifies the manner in which hospitals and sanitariums, rest homes, guest homes, convalescent hospitals and similar institutions in districts designated for Commercial uses shall be limited.
- (c) Based on the information in the Mitigated Negative Declaration and its independent review, the Planning Commission determines that upon implementation of the Mitigation Monitoring Program, the project will not have an adverse impact on the environment and recommends that the City Council adopt the Mitigated Negative Declaration and direct that a Notice of Determination be filed.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

AYES: Commissioners  
NOES: Commissioners:  
ABSTAIN: Commissioners:  
ABSENT: Commissioners:

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Kevin Paschall, Chair  
Sierra Madre Planning Commission

ATTEST:

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Danny Castro, Director  
Development Services Department