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11-11-08

VIA Email November 10, 2008

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Comments on Recirculated Mitigated Negative Declaration ND 11-08

Senior Community Housing, Long Beach, 3635 Elm Avenue.

Comment 1:

In its original form Mitigated Negative ND 11-08 was certified when the Project was approved by the Planning Commission on August 21. The decision was then appealed. On October 3, long after the comment period on the MND had ended but prior to the City Council Hearing on the Appeal, comment was received from the South Coast Air Quality Management District. The Lead Agency then elected to postpone the Appeal Hearing, to amend the air quality section of the MND and to recirculate the MND.

Specific reference to the original MND as well as a listing of mitigation measures from the document can be found in the findings to the Planning Commission Decision. The substantial alteration of the MND during the appeal process does not appear to comply with the requirement under LBMC 21.21.505 that "All decisions on appeal shall address and be based upon the same conclusionary findings, if any, required to be made in the original decision from which the appeal is taken."

Recommendation:

Council should hear the appeal based on the original MND, and, if not disposed to sustain the appeal completely and deny the project, then should redirect the matter to the Planning Commission.

Comment 2

This Mitigated Negative Declaration was originally issued on July 31. The hearing at which the MND was certified by the Planning Commission took place on August 21. Responses to the MND had to be made by August 19, two days before the hearing.

I offered comment to the original MND questioning whether two days were adequate to review timely comments received on a 50 page MND.

The comment was ignored, as were all comments offered. Detailed comments I made to the Air Quality analysis were also ignored by staff and the planning commission. After filing an appeal of the Planning Commission action I forwarded a copy of the MND to The SCAQMD for comment. On Oct 3 SCAQMD offered comment to the Air Quality Section and made substantially the same observations as I had earlier.

SCAQMD comments were not ignored, however, but instead resulted in a last minute postponement of the City Council Hearing on the Appeal, the MND being amended with a completely new Air Quality Section incorporating extensive additional mitigation measures and the MND being re-circulated for comment on Oct 22.

It seems reasonable to assume that the lack of time allowed for consideration of comments received may have played a role in allowing what proved to be salient comments to go unheeded.

In the case of the re-circulated MND, however, the time allowed for consideration of comment is not better, but worse. The comment period for the re-circulated document ends only one day before the City Council Hearing on the matter. I again suggest that this is inadequate time to properly consider comment..

The allowance (or deliberate orchestration) of this last-minute timing indicates at least an indifference to, if not an outright disregard of the specific requirements under CEQA to consider comments received:

Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(Title 14 CA Code of Regulations, Chapter 3, Article 6, Section 15074(b) "Consideration and Adoption of Negative Declaration or Mitigated Negative Declaration").

Is one day adequate to achieve the goals outlined as the purpose of the review process, especially subsections c, d,e, and f ?

The purposes of review of EIRs and Negative Declarations include:  
(a) Sharing expertise,  
(b) Disclosing agency analyses,  
(c) Checking for accuracy,  
(d) Detecting omissions,  
(e) Discovering public concerns, and  
(f) Soliciting counter proposals.

(Title 14 CA Code of Regulations, Chapter 3, article 13, Section 15200 "Review and

Evaluation of EIRs and Negative Declarations”)

Recommendation:

The hearing on this project should be postponed or continued to allow adequate consideration of timely public comment on the re-circulated Initial Study and MND.

Comment 3:

Note: This comment was made to the original MND, and acknowledged by Staff as correct. The re-circulated MND contains the same error.

Page 3 In the “Description of Project” section of the Initial Study: “A landscaped one way driveway and new 6’ sound wall would separate the facility from the use to the west of the project site.”

The attached site plan does not appear to show a driveway to the West of the project, though there is a sound wall. A driveway to the South of the project is shown, but no sound wall.

Recommendation:

The Initial Study or the Site Plan should be corrected and the MND reviewed for any contingent effects of the error.

Comment 4:

Page 3 In the “Description of Project” section of the Initial Study states that the Project will require a Zone Change from (R-3-S to R-4-U), General Plan Amendment (from LUD #3B to LUD #5), ...

The General Plan broadly affects the general welfare; regulating development intensity and establishing a crucial balance between quality of life and the economics of land use throughout the city. Amendment decisions should consider impact beyond the boundaries of a specific site and address broad issues of consistency and compatibility of use and the protection of property rights.

The changes requested are enduring and fundamental changes in law, which, if granted, would allow, by right, an unbuffered collision of widely disparate residential densities and heights which does not, at this time occur anywhere in Long Beach.

This decision will set a precedent citywide. The far reaching long term impacts of such spot planning or spot zoning can’t be evaluated on a single project basis. Unaddressed and damaging further environmental impacts could remain forever unmitigated.

Few, if any, potential cumulative, indirect or off-site impacts are actually addressed in the MND, despite a specific requirement stated in the document to do so. (Page 5, number 2 under “Evaluation of Environmental Impacts”).

The MND deals only with the limited specifics of the applicant's current stated plans, architecture and use, though nothing in the Initial Study or MND provides any assurance that the proposed development would actually be constructed, and if constructed would not later be converted to a different use. The requested amendment of the General Plan to LUD 5 and zoning to R-4-U would allow, by right, a broad range of very high-density usage not considered at all in the MND. The findings in support of this project actually state in part: "Following the approval of the requested zone change to R-4-U, the applicant would be permitted to double the Project's by-right density of 48 units utilizing the provisions of Section 21.52.27 A of the Long Beach Municipal Code, resulting in a total of 96 permitted units.

Even if the use were to be tightly restricted to that currently stated by the applicant via a covenant that ran with the land, nothing would constrain the density to the 65 unit, 75 bed level the applicant "volunteers" to accept at this time. In any case the environmental effects of the precedent established would not be adequately evaluated let alone mitigated.

#### Recommendations:

- 1) Involve all stakeholders; including, but not limited to, the owner, developer, architect, planning department, city officials and the neighboring property owners and residents, in an open and cooperative process to arrive at a project scale and design that is consistent with the current General Plan and Zoning.
- 2) If recommendation 1 above is not implemented or is unsuccessful, and the present entitlement requests remain; in order to provide the Planning Commission and City Council with environmental analysis adequate to address the full range of potential long term, large scale, and cumulative effects of changes in land use law of the scope and precedent-setting nature requested by this applicant, a formal Environmental Impact Report should be undertaken.

#### Comment 5

##### Discussion of Environmental Impacts: I Aesthetics, c

The principle public objections to the project aesthetics voiced at the initial Community Meeting and at the Planning Commission Study Session were to the proposed height, mass and density. Design changes made since the initial presentation have produced no significant reduction in height. Cosmetic changes to the upper two floors have reduced the square footage of the project 5%, with no reduction in the number of units.

In justifying a finding of "Less than Significant with Mitigation Incorporated" the MND offers only an undefined and unsubstantiated characterization of the proposed five-story project as "consistent with the urbanized character of the neighborhood" "given the area's mixture of land uses and building heights".

The only Mitigation proposed is the promise of an eventual Construction Staging and Management Plan dealing only with the construction phase.

In reality there is no five-story residential construction within miles of the site. This would be one of the tallest, most massive, most dense residential buildings North of downtown. North of the site there is no residential construction over two stories for blocks. South of the site (presently R-3-S), residential height and density increase consistent with the R-4-S zoning south of 36<sup>th</sup> to Wardlow. This application would place R-4-U adjacent to R-2-N and R-1-N to the North.

In (mis)characterizing the area, the MND appears to combine the “drive-by” appearance of residential areas with nearby construction in the commercial strips along Long Beach Blvd and Atlantic Avenue. If mere proximity to tall and dense-appearing commercial construction is adequate to justify increased residential height, mass and density, then few Long Beach residential neighborhoods will be safe from encroachment by multi-story high-density development.

#### Recommendations:

- 1) Re-evaluate the aesthetic impact of the project compared to the contiguous residential areas.
- 2) Alternatively, if the appearance of proximate development in commercial zones is to be considered in determinations of residential aesthetics, provide the Planning Commission and City Council with Citywide mapping identifying all areas of “urbanized character” and “mixture of land uses and building heights” similar to the proposed site.

Note: The re-circulated MND includes as an appendix additional purported analysis of Aesthetic Impacts apparently written by consultants hired by the applicant. Appending this material to this MND in the course of an appeal proceeding is out of compliance with LBMC 21.21.505. The legitimate creation and content of CEQA documents in Long Beach is the responsibility of the Department of Development Services and should not be left to applicants, developers or their agents. This material should not be included in the MND.

#### Comment 6

##### Discussion of Environmental Impacts: I Aesthetics, c I-1

Development is projected to take 15 months. I-1 promises a Construction and Staging Management Plan will be approved prior to issuing permits. This project would require excavation and construction encompassing very nearly the entire area of a small lot located at the corner of two narrow streets adjacent to residential areas and a school. The aesthetic difficulties of construction management warrant more analysis than a promise of an eventual plan addressing a standard list of items.

#### Recommendation

Provide a detailed plan identifying and proposing mitigation of the aesthetic impacts of project construction as part of the MND.

## Comment 7

### Discussion of Environmental Impacts: III Air Quality, Amended Analysis

#### Background

While this section states that the air quality analysis in the original MND indicated construction emissions exceeding thresholds for NO<sub>x</sub> and ROG, no explanation is offered as to why those results failed to be recognized as significant, failed to disqualify the MND and failed to require an EIR as CEQA provisions unequivocally require. SCAQMD action indeed gave the Lead agency cause to re-examine the potential impacts to air quality. The section fails to mention that public comments I submitted, though substantially the same as those offered by the SCQMD, did not given the lead agency cause to do anything. The Background section also omits the facts that the SCAQMD only received the MND because I sent them a copy and that the agency was only afforded the time to offer belated comment due to an appeal being filed.

#### Amended Analysis (b)

Section I c of the MND estimates construction to take 15 months. Construction emission calculations in the original MND were based on an 18-month construction period. Emails from the applicant, obtained pursuant to a public records request provide information used to formulate the original MND and indicate a construction period lasting from 18 to 22 months. Finally, the revised Air Quality Analysis appears based on a construction period of 13 months.

Assisted living facilities may use back-up generators to provide emergency electrical power. No mention is made of emissions related to fuel storage, exercising or operation of a backup generator.

Unmitigated emissions in three areas exceed significance levels, and extensive mitigation measures are proposed to reduce levels to less than significant. The section makes no mention of the mitigation monitoring program and enforcement measures to be imposed to assure compliance

#### Recommendations

- 1) Determine the correct construction period. Correct the relevant section(s) of the MND.
- 2) Determine if a backup generator will be used at the proposed facility and if so the fuel to be used. Correct emissions calculations.
- 3) Provide details of how mitigation measures would be monitored and what enforcement mechanisms would be available and implemented to assure compliance.

## Comment 8

### V Cultural Resources (a)

The project site is directly across Elm Avenue from a Church at 402 E 37<sup>th</sup> Street.

Prior to the current owner buying the property, another local developer in escrow on the property and planning condominiums for the 402 E 37<sup>th</sup> lot was informed by the Long Beach Planning Department during the entitlement process that the Church was of potential historic significance and could possibly be protected from demolition. This level of concern does not seem consistent with a finding of no impact on a historically significant site by a 65 foot tall building less than 50 feet away.

Recommendation:

Adequately investigate both the potential historic significance of the Church at 402 E 37<sup>th</sup> Street, and the potential impacts of this project upon it

Comment 9

Discussion of Environmental Impacts: VII Hazards and Hazardous Materials c

The MND states that the project site is located within a quarter mile of more than one school. The site is actually directly across the street from a school playground. In section III the MND estimates construction-related air quality impacts approaching Local Significance Thresholds for three pollutants despite extensive mitigation measures. In this section, however, the MND states that during construction, equipment at the project site would produce “some emissions”, but that such equipment as required by unspecified law would have unspecified devices in place to control emissions. In any case compliance with existing law does not constitute mitigation. The MND offers no estimate of emissions, and no standards for emissions. A Less than Significant Impact is stated.

Although oil extraction activities are known to have occurred throughout this area and continue to this day, the MND fails to consider the potential for the release of hazardous materials during the extensive excavation this project requires. Archival photographs actually document oil extraction activities adjacent to the project site if not on the site.

Recommendation:

- 1) Revise this section to incorporate the revised Air Quality information. Present analysis and explanation of how estimated pollutant levels were deemed safe for school children in order to support the finding of a Less than Significant Impact.
- 2) Thoroughly investigate any past oil extraction, processing or storage activities on the site. Given what is known of the area history and the potentially poor resolution and uncertainty in historical records, even if no such activity is documented, develop and implement mitigation measures to preempt or at least minimize potential impacts on area receptors from known or unforeseen residual hazardous materials on the site.

Comment 10

## Discussion of Environmental Impacts: VIII Hydrology and Water Quality a-j

The MND discussion of Wastewater impact and standard mitigation practices fails to account for the fact that the intersection of Elm Avenue and 37<sup>th</sup> street directly in front of the project site is currently subject to street flooding over the curbs during even modest rain events. 37<sup>th</sup> Street is often flooded nearly curb to curb from Elm to Atlantic as water drains south down Elm Avenue from Bixby Road and east along 37<sup>th</sup> Street from Long Beach Boulevard. The nearest storm drain is at the corner of Atlantic and 37<sup>th</sup>.

## Recommendation

The Hydrology section as pertains to storm water should specifically consider the current inadequate storm water drainage and the potential impacts and specific mitigation related to the proposed development.

## Comment 11

## Discussion of Environmental Impacts: IX Land Use and Planning b

(Comment 4 deals with land use as well)

This section of the MND states that because the project proposes amending the General Plan, changing the Zoning and all other applicable planning and land use policies and regulations to conform to the project, the project will not conflict with those regulations and the environmental impact will be less than significant.

By this logic, the impact of any use whatever can be rendered less than significant merely by including within the project any and all required changes in land use law and/or policy, (thus rendering this section useless).

The current General Plan Designation and Zoning of the project site; LUD 3-B and R-3-S buffer the lower density land uses of LUD 1 zoned R-2-N and R-1-N across 37<sup>th</sup> Street to the north, and the higher density developments south of 36<sup>th</sup> Street designated LUD 4 and zoned R-4-N.

This is exactly in conformance with the definition of the LUD 3B Moderate Density Residential District: “to provide apartment and condominium living opportunities in moderate density projects which conform in height and general exterior design to the lower density neighborhoods on which they may border;”

The LUD 5 Urban High Density Residential District by comparison is defined as follows: “This high density district is created specifically for application in very urban settings, such as the downtown area.



It is to accommodate a highly urbanized lifestyle in which interactions among home, workplace, shopping and entertainment are strong and regional transportation facilities are nearby...”

The MND cites only the proximity of the project site to nearby commercial uses and to Long Beach Boulevard to support the opinion that LUD 5 is appropriate and compatible for the neighborhood.

The project requests a zone change; from the existing R-3-S Three family residential district. “This District recognizes the constraints small lots place on multi-family developments and the adverse consequences related to large scale multi-family development in existing neighborhoods of single-family use.” to the R-4-U zone; “The R-4-U district is a high-density, multifamily residential district. It is intended to provide housing opportunities in an urban context and design style to support downtown activity center employment with adjoining housing.” The MND maintains that R-4-U would appear to complement the project site given the area’s urban context and the existing multi family residential land uses along Elm Avenue.

Note: The re-circulated MND includes as an appendix additional purported analysis of Land Use Impacts apparently written by consultants hired by the applicant. Appending this material to this MND in the course of an appeal proceeding is out of compliance with LBMC 21.21.505. The legitimate creation and content of CEQA documents in Long Beach is the responsibility of the Department of Development Services and should not be left to applicants, developers or their agents. This material should not be included in the MND.

#### Recommendations:

- 1) Consider the actual magnitude, scope and ramifications of the requested entitlements in determining the environmental impact of the project, rather than merely whether an adequate process of legal changes and regulatory acquiescence resulting in compliance has been incorporated into the project proposal.
- 2) Provide complete definitions of the existing and requested General Plan and Zoning classifications. Consider all points of the definitions to render unbiased assessments of the suitability of the requested changes to the project site, the neighborhood and to similar neighborhoods elsewhere in the city.
- 3) If proximity of a residential district to commercial use and to a major transportation corridor justifies a general Plan amendment to LUD 5, provide a citywide map showing all areas appropriate for that Land Use Designation.
- 4) Likewise provide a citywide map showing all areas where “urban context” and “existing multifamily residential land use” combine to support re-zoning to R-4-U.

#### Comment 12

##### Discussion of Environmental Impacts: XI Noise c,d

The proposed project is directly across the street from a school, offices and within 200 feet of residential properties. Construction is projected to continue for between 13 to 22 months depending on what source is used. The only mitigation proposed is to limit construction hours from 7 to 7 on weekdays and 9 to 6 Saturday. These rules appear to already be in place by ordinance and do not constitute mitigation.

The proposed development is a 75 bed senior assisted living facility and as such has the potential to generate many more medical emergency 911 calls requiring paramedic and ambulance response than other residential facilities with the same number of residents but not restricted to seniors. The MND does not consider the impact of emergency vehicle noise.

The proposed development will also require valet parking for all residents and guests. The MND does not consider the noise impact of any paging system for the parking attendants.

#### Recommendations

- 1) The MND should propose actual noise mitigation, i.e. measures to reduce sound levels: temporary sound walls, sound absorbing materials, mufflers on equipment etc. as well as possible coordination of work hours in conformance with the school schedule.
- 2) The MND should provide a detailed analysis of the expected incidence, intensity and distribution of emergency vehicle related noise, and mitigation measures.
- 3) The MND should analyze and mitigate the potential for off-site noise impacts of any audible paging system for valets.

#### Comment 13

##### Discussion of Environmental Impacts: XIII Public Services a

The proposed development is a 75 bed senior assisted living facility and as such has the potential to generate many more medical emergency 911 calls requiring paramedic response than other residential facilities with the same number of residents but not restricted to seniors. Paramedic response by the Long Beach Fire Department is typically a pumper truck and a paramedic unit. The MND does not consider the impact of medical emergency 911 calls on the fire department.

#### Recommendation

The MND should provide a detailed analysis of the expected incidence of medical emergency 911 calls, and the potential impact on the fire department. Mitigation measures should be specified if required.

#### Comment 14

##### Discussion of Environmental Impacts: XV Transportation / Traffic a,b,d

The MND refers to a 100 page Traffic Study provided by the applicant and available on the Planning Department website but not mailed to those that requested hard copies of the MND.

The study is based on observations conducted for a total of four hours on a single Sunday in May 2008, and for a total of five hours on the following Tuesday. No representation of the statistical significance

of the sampling is offered, although a considerable amount of calculations are conducted and visual materials introduced.

A key finding of the study is presented in page five in the section titled Environmental Setting: 18 feet is the minimum width required for safe passage of a vehicle along a parking strip. 37<sup>th</sup> Street measures 36 feet at the project site, the minimum required. Elm Ave South of 37<sup>th</sup> is 38 feet wide. To quote from the study: "Elm Avenue is 30 feet in width, however, north of 37th Street adjacent to the residential uses. Red curb has been installed along portions of Elm Avenue in this segment north of 37th Street to mitigate the potential parking and travel conflicts." ( Red curb is limited to a single 150 foot run in front of the Mormon Temple.)

The study simply asserts: "It should be noted that the Project will not add to the present parking and traffic volume along this segment of Elm Avenue north of 37th Street."

Support for the above statement appears to consist of unsubstantiated predictions of the behavior of drivers entering and leaving the proposed project. In the projections, although some 85% of drivers are predicted to exit the facility and head North on Elm Avenue, all but approximately 5 % turn either left or right on 37<sup>th</sup>. A similarly small percentage of drivers are projected to ever approach the site from the North on Elm.

The behavior of drivers actually counted in the study, however is quite different from that projected for the project drivers. For instance, of drivers observed approaching 37<sup>th</sup> street from the south on Elm, almost half continued straight.

The study also purports to predict year 2010 peak hour traffic at the three intersections studied, during weekday morning and afternoon periods and at mid-day on Sunday both with and without the planned project.

For Elm North of 37<sup>th</sup> weekday peak hour traffic, both morning and afternoon is predicted to be unchanged whether the project is built or not. Not one additional car. In the future Sunday peak hour, one additional peak hour car is predicted to drive North on Elm from 37<sup>th</sup> and one additional car will head south if the project is built.

This may be fortunate as not only is Elm Avenue North of 37<sup>th</sup> dangerously narrow according to the study criteria, but the pavement (and sidewalks) are literally crumbling up to Bixby Road. Even one additional car per hour would be too many.

Note: The re-circulated MND includes as an appendix additional purported analysis of traffic and parking impacts apparently written by consultants hired by the applicant. The additional material in the added appendix appears to rely on the same data as the original traffic study. No additional survey seems to have been conducted, simply more analysis. Appending this material to this MND in the course of an appeal proceeding is out of compliance with the LBMC 21.21.505. The legitimate creation and content of CEQA documents in Long Beach is the responsibility of the Department of Development Services and should not be left to applicants, developers or their agents. This material should not be included in the MND.

## Recommendations

The purported traffic study provided by the applicant is mainly of minimal data inflated with calculation plus filler material. Unsupported assumptions yield predictable results so favorable to the project as to be comic. Evaluations of traffic impacts in the MND should be based on an independent study based on statistically significant sampling and conservative assumptions.

### Comment 15

#### Discussion of Environmental Impacts: XV Transportation / Traffic f

The MND indicates that the 65 parking spaces planned for the facility are adequate but fails to mention that the subterranean stalls are tandem and for valet use only. The conditions of approval for the project however, specify that valet parking be provided only for religious holidays and special events. Even if Valet service is free and operates 24/7 no assurance is given that visitors and especially staff won't avoid the potential delays of valet parking and self-park on the surrounding residential streets. Staff parking related to prior institutional uses in the immediate residential area was problematic and is a cause of concern to many in the neighborhood.

Street parking in the residential areas on Sundays is often completely unavailable due to simultaneous activities at area religious institutions and at the Petroleum Club. No mention is made nor mitigation offered for the potential weekend "perfect storm" when visitors to the proposed project could be expected to also produce a maximum amount of traffic and parking demand.

(The applicant's traffic study indicates that no parking problem will exist because over four hours on the one Sunday observed, street parking was available.)

#### Recommendation

Conduct a comprehensive study of the adequacy of the tandem and valet parking scenario. Provide mitigation if required. Conduct a thorough study of street parking, particularly on Sundays and weekends. Provide for mitigation.

### Comment 16

#### Discussion of Environmental Impacts: XVI Utilities and Service Systems c)

See Comment 10 and Recommendation

### Comment 17

## Discussion of Environmental Impacts: XVII Mandatory Findings of Significance b

See Comment 4 and recommendations regarding potential cumulative effects not considered or mitigated

### Comment 18

## Discussion of Environmental Impacts: XVII Mandatory Findings of Significance c

The first floor site plan attached to the MND appears to show the location of existing high voltage (4800 volt ?) power lines, pole mounted transformers and multiple lower voltage power lines in a right-of-way along the Western boundary of the project site. If the poles are to remain in place at the locations shown, the MND does not evaluate or mitigate the possible exposure of residents and staff of the proposed facility to the potentially damaging health effects, nor to possible dangerous interference with implanted and other electronic medical devices, due to exposure to electromagnetic fields (EMF) generated by the power lines

The site plan shows the power poles along the West property line of the site, with the cross bars extending closer to the structure above the rear setback. The tops of the existing power poles are lower than the proposed building. The separation between the building and the wires appears less than 13 feet horizontal in some areas and at the same elevation as occupied areas of several floors.

Although determination of the risk, if any, of adverse health effects due to exposure to EMF is controversial and highly uncertain, exposure does increase with proximity to a source, effects may be cumulative and any effects that may exist could also have a greater impact on the elderly and those with pre-existing medical conditions. Medical device manufacturers often include warnings to avoid exposure to strong magnetic and electromagnetic fields.

### Recommendation

If the existing power lines are not to be relocated or placed underground as part of the project, given the close proximity of occupied areas of the building to high voltage and to lower voltage power lines and equipment, it would be prudent to conduct an analysis of the potential health effects of EMF as well as of the potential for dangerous interference with electronic medical devices and to propose mitigation measures.