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VIA: HAND DELIVERY AND EMAIL

Re: PA10-060 St. Matthew Catholic Parish and School Project

Dear Planning Commissioners:

Aaronson, Dickerson, Cohn & Lanzone represents certain neighbors of St. Matthew Catholic Parish and School (the "**Applicant**") and submits this letter on these neighbors' behalf. We have reviewed the current Master Plan proposal for a 11,683 sq.ft. gymnasium and associated parking reconfiguration (collectively, the "**Project**") submitted by St. Matthew Catholic Parish and School (the "**Applicant**"), the Mitigated Negative Declaration for the Project (the "**MND**"), the Revised Initial Study dated February 12, 2003 (the "**Initial Study**"), the Parking and Traffic Analysis Reported prepared by Hexagon Transportation Consultants, Inc. updated June 28, 2011 (the "**Traffic Study**"), the Planning Commission staff report dated June 1, 2012 including all of the exhibits (the "**Staff Report**"), and the public comment letters and responses to comments.

Based on this review, the MND should be rejected and Project should be denied for the following reasons, each of which is discussed in more detail below: (1) The Project is deficient 446 parking spaces required by the Municipal Code and therefore must be denied unless a variance is obtained; (2) Approval of the Project and adoption of the MND would violate the California Environmental Quality Act; (3) The proposed Qualified Overlay Zoning reclassification

violates State Planning and Zoning Law; (4) The required findings for the Project approvals cannot be met because it does not comply with the City's General Plan; and (5) The proposed Special Use Permit is vague, ambiguous and unenforceable.

It is important to keep in mind that the neighbors we represent are *not* – and have never been -- opposed to the proposed new building *itself*, whether it be cast in its current proposal as a school gymnasium or in its 2009 version as parish community center. Instead, they are opposed to the Project because it is *deficient* for the reasons set forth in this letter. The Project does not comply with the City's parking requirements set forth in the Municipal Code. It does not comply with the General Plan policies and goals. Its environmental impacts were not properly evaluated under CEQA. The proposed Qualified Overlay Zone Reclassification is an improper attempt to avoid seeking approval of the three variances required for this Project. The Special Use Permit which purports to carefully regulate the uses on the Project Site to protect the surrounding neighborhood is vague, ambiguous and unenforceable. Despite these neighbors' tireless efforts over the past six years to meet with the Applicant and communicate these deficiencies, the Applicant has refused to correct them. Instead, it has simply re-casted the 2009 application for a Parish Community Center (that the Planning Commission rejected) into a school gymnasium, in a transparent attempt to avoid meeting the associated parking and minimum floor area ratio requirements (or seek the three variances required to deviate from these requirements). Yet the uses, hours and capacities of the current proposal for a new gymnasium are nearly identical to the rejected 2009 proposal for the Parish Community Center (compare the current June, 2012 Staff Report with the June 4, 2009 staff report for the PA06-009 St. Matthew Parish Community Center; also see Mike Cunningham's letter to the Planning Commission dated March 14, 2012). Unfortunately, this disappointing response has left these neighbors little recourse but to seek our legal assistance in preparing and submitting this letter.

A. The Project is Deficient 446 Parking Spaces Required by the Municipal Code and Therefore Should be Denied Unless a Variance is Obtained

The parking conclusions in the Staff Report, Traffic Study, and Initial Study all rely on one faulty assumption: that the proposed new "gymnasium" is a "school building" for purposes of determining parking requirements. However, this 11,683 sq.ft. multi-use building is *no such thing*. Its enormous size (nearly three times the size of a standard NBA basketball court and over twice the size of St. Matthew Episcopal's proposed 5,200 sq.ft. gym) and nearly unrestricted uses and operational hours are not consistent with any elementary or junior high school gyms in the City of San Mateo (the "City") or to our knowledge, anywhere else in the County. Because the gymnasium will not be limited to school uses, and is clearly designed to accommodate non-school uses, it cannot be considered a school building for purposes of calculating parking requirements. Instead, it must be held to the same parking requirements as the existing "auditorium" as both the auditorium and the new gymnasium will accommodate similar school and non-school uses. Its failure to comply with these requirements violates Section 27.64.160(9) of the City's Municipal Code and therefore the Project, as proposed, must be denied unless a variance is obtained.

The Special Use Permit set forth in Exhibit B to the Staff Report does not restrict the

gymnasium to school uses and in fact explicitly *permits* use of the building for any “St. Matthew sponsored event or activity” which, according to Section 1 of the Special Use Permit could include masses, funeral services, weddings and any other “standard religious practice and/or activity or standard use”. (Special Use Permit, Section 6.) Additionally, the Special Use Permit explicitly authorizes gymnasium use for evening adult basketball, a before and after school care program, and a day camp. The only restrictions on operational hours are between the hours of 10:00p.m. and 7:00a.m. and during “regularly scheduled masses”, yet even these loose restrictions do not apply to time for dispersal and cleanup, “religious services” and “major events.” (Special Use Permit, Section 8.) The broadly authorized uses and hours for the gymnasium (which are discussed in more detail in Section E of this letter below) are not consistent with elementary or junior high school use.

Despite the fact that the Special Use Permit clearly authorizes non-school use of the new gymnasium, the Staff Report, Initial Study, and Traffic Study each rely on the false assumption that the gymnasium will be only for school use. This false assumption is, in turn, relied upon as the basis for the erroneous conclusion that the gymnasium is a “school building” and therefore no additional parking is required. Page 6 of the Staff Report states that “the new gymnasium is for use only by the school... [s]ince the school is not expanding enrollment or employees... additional parking is not required (citing Municipal Code Section 27.64.160(5)(c), requiring only one space per school employee, as the applicable parking code requirement).” It later concludes that “since the proposed gym will be used solely for school purposes, the gym building will not result in the requirement for additional parking spaces.” (Staff Report, p. 9.) The Initial Study repeats this same reasoning based on the same false assumption on page 28. The Traffic Study, which provides the basis for the conclusions in the Initial Study, states in the project description that “the proposed School Gymnasium will be used for Saint Matthew Elementary and Junior High School athletic uses and will not be used for any outside athletic programs.” (Traffic Study, p. 3.) Clearly, given the Special Use Permit’s broad authorization, this is not the case. It is also worth noting that at the community meeting held in the Spring of 2010 at Ward Hall attended by City Planner Bill Wanner, David Parisi, of Parisi Associates Transportation Consulting, explained that “[i]f there are activities like adult league basketball held in the new building, then it would disqualify it from being considered a school gym.”

Because the new gymnasium will accommodate non-school uses, and will in fact accommodate the exact same uses and hours as the existing auditorium (except that, unlike the auditorium, it can be used for competitive athletic events so in fact its use is even broader), it does not qualify as a “school building” and therefore is not eligible for the parking requirements for school buildings set forth in Section 27.64.160 (5) of the Municipal Code which require only one space per school employee. Instead, contrary to the conclusions in the Staff Report, MND, Initial Study and Traffic Study, the new gymnasium should be held to the same parking requirement staff applies to the auditorium (see p. 7 of the Staff Report) that is set forth in Section 27.64.160 (9) of the Municipal Code. This section calls for one parking for every 35 sq.ft. of floor area. Therefore, 334 spaces are required for the new 11,683 sq.ft. gymnasium. Using the estimates on page 7 of the Staff Report, the existing number of required parking spaces for the site is 418 and therefore a total of 752 total parking spaces are required to bring the Project site and all of its existing and proposed uses into compliance with the City’s parking

requirements. As proposed, the Project will provide only 306 total spaces. This results in a shortfall of 446 spaces that are required by the City's Municipal Code, translating into a 59% shortfall!

This significant deficit violates Section 27.64.160 (9) of the Municipal Code and therefore the Project must be denied unless it is revised to incorporate the required parking spaces or a variance is obtained.¹ This zoning code violation is not corrected by the proposed Q(7) Zoning Overlay Classification because the Q(7) Overlay only corrects deviations from the R-1 maximum floor area ratios and restrictions on parking *location*. It does not provide for a deviation in the *number* of parking spaces required. Even if it did, such a substantial deviation -- 59% -- could not be justified. Furthermore, this violation is not otherwise justified by the Traffic Study because, as mentioned above and further discussed below in Section B of this letter, the Traffic Study is fatally flawed because it incorrectly assumes that the new gymnasium will be used only for school uses and therefore does not properly evaluate the parking demand and associated impacts of the project as a whole.

B. Approval of the Project and Adoption of the MND Would Violate CEQA

1. There is No Substantial Evidence in the Record That Supports Adoption of the MND

The MND relies upon a fatally deficient Initial Study and Traffic Study and therefore its adoption under the California Environmental Quality Act ("CEQA") is unsupported. A mitigated negative declaration may only be adopted if *all* of the potentially significant effects of the project will be avoided or reduced to a less-than-significant level. (Pub Res Code §21080(c)(2); 14 Cal Code Regs §15070(b).) An agency's finding that a project will have no significant environmental impacts will be set aside if there is no support in the record for it. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.3d 296, 311.) CEQA places the burden of environmental investigation on the public agency, not the public. If an agency fails to properly evaluate a project's environmental consequences, it cannot support a decision to adopt a negative declaration or mitigated negative declaration by asserting that the record contains no substantial evidence of a significant adverse impact. An "agency should not be allowed to hide behind its own failure to gather relevant data." (Id at 311. See also *City of Redlands v. County of San Bernadino* (2002) 96 Cal.App.4th 398.) The Initial Study and Traffic Study do not provide substantial evidence for adoption of the MND under CEQA because, as discussed below, each is fatally flawed.

¹ . Note that a variance for this very same zoning code violation (along with two others to permit deviations from the maximum floor area ratios and parking lot location) was proposed by the Applicant in its 2009 application for the new Parish Community Center. The Planning Commission rejected this variance (along with the other two variances required for the project) on the grounds that the variance would be materially detrimental to the public health, safety or welfare or materially injurious to other property or improvements in the neighborhood because the increased parking deficiency "can be reasonably projected to intensify parking problems currently experienced by residents in nearby neighborhoods" and "can be reasonably anticipated to create a project generated impact upon City resources and the City's ability to provide service in regards to public health, safety, and welfare." (Findings for Denial, PA06-009 St. Matthew Catholic Parish Community Center, Section V-B(3) and (6).)

a. The Initial Study and Traffic Study Each Fail to Evaluate the Impacts of the Project as a Whole

The Initial Study, and the Traffic Study upon which it relies, fails to evaluate the whole of the Project as proposed and is therefore fatally deficient. An initial study is a preliminary analysis prepared by the lead agency to identify significant environmental effects of a project and determine whether an EIR, a negative declaration or a mitigated negative declaration should be prepared. 14 Cal. Code Regs §§15365; 15363(c). The Initial Study must describe the project to encompass the entirety of the activity that is proposed for approval to ensure that all of the potential impacts of the project will be examined before the project is approved. (14 Cal Code Regs §15378(a).) An initial study that fails to describe the entire project is fatally deficient. (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214.) This prevents agencies from chopping large projects into small ones, each with a minimal impact on the environment, to avoid full environmental disclosure. See 14 Cal Code Regs §15003(h); *Bozung v. LAFO* (1975) 13 Cal.3d 263, 283. A lead agency may not limit environmental disclosure by ignoring the development or other activity that will ultimately result from initial approval. (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325.)

Neither the Initial Study nor the Traffic Study, each relied upon as support for adoption of the MND, evaluates the impacts of the “whole of the project” because the Project as proposed is not the same project that was evaluated in these studies. As discussed above in detail in Section A, both the Initial Study and Traffic Study are based on the false assumption that the gym will be restricted to school use only. (See Initial Study pp. 6 and 9 and Traffic Study p. 3.) Therefore, because neither study considers the non-school authorized uses such as adult basketball, a day camp, and other “St. Matthew sponsored events and activities” permitted by the Special Use Permit, these studies did not evaluate the environmental impacts of these uses. It is also not entirely clear from our review whether the Project involves a change in the use of the existing auditorium and whether this change in use has been evaluated as part of the Project. In any event, the Initial Study, which relied upon the Traffic Study for its transportation conclusions, did not evaluate the “project as a whole” and all of its reasonably foreseeable impacts as required by CEQA. Therefore, the Initial Study, and the Traffic Study upon which it relies, are fatally deficient and cannot be considered substantial evidence supporting the adoption of the MND. (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214; *Sundstrom v. County of Mendocino* (1988) 202 Cal.3d 296, 311.)

b. The Traffic Study Analysis Relies on Flawed Data

The Traffic Study is also fatally deficient because it relies on flawed data. Because, as discussed above, the Traffic Study assumes that the new gymnasium would be used only for school uses when in fact it will be used also for church and other significant non-school uses, all of its data relying on this assumption is flawed. The flawed parking and traffic data presented in the Traffic Study is compounded because three of the four parking surveys were conducted in the summer when there is no school activity and church attendance would be expected to be

lower due to family vacations. (Traffic Study, p 8.) In addition, the Traffic Study fails to survey traffic at the intersection of 9th and El Camino where cars drop off students. The study also fails to survey traffic that enters the school by the driveway on El Camino. Furthermore, the Traffic Study improperly relies on a temporary, impermanent lease with a bank across the street in its parking demand analysis. Because this lease is not permanent and its terms cannot be enforced by the City, the additional parking it promises to provide cannot be counted in the parking analysis. The Traffic Study's failure to gather representative data, failure to include a key drop off point and ingress and egress point, and improper inclusion of parking spaces provided by a temporary agreement, are material errors leading to understated traffic and parking survey data. As such, the Traffic Study cannot be considered substantial evidence for adoption of the MND and should be disregarded. (*Leonoff v. Monterey County Bd. Of Supervisors* (1990) 222 Cal.3d 1337.)

c. The Initial Study's Conclusions are Unsupported.

Moreover, many of the conclusions in the Initial Study are unsupported and therefore cannot be relied upon as substantial evidence supporting adoption of the MND. For example, while the Initial Study checklist concludes that there will be "no impact" on a scenic vista, its discussion only addresses impact on scenic vistas *from the Project site*. It completely fails to address the Project's impact on scenic vistas *from neighboring properties*. (Initial Study, p. 5.) Likewise, the Initial Study concludes, without any supporting evidence, that despite that the Project will significantly increase the impervious surface area of the Project site (by at least 11,683 sq.ft. plus additional amounts due to the proposed parking reconfiguration), the Project "will actually result in a slight decrease in water leaving the site." (Initial Study, p. 18.) However, no explanation for this apparent contradiction is provided other than a vague reference to "on-site stormwater management measures" which are not described. The total existing and proposed total impervious surface areas are not even provided. Furthermore, the Initial Study states that the Project is estimated to increase noise levels by "only" .4 DBA without including or referencing any evidence supporting this estimate. (Initial Study, p. 24.) Moreover, the Initial Study is devoid of any explanation supporting its conclusion that the Project will not conflict with any applicable City land use plan, policy or regulation. For example, while it explains that the Q Overlay zone will permit certain zoning deficiencies, it completely fails to explain how the Project or its proposed Q Overlay Zone will be in conformance with the General Plan. (Initial Study, p.22.)

When an initial study checklist is used to provide the lead agency findings for a negative declaration, the checklist must be supported by evidence in the administrative record. An initial study must disclose the data or evidence supporting the study's environmental findings. (14 Cal Code Regs §15063(d)(3); *Citizens Ass'n for Sensible Dev.t v. County of Inyo* (1985) 172 Cal.3d 151, 171; *Sundstrom v. County of Mendocino* (1988) 202 Cal.3d 296.) The record of a lead agency's action must demonstrate, and not simply assume, that significant impacts will not occur. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.3d 296.) Here, because there is no substantial evidence in the record supporting many of the Initial Study's conclusions, these unsupported conclusions cannot be relied upon in the adoption of the MND.

2. An EIR Must be Prepared Because there is a Fair Argument that the Project will Result in Significant Impacts

There is a fair argument, based on substantial evidence in the record, that the Project will result in a significant impact and therefore an EIR must be prepared. A lead agency must consider all the evidence in the record of its proceedings, not just its initial study of the project, when deciding between preparing an EIR or adopting a negative declaration. Pub Res Code §21080(c)–(d), 21082.2. The information that must be considered includes any comments received during the public review process. 14 Cal Code Regs §15074(b). An agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of “B” St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) This is true even if the lead agency is also presented with other substantial evidence indicating that the project will have no significant effect. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of “B” St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002; *Brentwood Ass’n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.3d 491.) This fair argument standard 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. (*Friends of “B” St. v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

Because, as discussed above, the Initial Study gravely underestimated traffic counts and parking demand due to flawed data and its failure to evaluate the whole of the project (including the non-school uses of the new gymnasium), a fair argument can be made that the Project will result in a potentially significant traffic impact. There is also a fair argument that, based on the fact that the Project will result in an increase in impervious surfaces on the Project site by at least 14% (based on the Applicant’s calculation that the existing buildings total 85,841 sq.ft.) and the elevation of the Project site, the Project will substantially increase the rate or amount of surface runoff in a matter which would result in flooding on or off site and therefore result in a potentially significant hydrological impact. (See Mike Cunningham letter to the Planning Commission dated August 26, 2011, p. 5-6.) It can also fairly argued that the 32 ft. height of the gym will block neighboring views of the hillsides (despite that the height was reduced to comply with R-1 development standards) resulting in a “substantial adverse effect on a scenic vista,” which is considered a potentially significant impact on aesthetics. (See Mike Cunningham letter to the Planning Commission dated August 26, 2011, p. 5.) Finally, the discussion in Section D below presents a fair argument that the Project will have a potentially significant land use impact because it would conflict with applicable City land use plans, policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, CEQA requires preparation of an EIR.

C. The Q Zoning Overlay Reclassification Violates Planning and Zoning Law

1. The Project Site Does Not Qualify for the Qualified Overlay Zone

The Project, as proposed, includes adoption of an ordinance to establish a “Qualified (Q7) Overlay Zone” and a zoning reclassification to apply this Q7 Overlay Zone to the Project

site. Pursuant to Section 27.60.100 of the Municipal Code, the Qualified Overlay Zone was established “to provide for development of land pursuant to standards and regulations which reflect the unique characteristics of a site.”

The Project site does not qualify for the Qualified Overlay Zone because there is no evidence in the record which shows that the Project site has any unique site characteristics as required by Section 27.26.100. In fact, the City itself made a determination, in its denial of the Applicant’s 2009 application, that the Project site contained no unique site characteristics. It found that “[t]here are no exceptional or extraordinary circumstances or conditions applicable to the property that do not apply generally to properties in the same zone, neighborhood or the City of San Mateo.” (Findings for Denial, PA06-009 St. Matthew Catholic Parish Community Center, Section V.A.)

Furthermore, Government Code Section 65855 requires the Planning Commission to include reasons for a zoning reclassification recommendation. However, the record is completely devoid of evidence showing any justification for the proposed zoning reclassification of the Project site. The Staff Report attempts to justify application of the Overlay Zone to the Project site by stating, without citing any examples, that the “Q overlay designation has been used in the City to provide development criteria for *uses* that are unique to a particular zoning district.” Even if this were in fact the case and this was a proper interpretation of Section 27.100.100 (which is suspect since it clearly refers to unique *characteristics of a site* not unique *uses in a particular zoning district*), churches and schools are not unique uses to the R1-C (single family) district. To the contrary, the R-1 district explicitly *permits* these uses with a special use permit. Municipal Code §27.18.030. In any event, the staff report does not explain why application of the Q Overlay Zone to the Project site – and only the Project site -- is necessary or why it would further the City’s health, safety and welfare. (See *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256.)

There is no evidence in the record which demonstrates that there is any characteristic of the Project site which makes use of the Project site under its existing zoning impractical. Instead, it appears that the proposed zoning reclassification is solely for the purpose of enabling the Applicant to avoid the required findings for variances that otherwise would be required and are applicable to similarly situated properties.

2. The Proposing Zoning Classification Conflicts with the General Plan

Furthermore, the Q7 Overlay Zone conflicts with the City General Plan. Local zoning ordinances are required to be consistent with the adopted general plan. (Government Code §§65860 and 65910.) The proposed resolution establishing the Q7 Overlay Zone set forth in Exhibit D to the Staff Report makes the conclusory statement that “the proposed rezoning is consistent with the City’s General Plan.” However, there is no evidence in the record supporting this conclusion. As such, the City cannot make the required recitals set forth in Exhibit D and cannot establish the Q7 Overlay Zone or approve the zoning reclassification.

The proposed findings for approval set forth in Exhibit A to the Staff Report cite LU 1.18

in its promotion of a Q Overlay for the Project. LU 1.18 encourages the retention of major institutions and special facilities such as “San Mateo County Events Center and College of San Mateo...,” and “allow reuse or redevelopment of institutions ...subject to the approval of a Specific Plan Master Plan.” LU 1.18 does not apply to St. Matthew. St. Matthew is not a major institution nor is it a special facility in the genre cited above. In any event, there is no “reuse or redevelopment” proposed – the Applicant is simply adding a building to its already developed campus -- and no evidence that should the Project be denied, retention of St. Matthew’s would be at risk. Even if this policy did apply to St. Matthew’s the findings do not explain how the Q7 Zoning Reclassification itself is consistent with or furthers this policy.

Exhibit A to the Staff Report also references LU 1.9 which requires “protection of established predominately single family areas”. Exhibit A states that the Project is consistent with this policy because “the Special Use Permit contains specific provisions for the protection of the single-family neighborhood surrounding the high school property.” First, there is no high school on the Project site – it is an elementary and junior high, without any current plans for a high school. Second, as discussed in more detail below in Section E, the Special Use Permit is too vague and ambiguous to be enforceable in this regard.

Moreover, the proposed findings in Exhibit A do not address the following policies, neither of which, on their face appear to be consistent with the proposed Q7 Zoning Reclassification:

LU 1.10: Commercial Development. Encourage industrial, service, retail, and office development which is compatible with the desired character of the area and with adjacent residential areas in terms of intensity of use, height, bulk and design.

LU 1.19: Legal Non-conforming Developments. Allow legally established non-conforming uses and buildings to be maintained and to be reconstructed if destroyed by fire or natural disaster; allow **minor** expansion of legal non-conforming developments.

Adding a second 11,863 sq.ft. gymnasium cannot be considered a minor expansion under LU 1.19. Neither is it necessarily compatible with adjacent residential areas in accordance with LU 1.10. The Q7 Zoning Reclassification therefore should be denied on the basis of these General Plan inconsistencies alone.

3. The Proposed Zoning Reclassification Constitutes Illegal Spot Zoning

The proposed zoning reclassification overlay would apply the QV Overlay Zoning to only one property – the Applicant’s property -- allowing the Applicant to build out more of its seven acre property than the owners of the other R-1 zoned properties in the neighborhood surrounding the Project site, effectively discriminating against the surrounding land owners to the benefit of the Applicant. Because no rational reason for this preferential treatment exists in the record, such an action would be arbitrary and capricious and constitute illegal spot zoning.

Illegal spot zoning can occur when most of a zoning district is devoted to a limited or restricted use but additional uses are permitted in one or more "spots" in that district, essentially giving preferential treatment to the "spot" and discriminating against properties in the rest of the zoning district. (See *Wilkins v. City of San Bernadino* (1946) 29 Cal.2d 332.) As one commentator notes, spot zoning is "the oldest recognized form of zoning corruption ... Historically, spot zoning concerns centered on municipal favoritism (or bribery) ... Identified instances of spot zoning are always presumptively invalid." (Ryan, "Zoning, Taking, and Dealing: The Problems and Promise of Bargaining in Land Use Planning" *Harvard Negotiation Law Review* (Spring 2002) Vol. 7:337, p. 352.) Since spot zoning involves the "singling out [of] a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners," it "is the very antithesis of planned zoning." (*Griswold v. City of Homer*, 925 P.2d 1015, 1020 (Alaska 1996); see also *Pharr v. Tippett*, 616 S.W.2d 173, 177 (Texas 2001) ["Spot zoning as preferential treatment which defeats a pre-established comprehensive plan. ... It is piecemeal zoning, the antithesis of planned zoning."]; *Smith v. Skagit County*, 453 P.2d 832, 848 (Wash. 1983) ["Spot zoning has come to mean arbitrary and unreasonable zoning action by which a smaller is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan."].) *Godfrey v. Union County Bd. of Comm'rs*, 300 S.E.2d 273, 275-76 (N.C. Ct. App. 1983) [requiring a "clear showing of a reasonable basis for suspected spot zoning".].)

In the attached Minute Order dated 3/08/2012 issued by the Superior Court of California County of Orange (Attachment 1), Judge Andler determined that the rezoning of a single 7 acre property from single family residential to a newly established senior housing zoning ordinance constituted illegal spot zoning and was arbitrary and capricious because (a) it was inconsistent with the surrounding residential properties, allowing for a greater density than that which existed for the surrounding properties; (b) there was no characteristic of the property that made use under the original zoning impractical, (c) there was no showing as to how the comprehensive plan was furthered by the proposed rezoning; and (d) there was no otherwise rational basis for the rezoning.

The proposed reclassification here is likewise invalid for each of the reasons set forth in Judge Andler's order and therefore should be denied. It provides for development standards that are inconsistent the surrounding residential properties, allowing for a greater density than the permitted and existing densities for the surrounding properties. There is no characteristic of the Project site that makes its use under the R-1 zoning impractical (in fact its use as a church and school is permitted under the R-1 zoning with a special use permit). As discussed above, the Project is inconsistent with the General Plan, and in any event, there is no showing as to how the General Plan will be furthered by the proposed zoning reclassification. And finally, as discussed above, there is no otherwise rational basis for the proposed zoning reclassification.

4. A Parcel Merger is Required

Even if the Q7 Overlay Zoning Reclassification were legal and appropriate, the proposed ordinance adopting Q7 Overlay Zone attempts to apply a 0.31 maximum floor area ratio to the entire Project site as a single parcel, despite that the Project site is three separate legal parcels. To avoid misinterpretation and misapplication of this requirement in the event one or more of these parcels is sold to another owner, a parcel merger of three separate parcels into one legal parcel should be required as a condition of approval in the event this Project is approved over the objections, deficiencies and violations raised in this letter.

D. The Required Findings for the Project Approvals Cannot Be Met

The Planning Commission cannot recommend approval of the Project because it cannot make the required findings for the Site Plan and Architectural Review and the Special Use Permit, two of the other required entitlements for the Project. The Planning Commission is required to issue written findings on all adjudicative decisions, such as the Special Use Permit and the Site Plan and Architectural Review, in order to "bridge the analytical gap between the raw evidence and ultimate decision" (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515-517.) Based on the evidence in the record, several of the required findings set forth in Municipal Code Section 27.08.030 and 27.74.020 cannot be found and therefore these approvals must be denied.

In accordance with Municipal Code Section 27.08.030, prior to approving the Site Plan and Architectural Review, the Planning Commission must find that "[t]he development meets all applicable standards as adopted by the Planning Commission and City Council, conforms to the General Plan, and will correct any violations of the Uniform Building Code, Zoning Code or other municipal codes..." This finding cannot be met and therefore Site Plan and Architectural Review approval must be denied. As discussed above in Section C(2), the Project does not conform with the General Plan because it does not comply with General Plan policies LU 1.9, 10 and 1.19. It is also inconsistent with Goal 5: "[p]rovide an adequate parking supply for new development" for the reasons discussed above in Section A above. It is also not clear whether the Project would comply with UD 2.14 which requires "new development and building alterations to conform with the City's Sustainable Initiatives Plan and subsequent City Council adopted goals, policies, and standards pertaining to sustainable building construction" as this is not addressed either in the Staff Report or the Initial Study. Furthermore, as discussed above in Section C(1) it does not comply with Municipal Code Section 27.26.100 because it does not qualify for the Qualified Overlay Zone. Even if it did qualify for the Qualified Overlay Zone, the rezoning would not correct the Project's noncompliance with Municipal Code Section 27.64.160 (9) (discussed in Section A above) because the Qualified Overlay Zone does not provide a deviation from the required number of parking spaces set forth in this requirement.

Prior to approving the Special Use Permit, Municipal Code Section 27.24.020 requires the Planning Commission to find that the Project "will not adversely affect the general health, safety, and/or welfare of the community, nor will it cause injury or disturbance to adjacent property by traffic or excessive noise." The proposed findings of approval set forth in Exhibit A to the Staff Report state that this finding can be met because "the Special Use Permit places special conditions on the operation of the church and school..., which limits the number of

students and employees, limits the use of buildings at certain times, and requires adherence to a parking and traffic management plan.” (Exhibit A to Staff report, Section IV.2.) However, as discussed below in Section E, due to the vague and ambiguous language in the Special Use Permit it is devoid of any concrete limitations to protect the community and is otherwise unenforceable. As such, this finding cannot be met and the Special Use Permit must be denied.

E. The Special Use Permit is Vague, Ambiguous and Unenforceable

The church and school uses on the R-1 zoned Project site require a Special Use Permit in accordance with Municipal Code Sections 27.18.030 and 27.74.010. The proposed Special Use Permit is set forth in Exhibit B to the Staff Report and purports to impose conditions that the Applicant itself has proposed as part of the Project. As discussed above in Section D of this letter, this Special Use Permit is relied upon to make many of the findings for approval set forth in Exhibit A to the Staff Report. It is also used as the purported mechanism to enforce many of the assumptions relied upon in the CEQA environmental review documents, including the Initial Study and the Traffic Study.

However, contrary to the proposed findings set forth in Section V of Exhibit A to the staff report and contrary to Municipal Code Section 27.74.010, the Special Use Permit does not “carefully regulate” the church and school uses to ensure protection of the surrounding residential neighborhood because it does not contain the restrictions to do so and is otherwise too vague and ambiguous to be enforceable. And contrary to the assumptions made in the CEQA documents, the Special Use Permit does not restrict the proposed uses of the new gymnasium to school uses, or, for that matter, ensure that its uses will not occur simultaneously with church masses and religious services.

While the Special Use Permit purports to impose restrictions on the new gymnasium and other existing facilities on the Project site, there are too many ambiguities and loopholes for any of the so-called restrictions to hold water:

- As discussed above in Section A of this letter, the Special Use Permit does not – contrary to the assumptions made in the CEQA documents -- restrict use of the new gymnasium to school uses. Instead it explicitly permits non-school uses that in turn are undefined, essentially allowing the same uses proposed in the 2009 application for the Parish Community Center that was denied. (compare the Staff Report with the June 4, 2009 staff report for the PA06-009 St. Matthew Parish Community Center; see also Mike Cunningham’s letter to the Planning Commission dated March 14, 2012)
- By prohibiting use of the gym for any “non- St. Matthew sponsored event or activity” it indirectly allows the gym to be used for a “St. Matthew sponsored event or activity”. But what is a “St. Matthew sponsored event or activity”? Does this mean that any event or activity is allowed as long as it is “sponsored” by St. Matthew?

- Similarly, the Special Use Permit prohibits rental of the gymnasium to “outside organizations”. What are “outside organizations”? Does this mean the gym can be rented to “inside organizations”?
- It allows for use by “day camps that are primarily for St. Matthew School students.” What does “primarily” mean? Is the “day camp” subject to the enrollment restrictions for the school (625) set forth in Section 7 of the Special Use Permit?
- The Special Use Permit purports to restrict the uses for the existing auditorium to “the parish and school activities set forth in #1 above” but the referenced Section 1 does not define “parish activities”.
- As for the gymnasium, it prohibits the auditorium from being rented out or used for any “non- St. Matthew sponsored event or activity” but such events and activities are undefined. What does “sponsored” mean?

Furthermore, there are so many loopholes, ambiguities and exceptions to the purported restrictions on the hours of operation that Section 8 of the Special Use Permit is essentially empty:

- It does not regulate use of the church, rectory parish or administrative buildings at all.
- While certain hours are listed for both the gymnasium and the auditorium, it appears that these hours are subject to change given the “current Mass schedule.” As such they are merely suggested, rather than, mandatory operational hourly restrictions.
- There is no restriction on gym or auditorium hours other than that these facilities cannot be used “one half hour before or after regularly-scheduled masses”. Does this mean it they can both be used *during* mass? What about before, during and/or after *non-regularly* scheduled masses?
- The “one half hour before or after regularly-scheduled masses” restriction is excused if use of the gym will be for “preparation for or in conjunction with the mass.” Does this mean that the gym and/or auditorium can be used for mass simultaneously with the church? If so, then this allows an *expansion* of church uses and this is not addressed in the Project’s environmental review under CEQA.
- The operational hours set for the school are excessive and not consistent with typical school uses. We are not aware of any school operating on Saturdays or until 10:00pm. These proposed hours are inappropriate for a school.
- The operational hours do not apply to “religious services”, regardless of what building or facility the religious services are held in.

- The operational hours do not include time for dispersal and cleanup.
- None of the operational hours apply to “Major Events” and it is unclear whether they apply to “Minor Events” and/or “Typical Religious and School Gatherings”, each of which can be added to at will by the Applicant, apparently without City approval.

While Section 12 of the Special Use Permit purports to impose parking and traffic restrictions and conditions, these requirements are empty:

- The Applicant is required to comply with its own Parking and Traffic Management Plan, yet is allowed to update this Parking and Traffic Management Plan “from time to time”, apparently without any City approval. Can these updates include reducing the so-called conditions and restrictions set forth in Section 12?
- Section 12(d) lists certain “parking management strategies”. Are these strategies suggested or required? If required, when will they be required and how will they be enforced?
- Section 12(e) requires parents to perform “up to six” traffic and patrol shifts. This sets a maximum number of shifts not a minimum and is therefore an empty requirement. Furthermore, how will this so-called requirement be enforced? What is its purpose? What exactly are the duties on these shifts?
- Section 13 requires St. Matthews to maintain the “services” of a private parking company for assistance with parking Sunday morning masses and other events expected to exceed the on-site parking spaces, yet the term “services” is undefined.
- The “services” required in Section 13 can be foregone if only *one* event or mass is documented to have its parking demand met by the available parking supply. Does this mean that if there is low attendance for mass on one Sunday in August, the Section 13 requirement can be thrown out altogether for the life of the Special Use Permit?
- In Section 14(c), the “estimated parking demand” is required to be described for each event or activity. How will this requirement be verified and enforced?
- There is no provision requiring replacement parking in the event the bank lease suggested as “parking management strategy” in Section 12(d)(i) is terminated. The requirements of Section 15 cannot be enforced.

- Section 16 requires two noticed public meetings to monitor its performance and compliance with the Special Use Permit. This purpose cannot be met unless these meetings are required annually, yet no such requirement is made. Who must diligently address and report on these meetings? How will issues raised in these meetings be addressed? What if they are not addressed?

As demonstrated above, there are too many ambiguities and loopholes in the Special Use Permit for it to have any teeth to be enforceable, let alone “carefully regulate” the church and school uses as required by Municipal Code Section 27.74.010 or ensure protection of the surrounding residential community as required to meet the findings for Project approval set forth in Section V of the Exhibit A to the Staff Report. Furthermore, it does not support the assumptions made and relied upon in the CEQA documents that the proposed uses of the new gymnasium will be limited to school uses and will not conflict with or occur simultaneously with church masses. As such, it permits a Project whose environmental impacts have not been adequately reviewed in accordance with CEQA.

For all of the foregoing reasons, deficiencies and violations, we urge you to recommend that the City Council deny the Project and reject the MND.

Sincerely,



Camas J. Steinmetz

cc: Gregory Rubens, Partner, Aaronson, Dickerson, Cohn & Lanzone
Stephen Scott, Principal Planner, City of San Mateo
Shawn Mason, City Attorney, City of San Mateo