Craig Lawson & Co., LLC
Land Use Consultants

October 28, 2014

Honorable City Council
City of Los Angeles
City Hall, Room 395
200 N. Spring Street
Los Angeles, CA 90012

RE: **Case No. APCS-2013-4102-SPE-DRB-SPP-SPR/ENV-2013-4103-MND**
Council File No. 14-1155 (3780 Martin Luther King, Jr. Blvd. and 4055-4081 S. Marlton Ave.)

Dear President Wesson and Honorable Councilmembers:

On behalf of Kaiser Foundation Health Plan, Inc. (Applicant), we submit the attached Specific Plan Exception (SPE) findings in support of the appeal filed by Armen D. Ross, President of the Crenshaw Chamber of Commerce. Mr. Ross' appeal requests that the City Council reconsider the South Los Angeles Area Planning Commission's denial of the Applicant's perimeter fence SPE request.

The Applicant respectfully requests that the City Council adopt the attached findings in support of Mr. Ross' appeal and approve the Applicant's proposed perimeter fence Specific Plan Exception request.

Sincerely,

Donna Tripp
Craig Lawson & Co., LLC

CC: Sharon Gin, Legislative Assistant, Planning and Land Use Management Committee

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Kaiser Permanente Baldwin Hills-Crenshaw Medical Office Building
Specific Plan Exception Findings: Fence Height

> **PURSUANT TO LAMC SECTION 11.5.7 F**, the Applicant requests the approval of a **SPECIFIC PLAN EXCEPTION from 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual** to allow a 2'-6" high fence on top of the required 3'-6" high wall (total 6'-0" high) adjacent to surface parking lots fronting adjacent streets and a 6'-0" high fence fronting along adjacent streets.

The primary intent of the Crenshaw Corridor Specific Plan and Design Guidelines and Standards is to improve visual and physical appearance of commercial sites in the Plan area. The Project will achieve this intent by attractively developing approximately 8.6 acres of the large city block known as "Santa Barbara Plaza," which is un-landscaped and enclosed by an over 6 ft. high chain-link fence with no landscape buffers (Project Site). The Project Site is the largest undeveloped site in the Specific Plan area. This large property is not in the Pedestrian Oriented District, and a single site plan coordinates the proposed landscape and design for the more than 8.6 acres, achieving the intent of the Specific Plan standards. The front façade and street frontages are all proposed to be landscaped and buffered from adjacent uses. Additionally, the proposed medical office building utilizes high quality architecture with design features such as glass, screening and building setbacks to increase attractiveness from the street frontages.

An existing 12 ft. high wall runs perpendicular to Buckingham Road and separates the Project Site from the Buckingham Place Senior Apartments adjacent to the northwest. In addition to maintaining this existing wall, the Applicant is proposing a 6 ft. high fence along the northern property line of the Project Site which is permissible under the Specific Plan as this fence is not parallel to *and* visible from a public street due to its being located over 300 ft. from Martin Luther King, Jr. Blvd. and sited behind a strip of intervening off-site commercial lots. The subject of this Specific Plan Exception request is limited to the proposed 6 ft. high fence for additional security along the perimeter of the Project Site as follows:

> Santa Rosalia Drive, Buckingham Road, and Marlton Ave.
> On either side of the proposed Medical Office Building, two surface parking lots are proposed along Santa Rosalia Drive, with frontage along portions of Buckingham Road and Marlton Ave. As required by Design Standard 11f, the Applicant is providing a three and one-half (3.5) foot solid decorative wall between the pedestrian sidewalk and parking lots along Santa Rosalia, Buckingham and the southeasterly Marlton Ave. frontage. In compliance with Design Standard 8a, a three-foot wide landscaped buffer will be provided between the sidewalk and the wall which contains one 15 gallon tree every 20 lineal feet. On top of this 3.5 ft. wall, for security purposes the Applicant is proposing a two and a half (2.5) foot fence for a total of a 6 ft. tall wall/fence.

This 1,226 sq. ft. perimeter security fence is attractively designed to integrate with the architecture and landscape design of the overall medical facility Project. The proposed perimeter fence along the majority of Marlton Ave. will feature half (1/2) inch thick

aluminum slats, with width ranges of 4" to 7" and finished with #4 brushed strokes and satin clear coat to attractively complement the building design. The 2.5 ft. high fence on top of the required 3.5 ft. solid decorative walls along Santa Rosalia, Buckingham and the southeasterly Marlton Ave. frontages will feature ½" x 3" rectangular aluminum slats (also finished with #4 brushed strokes and satin clear coat) embedded into the solid decorative walls. The design concept, choice of materials, color and finishing all work to achieve visual lightness and transparency. Additionally, the perimeter fence design features no horizontal bar elements and ample landscaping and tree buffers to further soften its appearance.

Adjacent to most of the gates at vehicular and pedestrian entrances (including the main vehicular entrance off of MLK, Jr. Blvd. and the main pedestrian entrance off of Santa Rosalia), the perimeter fence will consist of vertical linear metal stanchions sculpted in section along the outer leading edge. The sculpting varies on each piece to create a larger flowing "wavy" pattern across the surface. The perception of the pattern varies dynamically depending on the viewer's position and angle of light. The proposed design provides further architectural interest and additional visual lightness to achieve the intent of the Design Guidelines.

(a) That the strict application of the regulations of the specific plan to the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan.

The Project Site is a large 8.6 acre lot, with three street frontages, and which presently is enclosed by an over 6 ft. in height chain-link fence. Although the Project Site is the largest vacant land in the Specific Plan area, the surrounding streets are well-traveled and the vicinity lots are built out with high density residential and high intensity commercial uses.

Martin Luther King, Jr. Blvd. is a Major Highway – Class II and Santa Rosalia Drive is a designated Collector Street. Although Marlton Ave. is a designated Local Street, it serves as a primary access for the busy Baldwin Hills – Crenshaw Plaza Mall located immediately to the east/northeast of the Site and which includes numerous department stores, retail shops, a movie theater, banks and restaurants. Multi-family residential uses exist across the streets on Santa Rosalia Drive and Buckingham Road. The Crenshaw Family YMCA is located to the southwest of the intersection of Santa Rosalia and Marlton Ave.

Due to the intense surrounding uses (which includes restaurants with alcoholic service and a 15-screen stadium seating movie theater) and the Project Site's location off of a Major Highway – Class II, the Project area is one that experiences high pedestrian and vehicular traffic 7 days a week and into the late night hours. Because the Project is an outpatient medical office building, it will be closed by 7 p.m. each day and on Sundays. As a result, properly securing the large site is a high priority for the Applicant.

Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual limits "freestanding walls" located parallel to and visible from a public street to a maximum height of 4 ft. The Applicant is requesting an Exception to this requirement to permit an additional 2 ft. in height to provide adequate security to the

Project Site which will contain not only the 105,000 sq. ft. outpatient medical facility, but four surface parking lots with 525 spaces, and nearly 2.5 acres of landscaped open space including outdoor plaza, garden areas, and pedestrian paths. If left unsecured at night, the large surface parking lots and contiguous swaths of central open space can be anticipated to attract youth using the large parking areas for skateboarding or social gatherings, transients using the open park/garden areas for overnight sleeping/camping, vandals and other criminal activity. As the proposed Medical Office Building will provide healthcare to its members with a wide variety of sensitive health issues, and will offer passive recreational opportunities for visitors, including children and the elderly, it is imperative for the Applicant to be able to ensure a safe and clean environment by deterring and preventing unauthorized access through physically securing the large site after business hours.

The strict application of Design Standard 8a would limit the perimeter fencing to 4 ft. in height. A 4 ft. tall wall is easily scalable and results in practical difficulties and hardships for the Applicant in adequately securing the large 8.6 acre Project Site at night and on Sundays when the Medical Office building will be closed. The Applicant wishes to provide beautiful, safe and clean grounds and amenities for its employees, members and visitors. Without the additional 2 ft. in height for a perimeter fence to provide the requisite deterrent and help the Applicant adequately secure the Project Site during non-business hours, the Project Site can easily be accessed by vandals, trespassers, and vagrants. This fact was confirmed by a Los Angeles Police Department (LAPD) Senior Lead Officer of the Southwest LA area who attended the August 19, 2014 South Los Angeles Area Planning Commission (APC) hearing. According to the LAPD Officer, a 4 ft. fence would be easy to step over, whereas a 6 ft. tall fence would be more difficult to scale and would be more effective in restricting access during hours of closure.

The LAPD Officer also advised the South LA APC that "having restricted access during hours of closure will provide LAPD peace of mind" because the fence will deter such activities as aggravated assault and narcotics transactions/use that LAPD often sees in unsecured large open spaces areas. Although City Planning staff indicates that the applicant can provide private security staff to secure the site after hours, the LAPD Officer noted that these security guards still have to call LAPD to process trespass issues, thereby further placing "a drain on City resources." The LAPD Officer provided the example of the nearby Baldwin Hills – Crenshaw Plaza Mall from which LAPD receives between 5-10 calls from private security guards on a given day. Each arrest takes approximately 2-3 hours to complete, which has a tremendous impact on LAPD resources.

As stated above, the primary intent of the Crenshaw Corridor Specific Plan and Design Guidelines and Standards is to improve visual and physical appearance of commercial sites in the Specific Plan area. The Project Site has been blighted and abandoned for years. The Project will eliminate that blight and create a beautiful, architecturally interesting building within a large site plan that includes green space available for public usage. Thus, the Project will improve visual and physical appearance of the Project Site in keeping with the general purpose and intent of the Specific Plan.

The Project Site is unlike the vast majority of parcels in the Specific Plan area; it is the largest undeveloped site in the Specific Plan area, with an area substantially larger than

the vast majority of parcels that make up the Specific Plan area. Because the Project Site is so large, it poses a unique temptation to people who desire illegal afterhours entry. In addition, long distances from City streets hinder police sight lines and create a substantial delay between the time a crime is spotted hundreds of feet from the Project Site's boundary and when an LAPD officer on foot could reach a suspect or victim. In addition, because a low wall could be jumped just as easily leaving the Project Site as entering the Project Site, a suspect would have opportunity to exit the Project Site without being apprehended. Consequently, as is reflected by the comments made by the LAPD, because the Project Site is so much larger than the usual parcel for which the Specific Plan regulations were intended, the enforcement of regulations designed for much smaller parcels would create practical difficulties and unnecessary hardships inconsistent with the general purpose and intent of the Specific Plan.

Therefore, not only does strict application of Design Standard 8a result in a practical difficulty and unnecessary hardship on the applicant, but also on LAPD and the community it seeks to serve.

(b) That there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use of development of the subject property that do not apply generally to other property in the specific plan area.

The Project Site is identified as a unique site in the Community Plan and Specific Plan. Chapter 3, Land Use Policies and Programs of the West Adams, Baldwin Park, Leimart Community Plan designates the Project Site as regional commercial and as a "Major Opportunity Site." The characteristics that were considered in by the City in identifying Project Site as a "Major Opportunity Site" were:

- The community identity or uniqueness of a parcel.
- The unimproved or underdeveloped nature/acreage of the parcel
- The potential build-out created by new development.
- The potential for jobs that new development could bring.
- The adequacy of the existing and proposed infrastructure.
- The potential benefit to the Community.

The Kaiser property is 8.6 acres with three street frontages and proximity to an extremely well-traveled Major Highway – Class II (Martin Luther King, Jr. Blvd.). The Project Site is described as critical to the Community because of its size, potential to generate significant development and its location close to the Baldwin Hills - Crenshaw Mall, the latter feature which ensures the Project Site area will see high pedestrian and vehicular traffic seven days a week and late into the night. It is the largest "Major Opportunity Site" in the Specific Plan. However, this Project Site feature also makes it difficult to secure after business hours.

The Project provides a community amenity that is not found in other projects in the Specific Plan area. The nearly 2.5 acres of central recreational space is heavily landscaped and contains walking paths and a plaza. The pedestrian paths provide exercise opportunities for patients, staff and the community.

Given that the Project Site is the largest undeveloped site in the Specific Plan area, and the Project will utilize the Applicant's entire 8.6 acres, these are exceptional circumstances or conditions applicable to the subject property involved and to the intended use of development of the subject property that do not apply generally to other property in the specific plan area.

Smaller commercial sites of only a few thousand square feet will not require or involve large parking areas or swaths of open/recreational space which could attract unlawful usage after business hours. Additionally, smaller commercial projects are not patronized by a large number of customers/clients with disabilities and sensitive health conditions which need additional protection. Finally, smaller commercial project sites can pursue alternate security measures such as exterior lighting or a security camera to deter criminal activity. A high volume of night-time lighting needed to illuminate the large Project Site would not be energy efficient and would be negatively impactful to adjacent residential uses. Security cameras or personnel both visible enough to deter unpermitted usage and sufficient in number to cover this 8.6 acre Project Site throughout the night would be infeasible for the Applicant.

As described above, the Project Site is exceptional large and the intended use includes very large surface parking lots and 2.5 acres of heavily landscaped open space; thus, circumstances and conditions applicable to the Project Site and the Project do not apply generally to other property in the Specific Plan area.

(c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question.

There are numerous characteristics of the Project Site which make it unique in the Specific Plan area. As previously indicated, the Project Site is 8.6 acres with three street frontages, and proximity to a Major Highway – Class II and the very busy Baldwin Hills – Crenshaw Plaza mall, which is home to numerous retailers and restaurants with weekend and late-night hours of operation. All of these characteristics make the Project Site attractive for unlawful afterhours usage, while creating challenges for the Applicant in its ability to properly physically secure the entire Project Site. Prohibiting an Exception from Design Standard 8a would preclude the Applicant from enjoying a substantial property right or use generally possessed by other property within the specific plan area in the same zone and in the vicinity.

Design Standard 8a's fence height limit of 4 ft. applies to both commercial and residential uses in the Specific Plan area. The following chart summarizes the surrounding existing uses and their fences which all deviate from Design Standard 8a:

Location	Current Use	Fence over 4 ft. tall?	Fence Image
MLK, Jr. Blvd & Marlton (southeast corner)	Retail	Yes	
Marlton Ave. (between MLK, Jr. Blvd & Santa Rosalia	Retail	Yes	
3820 Santa Rosalia	YMCA	Yes	
3850 Santa Rosalia	Church	Yes	

4020 Buckingham Rd.	Senior housing	Yes	
Buckingham Rd. (between Santa Rosalia & MLK Jr. Blvd.	Apartment buildings	Yes	

As the above images illustrate, the surrounding commercial and multi-family residential developments utilize fences for security which do not comply with Design Standard 8a's 4 ft. height restriction. In fact, most of these existing vicinity fences are well over 6 ft. in height and some also do not provide the requisite landscape buffer. Although these fences may pre-date the Specific Plan Design Guidelines, they are referenced here to illustrate that applicant's proposed fence would not be introducing a feature that is incompatible with what exists in the surrounding neighborhood. Indeed, as highlighted above, unlike most of these existing fences, applicant's proposed fence would be setback from the sidewalks with a landscape buffer, and include an attractive design and vegetation to soften/mute its appearance.

Despite the fact that these vicinity developments either have residents who can provide eyes on their sites around the clock, or have 7 day a week/late-night hour tenants and patrons, these surrounding commercial and residential developments have all deemed it necessary to provide physical security in the form of fences in excess of 4 ft. in height. The Applicant respectfully requests that it be allowed a similar right, particularly in light of the fact that it is not a 24-7 operation and in light of the challenges it would otherwise face in physically securing such a large site with multiple street frontages.

Sites that are substantially smaller do not include locations that are far from public streets and LAPD patrols where distant locations cannot be seen or reached quickly; thus, smaller sites can be secured more easily without a taller fence. An exception from Design Standard 8a's fence height limit of 4 ft. is necessary so that the Project Site may achieve the same level of security as is generally possessed by other property within the Specific Plan area.

(d) That the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property.

Development of the Project Site with a 105,000 square foot medical office building, including clinics, outpatient pharmacy, medical labs, and outpatient surgery center will bring health benefits to the plan area by making these services more accessible. Use of this facility would be of benefit not only to the immediate community, but will serve a more regional need. The large open space area with walking paths and a plaza provide opportunities to the public during business hours for exercise and pedestrian connections to and from the Crenshaw Mall and transit.

For 20 years the Project Site has been identified for development to remove an unsightly, blighted property and bring economic vitality to the area. The physical design of the Project creates an aesthetically pleasing new four-story building, stepping down to two stories where it faces residential and commercial uses. Along Buckingham Road the adjacent use is a senior citizen project and several multi-family residences across the street. To the south, across Santa Rosalia Drive are several multi-family buildings, a church and YMCA facility. Diagonal street parking is located along Santa Rosalia Drive directly south of the medical office building. Along Marlton Drive, to the west, is the Baldwin Hills Crenshaw Plaza Mall. The Project Site is undeveloped immediately adjacent to the north.

The proposed plot plan shows all perimeters of the Project Site to be landscaped with approximately 10 ft. wide sidewalks. The improvements will be visually beneficial to the adjacent properties. All landscaping and buffers will meet or exceed the design standards and guidelines of the Specific Plan.

The Project represents a major private investment in the community, as recommended by the Community Plan and the Redevelopment Plan. The Project will bring increased jobs, and patients to the area. The Project will have a beneficial economic impact during construction and long-term, as it will provide needed medical services.

The proposed 6 ft. tall fence which is the subject of this Specific Plan Exception request, will not only enable the Applicant to provide the aforementioned services and amenities in a safe and clean environment, but the fence itself will provide for a safer community by preventing access to the large Project Site which with its large surface parking lots and central park amenities would be an inviting space after-hours for vagrants, youth gatherings, vandals and other criminal activity. Moreover, the proposed fence would not be injurious to the surrounding properties and uses as most of these (particularly the larger commercial sites) also have security fences over 4 ft. in height, as illustrated in the preceding discussion.

As described in detail above and as illustrated on the attached fence design plans, the perimeter security fence will be uniquely and attractively designed to integrate with the architecture and landscape design of the project. The design concept, choice of materials, color and finishing all work to achieve visual lightness and transparency.

Additionally, the perimeter fence design features no horizontal bar elements and ample landscaping and tree buffers to further soften its appearance.

Moreover, adjacent to most of the gates at vehicular and pedestrian entrances (including the main vehicular entrance off of MLK, Jr. Blvd. and the main pedestrian entrance off of Santa Rosalia), the perimeter fence will consist of vertical linear metal stanchions sculpted in section along the outer leading edge. The sculpting varies on each piece to create a larger flowing "wavy" pattern across the surface. The perception of the pattern varies dynamically depending on the viewer's position and angle of light. The proposed design provides further architectural interest and additional visual lightness to achieve the intent of the Design Guidelines.

The nearly 2.5 acres of central landscaped open space area, including garden area, outdoor plaza, and pedestrian paths are open to the community during business hours. This means that of the 1,226 linear feet of subject fencing, sections of it by the pedestrian and vehicular entrances along Buckingham, Santa Rosalia, and Marlton will be open during the day to clearly welcome the public onto the Project Site to enjoy the recreational space. In addition, Kaiser will also be providing a number of community-serving activities there throughout the year, including health education and fitness classes, and events featuring local artists and musicians in the outdoor performance area. The combination of the physical openness of the Project Site during business hours and the full calendar of community-benefiting activities that will be provided on-site will ensure that the community has visibility and ease of access to these recreational offerings.

As indicated above, LAPD testified on August 19, 2014 to the South LA APC that from its experience, enclosing a site such as this with a larger fence has proven most effective in providing adequate security and in deterring criminal activity.

Because the fence is in keeping with nearby uses, is visually attractive and will enhance public safety, the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property.

(e) That the granting of the exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.

The granting of the exception would allow a development that is consistent with the intent and goals of the specific plan and the other applicable land use plans.

West Adams Baldwin Hill Leimert Park Community Plan Objective 1-4
Attract uses which strengthen the economic base and expand market opportunities for existing and new businesses.
1-4.2 Identify appropriate revitalization/redevelopment areas and encourage uses that would enhance the economic vitality of the Community

The Kaiser medical office building brings a major high quality development to the Project Site. Medical uses are among the strongest economic generators of the economy. The

large number of staff and patients would provide economic stimulus to adjacent retail uses.

Crenshaw Corridor Specific Plan, Section 2 - Purposes

A. To provide standards for the Crenshaw corridor which will promote controlled development/redevelopment while encouraging and stimulating economic revitalization.
B. To assure a balance of commercial land uses in the Specific Plan area that will address the needs of the surrounding communities and greater regional area

The Project will develop a 105,000 square foot medical building providing needed services for the surrounding community and larger area. The facility will provide jobs and health care. The medical office would include clinics, outpatient pharmacy, medical labs, an outpatient surgery center and other ancillary uses. The Project Site has been identified for redevelopment for 20 years, but is still vacant. The Project represents a major investment in the area promoting economic revitalization.

C. To promote a compatible and harmonious relationship between residential and commercial development where areas of commercial development are contiguous to residential neighborhoods.

Multi-family residential dwellings are across Buckingham Road and Santa Rosalia Drive, adjacent to the medical office building. The principal entry and drop-off for patients is to the rear of the medical building and accessed by the easement from Martin Luther King Jr. Boulevard, a Major Highway – Class II and, thus, would not be visible from the residential uses.

The plot plan has been designed with extensive landscaping, that complies with all landscape and buffering standards of the Specific Plan. Decorative walls 3.5 feet high buffer the perimeters of the surface parking lots. In addition to required landscaped setbacks and trees, by placing two of the parking lots alongside the building, a landscaped open space corridor will run the length of the Project Site and provide walking paths, encouraging walking as exercise. This will be an amenity for the public as well as members and staff at the Kaiser facility. This open space corridor will further facilitate pedestrian access through the Project Site and to the Baldwin Hills Crenshaw Plaza Mall, to existing transit and the future Crenshaw Metro station.

D. To preserve and enhance community aesthetics by establishing coordinated and comprehensive standards for signs, buffering, setbacks, building and wall height, open space, lot coverage, parking, landscaping and façade treatment.

The Project complies with all design standards for signs, buffering, setbacks, landscaping and façade treatment. The Project provides 3.5-foot high decorative walls at the perimeter of the surface parking lots, a minimum of 3-foot wide landscape buffers between the walls and sidewalk, 15-gallon trees every 20 feet, and landscaping of 7 per cent of the surface parking lots. These design elements meet the buffering and landscaping requirements of the Specific Plan.

As previously indicated, Design Standard 8a limits walls parallel to and visible from a public street to a maximum of 4 ft. high. Design Standard 8a also requires the aforementioned landscape buffer and vegetation "capable of covering or screening the length of the wall," as well as a prohibition on chain-link, wrought-iron and barbed-wire fences. It is clear that the intent of this Design Standard is to ensure fences/walls visible from public streets are muted in their appearance and do not contribute to an unwelcoming feel from the adjacent public streets.

The Applicant is conscientious of the intent of this Design Standard and accordingly has proposed a design which despite deviating from the height limit by 2 ft., meets the intent of the standard. As described in detail above and as illustrated on the attached fence design plans, the perimeter security fence will be uniquely and attractively designed to integrate with the architecture and landscape design of the Project through the use of aluminum slats finished with #4 brushed strokes and clear satin coat. The design concept, choice of materials, color and finishing all work to achieve visual lightness and transparency. Additionally, the perimeter fence design features no horizontal bar elements and ample landscaping and tree buffers to further soften its appearance.

Moreover, adjacent to most of the gates at vehicular and pedestrian entrances (including the main vehicular entrance off of MLK, Jr. Blvd. and the main pedestrian entrance off of Santa Rosalia), the perimeter fence will consist of vertical linear metal stanchions sculpted in section along the outer leading edge. The sculpting varies on each piece to create a larger flowing "wavy" pattern across the surface. The perception of the pattern varies dynamically depending on the viewer's position and angle of light. The proposed design provides further architectural interest and additional visual lightness to achieve the intent of the Design Guidelines.

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October 28, 2014

Honorable City Council
City of Los Angeles
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200 North Spring Street
Los Angeles, CA 90012

Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND / Council File No. 14-1155; Response to Appeals

Dear President Wesson and Honorable Councilmembers:

We represent Kaiser Foundation Health Plan, Inc. ("**Kaiser**") with regard to the above referenced application for entitlements (the "**Entitlements**") and approval of the Mitigated Negative Declaration ("**MND**"). The Entitlements will allow Kaiser to construct a medical outpatient facility (the "**Project**") to be located at 3780 W. Martin Luther King Jr. Boulevard and 4055-4081 S. Marlton Avenue (the "**Project Site**"). The Project will create jobs, provide access to much-needed medical services for residents of South Los Angeles in high quality facilities, and provide landscaped open space and walking trails for use by patients, staff, visitors, and community members, during daytime hours. In this letter, we will provide support for granting the Entitlements and approving the MND. We will also address concerns raised in two appeals to the Project.

Following the August 19, 2014 South Los Angeles Area Planning Commission (the "**APC**") hearing, the APC granted all of the Entitlements requested by Kaiser, other than an exception from the Crenshaw Corridor Specific Plan Design Guidelines (the "**Design Guidelines**") related to fence height. The APC's actions are evidenced by that certain Letter of Determination dated September 2, 2014 (the "**Letter of Determination**").

Two appeals to the APC action were filed following the hearing.

1. An appeal (the "**Ross Appeal**") dated September 9, 2014 by Armen D. Ross, President of the Crenshaw Chamber of Commerce, in which he appealed the APC's denial of the Design Guidelines exception; and

2. An appeal (the "**Leeds-Henning Appeal**") dated September 11, 2014, prepared by John A. Henning, Esq. on behalf of his client, MLK Marlton, LLC, which we are informed is

owned or managed by Fred Leeds[1] (collectively with MLK Marlton LLC, "**Mr. Leeds**"). The Leeds-Henning Appeal included two comment letters previously sent by Mr. Henning to the APC dated August 12, 2014 and August 15, 2014, respectively, (collectively, the "**Henning Letter**"), one of which references a letter dated August 12, 2014 prepared by Geoff Gold of Ervin Cohen & Jessup (the "**Gold Letter**" and, together with the Henning Letters, the "**Comment Letters**"). As we already prepared a detailed response to each of the Comment Letters in our letter to the APC dated August 18, 2014, this letter will, in large part, reiterate our prior responses to the Comment Letters. Although not mentioned in the Leeds-Henning Appeal, after the dates of the various Comment Letters, Mr. Leeds joined an ongoing suit (the "**Leeds Litigation**") against the City of Los Angeles (the "**City**") and the CRA/LA.[2] Furthermore, after the date of the Leeds-Henning Appeal, Mr. Leeds has amended his complaint to add Kaiser as a defendant in the Leeds Litigation.[3] In the Leeds Litigation, Mr. Leeds alleges the same property rights claims that he has inappropriately tried to shoehorn into the Council's consideration of the MND.

We are writing to respectfully request that the City Council (a) grant an exception to the Design Guidelines to allow fencing of an increased height; (b) adopt the required findings set forth in the letter of Donna Tripp of even date herewith ("**Tripp Letter**"); (c) grant the requested Entitlements approved by the APC; and (d) approve the MND. In addition, we are writing to provide information that will assist the Council in determining that the assertions contained in the Leeds-Henning Appeal are clearly inaccurate or erroneous and fail to satisfy the "fair argument" standard articulated in the Public Resources Code.

A. Support for the Ross Appeal

As a part of the Entitlements, Kaiser requested an exception from the Design Guidelines to allow a 2' 6" high fence on top of the required 3' 6" high wall adjacent to surface parking lots fronting along adjacent streets and a 6' 0" high fence where the Project fronts along adjacent streets. The requested exceptions would provide for a maximum fence height of 6' around the entire Project. The exception request was denied by the APC.

1. Exception to Design Guidelines. The Ross Appeal requested, and Kaiser now respectfully requests, that the Council reconsider denial of the Design Guideline exception allowing a maximum fence height of 6' around the perimeter of the Project and, instead, grant the exception request to enhance public safety and to preserve the aesthetic integrity of the Project.

2. Adoption of Findings. In addition to granting the exception to the Design Guidelines, Kaiser respectfully requests that the City Council adopt the required findings for the exception as set forth in the Tripp Letter.

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[1] Affidavit of Fred Leeds, dated August 11, 2014, attached to the Henning Letter.
[2] *Complaint in Intervention* filed in *Marlton Recovery Partners, LLC v. CRA/LA and the City of Los Angeles*, Case No. BC527351 (Los Angeles Superior Court).
[3] *Intervenor MLK Marlton's First Amended Complaint in Intervention,* filed in *Marlton Recovery Partners, LLC v. CRA/LA and the City of Los Angeles*, Case No. BC527351 (Los Angeles Superior Court).

B. Response to Leeds-Henning Appeal

The focus of this section of this letter is not to provide a line-by-line rebuttal of all of Mr. Henning's assertions of supposed deficiencies in the MND, that task is handled by the MND itself, together with its supporting expert studies and reports and letters from Parker Environmental Consultants. Rather, the purpose of this section is to debunk various property-based legal claims asserted in the Comment Letters, and, more importantly, to explain why those claims – even if they had merit, which they do not – are not relevant to the Council's consideration of the requested Entitlements or approval of the MND.

The general reasons for why the assertions set forth in the Comment Letters are clearly inaccurate or erroneous and irrelevant to the Council's consideration are as follows:

- The Declaration of Restrictions created restrictions enforced through the power of termination. Pursuant to the Marketable Record Title Act, the Declaration of Restrictions has expired and the restrictions set forth therein are no longer effective.

- Historically, parking was not provided through an easement but through shares of the Parking Company, which owned the Historic Parking/Access Area. However, the Parking Company no longer owns or has rights to the Historic Parking/Access Area.

- Because (a) there was no expression of an intent to grant an easement for parking, (b) an easement for parking cannot be implied because there was no need for one, and (c) facts showing that the illegal use of the Historic Parking/Access Area has ripened into a prescriptive easement are not apparent, no easement of any sort has been created over any portion of the Project Site.

- An enforceable equitable servitude does not exist because the Declaration of Restrictions did not intend to create one, and, even if it did, an equitable servitude would not be enforced because the block no longer contains a commercial center, the Parking Company does not own the Historic Parking/Access Area, and property owners are not paying for the operation of the Parking Company and otherwise abiding by the restrictions set forth in the Declaration of Restrictions.

- Because the Conditions of Approval condition the Entitlements on the provision of 525 parking spaces serving the Project and because the MND has studied the effects of driveway use restrictions, the Comment Letters' assertions addressed in this letter are clearly inaccurate or erroneous and do not create a "fair argument" under the Public Resources Code.

- Claims of right through various alleged easements or an enforceable equitable servitude are irrelevant to the Council's consideration of the Entitlements, because such claims cannot be resolved by the Council, and there is no law or public policy requiring adjudication before the Entitlements are granted.

1. **Assertions from the Comment Letters**.

a. Henning Letter. The Henning Letter asserts that the Entitlements may not be granted because a portion of the Project Site is burdened by a Declaration of Restrictions, recorded on July 18, 1950, in Book 33961-311 in the Official Records of Los Angeles County (the "**Declaration of Restrictions**") "that is the equivalent of a mutual parking and access easement"[4] benefitting Mr. Leeds's current property and property that he is acquiring. Additionally, the Henning Letter asserts that Mr. Leeds is empowered by the Declaration of Restrictions to use 305 of the Project's 525 parking spaces, and, thus, the Project does not provide enough parking to comply with the zoning code and that "there is a fair argument that there will be a significant impact on parking in the neighborhood."[5] The Henning Letter further asserts that by depriving businesses of parking spaces they would have pursuant to the alleged "easement," "the Project has the potential to exacerbate . . . blight" and increase on-street parking in the neighborhood.[6] Finally, the Henning Letter asserts that Kaiser's failure to abide by the alleged "easement" will cause unmitigated environmental effects with regard to aesthetics,[7] land use,[8] public services,[9] and transportation and traffic,[10] thus causing the MND to be deficient.

b. Gold Letter. The Gold Letter expands upon the easement arguments provided in the Henning Letter and adds an assertion that the Declaration of Restrictions created an equitable servitude. The Gold Letter is in apparent support of the August 12th Henning Letter's assertion that Mr. Leeds holds parking rights to the Project Site that preclude the Council from granting the Entitlements or adopting the MND.

c. Conclusion. Because all of the Comment Letters' assertions set forth above rely on Mr. Leeds holding parking rights to the Project Site, if no such rights exists, then all of the assertions are clearly inaccurate or erroneous.

2. **Restrictive Covenant**.

a. Restrictions. The Declaration of Restrictions imposed "conditions, reservations, terms, restrictions and charges,"[11] which (i) restricted the use of portions of the Project Site and other areas (the "**Historic Parking/Access Area**") to only parking and access for other lots in the same block;[12] (ii) restricted the use of the entire block to only commercial uses[13] (which would likely prohibit the adjacent senior housing project owned by the City, if the terms of the Declaration of Restrictions were effective); and (iii) prohibited any construction or

[4] Henning Letter, Page 8.
[5] *Id.*, Page 15.
[6] *Id.*, Page 17.
[7] *Id.*, Pages 28 and 29.
[8] *Id.*, Pages 34 and 35.
[9] *Id.*, Pages 37 and 38.
[10] *Id.*, Pages 38 and 39.
[11] Declaration of Restrictions, Page 1.
[12] Id., Article I, Page 1.
[13] *Id.*, Page 2.

exterior alteration (including a change of paint color) of any building on the block without the permission of an "Architectural Committee."[14]

b. Enforcement.

i. Power of Termination. The "conditions, reservations, terms, restrictions and charges" imposed by the Declaration of Restrictions were enforceable by the original declarant (the "**Declarant**") who recorded the Declaration of Restrictions and the Declarant's successors and assigns through a right of reverter.[15] California law defines what used to be called a right of reverter (meaning that the restricted property's ownership would return to the grantor, if a covenant was breached) as a "power of termination."[16] Consequently, the restrictions set forth in the Declaration of Restrictions are enforceable in part by a power of termination.

ii. Appropriate Proceedings. Defaults under the restrictions imposed by the Declaration of Restrictions also could have been "enjoined, abated or remedied by the appropriate proceedings maintained by any" of the owners of the various parcels located in the block.[17]

iii. Conclusion. Whatever else it might do, the Declaration of Restrictions imposes restrictive covenants enforceable in part through a power of termination.

c. Expiration of Restrictive Covenants.

i. Date of Expiration. Pursuant to the Marketable Record Title Act (Cal. Civ. Code §§ 880.020 – 887.010) (the "**Act**"), a power of termination and the restrictions contained in the document creating the power of termination expire 30 years after the document's initial recordation unless a notice of intent to preserve the power of termination is recorded prior to the end of such time period. [18] However, the Act allowed a five-year grace period after the Act first became effective in 1982 in which interested parties could record a notice of intent to preserve the power of termination.[19]

ii. Strict Construction of Dates for Expiration and Notice. In order to provide certainty, the Act states that recordation of a notice of intent to preserve the power of termination must occur prior to expiration,[20] and that expiration and notice dates must be strictly construed regardless of "any disability or lack of knowledge."[21]

iii. Effect of Expiration. The Act states that "the [e]xpiration of a power of termination pursuant to this chapter terminates the restrictions to which the fee simple

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[14] *Id.*, Page 3.
[15] *Id.*, Article VII, Page 5.
[16] Cal. Civ. Code § 885.010 and *see* § 885.020.
[17] Declaration of Restrictions, Page 6.
[18] Cal. Civ. Code § 885.030.
[19] *Id.* § 885.070.
[20] *Id.* § 880.310.
[21] *Id.* § 880.250.

estate is subject and makes the restrictions unenforceable by any other means, including, but not limited to, injunction and damages."[22] Further, such an expiration "is equivalent for all purposes to a termination of the power of record and a quitclaim of the power to the owner of the fee simple estate."[23]

iv. Misleading Assertion. Because, as set forth in the preceding section, the Act states that "the [e]xpiration of a power of termination . . . makes the restrictions unenforceable by any other means, including, but not limited to, injunction and damages,"[24] Mr. Gold's assertion that "the Act has merely caused one remedy for violation of the Declaration [of Restrictions] to expire – namely, the power of termination . . . . [and] the Declaration [of Restrictions] remains enforceable by injunction and any other available remedies,"[25] is flatly wrong and misleading.

d. Declaration of Restrictions has Expired and has No Effect. The Declaration of Restrictions was recorded in 1950 and contains a power of termination. No notice of intent to preserve the power of termination was recorded within the time period specified in the Act. The Act states that without the recordation of a notice of intent to preserve the power of termination, a document with restrictions and a power of termination recorded in 1950, such as the Declaration of Restrictions, would have expired in 1987. Consequently, unless the Declaration of Restrictions creates an easement or an enforceable equitable servitude, which the discussion below shows it has not, the restrictions set forth in the Declaration of Restrictions have expired. The Act states that upon such expiration, the restrictions and the power to terminate have no further effect.

3. **Mr. Leeds has No Easement Rights in the Project Site**.

a. Declaration of Restrictions Contains No Expression of Easement Rights. The Declaration of Restrictions does not contain any language associated with the creation of an easement or expressing an intent to create an easement. Rather, as stated above, the Declaration of Restrictions created "conditions, reservations, terms, restrictions and charges,"[26] enforceable through a power of termination,[27] and irrespective of what it states "on its face,"[28] has terminated under California law. In fact, Mr. Gold does not argue that an express easement exists and appears to concede the point arguing only that "there is strong evidence that an easement was created by implication, by prescription, or by both."[29]

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[22] *Id.* § 885.060(b).
[23] *Id.* § 885.060(a).
[24] *Id.* § 885.060(b).
[25] Gold Letter, Page 2.
[26] Declaration of Restrictions, Page 1.
[27] Id., Article VII at Page 5.
[28] Gold Letter, Page 2.
[29] Gold Letter, Page 8.

b. Original Parking Scheme Granted Parking Rights through Ownership of Parking Company Rather than through an Easement.

i. Parking Not Provided by Easement but by Feehold Interest. When the Declaration of Restrictions was recorded in 1950, no easement was needed to grant parking rights to the various purchasers of parcels surrounding the Historic Parking/Access Area, because, as Mr. Henning and Mr. Gold separately state, to effectuate the parking scheme described in the Declaration of Restrictions, the Declarant granted a feehold interest in the Historic Parking/Access Area to the Santa Barbara-Crenshaw Parking Company (the "**Parking Company**"). Each purchaser of a parcel on the block received shares in the Parking Company,[30] allowing "the owners of said stock and their tenants, occupants, employees, [and] customers . . ." to utilize the Historic Parking/Access Area.[31] Each owner of a parcel in the block obtained access and use rights to the Historic Parking/Access Area through its stock in the Parking Company. As Mr. Henning notes, the Declaration of Restrictions contemplates the incorporation of the Parking Company and the feehold ownership of the Historic Parking/Access Area by the Parking Company.[32] Inversely, as Mr. Gold notes, the grant of the feehold interest in the Historic Parking/Access Area from the Declarant to the Parking Company contemplates the Declaration of Restrictions. Consequently, not only does the Declaration of Restrictions not include language expressing a grant of easement, it does include a feehold parking scheme that contradicts any allegation of an intent by the Declarant or those to whom the Declarant transferred property – such as the Parking Company – to create an easement.

ii. Parking Company No Longer Owns Historic Parking/Access Area and is Defunct. The Parking Company no longer owns, and is not alleged to own, any portion of the Project Site. As the Henning Letter states, when the Parking Company was in operation, it owned a feehold interest in the Historic Parking/Access Area.[33] Because the Parking Company no longer holds any interest in the Project Site, shares of stock in the Parking Company do not create rights in the Project Site. Documents provided by the Secretary of State indicate that the Parking Company fell into disuse in the 1990s, was revived once apparently as part of a failed development scheme, and was again suspended by the Secretary of State in 2007. Regardless of the corporate status of the Parking Company, it no longer owns or possesses, and has not been alleged to own or possess, any right to any portion of the Project Site.

iii. Conclusion; No Grant of Easement. The Declaration of Restrictions does not include any language expressing a grant or intent to grant an easement. However, it expressly includes a detailed parking scheme by which the Historic Parking/Access Area would be owned in fee by the Parking Company, which would provide parking to the rest of the parcels on the block through their rights as shareholders. The explicit parking scheme would have been undermined by an easement that diminished the Parking Company's control of the Historic Parking/Access Area, and there would have been no possible reason for an easement to have been intended or needed.

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[30] Henning Letter, Page 11.
[31] Articles of Incorporation of Santa Barbara-Crenshaw Parking Company, Page 2 (attached as Exhibit A).
[32] Henning Letter, Page 11.
[33] *Id.*, Page 9.

c. No Easement by Implication.

i. Intent to Create an Easement Cannot be Implied.

1. Gold Letter's Assertion. Lacking any language in the Declaration of Restrictions associated with the creation of an easement or expressing an intent to create an easement, Mr. Gold argues that "[u]nder certain circumstances, the law implies that creation of an easement was intended even in the absence of express granting language."[34] Mr. Gold explains that "[t]he doctrine of implied easements is applied by the courts to carry into effect the intention of the parties as manifested by the facts and circumstances . . ."[35]

2. Facts and Circumstances do Not Support the Assertion. As explained above, the implication of an easement is directly contradicted by the expressed intentions of the Declarant and the Parking Company to which the Declarant granted the Historic Parking/Access Area and the facts and circumstances surrounding that grant. Parking was not provided through an easement but through ownership of the Parking Company that owned the Historic Parking/Access Area.

ii. Disfavored by Courts; Burden on Party Asserting Claim. "[I]mpled easements are not favored by the law."[36] "The person who claims an implied easement has the burden of proving each element of the cause of action by a preponderance of evidence."[37]

iii. Required Conditions Cannot be Met to Establish an Implied Easement.

1. Required Conditions. Mr. Gold describes three conditions, each of which he asserts "must exist to imply the creation of an easement upon a division of title: (1) there must be a common ownership of a parcel and a transfer or conveyance of one parcel to another; (2) prior to the division of title, there must have been an existing obvious, and apparently permanent use of the alleged easement by the common owner; and (3) the easement must be reasonably necessary to the use and benefit of the benefitting property owner."[38]

2. Required Conditions Not Satisfied. In light of the facts, circumstances and intentions set forth above, it cannot be established that an implied easement burdens any portion of the Project Site.

First, the Declarant would not likely have owned the Historic Parking/Access Area (because it was transferred to the Parking Company) when the Declarant transferred the other parcels on the block to the various individual owners. Consequently, the first condition would not have been satisfied. Next, because use of the Historic Parking/Access Area does not appear to

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[34] Gold Letter, Page 8.
[35] *Id.*
[36] *Horowitz v. Nobel*, (1978) 79 Cal. App 3rd 120, 131.
[37] *Tusher v. Gabrielsen*, (1ST App. 1998) 68 Cal. App 4th 131, 145.
[38] Gold Letter, Page 9.

predate its transfer to the Parking Company, and the common owner had not developed the block, the second condition would not have been satisfied.

Finally, and dispositively, because parking was provided to the various parcels in the block through ownership of the Parking Company, which owned the Historic Parking/Access Area, there would not have been a necessity that an easement be created. Moreover, the creation of an easement would have been at odds with the detailed parking scheme documented in the Declaration of Restrictions, the Parking Company's Articles of Incorporation and the deed that transferred the Historic Parking/Access Area from the Declarant to the Parking Company.

iv. Conclusion; No Implied Easement. Because implied easements are disfavored under the law, a party asserting the existence of an implied easement bears a heavy burden of proof. The facts, circumstances and intentions set forth in detail in the Declaration of Restrictions, the Parking Company's Articles of Incorporation and the deed that transferred the Historic Parking/Access Area from the Declarant to the Parking Company, conclusively show that no implied easement was created and that Mr. Leeds cannot possibly satisfy the required conditions described by Mr. Gold.

d. No Prescriptive Easement. Apparently concerned that the text of the Declaration of Restrictions does not in any way express a grant or intention to grant an easement, and that the facts, circumstances and intentions surrounding the transfer of the Historic Parking/Access Area and the various parcels in the block do not in any way imply the intent to create an easement, Mr. Gold asserts that perhaps some unknown and undescribed facts have created a prescriptive easement.

i. Permissive Use does Not Create a Prescriptive Easement.

1. A Prescriptive Easement Cannot be Created by Permissive Use. Although Mr. Gold does not appear to agree, when he asserts that an easement could both be created by implication and by prescription,[39] a prescriptive easement can only arise when the party asserting the right to such easement has been using someone else's property without legal right.[40] In other words, in this case, the use of the Historic Parking/Access Area by Mr. Leeds's predecessors-in-interest would need to have been an illegal trespass rather than pursuant to rights granted by an implied easement or through ownership of shares in the Parking Company.

2. Facts Proffered in the Comment Letters Support Permissive Use. Apparently based on the Declaration of Restrictions, the Parking Company's Articles of Incorporation and the deed that transferred the Historic Parking/Access Area from the Declarant to the Parking Company, Mr. Gold assumes that folks have been parking in portions of the Historic Parking/Access Area since the 1950s. However, he has provided no evidence that such usage was adverse. Moreover, Mr. Henning has provided strong evidence regarding

[39] Gold Letter, Page 8.
[40] Miller and Starr, California Real Estate (3rd ed.), Section 15:29, citing, among many others, *City of Los Angeles v. City of Glendale* (1943), 23 Cal. 2d 68, 79 ("It is well-settled that an appropriation must invade the rights of another before it can destroy them by establishment of precipitated title").

the permissive use of the Historic Parking/Access Area under permissive rights arising from ownership of the Parking Company that owned the Historic Parking/Access Area.

Further, the assertion of hostile use of any portion of the Project Site is undermined by Mr. Leeds and Mr. Henning's assertion of the wetland's and bird sanctuary attributes of a substantial portion of the Historic Parking/Access Area.

Because Mr. Leeds appears to have acquired his property on October 7, 2013,[41] which was after the Project Site was fenced, it defies any sense of credulity to assert that he has any knowledge of any adverse use of the Project Site. Moreover, because, according to both Mr. Henning and Mr. Gold, the nearest portion of the Project Site is about 200 feet away from Mr. Leeds's property – across a vacant, trash-filled lot behind a nearly abandoned commercial center – it would seem highly unlikely that Mr. Leeds's predecessors-in-interest parked on the Project Site. Consequently, because adverse use of the Historic Parking/Access Area has not in any way been established, the existence of a prescriptive easement has not been established by the Comment Letters.

e. Conclusion; No Easement Rights Exist. The Comment Letters fail to establish that Mr. Leeds has any easement rights to any portion of the Project Site. The Declaration of Restrictions does not include any language expressing a grant or intent to grant an easement. However, it expressly includes an explicit parking scheme that contradicts the existence of any sort of easement. The facts, circumstances and intentions set forth in detail in the Declaration of Restrictions, the Parking Company's Articles of Incorporation and the deed that transferred the Historic Parking/Access Area from the Declarant to the Parking Company, conclusively demonstrate that Mr. Leeds cannot possibly satisfy the high-burden of proving that an implied easement was created. Finally – in direct contradiction to all of the other arguments set forth in the Comment Letters – Mr. Gold asserts that a prescriptive easement has been created through illegal usage of the Historic Parking/Access Area. However, because adverse use of the Historic Parking/Access Area has not in any way been established, the existence of a prescriptive easement has not been established by the Comment Letters.

4. **No Enforceable Equitable Servitude Exists**.

a. Mr. Gold's Argument. Mr. Gold correctly states that "[e]quitable servitudes do not terminate under the Act in the same manner as other restrictions."[42] He then asserts that the restrictions set forth in the Declaration of Restrictions have not expired, because they constitute equitable servitudes. Mr. Gold summarizes why, in his opinion, the restrictions set forth in the Declaration of Restrictions constitute equitable servitudes as follows:

[41] Confusingly, Mr. Leeds's affidavit, dated August 11, 2014, states both that he has owned the property since 2012 and, conflictingly, that he has owned the property for about a year (i.e., since July or August of 2013); however, title records submitted by Mr. Leeds in the Leeds Litigation demonstrate that he acquired the property in October 7, 2013.

[42] Gold Letter, Page 4.

"In sum, the restrictions contained in the Declaration are in writing, run with the land and can be enforced by injunction, and are therefore equitable servitudes enforceable by any owner of property in the [block]."[43]

Consequently, if Mr. Gold's argument were correct, and the only criteria that would matter in determining whether an enforceable equitable servitude exists would be that the document be in writing, run with the land and be enforceable by injunction, then many real estate related documents – such as leases, rental agreements, easements, and covenants – would be equitable servitudes, which is clearly not the case.

b. Actual Standard. An enforceable equitable servitude is (1) an agreement between grantor and grantee that land be conveyed subject to a common scheme of development; (2) evidenced by wording in a written, recorded instrument (typically a deed or declaration) indicating that the parcels conveyed are subject to the restrictions and in accordance with the common scheme binding and benefitting all the affected parcels and (3) impacting clearly defined properties.[44]

c. No Equitable Servitude Affects the Historic Parking/Access Area. As stated above, an equitable servitude must benefit all of the affected parcels. Here, Lots 51 and 52, which make up the Historic Parking/Access Area, are not benefitted by being restricted only to parking usage and access usage. Rather, they are burdened by a covenant that benefits the other properties in the block. Consequently, the reciprocity required to create an equitable servitude does not exist with regard to the lots in the Historic Parking/Access Area.

d. An Equitable Servitude Would Not be Enforced.

i. Must be Equitable. A "[t]rial Court ha[s] the equitable power to refuse enforcement if it finds the restriction so unreasonable as to violate public Policy."[45] In this case, it would not be equitable to enforce an equitable servitude related to a time in which the block was an operating shopping center, the Historic Parking/Access Area was owned by the Parking Company and the property owners on the block all paid for the operation and maintenance of the Historic Parking/Access Area.

ii. Change of Circumstances. Equitable restrictions become unenforceable when the character of the land in the vicinity of the restricted property has changed so that the original purpose of the restrictions has become obsolete and continued enforcement would be oppressive and inequitable. "An equitable servitude will be enforced unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the affected land; or it otherwise imposes burdens on the affected land that are so disproportionate to the restriction's beneficial effects that the restriction should not be enforced."[46] "Courts will not enforce a land use restriction when a change in surrounding properties effectively defeats the intended purpose of the restriction, rendering it of little benefit

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[43] *Id.*
[44] *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal. 4th 345, 353-354.
[45] *Hotz v. Rich* (1992) 4 Cal. App.4th 1048, 1057.
[46] *Nahrstedt v. Lakeside Village Condominium Assn.*, (1994) 8 Cal. 4th 361, 382.

to the remaining property owners."[47] The restrictions imposed by the Declaration of Restrictions are obsolete and enforcing them now would be oppressive and inequitable, because any equitable servitude would have related to a time in which the block was an operating shopping center and the Historic Parking/Access Area was owned by the Parking Company.

iii. Property-Specific Changes. The circumstances on the block have changed drastically since the restrictions were originally recorded. The Parking Company, formed to own and manage Historic Parking/Access Area no longer owns the property and is suspended, and the owners of the properties in the block have stopped paying the costs of operating the Parking Company. Further, large portions of the Historic Parking/Access Area, including the area occupied by the senior housing project, have not been used as a parking lot for years. Over the years, large amounts of dirt were dumped on the Historic Parking/Access Area, and no record of property owners on the block protesting such conditions exists, despite Article IV of the Declaration of Restrictions. No architectural committee has existed for any number of years, and many property owners have not maintained all unimproved portions of their land with landscaping or hardscaping in adherence with Article III. Moreover, the structures themselves have also changed dramatically from the original scheme. Most of the buildings were demolished, others lie vacant and new affordable housing (rather than commercial development as required by Article II) was constructed on a portion of the block.

In other words, the block hardly resembles the 1950's style shopping center that it once was. Yet, Mr. Leeds seeks now to turn back the hands of time and require that the portion of the Historic Parking/Access Area located on the Project Site be maintained as a surface parking lot for a shopping center that has not existed in 20 years. Enforcing the restrictions at this late date would deprive Kaiser of the use of a substantial portion of the Project Site, and the community of a neighborhood-serving, job-producing, medical office building.

iv. Violation of Restriction that Party is Seeking to Enforce. A party that is violating equitable restrictions cannot enforce those restrictions against another party. This is essentially the equitable doctrine of unclean hands – a breaching party is estopped from enforcing the restrictions contained in an equitable servitude.[48] Here, Mr. Leeds has not been making required payments to the Parking Company or complying with the maintenance and repair requirements. Consequently, even if there were an equitable servitude, Mr. Leeds would be precluded from enforcing it by his unclean hands.

e. Conclusion; There is No Enforceable Equitable Servitude. An equitable servitude must benefit all of the affected parcels. Here, Lots 51 and 52, which make up the Historic Parking/Access Area, are not benefitted by being restricted only to parking usage and access usage. Consequently, the reciprocity required to create an equitable servitude does not exist with regard to the lots in the Historic Parking/Access Area. Moreover, equitable servitudes may not produce inequitable results and will not be enforced if circumstances have changed or the party seeking to enforce an equitable servitude is in breach. Because the circumstances of

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[47] *Id.*

[48] *Diederichsen v. Sutch* (1941) 47 Cal. App.2d 646, 650 ("Where a party has violated the restrictions in his own deed, he cannot enjoin violations by others even though the covenant violated by the plaintiff is entirely different from that disregarded by the defendant.").

the block and of the original parking scheme have changed dramatically, even if there were an equitable servitude, it would not be enforceable.

5. **Assertions are Irrelevant to the Council's Consideration of the Entitlements and the MND**. The Comment Letters have not created a fair argument that any unmitigated environmental effects might arise from the Project or demonstrated that the Council cannot grant the requested entitlements. However, in order to assure the community that Kaiser is not avoiding any facts, we have felt compelled to demonstrate that the various assertions set forth in the Comment Letters are meritless. More importantly, though, the assertions rebutted in this letter are irrelevant to the Council's evaluation of the Project. In other words, even if the assertions were true, which they are not, the assertions would have no necessary legal effect on the Council's grant of the Entitlements or adoption of the MND.

a. Assertions do Not Create a Fair Argument for CEQA Purposes. The Comment Letters have not created a fair argument that any unmitigated environmental effects might arise from the Project.

i. Assertions. The Henning Letter argues that "there is a fair argument of numerous significant impacts . . . [and] an environmental impact report (EIR) must be prepared for the Project."[49] The Gold Letter reiterates Mr. Henning's argument stating that "the Project requires the preparation of an Environmental Impact Report under the California Environmental Quality Act ("**CEQA**"), because there is at least a fair argument that the parking effects of the Project will constitute significant impacts on the environment."[50] More specifically, the Henning Letter asserts that Kaiser's failure to abide by the alleged "easement" will cause unmitigated environmental effects with regard to aesthetics,[51] land use,[52] public services,[53] and transportation and traffic,[54] thus causing the MND to be deficient.

ii. Assertions Addressed in MND and Supporting Documents. Although the environmental assertions made in the Comment Letters are addressed fully in in the MND, together with its supporting expert studies and reports and letters from Parker Environmental Consultants, we wish to briefly review and apply the fair argument standard with regard to the assertions addressed in this letter.

iii. Fair Argument Standard. "[T]he 'fair argument' threshold is low, but it is not so low as to be non-existent."[55] The Public Resources Code states that "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact" and "not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous."[56]

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[49] Henning Letter, Page 1.
[50] Gold Letter, Page 2.
[51] Henning Letter, Pages 28 and 29.
[52] *Id.*, Pages 34 and 35.
[53] *Id.*, Pages 37 and 38.
[54] *Id.*, Pages 38 and 39.
[55] *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2d Dist. 2001) 90 Cal. App. 4th 1162, 1173-1176.
[56] Public Resources Code § 21080(e).

iv. Parking Related Assertions. Mr. Gold makes the general statement that "the parking effects of the Project will constitute significant impacts." While parking is no longer a category subject to review under CEQA, we will assume that Mr. Gold is referring to the secondary effects of parking discussed by Mr. Henning under the categories of aesthetics and land use. The Henning Letter asserts that Mr. Leeds is empowered by the Declaration of Restrictions to use 305 of the Project's 525 parking spaces, and, thus, the Project does not provide enough parking to comply with the zoning code and that "there is a fair argument that there will be a significant impact on parking in the neighborhood."[57] Mr. Henning alleges that parking deficiencies would be cognizable with regard to aesthetics[58] and land use,[59] thus causing the MND to be deficient.

1. Conditions of Approval. Condition 1 of the Conditions of Approval for the Project (the "**Conditions of Approval**"), which are set forth in the Recommendation Report prepared by Planning Department Staff, states that "the use and development of the subject property will be in substantial conformance with the attached plans . . ." Condition 7 of the Conditions of Approval states that "[a] total of 525 parking spaces *shall* be provided pursuant to LAMC Section 12.21.A.4."[60] Condition 50 states that a covenant requiring the Project to conform with the Conditions of Approval will be recorded and run with the land.

2. Conclusion; the Conditions of Approval Require Sufficient Parking. The Conditions of Approval make it clear that the Entitlements that are requested from the Council are expressly conditioned on Kaiser's provision of 525 parking spaces for use by the Project in the manner depicted on the submitted plans. In other words, because of the Conditions of Approval, there is no circumstance in which the Entitlements would grant Kaiser the right to construct or use the Project with only 220 parking spaces. Therefore, any argument that the analysis of aesthetics or land use is deficient because it has not studied the effect of only providing 220 spaces for the Project is the Conditions of Approval is clearly inaccurate or erroneous.

v. Driveway Related Assertions. The Henning Letter asserts that because Mr. Leeds's property will continue not to have access to additional driveway entrances, which have been closed since before Mr. Leeds acquired his property,[61] public services and transportation and traffic will be affected. However, the traffic study completed in support of the MND studied the effects of the Project, including the lack of the driveways Mr. Leeds would like to use. Consequently, the lack of possible additional driveways has been studied and Mr. Henning is not providing new information. Additionally, the MND's review of the Project's effects on public services also assumed that the driveways would not be reopened, so any effects have also been sufficiently analyzed. Because the analysis of the Project included in the MND assumes that the driveways will not be reopened to serve Mr. Leeds's property, the driveway assertions set forth in the Henning Letter do not raise a fair argument that the analysis set forth in the MND is deficient.

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[57] Henning Letter, Page 15.
[58] *Id.*, Pages 28 and 29.
[59] *Id.*, Pages 34 and 35.
[60] Emphasis added.
[61] Which apparently occurred on December 5, 2013.

vi. Conclusion; No Fair Argument Created. Because the Comment Letters' assertions described in this letter are "clearly inaccurate or erroneous" as a matter of established law, none of the assertions have met the standard to constitute a "fair argument" under the Public Resources Code.

b. No Requirement that the City Resolve an Easement Claim.

i. No Legal Requirement. Without citation to any governing law, the Comment Letters insist that the City should not grant the Entitlements until the various and contradictory claims to easements or an enforceable equitable servitude made by Mr. Leeds's various attorneys are resolved by a judicial ruling. However, there is no law stating that conflicting claims to various easements or an enforceable equitable servitude has any effect whatsoever on an application for discretionary entitlements. The City does require that an applicant, such as Kaiser, be the owner or lessee (or their respective representative) of the site for which entitlement is sought but – at least to this point – Mr. Leeds has not asserted that he owns the Project Site.

ii. Public Policy. The Comment Letters' position that any unsubstantiated claim to property be allowed to block the entitlement process until settled by a court would have the effect of adding at least two years to the time involved to entitle any contested project. While such a rule would be a boon for vexatious litigants hoping to increase the settlement value of their nuisance claims, it would serve no public policy purpose.

iii. No Denial of Rights by the City. As stated in the Comment Letters, only a court is qualified to adjudicate the title claims alleged by Mr. Leeds, and Mr. Leeds is currently pursuing his asserted title claims in the Leeds Litigation. Consequently, the Council does not have jurisdiction to resolve the title claims asserted in the Comment Letters and those claims are not pertinent to the Council's deliberations. The granting of the Entitlements by the Council in no way precludes Mr. Leeds from pursing his title claims through the Leeds Litigation. However, the Council's failure to grant the Entitlements based upon Mr. Leeds assertion of rights under various alleged easements or an enforceable equitable servitude would deprive Kaiser of its ability to pursue completion of the Project while defending Mr. Leeds's claims in the Leeds Litigation – and would deprive the community of a desired community-serving medical building.

c. No Fair Argument or Required Adjudication. The Comment Letters have not created a fair argument that any unmitigated environmental effects might arise from the Project or proffered any law that would prohibit the Council from granting the requested Entitlements. Consequently, the assertions regarding the various alleged easements or an enforceable equitable servitude are irrelevant to the Council's decision making process.

6. **Response to Various Statements**.

a. Title Policy Provides Third-Party Indicia. A page and a half of the Gold Letter is spent providing a primer on title policies.[62] Mr. Gold is correct in stating that the failure

[62] Gold Letter, Pages 6 and 7.

to include an obviously recorded document such as the Declaration of Restrictions as a policy exception on Schedule B of Kaiser's title policy is not dispositive with regard to the continued effectiveness of the Declaration of Restrictions. However, it is likely indicative of a third-party assessment of risk by a title officer. As is shown in Kaiser's title policy (a copy of its title page and Schedules A and B are attached as Exhibit B to this letter), a title officer issued a policy with a limit of $15,065,320 in return for a premium of $12,805.95 and did not include the Declaration of Restrictions as a policy exception on Schedule B. Obviously, title companies stay in business by collecting more in premiums than they pay in claims. Thus, the fact that a title policy was issued with a limit of $15,065,320 in return for a premium of $12,805.95 – and did not include the Declaration of Restrictions as a policy exception – would tend to indicate that the title officer underwriting the policy determined that the value of any claim arising from the Declaration of Restrictions was likely miniscule. Finally, Mr. Gold's assertion that "it is fair to presume that at the time of purchase, Kaiser secured [the exclusion of the Declaration of Restrictions] precisely in order to avoid eventual disclosure of the Declaration to the City in connection with the Project,"[63] is without factual basis, unseemly and disappointingly unprofessional.

b. Summary Judgment Filing. Prior to joining the Leeds Litigation, Mr. Gold asserted that a neighboring property owner's suit against the City, which like Kaiser has "manifestly deep pockets,"[64] somehow proves the validity of Mr. Leeds's claims. Although, such an assertion is not particularly edifying, it is not manifestly false. Sadly, Mr. Gold continues on and misleadingly states that "the defendant in this case has not moved for summary judgment . . . this *means that the City believes Marlton Recovery's case presents an actual dispute of material facts and that the City is not entitled to a judgment as a matter of law.*"[65] Of course, Mr. Gold has no idea why the City has not yet filed a motion for summary judgment, and, moreover, Mr. Gold is aware that as of the date of the Gold Letter, proceedings in the Litigation were stayed, preventing the City from filing a motion for summary judgment at that time. Further, the City and Kaiser maintain the right to file a motion for summary judgment in the future.

Moreover, the fact that a suit contains allegations of disputed facts that cannot be settled as a matter of law, does not mean that the suit is meritorious, just that a clever plaintiff's lawyer has managed to allege a factual dispute that could survive summary judgment. For example, although the alleged existence of a prescriptive easement contradicts all of Mr. Gold's and Mr. Henning's other arguments and assertions regarding Mr. Leeds's alleged rights to use the Historic Parking/Access Area, Mr. Gold states that such a claim "is a question of fact, and the claimant is entitled to a jury trial on the factual issues."[66] Of course, if a plaintiff's goal is to create delay in order to raise the settlement value of its nuisance suit, alleging a spurious claim with a factual basis is more valuable than a colorable claim that could be resolved as a matter of law.

c. CRA Easement. Mr. Gold asserts that the CRA/LA has easement rights over portions of the Project Site arising from a document entitled Exchange of Easements. We were unaware of the Exchange of Easements, and it provides evidence that the Declarant knew

[63] *Id.*, Page 7.
[64] *Id.*
[65] *Id.*, Page 8 (emphasis added).
[66] *Id.*, Page 11.

how to create an easement when it intended to do so. Of course, whether or not the CRA/LA has effective easement rights over any portion of the Project Site is irrelevant in that it is not asserting such rights and has been supportive of the Project.

Sincerely,

Paul Rohrer
Partner

cc: Kenneth Fong, Esq.
Indrajit Obesekere, Esq.

EXHIBIT A

FILED
In the office of the Secretary of State
of the State of California
JUL 19 1950
FRANK M. JORDAN, Secretary of State
By [illegible] Assistant Secretary of State

246955

ARTICLES OF INCORPORATION

OF

SANTA BARBARA-CRENSHAW PARKING COMPANY.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, the majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California, and we hereby certify:

I

That the name of this corporation shall be:

"SANTA BARBARA-CRENSHAW PARKING COMPANY."

II

That the purposes for which it is to be formed are as follows:

(1) The primary business in which the corporation intends initially to engage is to own and hold Lots 51 and 52 of Tract 10838 in the City of Los Angeles, County of Los Angeles, State of California, and to operate the same as a parking lot.

(2) To acquire additional property and operate the same for parking purposes.

(3) To appoint the architectural committee referred to in any declaration of conditions which may be recorded against or in connection with any part of said Tract 10838 and to do and perform any and/or all acts convenient, proper and necessary in connection with said architectural committee and the functioning thereof.

Restriction of right to amend articles
No
Yes

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(4) To hold and operate that certain property in the City of Los Angeles, County of Los Angeles, State of California described as Lots 51 and 52 of Tract 16050 as and for a parking lot and for the use and benefit of, subject to the By-laws of this corporation, the holders of stock of this corporation and who, in turn, shall be the owners of a portion of the property of said Tract 16050, and the corner of Santa Barbara and Marlton now owned by the Occidental Life Insurance Company of California, and now occupied by Barker Bros. Corporation. The use of said parking lot shall be by the owners of said stock and their tenants, occupants, employees, customers and invitees, and the sub-tenants, employees, customers and invitees of such tenants.

(5) That it is not intended that this corporation shall engage in any business other than the operation of said parking lot, but for the purpose of the operation of such parking lot it shall have all the incidental rights and purposes that may be proper, convenient or necessary in regard thereto, it being provided, however, that the corporation may buy additional property to supplement said parking lot and to operate the same as a parking lot, [illegible] provided, this corporation shall not [illegible] and may do or perform any and all [illegible] or necessary in connection therewith.

(6) In connection with the operation of said parking lot to build, erect, change, alter and repair buildings for parking.

(7) To borrow money and in connection therewith to issue Promissory Notes, Indentures, Encumbrances and Hypothecations of every kind and character.

-2-

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(8) To build a building or to construct subterranean floors for parking purposes. Such building or subterranean floors shall only be used for the parking of vehicles and other purposes usually and normally conducted in connection with the parking business.

(9) To have all powers proper, convenient or necessary to conduct and operate the property described above as the parking lot.

III

The county in this State where the principal office for the transaction of the business of the corporation is to be located is the County of Los Angeles.

IV

The term for which said corporation is to exist is perpetual from and after the date of this incorporation.

V

That the number of directors of said corporation shall be three(3) and that the names and residences of said directors are as follows:

VICTOR [illegible] — Los Angeles, [illegible]

[illegible] — [illegible]

G. H. [illegible] — Los Angeles, [illegible]

VI

That the amount of the capital stock of this corporation is three Thousand [illegible] common stock, without nominal or par value. [illegible] (3,000) shares of said [illegible] stock and shall be without nominal or par value and shall be assessable; One Hundred (100) shares shall be [illegible] and

LA2391771.3
219149-10001

shall be non-assessable. All stock shall have equal voting rights.

VII

That, except as otherwise provided herein, the said corporation may issue, from time to time, and sell its shares, without nominal or par value, for such consideration as, from time to time, may be fixed by the Board of Directors, or for such consideration as shall be consented to or approved by the holders of a majority of the shares then outstanding, at any meeting called in the manner prescribed by the By-laws of said corporation, providing the call for such meeting shall contain notice of such purpose, or for such other consideration as may be permitted by law. The authority of the Board of Directors of said corporation to fix the consideration for the sale or issuance of said shares above provided is hereby expressly conferred upon the said Board of Directors.

VIII

This corporation, and the Board of Directors thereof, are granted authority and power to levy and collect from time to time, as in their discretion they may deem advisable, assessments upon all of the shares of "A" stock of this corporation at any time issued and outstanding, and shall have and enjoy all of the rights and privileges with reference to such assessments as are fixed, provided and established by law in respect to corporations the directors of which have such power of assessment.

It is expressly hereby provided that each and every holder of said "A" stock shall be personally liable for the payment of such assessment and that the corporation shall have the option to enforce the collection of such assessment either by foreclosure against the stock or by personal suit

-4-

against the shareholder holding said stock. These remedies are expressly provided herein in accordance with Section 2714 of the Corporations Code, it being the intention hereof that the corporation shall have the right to enforce collection by foreclosure and sale or by suit without foreclosure sale against the shareholder or shareholders involved and there shall exist a lien against the stock and likewise and in addition thereto the personal liability of shareholders for the payment of the assessment. It is hereby provided that the "B" stock of this corporation shall be non-assessable.

IX

This corporation is formed for the purpose of acquiring title to Lots 51 and 52 of Tract 16050 in the City of Los Angeles, California, which property is intended to be used, and shall be used, by the corporation for parking purposes for the benefit of the business property surrounding the same, and which business property is described as Lots 1 to 50 inclusive of Tract 16050, in the City of Los Angeles, California, and that certain property at the corner of Santa Barbara and Marlton now owned by Continental Life Insurance Company of California, and now occupied by Avalon Savings Association. It is hereby provided that the stock of this corporation shall be issued to the owners of said Lots 1 to 50 inclusive and said corner of Santa Barbara and Marlton and can only be held by a person, company, or corporation owning or leasing a portion of the said business property [illegible]. Said stock shall be issued in the following proportions, to wit:

Lots 27 and 28	[illegible]
Lots 16,17,18,34,37 and 38	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Lots 1 to 15 inclusive, and 31,32,33,35,36,39,40,41,42,43	[illegible]
Corner Santa Barbara and Marlton	100 shares Class B

-5-

The one hundred (100) shares issued in connection with said corner of Santa Barbara and Marlton shall be Class"B" non-assessable stock. All of the stock of this corporation must be owned by owners of said lots in Tract 16050, and the southwest corner of Santa Barbara and Marlton Avenues in Los Angeles, California, as set forth above in this paragraph. No one else shall have the right to own any of said shares and the record owners of said lots and property shall only be entitled to own the number of shares designated above in this paragraph. Said stock shall be transferable only to the owners of the record title to said lots and property and only in the number of shares per each lot and item of property as listed above.

Every certificate of stock issued by this corporation shall express on its face the number and type of shares represented thereby and the fact that such shares shall be owned by and transferable only to the owner of the record title of the lots of Tract 16050, and the said southwest corner of Santa Barbara and Marlton Avenues in Los Angeles, California, as described above.

X

Notwithstanding the provisions of Section 3634 of the Corporations Code of the State of California, or any other applicable provisions of law, these Articles may not in any respect be amended:

(1) To make any of the Class "B" shares of stock provided for herein assessable in any way or to diminish or eliminate the voting or dividend rights pertaining to any of

said Class "B" shares without the prior vote or written consent in favor thereof of the holder or holders of said Class "B" shares sought to be so affected; or -

(2) To make any Class "A" shares provided for herein non-assessable in any way without the prior vote or written unanimous consent in favor thereof of all Class "A" and Class "B" shareholders; or -

(3) To authorize issuance of any additional non-assessable stock over and above the one hundred (100) Class "B" shares authorized herein without the prior vote or written unanimous consent in favor thereof of the holder or holders of all Class "B" stock; or -

(4) To authorize issuance of said one hundred (100) Class "B" shares to any person, firm or corporation other than the record owner or owners of said Southwest corner of Santa Barbara and Marlton without the prior vote or written unanimous consent in favor thereof of the holder or holders of all of said Class "B" stock.

IN WITNESS WHEREOF, we have hereunto set our hands this 10th day of July, 1950.

VICTOR [illegible]

[illegible]

C. H. Jordan

B. E. [illegible]

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On this 19th day of July, 1950, before me, Frank Kennedy, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared VICTOR FORD COLLINS, ARNOLD M. CANNAN and C. H. JORDAN, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Frank Kennedy
NOTARY PUBLIC IN AND FOR [illegible]
County and State.

(NOTARIAL SEAL)

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FILED
In the office of the Secretary of State
of the State of California
MAR 07 2006

RESTATED ARTICLES OF INCORPORATION

The undersigned hereby certify that:

1. They are the President and Secretary, respectively, of Santa Barbara-Crenshaw Parking Company, a California corporation.

2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

"Article I

The name of this corporation shall be: Santa Barbara-Crenshaw Parking Company.

Article II

The purposes of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the general Corporation law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

Article III

This corporation elects to be governed by all the provisions of the General Corporation Law of 1977 not otherwise applicable to it under Chapter 23 thereof.

Article IV

This corporation is authorized to issue class "A" shares of stock and class "B" shares of stock. This corporation is authorized to issue in 3000 shares of class "A" stock (which shall be assessable) and 100 shares of class "B" stock (which shall be non assessable). All of the shares of each class of stock of this corporation shall have the same and equal rights, privileges, and restrictions in all respects.

Article V

The number of directors of said corporation shall be four (4)."

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation entitled to vote on the amendment was 3000 shares of class "A" stock and 100 shares of class "B" stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50% of the class "A" stock and more than 50% of the class "B" stock.

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voting in favor of this amendment equaled or exceeded the vote required. The percentage vote of class "A" stock required was 100%. The total number of outstanding class "B" shares of the corporation is 100. The number of class "B" shares voting in favor of this amendment equaled or exceeded the vote required. The percentage vote of class "B" stock required was 100%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: December 12, 2005

By: _____
Anton Burrell, President

By: _____
Minnie Talton, Secretary

I hereby certify that the foregoing transcript of 10 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

JUL 28 2014

Date: _____

DEBRA BOWEN, Secretary of State

EXHIBIT B

Fidelity National Title Insurance Company

POLICY NO.: CAFNT0972-0972-0051-0725141313-FNTIC-2012-05

OWNER'S POLICY OF TITLE INSURANCE

Issued by

Fidelity National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. *Title being vested other than as stated in Schedule A.*
2. *Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from*
   - *(a) A defect in the Title caused by*
     - *(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;*
     - *(ii) failure of any person or Entity to have authorized a transfer or conveyance;*
     - *(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;*
     - *(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;*
     - *(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;*
     - *(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or*
     - *(vii) a defective judicial or administrative proceeding.*
   - *(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.*
   - *(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.*
3. *Unmarketable Title.*
4. *No right of access to and from the Land.*
5. *The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to*
   - *(a) the occupancy, use, or enjoyment of the Land;*

(b) the character, dimensions, or location of any improvement erected on the Land;

(c) the subdivision of land; or

(d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. *An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.*

7. *The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.*

8. *Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.*

9. *Title being vested other than as stated Schedule A or being defective*

   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

      (i) to be timely, or

      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. *Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.*

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Fidelity National Title Insurance Company

SEAL

BY _____ President

ATTEST _____ Secretary

_____
Countersigned

SCHEDULE A

Name and Address of Title Insurance Company: Fidelity National Title Company, 1300 Dove Street, Suite 310, Newport Beach, CA 92660

Policy No.: CAFNT0972-0972-0051-0725141313-FNTIC-2012-05
Address Reference: Buckingham Rd., Santa Rosalia Dr., & Marlton Ave., Los Angeles, California

Amount of Insurance:	$ 15,065,320.00
Premium:	$ 12,805.95

Date of Policy: May 29, 2012 at 08:00 AM

1. Name of Insured:

   Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation

2. The estate or interest in the Land that is insured by this policy is:

   A FEE as to Parcel(s) 1 through 17, 19 and 20;
   AN EASEMENT more fully described below as to Parcel(s) 21

3. Title is vested in:

   Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation

4. The Land referred to in this policy is described as follows:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED

6. **The fact** that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment Agency:	Crenshaw Redevelopment Project Area
Recorded:	December 22, 1994, Instrument No. 94-2276776, 94-2258979 and 20072636417, both of Official Records

The fact that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment Agency:	Crenshaw Redevelopment Project
Recorded:	November 30, 2007, Instrument No. 20072636417, Official Records

7. **An irrevocable offer** to dedicate an easement over a portion of said land for sanitary sewer.

Recorded:	Book 370, Page 44, 45 and 46, of Maps
Affects:	As shown on the map of said tract.

8. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	City of Los Angeles
Purpose:	Sanitary Sewer
Recorded:	December 1, 2011, Instrument No. 20111624584, of Official Records
Affects:	A portion of said land

9. **Matters** contained in that certain document entitled "Easement Agreement (Vehicular and Pedestrian Access)" dated May 24, 2012, executed by and between Marlton Recovery Partners, LLC, a California limited liability company and Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation, a California limited liability company recorded May 29, 2012, Instrument No. 20120789786, of Official Records.

Reference is hereby made to said document for full particulars.

END OF SCHEDULE B

WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS IN DEED BY CAPITAL COMPANY, RECORDED OCTOBER 2, 1951 AS INSTRUMENT NO. 1446, IN BOOK 37331, PAGE 38 OF OFFICIAL RECORDS

PARCEL 3:

LOT 39 OF TRACT NO. 16050, EXCEPT IN THE WESTERLY 30 FEET THEREOF, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, MEASURED AT RIGHT ANGLES TO THE WESTERLY LINE, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM 1/2 INTEREST IN ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID PROPERTY, BUT WITH NO RIGHT OF SURFACE ENTRY, AS PROVIDED IN THE DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM 1/2 INTEREST IN ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 100 FEET FROM THE SURFACE OF SAID PROPERTY, BUT WITH NO RIGHT OF SURFACE ENTRY, AS PROVIDED IN THE DEED RECORDED SEPTEMBER 19, 1951 IN BOOK 37235, PAGE 43 OF OFFICIAL RECORDS.

PARCEL 4:

PARCEL A:

THE WESTERLY 30 FEET OF LOT 39 OF TRACT NO. 16050, MEASURED AT RIGHT ANGLES TO THE WESTERLY LINE, THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES

ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN THE DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 19, 1951, AS INSTRUMENT NO. 1306 OF OFFICIAL RECORDS.

PARCEL B:

THE SOUTHEASTERLY 0.3 FEET OF LOT 38 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 19, 1951 AS INSTRUMENT NO. 1306 OF OFFICIAL RECORDS.

PARCEL 5:

LOT 38 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE SOUTHEASTERLY 0.3 FEET THEREOF.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND

MINERAL SUBSTANCES WAS QUITCLAIMED BY DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 19, 1951 AS INSTRUMENT NO. 1306 OF OFFICIAL RECORDS.

PARCEL 6:

LOT 37 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 19, 1951, BOOK 37235, PAGE 36 OF OFFICIAL RECORDS.

PARCEL 7:

LOT 36 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA,

ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPING OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 24, 1951 IN BOOK 37262, PAGE 401 OF OFFICIAL RECORDS.

PARCEL 8:

LOT 35 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF, TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPING OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 26, 1951 IN BOOK 37286, PAGE 74 OF OFFICIAL RECORDS.

PARCEL 9:

LOT 34 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 AS INSTRUMENT NO. 806 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF, TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPING OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED NOVEMBER 16, 1951 IN BOOK 37651, PAGE 164 OF OFFICIAL RECORDS.

PARCEL 10:

LOT 33 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND

AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED SEPTEMBER 24, 1951 IN BOOK 37262, PAGE 380 OF OFFICIAL RECORDS.

PARCEL 11:

LOT 31 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED AUGUST 31, 1953, BOOK 42583, PAGE 181 OF OFFICIAL RECORDS.

PARCEL 12:

PARCEL A:

LOT 30 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED AUGUST 31, 1953 IN BOOK 42583, PAGE 181 OF OFFICIAL RECORDS.

PARCEL B:

LOT 29 OF TRACT NO. 16050 IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED RECORDED JULY 24, 1959 AS INSTRUMENT NO. 1043 OF OFFICIAL RECORDS.

PARCEL 13:

LOT 48 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE SOUTHWEST 15 FEET THEREOF.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED FROM THE CAPITAL COMPANY, RECORDED FEBRUARY 27, 1952 AS INSTRUMENT NO. 922, OFFICIAL RECORDS.

PARCEL 14:

LOTS 46, 47 AND THE SOUTH 15 FEET OF LOT 48 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF

DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEEDS FROM THE CAPITAL COMPANY, RECORDED APRIL 27, 1953, BOOK 41570, PAGE 141, AS TO LOT 46; MAY 27, 1952, AS INSTRUMENT NO. 1911, AS TO LOT 47; AND FEBRUARY 27, 1952, AS INSTRUMENT NO. 922, AS TO LOT 48, ALL OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM SAID LAND, ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND AS RESERVED BY JAMES R. EUBANK AND VERA EUBANK, HUSBAND AND WIFE, IN DEED RECORDED DECEMBER 29, 1976 AS INSTRUMENT NO. 5307 OF OFFICIAL RECORDS.

PARCEL 15:

LOT 45 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBONS AND KINDRED SUBSTANCES LYING BELOW A DEPTH OF 100 FEET FROM THE SURFACE OF SAID LAND, WITHOUT HOWEVER, THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND, AS PROVIDED IN INSTRUMENTS RECORDED FEBRUARY 10, 1950 IN BOOK 32246, PAGE 212 AND JUNE 20, 1952 IN BOOK 1261, PAGE 78, BOTH OF OFFICIAL RECORDS.

PARCEL 16:

LOTS 42, 43 AND 44 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THROUGH 46, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THAT PORTION OF LOT 44, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 44; THENCE ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID LOT 44, NORTH 30° 49' 27" EAST 47.79 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 44; THENCE ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID LOT 44, SOUTH 52°56'03" EAST 16.69 FEET TO A LINE THAT BEARS NORTH 50°39'52" EAST FROM SAID POINT OF BEGINNING; THENCE ALONG SAID LAST MENTIONED LINE, SOUTH 50°39'52" WEST, 48.88 FEET TO SAID POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST OF ALL PETROLEUM, OIL, GAS, NAPTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1949 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 OF OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OF ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPMENT OR EXTRACTING ANY OIL, GAS, NAPTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED IN BOOK 32246, PAGE 212 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED THEREIN, AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL, FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN DEED RECORDED IN BOOK 47380, PAGE 24 OF OFFICIAL RECORDS.

PARCEL 17:

THOSE PORTIONS OF PARCEL 2 OF CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED ON APRIL 6, 2007, AS INSTRUMENT NO. 2007-0831664 OF OFFICIAL RECORDS AND LOT 51 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGES 44 THRU 46 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED APRIL 6, 2007 AS INSTRUMENT NO. 2007-0831663 OF OFFICIAL RECORDS, THENCE THE FOLLOWING NUMBERED COURSES:

1. NORTH 83° 11' 32" EAST, 165.09 FEET, ALONG THE SOUTHERLY LINE OF SAID PARCEL 1;

2. NORTH 37° 04' 20" EAST, 107.14 FEET, ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 1, TO A LINE THAT IS PARALLEL WITH AND 163.50 FEET SOUTHWESTERLY OF THE NORTHEASTERLY LINE OF SAID LOTS 51 AND 52;

3. SOUTH 52° 56' 03" EAST, 827.37 FEET, ALONG SAID PARALLEL LINE, TO THE NORTHWESTERLY LINE OF SAID LOT 48.

SAID LAND IS ALSO SHOWN AS PARCEL 1 OF CERTIFICATE OF COMPLIANCE FOR LOT-LINE ADJUSTMENT RECORDED ON DECEMBER 22, 2011 AS INSTRUMENT NO. 20111738454, OFFICIAL RECORDS OF SAID COUNTY.

ALSO EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 200 FEET WITHOUT ANY RIGHT TO ENTER UPON THE SURFACE OR THE SUBSURFACE OF SAID LAND ABOVE A DEPTH OF 200 FEET, AS PROVIDED IN INSTRUMENTS RECORDED MAY 19, 1949 IN BOOK 30124, PAGE 18 AND FEBRUARY 10, 1950 IN BOOK 32246, PAGE 212, BOTH OF OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 100 FEET WITHOUT ANY RIGHT TO ENTER UPON THE SURFACE OR THE SUBSURFACE OF SAID LAND ABOVE A DEPTH OF 100 FEET, AS PROVIDED IN AN INSTRUMENT RECORDED JANUARY 12, 1951 AS INSTRUMENT NO. 3793 OF OFFICIAL RECORDS..

(PARCEL 18 - INTENTIONALLY DELETED)

PARCEL 19:

LOT 32 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370 PAGES 44 TO 46 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING AN UNDIVIDED ONE HALF INTEREST OF ALL PETROLEUM, OIL. GAS, NAPHTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDERLYING SAID LAND AS EXCEPTED BY CHAS. H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST, DATED NOVEMBER 30, 1948 IN DEED RECORDED MAY 19, 1949 IN BOOK 30124 PAGE 18, OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OR ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPING OR EXTRACTING ANY OIL, GAS, NAPHTHA AND OTHER HYDROCARBON AND MINERAL SUBSTANCES WAS QUITCLAIMED BY A DEED EXECUTED BY CHAS H. CHURCH AS TRUSTEE RECORDED IN BOOK 32246 PAGE 212, OFFICIAL RECORDS.

ALSO EXCEPT ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER OR PRODUCIBLE THEREFROM TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 100 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SUCH SUBSTANCES PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 100 FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO AS TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED INCLUDING THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS AS RESERVED IN THE DEED FROM CAPITAL COMPANY, RECORDED APRIL 29, 1952 AS INSTRUMENT NO. 146, OFFICIAL RECORDS.

PARCEL 20:

LOT 28 AND A PORTION OF LOT 52 OF TRACT NO. 16050, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 370, PAGE 44 TO 46 INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT PORTION OF LOT 52, DESCRIBED AS FOLLOWS:

THAT PORTION OF SAID LOT 52 LYING WESTERLY OF THE EASTERLY LINE OF SAID LOT 28, EXTENDED NORTHERLY TO THE INTERSECTION OF COURSE #2 STATED BELOW AND LYING SOUTHERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT; THENCE SOUTH 66° 25' 42" EAST, 163.39 FEET, ALONG THE NORTHERLY LINE OF SAID LOT; THENCE SOUTH 52° 56' 03" EAST, 267.29 FEET, CONTINUING ALONG SAID NORTHERLY LINE, TO THE TRUE POINT OF BEGINNING OF SAID LINE; THENCE THE FOLLOWING TWO NUMBERED COURSES:

1. SOUTH 37° 04' 20" WEST, 270.64 FEET;

2. SOUTH 83° 11' 32" WEST 165.09 FEET, TO A POINT OF CURVATURE IN THE EASTERLY RIGHT-OF-WAY OF BUCKINGHAM ROAD, SAID CURVE HAVING A RADIUS OF 542.00 FEET AND A RADIAL BEARING OF NORTH 80° 56' 10" EAST, SAID POINT BEING AN ARC DISTANCE OF 16.26 FEET NORTHERLY FROM THE MOST WESTERLY CORNER OF LOT 28 OF SAID TRACT NO. 16050.

SAID LAND IS ALSO SHOWN AS PARCEL 3 OF CERTIFICATE OF COMPLIANCE FOR LOT-LINE ADJUSTMENT

RECORDED ON APRIL 6, 2007, AS INSTRUMENT NO. 20070831664, OFFICIAL RECORDS OF SAID COUNTY.

EXCEPTING AN UNDIVIDED ONE-HALF INTEREST OF ALL PETROLEUM, OIL, GAS, NAPHTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WITHIN OR UNDERLYING SAID ABOVE DESCRIBED LAND, AS EXCEPTED BY CHAS H. CHURCH, TRUSTEE UNDER DECLARATION OF TRUST DATED NOVEMBER 30, 1948, IN DEED RECORDED MAY 19, 1949, AS INSTRUMENT NO. 806, IN BOOK 30124, PAGE 18, OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON OR USE THE SURFACE OR ANY PART OR PORTION OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 200 FEET FROM THE SURFACE FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPING OR EXTRACTING ANY OIL, GAS, NAPHTHA AND OTHER HYDROCARBONS AND MINERAL SUBSTANCES WAS QUITCLAIMED TO THE RECORD OWNERS BY A DEED EXECUTED BY CHAS H. CHURCH, AS TRUSTEE, RECORDED MAY 10, 1949, AS INSTRUMENT NO. 806, IN BOOK 32246, PAGE 212, OFFICIAL RECORDS.

ALSO EXCEPTING FROM LOT 28 ALL THE REMAINING OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER, OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS ONE HUNDRED (100) FEET OR MORE BENEATH THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL THE SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED HEREIN AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN ONE HUNDRED (100) FEET OF THE SURFACE THEREOF, AND ALL OF THE RIGHT SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN THE DEED FROM THE CAPITAL COMPANY, A CALIFORNIA CORPORATION, RECORDED OCTOBER 2, 1951, AS INSTRUMENT NO. 1446, IN BOOK 37331, PAGE 38 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THAT PORTION OF LOT 52 ALL THE REMAINING PETROLEUM, OIL, GAS, NAPHTHA, ASPHALTUM, BREA AND OTHER HYDROCARBONS AND ALL OTHER MINERALS WITHIN OR UNDER SAID LAND, AND SAVING, EXCEPTING ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER, OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS ONE HUNDRED (100) FEET OR MORE BENEATH THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL THE SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED HEREIN AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN ONE HUNDRED (100) FEET OF THE SURFACE THEREOF, AND ALL OF THE RIGHT SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS RESERVED IN THE DEED FROM THE CAPITAL COMPANY, A CALIFORNIA CORPORATION, RECORDED JANUARY 12, 1951, AS INSTRUMENT NO. 3793 OF OFFICIAL RECORDS.

PARCEL 21:

NON-EXCLUSIVE EASEMENTS AS DISCLOSED IN THAT CERTAIN DOCUMENT ENTITLED "EASEMENT AGREEMENT (VEHICULAR AND PEDESTRIAN ACCESS)", DATED MAY 14, 2012, EXECUTED BY AND BETWEEN MARLTON RECOVERY PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AND KAISER FOUNDATION HEALTH PLAN, INC., A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, AND RECORDED MAY 29, 2012, AS INSTRUMENT NO. 20120789786, OF OFFICIAL RECORDS OF SAID COUNTY.

APN: 5032-003-010, 5032-003-014, 5032-003-015, Portion of 5032-005-001, Portion of 5032-005-003, 5032-006-001, 5032-006-002, 5032-006-003, 5032-006-004, 5032-006-005, 5032-006-006, 5032-006-007, 5032-006-008, 5032-006-009, 5032-006-010, 5032-006-011, 5032-006-012, 5032-006-013, 5032-006-014, 5032-006-015, 5032-006-016, 5032-006-017, 5032-006-018

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2012-2013.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-003-010
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $188,308.04
By: May 31, 2012
Amount: $189,973.99
By: June 30, 2012
Affects: Lot 45

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-003-014
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $378,627.81
By: May 31, 2012
Amount: $381,988.82
By: June 30, 2012
Affects: Lot 46 and a portion of Lot 47

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-003-015
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $69,376.72
By: May 31, 2012
Amount: $69,982.79
By: June 30, 2012
Affects: Lot 48 and a portion of Lot 47

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-005-001
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $616,952.59
By: May 31, 2012
Amount: $622,570.42
By: June 30, 2012

Affects: Lot 51.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2008-2009 2009-2010 2010-2011
APN: 5032-005-003
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $380,740.52
By: May 31, 2012
Amount: $384,705.61
By: June 30, 2012
Affects: Portion of Lot 52.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-001
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $119,259.35
By: May 31, 2012
Amount: $120,294.72
By: June 30, 2012
Affects: Lot 28.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal Year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-002
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $81,665.04
By: May 31, 2012
Amount: $82,387.57
By: June 30, 2012
Affects: Lot 29.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-003
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $74,551.89
By: May 31, 2012
Amount: $75,204.86
By: June 30, 2012
Affects: Lot 30.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-004
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $109,716.49
By: May 31, 2012
Amount: $110,703.97
By: June 30, 2012
Affects: Lot 31.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
APN 5032-006-005
Amount: $111,626.26
By: May 31, 2012
Amount: $112,627.64
By: June 30, 2012
Affects: Lot 32.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-006
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $100,290.49
By: May 31, 2012
Amount: $101,173.71
By: June 30, 2012
Affects: Lot 33.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-007
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $86,861.50
By: May 31, 2012
Amount: $87,625.57
By: June 30, 2012
Affects: Lot 34.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-008
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $115,445.75
By: May 31, 2012
Amount: $116,466.14
By: June 30, 2012
Affects: Lot 35.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-009
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $102,564.52
By: May 31, 2012
Amount: $103,467.60
By: June 30, 2012
Affects: Lot 36.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-010
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $78,116.77
By: May 31, 2012
Amount: $78,810.39
By: June 30, 2012
Affects: Lot 37.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-011
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $62,010.65
By: May 31, 2012
Amount: $62,546.30
By: June 30, 2012
Affects: Lot 38.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-012
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $44,097.67
By: May 31, 2012
Amount: $44,480.79
By: June 30, 2012
Affects: Lot 39.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-013
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $88,429.07
By: May 31, 2012
Amount: $89,207.06
By: June 30, 2012
Affects: Lot 39.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-014
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $114,749.04
By: May 31, 2012
Amount: $115,761.88
By: June 30, 2012
Affects: Lot 40.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-015
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $116,150.96
By: May 31, 2012
Amount: $117,174.60
By: June 30, 2012
Affects: Lot 41.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-016
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $233,941.39
By: May 31, 2012
Amount: $236,015.11
By: June 30, 2012
Affects: Lot 42 and Lot 43.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011
APN: 5032-006-017
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $111,592.19
By: May 31, 2012
Amount: $112,577.20
By: June 30, 2012
Affects: Lot 44.

Said property has been declared tax defaulted for non-payment of delinquent taxes for the fiscal year(s) 2008-2009 2009-2010 2010-2011
APN: 5032-006-018
Amounts to redeem for the above stated fiscal year (and subsequent years, if any) are:
Amount: $6,700.09
By: May 31, 2012
Amount: $6,772.30
By: June 30, 2012
Affects: Portion of Lot 52.

2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California, assessed as a result of events occurring subsequent to the date hereof.

3. **Water rights, claims or title to water,** whether or not disclosed by the public records.

4. **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: April 22, 1947, Instrument No. 1204, Book 24497, Page 230, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

Modification(s) of said covenants, conditions and restrictions

Recorded: Book 25676, Page 66, of Official Records

and in Book 30124, Page 30, and in Book 32656, Page 108, and Book 55602, Page 60 all of Official Records.

5. **An easement** for observation wells, hydrocarbons recovery system and incidental purposes in the document recorded January 12, 1990 as Instrument No. 90-066245 of Official Records.

6. **The fact** that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment Agency:	Crenshaw Redevelopment Project Area
Recorded:	December 22, 1994, Instrument No. 94-2276776, 94-2258979 and 20072636417, both of Official Records

The fact that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment Agency:	Crenshaw Redevelopment Project
Recorded:	November 30, 2007, Instrument No. 20072636417, Official Records

7. **An irrevocable offer** to dedicate an easement over a portion of said land for sanitary sewer.

Recorded:	Book 370, Page 44, 45 and 46, of Maps
Affects:	As shown on the map of said tract.

8. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	City of Los Angeles
Purpose:	Sanitary Sewer
Recorded:	December 1, 2011, Instrument No. 20111624584, of Official Records
Affects:	A portion of said land

9. **Matters** contained in that certain document entitled "Easement Agreement (Vehicular and Pedestrian Access)" dated May 24, 2012, executed by and between Marlton Recovery Partners, LLC, a California limited liability company and Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation, a California limited liability company recorded May 29, 2012, Instrument No. 20120789786, of Official Records.

Reference is hereby made to said document for full particulars.

END OF SCHEDULE B

October 29, 2014

Honorable City Council
City of Los Angeles
City Hall, Room 395
200 N. Spring Street
Los Angeles, CA 90012

Re: Response to the Comments from Armen D. Ross, dated September 9, 2014, and John A. Henning, Jr., dated September 11, 2014, Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR [ENV-2013-4103-MND] (3780 W. Martin Luther King Jr. Boulevard and 4055-4081 S. Marlton Avenue)

Dear President Wesson and Honorable Members of the Los Angeles City Council:

On behalf of the Kaiser Foundation Health Plan, Inc. (Applicant), Parker Environmental Consultants has reviewed the appeal letters submitted by Armen D. Ross, dated September 9, 2014, and John A. Henning, Jr., dated September 11, 2014, on the Mitigated Negative Declaration (MND) for the proposed Kaiser Permanente Outpatient Medical Facility – Baldwin Hills MOB (Project), and is providing the following written responses for your consideration.

With respect to the appeal filed by Mr. Henning, the Appellant has included a letter dated August 12, 2014, of which Parker Environmental Consultants has previously addressed in a written response letter, dated August 19, 2014, that was submitted to the Department of City Planning. Nevertheless, responses to Mr. Henning's comment letter, dated August 12, 2014, are provided below.

A copy of the original comment letters with annotated brackets corresponding to the labeling of the individual comments and responses as addressed below are included as Attachment A to this letter.

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COMMENT LETTER No. 1

Armen D. Ross
1861 Buckingham Road
Los Angeles, CA 90019

COMMENT 1.1

Attachment "1"
Justification/Reason for Appealing Determination
APCS-2013-4102-SPE-DRB-SPP-SPR

I am appealing the #3 determination of the South Los Angeles Area Planning Commission that, "Denied the Exception from Section 14C and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow a 2'-6" high fence on top of the required 3'-6" high wall (total 6'-0" high) adjacent to surface parking lots fronting along adjacent streets and a 6'-0" high fence fronting along adjacent streets."

I am aggrieved by the decision because the determination is contrary to public safety concerns by law enforcement and detrimental to the overall success of the facility. Safety is a concern in all neighborhoods and a 3'-6" wall is inviting to unwelcomed guests to a facility that is being built first to accommodate Kaiser Members living in the surrounding neighborhoods and additionally for the immediate community. The facility will be open to the public during business hours, but not after closing. Therefore, it should not be inviting to members of Kaiser or the general public after hours. Security and safety will ensure that this facility, which is long in coming to our community, will remain as aesthetically pleasing and welcoming to the community when it opens as it will be ten, twenty, thirty years from now.

The decision makers erred or abused their discretion because The Crenshaw Corridor Specific Plan should not be interpreted so rigidly as to impose impediments to new projects that will benefit the greater community by bring sorely needed development, critical services, jobs, and economic infusion to the retail businesses in the area.

RESPONSE 1.1

The commenter's objection to the South Los Angeles Area Planning Commission's denial to allow a 2'-6" high fence on top of the required 3'-6" high wall is noted for the record and will be forwarded to the decision makers. Approval to allow the additional 2'-6" fence is under the discretion of the City Council. In furtherance of the Applicant's request, revised findings and justifications for approving the fence as proposed (see Craig Lawson & Co. correspondence dated October 28, 2014) have been submitted to the City Council for further consideration.

The issue of public safety was analyzed in Section XIV, Public Services of the MND. As noted on page III-83 of the IS/MND, implementation of the Proposed Project would result in an increase of site visitors and employees within the Project Site, thereby generating a potential increase in the number of service calls from the Project Site. However, with implementation of mitigation measures XIV-20 and XIV-30 below, the MND concluded that the Proposed Project's potential impact upon LAPD services would be mitigated to a less than significant level. While in increase in the height of the proposed fence would further deter crime, the mitigation measures below will also discourage crime on the Project Site. As such, with respect to the environmental analysis, no further response is required.

XIV-20 Public Services (Police – Demolition/Construction Sites)

- Fences shall be constructed around the site to minimize trespassing, vandalism, short-cut attractions and attractive nuisances.

XIV-30 Public Services (Police)

- The plans shall incorporate the Design Guidelines (defined in the following sentence) relative to security, semi-public and private spaces, which may include but not be limited to access control to building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the project site if needed. Please refer to "Design Out Crime Guidelines: Crime Prevention Through Environmental Design," published by the Los Angeles Police Department. Contact the Community Relations Division, located at 100 W. 1st Street, #250, Los Angeles, CA 90012; (213) 486-6000. These measures shall be approved by

the Police Department prior to the issuance of building permit.

It should further be noted that at the Area Planning Commission hearing held on August 19, 2014, the LAPD spoke in support of a perimeter fence as a means to deter crime and reduce demands upon LAPD resources.

COMMENT LETTER No. 2

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Avenue
Los Angeles, CA 90048

COMMENT 2.1

Justification/Reason for Appealing
Appeal to City Council
Case No. **APCS-2013-4102-SPE-DRB-SPP-SPR I ENV-2013-4103-MND**

The within appeal is filed on the ground [sic] that the South Los Angeles Area Planning Commission ("SLAAPC") erred and abused its discretion by approving the project and accepting the mitigated negative declaration ("MND") as the environmental review for the project.

Appellant MLK Marlton LLC is aggrieved by the decision because it is the owner of two parcels that are less than 200 feet from the Project site and is directly affected by the proposed development, and because it is a property owner and taxpayer and in the City of Los Angeles and as such is entitled to the full enforcement by the City of both local zoning laws and the California Environmental Quality Act.

RESPONSE 2.1

The commenter's objection to the South Los Angeles Area Planning Commission's approval of the project and adoption of the mitigated negative declaration (MND) as the environmental review for the project has been noted for the record and will be forwarded to the decision makers.

COMMENT 2.2

The points at issue are fully described in the attached letters to the SLAAPC dated August 12,

2014, and August 15, 2014, respectively. The SLAAPC ignored these points in its deliberations, with the exception of the objections made to the requested Specific Plan Exception for fence height, which were sustained. Moreover, subsequent to these two letters no additional evidence was submitted by the applicant or anyone else sufficient to support the various approvals and findings made by the SLAAPC. Thus, it is unnecessary to prepare additional correspondence to the City Council in the context of this appeal.

The decision maker erred and/or abused its discretion because (1) the project violates the City's zoning code; (2) an Environmental Impact Report should have been prepared instead of an MND; (3) the various approvals are not supported by adequate findings; and (4) the findings are not supported by substantial evidence in the record.

RESPONSE 2.2

The commenter's objection to the South Los Angeles Area Planning Commission's approval of the project has been noted for the record and will be forwarded to the decision makers. With respect to the commenter's claim that the Project violates the City's zoning ordinance and the Crenshaw Corridor Specific Plan, no such violations currently exist, and no zoning or Specific Plan violations will occur from the granted land use entitlements. The Project requested the following discretionary approvals from the lead agency: (a) Project Permit Compliance approval of a 4-story, 105,000 square-foot outpatient medical facility with a maximum building height of 60 feet, (b) a Specific Plan Exception from 14c and Design Standard 11i of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow two surface parking lots to be located on the side of the structure, fronting along Santa Rosalia Drive, (c) a Specific Plan Exception from section 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow a 2'-6" high fence on top of the required 3'- 6" high wall (total 6'-0" high) adjacent to surface parking lots fronting along adjacent streets and a 6'-0" high fence fronting along adjacent streets (d) Design Review approval of a 4-story, 105,000 square-foot outpatient medical facility with a maximum building height of 60 feet, and (e) Site Plan Review. The Project's discretionary requests were identified in the MND, which concluded that the approval of the entitlement requests would not result in any significant environmental impacts. With the exception of the Specific Plan Exception from section 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines, the South Los Angeles Area Planning Commissions approved the requested entitlements and adopted the MND. With the approval of the requested entitlements and associated environmental findings the Project is in conformance with the policies and procedures of the Los Angeles Municipal Code (LAMC) with

respect to obtaining lawful authorization to develop the property as proposed.

With respect to commenter's statements that an Environmental Impact Report should have been prepared instead of an MND, that the various approvals are not supported by adequate findings, and that the findings are not supported by substantial evidence in the record, the commenter does not make a fair argument in this letter or his letters dated August 12, 2014 and August 15, 2012 that the Project would result in a significant impact upon the environment. Parker Environmental Consultants submitted a response letter to the Department of City Planning, dated August 19, 2014, addressing the comment's raised in Mr. Henning's letter, dated August 12th, 2014. The responses to Mr. Henning's previous comment letter are included in this letter under Comment Letter No. 3. Additionally, Parker Environmental Consultants has also provided responses to Mr. Henning's comment letter dated August 15, 2014 (See Comment Letter No. 4). As stated in our response letter, dated August 19, 2014, while the commenter disagrees with the conclusions of the environmental analysis contained in the MND, the commenter has not provided any basis to support his conclusion that the impacts of the project would exceed any thresholds of significance under the methodologies established in the State CEQA Guidelines or L.A. CEQA Thresholds Guide. The argument and speculation provided by the commenter does not constitute substantial evidence. Pursuant to Section 15184 of the State CEQA Guidelines, "…Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." Therefore, the preparation of EIR is not warranted.

COMMENT LETTER No. 3

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Avenue
Los Angeles, CA 90048
August 12, 2014

COMMENT 3.1

Honorable Commissioners:

I represent MLK Marlton LLC ("MLK Marlton"), which owns the parcels at 3710 and 3718 Martin Luther King Jr. Boulevard and which opposes the above-referenced project (the "Project")

proposed by Kaiser Foundation Health Plan, Inc. ("Kaiser"). The Project is scheduled for a hearing before your commission on August 19, 2014.

My client opposes this project on the ground that it violates the City's zoning ordinance and the Crenshaw Corridor Specific plan, and because it would inject a soulless, inward-facing and completely gated institutional use into the middle of a densely populated residential area. In addition, my client strenuously objects to the use of a Mitigated Negative Declaration as the environmental review for the Project. Instead, because there is a fair argument of numerous significant impacts in a host of impact categories, the City should prepare an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act (CEQA).

My client initially wrote to the Commission's hearing officer, Michelle Singh, on July 17, 2014, explaining why the Project should be denied and why an EIR should be prepared. In our July 17 letter, we focused especially on uncontroverted evidence that the Project site is subject to a Declaration of Restrictions ("Declaration") requiring that a substantial part of the site be used only for parking and vehicular access to benefit MLK Marlton and others. On July 18, 2014, Ms. Singh conducted a public hearing regarding the Project. At the hearing, Kaiser's counsel, Paul Rohrer of Loeb & Loeb LLP, appeared on behalf of Kaiser, and asserted various grounds for the City to ignore the Declaration. Subsequently, Mr. Rohrer wrote a letter to Ms. Singh dated July 25, 2014, in which he elaborated on these and other arguments. Also on July 25, Kaiser's environmental consultant, Shane Parker of Parker Environmental Consultants, wrote a 61-page letter to Ms. Singh responding to the various points made in our July 17 letter.

RESPONSE 3.1

This comment expresses Mr. Henning's clients opposition to the project and presents their position that the project violates the City's zoning ordinance and the Crenshaw Corridor Specific plan, that a fair argument of significant impacts should compel the City to prepare an EIR, and that the Project Site is subject to a Declaration of Restrictions that requires a substantial portion of the Project Site to be used to provide parking and access to his client and other adjoining property owners. The comment also acknowledges the response letters previously submitted to the file by Paul Rohrer of Loeb & Loeb LLP and myself addressing Henning's prior comment letter.

The commenter's objections are noted for the record and will be forwarded to the decision makers. The issues raised in these introductory paragraphs are addressed in detail in the specific responses to comments presented below.

COMMENT 3.2

Neither of Kaiser's letters adequately rebuts my client's arguments for denial of the Project, or its contention that the there is substantial evidence supporting a fair argument that a significant environmental impact exists, requiring preparation of an EIR. To the contrary, by tying themselves into knots with convoluted rationales, the letter writers each illustrate that there is a spirited dispute on virtually every count, and especially with regard to parking and access. These disputes must be resolved by an EIR, not by an exchange of letters that is invisible to the public.

Mr. Rohrer, the lawyer, uses what is essentially magical thinking to explain away the existence of a restrictive covenant that is recorded against the title of a substantial portion of the subject property, and which specifies that the property must be used only for parking and access, not for buildings and a private "park". [sic] Leaving aside the merits of Mr. Rohrer's arguments, at the outset the Department of City Planning must understand its limits here. The Department is simply in no position to accept the unproven and self-serving legal opinions of an applicant's lawyer, in the face of a recorded document to the contrary. The fact is that the covenant exists, Kaiser does not dispute its existence, and neither Mr. Rohrer nor the applicant has ever gone to court to obtain a declaration that the covenant is extinguished. Thus, for purposes of both the "fair argument" standard and the underlying permits, the City must assume that the covenant is not extinguished.

RESPONSE 3.2

The argument of whether the parking Declaration is valid or not is a potential real estate land use dispute that is not resolvable by the entitlement process.

COMMENT 3.3

Mr. Parker, the environmental consultant, also does not explain in his letter why a "fair argument" of a significant environmental impact cannot be made here. The letter reads like an advocacy piece from Kaiser's public relations machine. In a desperate attempt to "plug every hole" in the MND and thereby avoid any further environmental review of this project, Mr. Parker repeatedly resorts to circular reasoning and injects new "factual" allegations that were never considered in the MND. He also misinterprets the law. He parrots Mr. Rohrer's convoluted legal opinion about the restrictive covenant as though it were gospel, rather than being one lawyer's opinion of a disputed matter.

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RESPONSE 3.3

The commenter's objection to the responses previously provided in noted for the record. However, as noted in our earlier response letter dated July 25, 2014, the commenter has still not made a fair argument that the Project would result in a significant impact upon the environment. While the commenter disagrees with the conclusions of the environmental analysis contained in the MND, the commenter has not provided any basis to support his conclusion that the impacts of the project would exceed any thresholds of significance under the methodologies established in the State CEQA Guidelines or L.A. CEQA Thresholds Guide.

COMMENT 3.4

My client's real estate counsel, Geoff Gold of Ervin Cohen & Jessup, has responded to Mr. Rohrer's arguments in more detail in his letter dated August 12, 2014, which is submitted concurrently with the within letter. In sum, Mr. Gold establishes that the Declaration is on its face fully in effect and fully enforceable by MLK Marlton, and that even if it weren't fully enforceable MLK Marlton has acquired an easement by implication, an easement by prescription, or both across the parking and access. As a result, the Project either (a) utterly lacks the minimum on-site parking required by the zoning code; or (b) will effectively deprive the other property owners in the Plaza, and their employees and customers, of the parking and access to which they are legally entitled and that they presently enjoy and have come to rely upon. In either event, the Project requires the preparation of an EIR, because there is at least a fair argument that the parking effects of the Project will constitute significant impacts on the environment.

I will address the points made by Mr. Parker below, in the context of a complete description of the project and our various arguments. In addition, we have attached as Exhibits 2 and 3 the affidavits of Johnny Edwards and Fred Leeds, respectively. These affidavits reflect the essence of their testimony at the July 18 public hearing as well as additional evidence sufficient to support a fair argument that the Project would have a significant impact on the environment.[1]

For the Commission's convenience, the new material responsive to Mr. Parker's letter will be highlighted in yellow.

[1] *The attached affidavits are unsigned; original signed affidavits will be presented to the Commission on or before the Commission's meeting on August 19, 2014.*

RESPONSE 3.4

With respect to the alleged parking Declaration, see separate response provided by Kaiser's legal counsel Loeb and Loeb, dated August 19, 2014. With respect to the claim that the Project lacks the minimum on-site parking required by the zoning code, see comment 1.8, below in response to paragraph "E" of the commenter's letter. The commenter acknowledges that the Project provides precisely the amount of parking required by code.

The claim that the Project will deprive other property owners in the Plaza, and their employees and customers, of the parking and access to which they are legally entitled and that they presently enjoy and have come to rely upon is simply inaccurate and not supported by any factual data. First, Condition 7 of the Conditions of Approval states that "[a] total of 525 parking spaces shall be provided pursuant to LAMC Section 12.21.A.4." Thus, the Proposed Project will be parked to Code and a parking deficiency will not occur. Second, the properties located at 3710 and 3718 Martin Luther King Jr. Boulevard, which are owned and controlled by MLK Marlton are primarily accessible by Martin Luther King Jr. Boulevard, and Marlton Avenue. Both of these properties have adequate parking available within the parking strip that parallels Martin Luther King Jr. Boulevard in front of their respective businesses. There is also a vacant and accessible parking lot currently serving these land uses at 3734 Martin Luther King Jr. Boulevard. This parking area will not be impacted by the Proposed Project and provides more than enough parking to meet the parking requirements of the existing land uses at 3710 and 3718 Martin Luther King Jr. Boulevard.

COMMENT 3.5

A. Project Area.

The Project is an enormous 105,000 square foot outpatient medical facility on a larger commercially-zoned "superblock" bounded by Martin Luther King Jr. Boulevard to the north, Marlton A venue to the east, Santa Rosalia Drive to the south and Buckingham Road to the west. This block was once known as Santa Barbara Plaza, and from the early 1950s until the commencement of redevelopment in the late 1990s, it housed more than 250 individual local serving businesses located on approximately 50 separate parcels. In more recent years, the entire block has been referred to as Marlton Square.

[Graphic insert: "Neighborhood Context (from ZIMAS) not shown]

The site is surrounded on all sides by stable, historically African-American residential neighborhoods, churches and other small-scale commercial uses. The nearby residential uses include (1) a large senior housing facility on Buckingham Road, immediately adjacent to the site; (2) several hundred multi-family residences (zoned R-3) across Buckingham Road and Santa Rosalia Drive to the west and southwest (zoned R-3); and (3) a single family neighborhood across Martin Luther King, Jr. Blvd. to the northeast. As evidenced by the mailing labels supplied by the applicant, more than 1000 individual residences are within a 500 foot radius from the Project. Many of these residential neighbors are less than 100 feet away from the Project boundary. My client's principals and their related entities own more than 30 buildings with over 500 residential apartments in close proximity to the site.

[Graphic insert: "Surrounding Land Use Map (MND, Figure II-7) not shown]

[Graphic insert: "Residential Properties Less than 100 Feet from Project (from Applicant's Site Photo Exhibit) not shown]

RESPONSE 3.5

This comment describes the Project Site and surrounding area and does not warrant a response. The land uses surrounding the Project Site were adequately described in the MND and do not appear to be in dispute.

COMMENT 3.6

B. Project Description.

The applicant proposes to construct a four-story, approximately 60 feet in height, 105,000 square foot outpatient medical facility on a parcel 8.65 acres in size. Solar panels on the roof would raise the height by an additional 11 feet, to 71 feet. There would be 525 surface parking spaces in four separate parking lots. Two of these would be behind the medical building, and two of which would be alongside the building and directly adjacent to Santa Rosalia Drive. Project vehicles would take their access from five separate driveways. The primary access would be to Martin Luther King, Jr., Boulevard, via an existing access easement located on adjacent property. Secondary access would be taken through three on-site driveways, one on Buckingham Road and two on Marlton Avenue. A fifth driveway to Santa Rosalia Drive would provide access only to service vehicles. The Project would alter, enclose and make private three existing access points to the parking area reserved for property owners on Marlton Square.

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[Graphic insert: "Site Access points (from Site Plan) not shown]

C. Project Approvals Requested.

The applicant seeks the following project approvals:

1. Adoption of the Mitigated Negative Declaration (Case No. ENV-2013-41 03-MND).

2. Pursuant to Section 16.05 of the LAMC, Site Plan Review for a development which creates more than 50,000 gross square feet of floor area;

3. Pursuant to Section I 1.5.7.F.l (f) of the Municipal Code, a Specific Plan Exception from Design Standards of the Crenshaw Corridor Specific Plan, as follows:

a. An exception from section 14c and Design Standard 11 i of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow two surface parking lots to be located on the sides of the structure, fronting along Santa Rosalia Drive and portions of Marlton Avenue and Buckingham Road; and

b. An exception from section 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow a 2 '-6" high fence on top of the required 3' - 6" high wall (total 6' -0" high) adjacent to surface parking lots fronting along adjacent streets and a 6' -0" high fence fronting along adjacent streets;

4. Pursuant to Section 11.5. 7 .C of the Municipal Code, a Project Permit Compliance determining compliance with the applicable regulations of the Crenshaw Corridor Specific Plan.

5. Pursuant to Section 16.50 of the Municipal Code, and Section 14 of the Crenshaw Corridor Specific Plan, a Design Review of the Project with the applicable Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual.

RESPONSE 3.6

This comment summarizes the Proposed Project and the entitlement requests being sought by the Applicant. No specific response is required.

COMMENT 3.7

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D. The Project is Built on a Shared Parking and Access Area That the Applicant Does Not Control.

The entire Project is built on a fallacy, namely, that the applicant has exclusive control over its 8.65 acre site. In fact, more than half of the Project site lies within an area that is shared with numerous other private property owners, including my client, MLK Marlton, pursuant to a longstanding recorded Declaration of Restrictions that is the equivalent of a mutual parking and access easement.

Given the uncontested legal rights of my client and other property owners in the former Plaza property, the applicant here is attempting to do something that it cannot do under the City's zoning code: To build structures and parking lots on areas which are, in fact, designated by the Declaration for use by third parties, and solely for parking and access/egress to the respective parcels owned by those third parties. For this reason alone, the City cannot approve this Project.

A large percentage of the Project site quite obviously overlaps with a longstanding parking area that has been shared by all of the properties on the perimeter of the superblock on which the site is located. Although subsequent demolition and construction have obscured this fact, a 2001 aerial photo from ZIMAS clearly shows the shared parking area in use as one continuous reservoir containing more than 700 spaces and having several access points, including two driveways that the applicant now wants to have closed as part of the Project.

[Graphic insert: Shared Parking Area Overlapping Project Site (2001 photo from ZIMAS)

This parking area and five of the driveway accesses to it (including the Project's primary access to Martin Luther King Jr. Blvd.) are all subject to a recorded Declaration of Restrictions dated July 18, 1950, which is attached as Exhibit "I" to this letter. The Declaration was recorded at a time when the superblock on which the Project is proposed to be located was a single, unsubdivided parcel. The main purpose of the Declaration was to enable the owner of that parcel to subject all of the land to specific conditions, restrictions, terms, and covenants prior to subdividing it and selling the individual parcels to various commercial owners. This land later became Santa Barbara Plaza (the "Plaza"), and finally, during redevelopment, was renamed Marlton Square.

The stated purpose of the Declaration is to benefit the respective owners of the Plaza property, and it accordingly contains numerous provisions concerning the development and maintenance of the various properties in a consistent and reasonable manner. However, its primary operative term

- Article I of ten distinct articles - is that that the two largest lots in the Plaza (Lots 51 and 52), consisting together of approximately 8 acres in the approximate center of the Plaza and including the five present access driveways to surrounding streets (the "Parking/Access Area") "shall not be used for any purpose other than the parking of automobile and other vehicles and for the purpose of ingress and egress to other lots in Tract 16050." For all intents and purposes, this provision established a parking and access easement across the entire Parking/Access Area for the benefit of all of the property owners, which is depicted below.

[Graphic insert: Parking/Access Area (lots 51 and 52) subject to Record Declaration]

In addition to Article I, which restricts the Parking/Access Area solely to use for parking and access, Article VIII of the Declaration refers to the creation and incorporation of an entity called "Santa Barbara-Crenshaw Parking Company" (the "Parking Corporation"). This entity was formed July 19, 1950, the day after the Declaration was recorded. The Declaration clearly contemplated that the parking in the Parking/ Access Area would be shared by all properties in the Plaza through the operation of the Parking Corporation, using the following means:

a. The Parking Corporation would run the Parking/ Access Area;

b. Each property owner at the Plaza would, upon taking title to the property, be deemed to agree automatically to accept shares of stock in the Parking Corporation;

c. Each property owner would, upon becoming a property owner, be obligated to pay its portion of the cost of operation and maintenance of the Parking/ Access Area.

The Parking Corporation did, in fact, operate for many years performing precisely this function. As evidence of this, a subsequent agreement recorded October 17, 1963, by and between the Parking Corporation and one of the property owners at the Plaza, acknowledged that the Parking Corporation was organized for the purpose of acquiring, owning and operating the Parking/ Access Area and the entire Parking/ Access Area was actually deeded to the Parking Corporation "for the purpose of furnishing parking to certain commercial lots". [sic]

As late as 1968, more than 18 years after its creation, the Parking Corporation was still issuing formal stock certificates to property owners in the Plaza property, and as late as 1983, these certificates were still being formally transferred from property owner to property owner using a written instrument. One example of such a certificate and the subsequent transfer to Johnny

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Edwards, the present owner of the property at 3724 Martin Luther King Jr. Boulevard, are attached to Mr. Edwards' affidavit, which is attached as Exhibit "2" to this letter.

From their subdivision in 1950 until the late 1990s, the approximately 50 separate parcels around the perimeter of the former Santa Barbara Plaza were held in separate ownerships. However, the Plaza fell on hard times during the 1980s, and was targeted for redevelopment. In the late 1990s, the Community Redevelopment Agency of Los Angeles (CRA/LA) began acquiring the various properties using eminent domain; and it ultimately completed this process and demolished most of the structures in the former Plaza. CRA/LA then reassembled some of the properties into a smaller number of parcels, and began selling them off to private owners.

With many of the commercial properties vacant or underutilized in recent years, the Parking Corporation, which was formed to oversee the sharing of parking within the Plaza property, eventually ceased operating. According to corporate filings obtained from the California Secretary of State, the Parking Corporation was suspended by the California Franchise Tax Board on or about September 4, 2007, presumably for failure to pay taxes. Nonetheless, the legal rights and obligations of the various property owners to use the Parking/Access Area for parking and access survive any suspension of the technical corporate status of the Parking Corporation. Indeed, while not used to its full capacity, the Parking/Access Area has been continuously in use for parking and access, both by my client and by other property owners in the former Plaza, through to the present. My client's representative, Fred Leeds, will testify to this fact at the hearing.

Meanwhile, although 64 years have passed since it was recorded, the Declaration, which restricts the use of the Parking/Access Area only to parking and access for the benefit of the various properties in the former Plaza property, remains fully in effect. The Declaration expressly provides that all of the restrictions contained therein run with the land, do not expire, and bind all present and future owners and their respective successors-in-interest. Further, because the Declaration was recorded, all of the various entities currently holding title to property at the Plaza, including the applicant here, purchased such property subject to the Declaration and are accordingly subject to all of these restrictions and conditions.

Thus, unless and until there is a court ruling to the contrary, for purposes of this Project the City must assume that the Declaration remains effect, and binds the applicant for this Project.

Although all of the owners of parcels located on the former Plaza property have rights to use the Parking/Access Area pursuant to the Declaration, as a result of the acquisition and reassembly of

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property by CRA/LA the actual ownership of the property underlying that area is presently divided among three separate entities: Kaiser Foundation Health Plan, Inc. (the applicant for this Project); Marlton Recovery Partners LLC, and the City of Los Angeles.

The parcels owned by these entities, and the present ownerships of the remainder of the properties in the former Santa Barbara Plaza, are depicted in the drawing below. Kaiser Foundation Health Plan, Inc., the applicant here, owns the largest of the CRA-assembled parcels, which includes more than half of the Parking/ Access Area. That parcel is depicted in shaded blue. Marlton Recovery Partners, LLC, owns most of the remaining Parking/Access Area, including the shared driveway access to Martin Luther King Jr. Boulevard. Its property is depicted in shaded red. The other ownerships include my client, MLK Marlton, LLC, depicted in solid yellow; its immediate neighbor, Johnny B. and Romaine Edwards, depicted in solid red; the City of Los Angeles, which owns the Buckingham Place Senior Apartments property and another portion of the Parking/Access Area, depicted in shaded black; and the Community Redevelopment Agency of Los Angeles (CRA/LA), depicted in shaded green.

[Graphic insert: Property Ownership in Lots Adjacent to Project Site not shown]

The applicant, Kaiser, purchased its 8.65 acre property in 2012. Concurrent with this purchase, it entered into an Easement Agreement with Marlton Recovery Partners LLC, which was recorded May 29, 2012. Under the Easement Agreement, Marlton Recovery Partners, which owns a large portion of the Parking/Access Area, including the access driveway to Martin Luther King Jr. Boulevard, granted to the applicant a sixty (60) foot wide easement across a portion of the Parking/Access Area for vehicular and pedestrian ingress and egress to the applicant's property. This grant on its face did not initially appear to violate the Declaration since the use of the Parking/Access Area parcels is, by the terms of the Declaration, expressly for "parking ... and... ingress and egress to other lots," including the applicant's lots. However, subsequent to the 2012 purchase and in apparent preparation for developing this Project, the applicant has brazenly violated the Declaration by constructing and maintaining fences across its property line, and directly through the center of the Parking/Access Area, thereby blocking all other property owners, including my client, from their rightful access to the parking lots, and to several of the access driveways to those lots.

My client has formally objected to Kaiser about this violation of its rights under the Declaration and both my client and its neighbor, the Edwards, have recorded the requisite statutory notice of intent to preserve their respective interests in the Parking/ Access Area. However, Kaiser has refused to restore access to either my client or the Edwards. There has already been litigation over

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the illegal blockage of other portions of the Parking/Access Area by another property owner in the former Plaza property. On November 13, 2013, Marlton Recovery Partners LLC filed a complaint against the CRA/LA and the City (Los Angeles Superior Court Case No. BC527351), claiming that the defendants illegally blocked a portion of the Parking/Access Area with a masonry wall and fence in violation of the Declaration, and seeking a determination that this area must be made available for parking and ingress/egress. This action is now pending and a trial is set for March 9, 2015.

RESPONSE 3.7

With respect to the alleged parking Declaration, see separate response provided by Kaiser's legal counsel Loeb and Loeb, dated August 18, 2014.

COMMENT 3.8

E. The Project Does Not Have Enough Parking to Satisfy the Zoning Code.

As the MND confirms, the Project has only the precise minimum number of parking spaces required by the zoning code. LAMC section 12.21.A.4 requires 5 parking spaces per 1,000 square feet, and that for 105,000 square feet of development the Project requires a minimum of 525 parking spaces. As reflected by the table below in the MND, the Project provides exactly that number of spaces.

[Graphic insert: Parking Table from MND (Table II-2) not shown]

Yet as illustrated by the drawing below, which overlays the Parking/ Access Area over the Project's site plan, the Project's northern parking area, which consists of 305 (i.e., about 60%) of the total 525 parking spaces provided, lies directly over the Parking/Access Area shared by MLK Marlton and other neighbors. Moreover, a portion of the facility itself is constructed above this shared area, and the structures, parking and landscaping included in the Project completely block two of the driveway accesses presently shared by the other property owners (one to Marlton Ave. and the other to Santa Rosalia Drive), and partially block a third access to Buckingham Road.

[Graphic insert: Parking/Access Area overlaying Site Plan not shown]

Since the two northern parking areas depicted for the Project are in fact subject to an easement pursuant to which other the owners of other properties have the right to park in the same location, the applicant cannot satisfy its minimum code parking requirements by way of parking located in

this area. Therefore, the Project violates the zoning ordinance and does not qualify for a Site Plan Review determination. In addition, the lack of minimum code parking also means that the Project's impact on parking has not been mitigated to a level of insignificance, and that there is a fair argument that there will be a significant impact on parking in the neighborhood. Therefore, an EIR should have been prepared.

RESPONSE 3.8

The commenter's assertion that the Project does not have enough parking to satisfy the zoning code is incorrect. In fact, the commenter acknowledges that " …the Project has only the precise minimum number of parking spaces required by the zoning code. Notwithstanding any parking covenants or Declarations, which are in dispute, the project's parking requirements are based on the proposed land uses. Further Condition 7 of the Conditions of Approval states that "[a] total of 525 parking spaces shall be provided pursuant to LAMC Section 12.21.A.4." Thus, the Proposed Project will be parked to Code and a parking deficiency will not occur.

COMMENT 3.9

Kaiser's environmental consultant, Shane Parker, contends that pursuant to a recent amendment to CEQA, parking impacts and aesthetic impacts need not be considered by the City. (See July 18. 2014 letter from Shane Parker to Michelle Singh ("Parker Letter") response to Comment 6.1. at pg. 1 6.) Specifically. Mr. Parker states that SB 743 (codified as Public Resources Code section 21155.4) statutorily exempts this project from any review of aesthetic or parking impacts. In fact, SB 743 does not apply to this project at all, since the project is neither a "residential, mixed-use residential, or [an] employment center project". [sic] Manifestly, this project has no residential component, so it does not qualify as "residential" or "mixed-use residential." In order to qualify as an "employment center" project, a project must meet the definition set forth in Public Resources Code section 21099, including the requirement that it have "a floor area ratio of no less than 0.75." Here, the project's FAR is only .28 to 1, which is far less than 0.75. Therefore. the project does not qualify as an "employment center" project and is not subject to the statutory exemption set forth in section 21155.4.

RESPONSE 3.9

The commenter has correctly pointed out that the Proposed Project does not meet the definition of an "employment center" as it does not have a FAR of 0/75:1 or higher. Thus, our prior determination in Response to Comment 6.1 of our July 25, 2014 letter stands corrected.

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Notwithstanding this correction, the Project's aesthetic and parking impacts were thoroughly and adequately addressed in the MND and were concluded to be less than significant. Further, the exemption was not exercised within the scope of the MND and the analysis presented therein stands.

Notwithstanding the exemptions authorized under SB 743, which we agree would not apply to the Proposed Project, the CEQA Amendments were nonetheless amended in 2010 to eliminate the issue of parking adequacy from the CEQA Initial Study Checklist. As explained in the Initial Statement of Reasons (December 2009), the Natural Resources Agency concluded that the question related to parking adequacy should be deleted from the Appendix G checklist in part as a result of the decision in *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656. The court in that case distinguished the social impact of inadequate parking from actual adverse environmental impacts. In particular, that court explained:

> [T]here is no statutory or case authority requiring an EIR to identify specific measures to provide additional parking spaces in order to meet an anticipated shortfall in parking availability. The social inconvenience of having to hunt for scarce parking spaces is not an environmental impact; the secondary effect of scarce parking on traffic and air quality ***is***. Under CEQA, a project's social impacts need not be treated as significant impacts on the environment. An EIR need only address the ***secondary physical*** impacts that could be triggered by a social impact. (Id. at p. 698 (emphasis in original).)

The Natural Resources Agency further concluded that it is aware of no authority requiring an analysis of parking adequacy as part of a project's environmental review. Rather, the Agency concurred with the court in the San Franciscans case that inadequate parking is a social impact that may, depending on the project and its setting, result in secondary effects. Consistent with existing CEQA Guidelines section 15131(a), deletion of the parking adequacy question from Appendix G checklist will ensure that the "focus of the analysis shall be on the physical changes." Specifically, the Appendix G checklist contains questions asking about possible project impacts to air quality and traffic.

With respect to aesthetics, the MND adequately analyzed the project's physical impact upon the environment with respect to scale and massing, compatibility with the surrounding land uses, shade and shadow impacts, and obstruction of views. In light of the information and analysis presented in the MND, the commenter has not provided any new information which would alter the conclusions presented therein as it pertains to aesthetic impacts.

COMMENT 3.10

F. The Project Deprives Existing Commercial Businesses of the Parking That They Require.

The applicant proposes to feed its own development aspirations at the expense of every other property owner in the former Plaza, and at the expense of residential and commercial neighbors who experience and relate to the Plaza property on a daily basis.

The more than 700 parking spaces in the shared Parking/ Access Area is a resource that was intended to be, and which has historically always been, shared among all of the approximately 50 separate commercial properties surrounding the former Plaza. By privatizing more than half of this parking for a single development, and by eliminating two of the access driveways leading to this parking, the applicant will starve all of the other property owners of their rightful parking and access, thereby impinging not only on their legal rights, but also on the use and future development of their respective properties.

The representative of my client, Fred Leeds, spoke to this issue at the public hearing, and his affidavit to the same effect is attached hereto as Exhibit "3" to this letter. Mr. Leeds testifies that he owns two parcels at the northeastern portion of the former Plaza, both of which are presently used for commercial stores; that these enterprises rely on the parking within the Parking/Access Area; that his immediate neighbor, Johnny B. and Romaine Edwards owns a restaurant that has also long relied on this parking; that he is presently in escrow to buy the Edwards property; that he has a preliminary plan for a new commercial development consisting of between 40,000 and 80,000 square feet to include a sporting goods store and a fitness center on these combined properties, and is awaiting letters of intent from two publicly traded companies to complete this transaction; that the project could require as many as 320 parking spaces under the City of Los Angeles zoning code; and that if he is deprived of full use of the Parking/Access Area these developments could be jeopardized.

In addition, because the Project deprives all of the other existing businesses and commercial properties located around the perimeter of the Plaza of the parking that is the lifeblood of any commercial enterprise, the Project has the potential to exacerbate the blight and decay already apparent in the Plaza and surrounding commercial areas.

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RESPONSE 3.10

The commenter's claim that the Project deprives existing commercial businesses of the parking that they require is entirely unsubstantiated. The commenter claims that development of the Proposed Project would deprive his clients of the potential future parking demand for a speculative project that does not exist. If and when Mr. Leeds files an application to develop his property, the parking demand for that application will need to be determined as part of that separate entitlement process. The Kaiser Project Site is under no obligation to reserve parking spaces for speculative development projects that do not exist.

Furthermore, as documented in the numerous photographs of the Project Site presented in the MND, Mr. Leeds' properties currently have access to adequate parking and are not currently deprived of its parking areas. These photographs were taken in 2013, which establish the baseline analysis for purposes of CEQA. As shown in Figure II-2, Aerial Photographs of the Project Site, there are approximately 26 vehicles parked within the rear yard of Mr. Leeds properties, occupying approximately one-tenth of the total parking supply in this area. Access to Mr. Leeds' parking areas is clearly depicted in Views 6 and 7 in Figure II-4, Photographs of the Project Site. View 6 shows the current access point from Martin Luther King Jr. Boulevard, which provides access to approximately 110 surface parking spaces within the parking isle that parallels Martin Luther King Jr. Boulevard and directly fronts Mr. Leeds' properties. The parking isle also provides direct and primary access to the surface parking lot that is located between Mr. Leeds' buildings. (see photo below).

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View depicting the empty surface parking lot located adjacent to the Flying Fox restaurant.

View 7 shown in Figure III-4 of the MND depicts a secondary unobstructed driveway access from Marlton Avenue that leads to the rear of Mr. Leeds' properties. This driveway access is currently open and is not obstructed by the Kaiser Project Site.

COMMENT 3.11

Finally, the injection of a new parking-intensive use into an area with a historic lack of parking would also harm the adjoining residential neighborhoods. In these areas, most of the multi-family buildings date from the 1930s and 1940s, and accordingly they already have far less parking than would normally be required under modern codes. Thus, the residential streets are already clogged with cars, and parking is difficult to find. Any additional parking load imposed by a large new medical facility with inadequate parking, or by other commercial properties on the former Plaza whose parking has been displaced by such a facility, would merely subject these residential neighbors to even more parking strain.

RESPONSE 3.11

The commenter is asserting that the Project's lack of parking would adversely affect the adjacent residential neighborhood. However, we find that this claim is entirely without merit since the Proposed Project provides adequate parking pursuant to the LAMC. The commenter has not provided any evidence to suggest that the Proposed Project's parking demands would exceed the code required parking.

Furthermore, as provided in the Project Traffic Study, a comprehensive TDM plan is recommended for Kaiser Permanente in conjunction with the proposed project so as to reduce vehicular traffic and parking generated at the project site. The proposed project site is situated within a transit rich area and will be adjacent to the future transit-oriented-district for the Metro Crenshaw/LAX Martin Luther King Jr. Boulevard light rail station. Accordingly, the proposed project site is well suited to achieving vehicle trip reductions. The TDM measures to be implemented as part of the proposed project will be aimed at decreasing the number of vehicular trips generated by persons traveling to/from the site by offering specific facilities, services and actions designed to increase the use of alternative transportation modes (e.g., transit, rail, walking, bicycling, etc.) and ridesharing. As discussed with LADOT staff, it is estimated that project-related vehicle trips will be reduced by a minimum of 10 percent (10%) with full

implementation of a Kaiser Permanente TDM plan. Thus, with the implementation of the TDM program and the fact that the Proposed Project

COMMENT 3.12

Kaiser's environmental consultant, Mr. Parker, contends that my client "has failed to provide any factual evidence that a lack of parking exists in the Project Area." (See Parker Letter, response to Comment 7.1. at pg. 18.) However, Fred Leeds, the representative of MLK Marlton, has presented evidence of a lack of parking in the residential neighborhood, and his affidavit to the same effect is attached hereto as Exhibit "3" to this letter. Such layperson evidence is sufficient to make a fair argument that there may be a significant impact on the environment under CEQA, and that accordingly an EIR must be prepared. (See Pocket Protectors, v. City of Sacramento (2004) 124 Cal. App. 4th 903 ("relevant personal observations by area residents" may be properly considered substantial evidence.) In particular, Mr. Leeds testifies as follows:

- He is familiar with the residential neighborhoods to the south and west of the project, as he owns numerous multi-family residential apartment buildings in this area.

- In his experience the buildings there do not have sufficient off-street parking to meet the needs of the residents and their visitors, and as a result street parking is constantly occupied and difficult to find.

- Any unsatisfied parking demand from the Kaiser project would seriously impact these residential neighborhoods by either depriving residents of a place to park entirely, or at least forcing them to park far from their residents and walk home, including late at night.

- Many of his tenants are women and elderly people who arc subject to be the targets of opportunistic crimes such as robbery or assault if they are forced to park far from their homes, especially at night.

RESPONSE 3.12

Mr. Leeds' personal observations and viewpoints are noted for the record and will be considered by the decision makers. However, it should be noted that Mr. Leeds' observation that a lack of parking exists in the residential neighborhoods to the south and west of the Project Site is not being disputed. The lack of residential parking in the residential neighborhoods in an existing condition that is not at all associated with the Proposed Project. This is not a Project impact.

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Rather it is part of the baseline environmental conditions. Furthermore, the Proposed Project will provide adequate parking to meet the anticipated demands of the employees and visitors of the proposed medical office use on-site. The commenter has not provided any evidence to suggest that visitors to the Kaiser facility would not be able to park on site. Based on site observations of Parker Environmental Consultants staff and the series of aerial photographs and site photographs taken at different times, it appears that the parking demands for Mr. Leeds properties are being adequately accommodated on his site and are not spilling over into adjacent areas. The surface parking lot fronting his property along Martin Luther King Jr. Boulevard is nearly vacant in every photo depicted. Also, two separate aerial photographs, taken years apart, show similar conditions with cars parked in the rear lot of Mr. Leeds' properties. Thus, the claim that the parking demands of Mr. Leeds' properties cannot be accommodated on his own property or within other accessible areas of the Marlton Square Project Site (i.e., the property currently under the ownership of Marlton Recovery Partners, LLC,) is unsubstantiated.

COMMENT 3.13

G. An Exception Should Not be Granted From the Specific Plan Design Standard Requiring Parking Lots to Be at the Rear of Buildings.

The Project seeks two Specific Plan Exceptions from section 14c of the Crenshaw Corridor Specific Plan, which provides for compliance with the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual. Neither of these exceptions should be granted.

The first requested exception is from Design Standard 11i, which provides:

> **Design Standard IIi.** Surface parking lots, parking structures, garages and carports shall always be to the rear of the buildings.

Under the requested exception, two large parking lots on the south side of the property would be placed directly adjoining public streets, adjoining the medical facility and in the front yard of the property. This would create two classic "dead zones," each more than 500 feet in length, of the type that is universally frowned upon by the city planning profession. It would also permanently deprive the densely populated residential neighborhoods to the south and west of the Project of any meaningful relationship with the commercial property in the former Plaza akin to the relationship that it historically enjoyed for almost 50 years until the CRA took over the property and began demolishing structures in the 1990s.

RESPONSE 3.13

The Applicant is requesting an exemption from Design Standard II i. The commenter's objection to the granting of this request is noted for the record and will be forwarded to the decision makers for their consideration. The commenter's assertion that the proposed site plan would permanently deprive the residential neighborhoods to the south and west of the Project of any meaningful relationship with the commercial property in the former Santa Barbara Plaza fails to acknowledge the fact that the commercial land uses within the Santa Barbara Plaza have not been in use for over 20 years. Furthermore, the Proposed Project has been designed to respect the adjoining neighborhoods through enhanced landscape design elements and pedestrian walkways that would allow for through access across the property linking the residential areas to the west to the Baldwin Hills Crenshaw Plaza mall to the east.

COMMENT 3.14

The application presents a series of rationales purportedly supporting the grant of the requested exception. None of these rationales support the mandatory findings for a specific plan exception as set forth in L.A.M.C. section 11.5.7.F. These mandatory findings include:

> (a) That the strict application ofthe regulations of the specific plan to the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;
>
> (b) That there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use of development of the subject property that do not apply generally to other property in the specific plan area.
>
> (c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question.
>
> (d) That the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property.

> (e) That the granting of the exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.

The applicant does not present even a single "practical difficulty," "unnecessary hardship," "exceptional circumstance," or "special circumstance" warranting an exception to Design Standard 11 i. Instead, the applicant recites a series of vague policy reasons to grant the exception. The MND itself states the rationale this way:

> "Due to the unique size and shape of the Project Site, the utilization of only 18 percent of the allowable FAR for development, and the proposed configuration of a central open space plaza providing public access through the Project Site, the proposed Specific Plan Exception is a necessary and reasonable request. The placement of the surface parking lots along the sides of the structure will allow parking stalls to be located at a shorter distance to the buildings entrances, which is necessary for visitors and patients accessing the outpatient medical facility. The Plan layout will also allow for a central open space plaza, which will provide a unique community benefit by facilitating pedestrian traffic through the site and providing a large centralized open space area to be utilized for passive social and community events.
>
> The configuration of the open space Plaza will also provide walking and jogging areas, areas of respite with seating, and a pedestrian oriented garden that is expected to serve the needs of medical office staff, patients and visitors at the site. Therefore, with approval of the Exception from the Specific Plan Design Guidelines the Proposed Project would have a less than significant impact upon a City-designated scenic highway."

Elsewhere the application (Attachment B to Master Land Use Application) states the rationale for an exception to Design Standard 11i as follows:

> The practical difficulties and hardships in locating all of the parking to the rear are related to the large size of the site, its three street frontages to the front and sides of the building, and no street or alley to the rear of the building. Another practical difficulty is that medical clinics and offices require significantly more parking than other commercial uses.

These rationales are not sufficient to justify an exception from the specific plan. First, it is not a "practical difficulty" or "hardship" that a medical clinic/office structure requires more parking than other uses. It is the applicant's decision, voluntarily made, to use the site for this purpose,

and to build a structure of this size. The property could as easily be developed with a use and/or structure size that would require less parking and allow all of the parking to be provided behind the building.

Second, the existence of three street frontages and the fact that the Project site is of a "unique size and shape" does not preclude placing parking to the rear of the structure. To the contrary, as the applicant repeatedly emphasizes throughout the application, this is an 8.65 acre site with ample room to buffer parking from adjacent residential areas. It is the applicant that has chosen, for its own reasons, to push the parking lots directly up against the street.

Third, the fact that there is no street or alley to the rear of the building has no bearing on the need to place parking lots adjacent to the street frontages. As the applicant has pointed out, there are five separate access points for this project, leading from all directions, and the primary access point at Martin Luther King Jr. Boulevard leads through an access easement directly to the rear of the property. It is difficult to conceive of a situation with better access to parking at the rear of the property.

Fourth, the provision of a purported offsetting "community benefit" of "a large centralized open space area to be utilized for passive and social and community events" does not warrant a deviation from the requirement. The large centralized open space area touted by the applicant is, in fact, completely fenced off and privatized for use solely by the staff, patients and visitors to the Kaiser development. Design Standard 11 i, in contrast, is designed to ensure that the Project relates properly and directly to the street and nearby land uses, and that it retains a human scale, rather than being separated by a soulless parking lot.

RESPONSE 3.14

The commenter's objection to the Applicant's findings for the requested exemptions from the Specific Plan is noted for the record and will be forwarded to the decision makers for their consideration.

COMMENT 3.15

Mr. Parker's letter attempts to buttress Kaiser's request for an exception from the Specific Plan requirement to place parking lots at the rear of buildings, by making a series of specious arguments about the purported community benefits from the open space to be provided, the "'abundant landscaping and design elements" and the "thoughtfully designed building." (Parker

Letter, response to comment 8.1 at pg. 21-23.) These contentions, taken collectively, do not even come close to meeting the stringent findings necessary to grant such an exception, which have little to do with the purported benefits of a project. Moreover, they arc not even good reasons for the City to exercise its discretionary authority in this case.

Mr. Parker begins by implying that this private, gated "open space" is the equivalent of a public park, because Kaiser intends to offer health classes to the community and "host local artists and musicians." However, this is anything but a public park: When Kaiser's "park" is closed, which is to say after 7 p.m. weekdays and all day on Sundays, there is no access whatsoever. When the park is open, Kaiser completely controls access, even if such access is not literally gated- just as the Grove or Century City shopping centers are controlled by their respective owners. On this unequivocally private property, Kaiser has the right to eject any person at any time, and for any reason.

RESPONSE 3.15

The commenter's objection to the Applicant's findings for the requested exemptions from the Specific Plan is noted for the record and will be forwarded to the decision makers for their consideration.

COMMENT 3.16

Next, in an apparent attempt to establish that there is a "special circumstance" and/or an "exceptional circumstance" unique to this property that would justify an exception from the Specific Plan, Mr. Parker ironically declares that since the site is unusually large- encompassing many formerly individual commercial lots- it is thus "special" or "exceptional". [sic] This contention turns the entire purpose of an exception on its head. Exceptions are generally granted to parcels that are unusually small, which make them harder to develop without such relief. Obviously, the larger a parcel is, the less difficult it is to accommodate a design that strictly meets the relevant planning documents. Clearly here, with 8.65 flat acres to maneuver in, Kaiser could easily have proposed a project that would require no exceptions whatsoever. Since they could easily have done so, they must do so. Mr. Parker also appears to argue that complying with the Specific Plan would present some sort of "hardship" sufficient to meet one of the necessary findings for an exception. First, he says that Kaiser would have to sacrifice its private open space in order to place parking lots behind the building. He does not explain why such open space cannot be placed exactly where the parking lots are now planned, and to better effect for purposes of relating to the street. Second, he says that Kaiser would not be able to "provid[e] the proposed

large circular pick-up and drop-off area for members who are too ill or physically unable to drive themselves" and that "the linear stacking of parking" behind the building would make it impossible to "provide abundant ease of access handicap stalls proximate to building entrances." However, Mr. Parker is no architect, and Kaiser's architect is utterly silent on both of these points. The fact is, with 8.65 acres to work with Kaiser could easily have built a more linear building (or multiple buildings) facing Santa Rosalia, with plenty of parking behind it, and plenty of room for handicap stalls immediately adjoining the building, and a circular drop-off. The failure to design the Project in this way is a self-imposed "hardship" that is simply not recognized by law.

Therefore, no exception to Design Standard 11 i should be granted.

RESPONSE 3.16

The commenter asks for an explanation as to why the project's open space cannot be placed exactly where the parking lots are now planned, and to better effect for purposes of relating to the street. While it is physically possible to move the parking away from the street it does not result in sound planning practices in light of the results it would create. Moving the parking spaces within the areas currently proposed for open space would displace the continuous green space and the entrance plaza. Less than a third of this relocated parking would be 'behind' the building (actually the front door) and would preclude the development of an entrance plaza. The entrance plaza manages, safety and securely, the movement of large quantities of customers by separating vehicles from pedestrians. The plaza also serves as a place for community events and interactions. Furthermore, green spaces have less value if disconnected from the entrance experience. It is commonly understood that plazas, streets and green spaces are more successful and safe when they are actively used, in this case coming and going from parking and further activated by programmed activities. The commenter's suggestion to switch the placement of parking areas and open space areas would render the green spaces under-used fragments, rather than creating a site-unifying element with connectivity. This is a core design principle for Kaiser. Kaiser's projects are designed to be connected with communities in meaningful ways. It is extremely important that these spaces are designed for success. In summary, moving the parking does not significantly achieve the petitioner's goal of putting all the parking behind the building. It also would destroy the open space/amenities concept.

COMMENT 3.17

H. An Exception Should Not be Granted From the Specific Plan Design Standard Requiring Walls Visible From a Public Street to Be a Maximum of 4 Feet in Height.

The second requested exception is from Design Standard 8a, which provides:

> **Design Standard 8a**. Freestanding walls located parallel to and visible from a public street should provide a minimum three-foot wide landscaped buffer for the length of the wall adjacent to that public street, with a maximum height of four feet. The landscaped buffer should contain clinging vines, oleander trees or similar vegetation capable of covering or screening the length of such wall, and should include the installation of an automatic irrigation system. Chain-link, barbed- wire and wrought iron are not permitted. (Figure F .1)

Under the exception, the Project would essentially eviscerate Design Standard 8a. Instead of a modest, attractive wall up to 4 feet in height, the entire property would be encircled almost at the property line with either 6 foot high fences or, in areas where parking lots are located, by 6-foot fence/wall combinations. In total, there would be more than 2500 feet almost ½ mile- of linear fencing or wall-fencing, completely sealing off the vast majority of the property from the adjoining public street and creating a "caged-in" appearance for the entire project.

[Graphic insert: Perimeter Wall Plan (MND, Figure II-20)]

[Graphic insert: Typical perimeter fences/walls (from application)]

[Graphic insert: Typical perimeter fences and entry gate (from application)]

The application attempts to justify this perimeter fencing, using benign descriptions about its "visual lightness" and "architectural interest" and characterizing it as consisting of "rectangular aluminum slats" with "no horizontal bar elements." (See memorandum in file from Donna Tripp to Michelle Singh dated June 11, 2014.) In fact, the proposed fence is in most respects indistinguishable in appearance from a wrought iron fence, is to a large degree less transparent than a wrought iron fence, and thus directly contravenes both the letter and the intent of Design Standard 8a.

As with the other requested exception from the Specific Plan, the applicant does not present even a single "practical difficulty," "unnecessary hardship," "exceptional circumstance," or "special circumstance" warranting an exception to Design Standard 8a. Instead, the applicant recites a series of justifications that could be used to justifY installing an over-height security fence around virtually any property in the area. (Tripp Memo dated 6/11/14.)

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For example, the application cynically attempts to justify the exception on the ground that the Project site "presently is enclosed by an over 6 ft. in height chain link fence." The applicant erroneously believes that since the property owner has encircled the property temporarily in an ugly fence -something that is forbidden by the Crenshaw Specific Plan and is thus illegal - that justifies allowing an ugly fence to be remain on the site forever.

The application also states that "properly securing the large site is a high priority for the applicant," and predicts that "If left unsecured at night, the large surface parking lots and contiguous swaths of central open space can be anticipated to attract youth using the large parking areas for skateboarding or social gatherings, transients using the open park/garden areas for overnight sleeping/camping, vandals and other criminal activity." However, the Crenshaw Specific Plan was drafted with a clear recognition of the need for security, and yet it does not permit- indeed, it actively discourages- the cordoning off of private property from the adjacent commercial and residential neighborhoods. The applicant's security goals must be achieved through some method other than caging in the property.

In this vein, the application goes on to state that "Security cameras or personnel both visible enough to deter unpermitted usage and sufficient in number to cover this 8.6 acre Project Site throughout the night would be infeasible for the Applicant." No facts are provided to support this statement, and it is, on its face, preposterous. Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries reported operating revenue of $13.2 billion for the quarter ending September 30, 2013. (See press release at http://share.kaiserpermanente.org/articlelkaiser-foundation-hospitals-and-health-plan-report., third-guarter-20 13-financial-results/)

The application also notes that security lighting in particular "would be negatively impactful to adjacent residential uses." This is ironic, given that the primary reason for any night time lighting impact on adjacent residential uses is that the Project intentionally violates (and therefore seeks an exception from) another Design Standard requiring that parking lots be located behind buildings, and therefore out of the view of adjoining residential property.

The application makes a play for sympathy to the patients of the facility, noting that patients have "disabilities and sensitive health conditions which need additional protection." Yet elsewhere the application contradicts itself, ·stating that the need for the security fence mainly arises after 7 p.m., when the facility is closed.

The application also boasts of the "2.5 acres of central recreation space," noting the "passive recreational activities" that it will offer and describing it as a "community amenity." However,

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the applicant downplays the fact that this area is to be entirely behind locked gates, and thus enjoyed only by the applicant's invited guests, staff and patients, to the exclusion of all others in the surrounding neighborhood. In fact, this private "recreation space" will be of no benefit to the community or neighbors, unless they happen to be guests, staff or patients of the applicant. Moreover, the applicant is not content merely to "secure" the property so as to exclude the neighborhood; it goes further and insists that the security fencing be located almost at the property line, therefore depriving hundreds of residential neighbors and thousands of daily passersby of even a proper visual buffer from the street.

In an attempt to show that other nearby properties are enjoying a substantial property right that is denied to the property in question, the application provides photos of a handful of other properties in the area which feature fences of 6 feet or taller, some of them just a few feet long. However, the applicant does not contend that any of these fences is permitted or otherwise legal, much less does it provide evidence of this fact. Nor does the applicant show how small these fences are compared to the large swath of fencing proposed by the applicant here. Rather, the argument appears to be that since other nearby properties have illegal and/or unpermitted fences, this property should be given the legal right to have such a fence, and along a street frontage that is almost ~ mile long.

Finally, the applicant makes another cynical argument in an attempt to support the mandatory finding that the exception would not be detrimental to the public welfare or injurious to nearby property. It contends that because the Project represents a "major private investment" that will "remove an unsightly, blighted property and bring economic vitality to the area," it should be forgiven from this required finding. The contention appears to be that the negative impacts of the exception should be ignored if they are outweighed by the other net benefits of the Project. However, regardless of any net benefit the Project may generate for the area generally, the property closest to the site would be harmed by the continuous cage-like fence that the applicant proposes, as it would cordon off the site from the adjacent residential neighborhoods, thereby depriving them of any connection to the Project and destroying the aesthetic and visual buffer that the Design Standard is intended to preserve.

For the above reasons, the mandatory findings for an exception to Design Standard 8a cannot be made, and the exception should not be granted.

RESPONSE 3.17

The commenter's objection to the Applicant's request for an exemption from Design Standard 8a in the Specific Plan is noted for the record and will be forwarded to the decision makers for their consideration. It should be noted that the recommendation report of the Area Planning Commission is to deny this request. As noted in Condition No. 2c. Freestanding Walls, on page C-1 of the APC Recommendation Report, the project is conditioned to limit freestanding walls to: (i) a four foot high fence located on the east and west sides of the property line adjacent to open space areas, and submit revised plans to be in compliance with this condition, and (ii) a six foot fence on the northern interior property line, abutting commercially zoned properties.

COMMENT 3.18

I. The Site Plan Review Findings Cannot Be Made.

Among the entitlements sought by the applicant is a Site Plan Review. (See LAMC section 16.05.) A Site Plan Review determination requires the decision-maker to make certain findings. (See LAMC section 16.05.F.) The mandatory findings include:

1. That the Project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any application specific plan.

2. 2. That the Project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties.

Here, these two mandatory findings cannot be made. Finding 1 cannot be made because, as discussed above, the Project would be improperly caged behind almost ½ mile of 6-foot high security fencing, and because it would place parking lots alongside and in front of, rather than to the rear of, the subject medical facility. These design characteristics violate section 14c of the Crenshaw Corridor Specific Plan (which requires compliance with the Design Guidelines and Standards Manual).

Finding 2 cannot be made because, the Project is not compatible with existing and future development on adjacent properties and neighboring properties, in numerous respects. These include: (a) the inclusion of over-in-height fencing; (b) the improper location of parking lots

adjoining the street frontage; and (c) the absence of adequate off-street parking facilities sufficient to meet the minimum code-required parking for the Project.

Therefore, a Site Plan Review determination cannot be made.

RESPONSE 3.18

The commenter's objection to the Site Plan Review findings is noted for the record and will be forwarded to the Decision makers for their consideration. It should be noted that the APC Recommendation Report denied the exception from Section 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow a 2'-6" high fence on top of the required 3'- 6" high wall (total 6'-0" high) adjacent to surface parking lots fronting along adjacent streets and a 6'-0" high fence fronting along adjacent streets.

COMMENT 3.19

J. A Project Permit Compliance Determination Cannot Be Made.

The applicant seeks a Project Permit Compliance determination concerning compliance with the applicable regulations of the Crenshaw Corridor Specific Plan, pursuant to LAMC section 11.5.7.C. However, since, as discussed above, both the perimeter fence and the placement of parking lots along the street frontages directly violate section 14c of the specific plan, a Project Permit Compliance determination cannot be made.

RESPONSE 3.19

The commenter's objection to the Project Permit Compliance Determination is noted for the record and will be forwarded to the Decision makers for their consideration.

COMMENT 3.20

K. An Environmental Impact Report Should Be Prepared for the Project.

The Mitigated Negative Declaration prepared for this project was not the proper form of environmental review under the California Environmental Quality Act (CEQA). CEQA provides that "If there is substantial evidence, in light of the whole record before the lead agency, that the

Project may have a significant effect on the environment, an environmental impact report shall be prepared." (Public Resources Code, section 21 080(d).) The courts emphasize that the threshold for preparing an EIR is a low one: Whenever there is "substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment," a mitigated negative declaration will not suffice and an EIR must be prepared. *(Citizens for Responsible & Open Government v. City of Grand Terrace, (2008) 160 Cal. App. 4th 1323.)* A mitigated negative declaration, on the other hand, is appropriate only when "(1) the proposed conditions avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the Project, as revised, may have a significant effect on the environment." *(Architectural Heritage Assn. v. County of Monterey (2004) 122 Cal. App. 4th 1095, 1119.)* Thus, "It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project. *(See No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 85.)

We address below the numerous impact categories in which a fair argument can be made that there will be a significant impact on the environment. An EIR should be prepared on each one of these subjects.

RESPONSE 3.20

The commenter is asserting that he has presented substantial evidence to support a fair argument that the Project would result in a significant impact upon the environment. We respectfully disagree because the argument and speculation provided by the commenter does not constitute substantial evidence. Pursuant to Section 15184 of the State CEQA Guidelines, "…Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence."

COMMENT 3.21

1. Aesthetics

The Project would result in aesthetic impacts due to its failure to meet the requirements of the Crenshaw Corridor Specific Plan and other City policies. The height of the proposed medical building would be approximately sixty feet above grade, with a photovoltaic canopy

approximately 71 feet above grade. This is considerably taller than any other structure in the immediate area except the senior housing fronting on Buckingham. The Project is located further from the commercial corridor and will be approximately double the height of the residential structures immediately across Santa Rosalia Ave. from the Project site. Placement of the structure on the southerly portion of the site exacerbates the sense of an abrupt change in scale.

The Project is located in Subarea C of the Crenshaw Corridor Specific Plan, where building height is limited to a maximum of sixty feet under Specific Plan Section 10. The proposed solar panel canopy exceeds the height limit by eleven feet, raising the total height to 71 feet and further contributing to the sense of mass and abrupt change in scale from the surrounding area. Since the specific plan, unlike the City's zoning code, does not contain an exception from height limits for solar panels, the Project may actually violate the specific plan, but regardless it will create a sense of overwhelming mass and will mark an abrupt change in scale from the surrounding area, resulting in an arguably significant impact on aesthetics.

RESPONSE 3.21

The commenter asserts that the height of the proposed project would result in a significant environmental impact. However, the Proposed Project is entirely consistent with the allowable height of the zoning code and the Crenshaw Corridor Specific Plan. As noted on page III-2 of the MND, the Project Site is located in Subarea C of the Crenshaw Corridor Specific Plan which limits building height to a maximum of 45 feet, except projects located in Subarea C may exceed 45 feet, but shall not exceed a height of 60 feet. The Proposed Project would be four stories high (approximately 60 feet in height). The top of the screened mechanical equipment on the roof level is approximately 65 feet above grade and the top of the proposed PV (photovoltaic) solar panel structure is approximately 71 feet above grade, which is permissible under the LAMC. The Specific Plan requires screens around mechanical equipment that are above the building parapet, however, it does not provide any specific guidance with respect to solar panel apparatuses. As such the requirement of the LAMC prevail.

COMMENT 3.22

The applicant also proposes to erect fences along all street frontages. As discussed in greater detail above, the Crenshaw Corridor Specific Plan design guidelines provide that walls may not exceed 4 feet along street frontages. These fences will further contribute to a potentially significant aesthetic impact. Moreover, while the MND acknowledges that the fence was part of the project, and that the applicant would seek an exception from the provision of the specific plan

design guidelines that forbid such a fence- the aesthetic impact of this fence was not even mentioned, much less analyzed, in the MND. Finally, because it deprives existing commercial businesses and commercial properties located around the perimeter of the Plaza of the parking that is the lifeblood of any commercial business, the Project has the potential to exacerbate the blight and decay already apparent in the Plaza and surrounding commercial areas. (See *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446 (Court required City to perform further CEQA analysis on rezoning of suburban parcel to commercial use because "The potential economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area.") This is a potentially significant impact on aesthetics which should have been analyzed in an EIR.

Mr. Parker's letter reiterates the argument, made in connection with parking impacts, that aesthetic impacts need not be evaluated under SB 743, the recent statutory amendment to CEQA. (See Parker Letter, response to comment 13.1. at pg. 34.) As discussed above, SB 743 does not apply to this project since the project is neither a "residential, mixed-use residential, or [an] employment center project". (In order to qualify as an "employment center" project, a project must meet the definition set forth in Public Resources Code section 21099. including the requirement that it have "a floor area ratio of no less than 0. 75"; here, the project's FAR is only .28 to 1.)

Mr. Parker also argues that aesthetic impacts of a ½ -mile long fence should be ignored for purposes of CEQA simply because an exception is being requested under the Specific Plan. (See Parker Letter, response to comment 13.2. at pg. 35.) However, the grounds upon which Kaiser requests that an exception be granted arc not primarily aesthetic in nature: rather, they have to do with hardship and special circumstances. If an exception is granted on these grounds, the potential aesthetic impact remains. This potential impact must be analyzed under CEQA.

RESPONSE 3.22

With respect to SB 743, see response to comment 3.9, above. The commenter has correctly pointed out that the Proposed Project does not meet the definition of an "employment center" as it does not have a FAR of 0/75:1 or higher. Thus, our prior determination in Response to Comment 6.1 of our July 25, 2014 letter stands corrected. Notwithstanding this correction, the Project's aesthetic and parking impacts were thoroughly and adequately addressed in the MND and were concluded to be less than significant. Further, the exemption was not exercised within the scope of the MND and the analysis presented therein stands.

With respect to the Applicant's request for an exemption from Section 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual, it should be noted that the APC denied the Applicant's request to allow a 2'-6" high fence on top of the required 3'- 6" high wall (total 6'-0" high) adjacent to surface parking lots fronting along adjacent streets and a 6'-0" high fence fronting along adjacent streets.

COMMENT 3.23

2. Air Quality

Page 3 of Appendix A of the MND (Air Quality) shows import and export of 37,073 cubic yards of material, reflecting only contaminated soils that are to be removed. This does not include removal of peat materials around future building foundations or removal of undocumented fill materials. Based on the recommended removal depth of 20 feet and building footprint of approximately 25,000 square feet, up to 18,000 additional cubic yards of peat materials may need to be moved from the site. (See Gobies; pp. 15-17.)

Moreover, the bulk of the contaminated soil is located at the easterly portion of the site where future parking is planned, whereas the medical building would be centrally located on the site. Thus, there would not be a great deal of overlap in soils removed for different purposes, and the work areas would be separated enough that heavy equipment could easily operate in both locations at the same time. This has negative consequences for air quality, as multiple work areas means multiple sources of emissions.

In the MND, based upon the assumption that 37,073 cubic yards would be imported and exported from the site, peak daily emissions of nitrous oxides during the construction were calculated to be 92.5 percent of the South Coast Air Quality Management District's adopted threshold of significance. If the removal of peat materials contributed just 9,300 more cubic yards of grading, this would cause the NOx threshold to be exceeded, causing a significant impact on air quality.

RESPONSE 3.23

As noted in response to comment 14.1 of our July 25 correspondence, the commenter's assumptions with respect to the MND's air quality analysis are incorrect. The air emissions associated with the amount of soil import and export (i.e., 37,073 cubic yards of import plus 37,073 cubic yards of export) was calculated for purposes of determining off-site emissions associated with hauling activities. This calculation was based on the area of planned excavation

beneath the proposed building. The air quality emissions associated with total grading was calculated using the CalEEMod Version: CalEEMod.2013.2.2 software platform, which calculates the emissions from onsite grading activities based on default values for the number and types of construction equipment and activity based on total lot area. This methodology more accurately reflects the total area of daily soil disturbance that would occur across an approximate 9-acre Project Site. The commenter's claim that the analysis failed to include an additional 18,000 cy of peat removal is unfounded and erroneous as the total amount of export calculated for the peat removal was 37,073 cy. The grading phase would involve approximately 49,838 cubic yards of earthwork across the entire Project Site over a period of approximately 4 months. In accordance with the soil remediation plan under the direction and oversight of the Regional Water Quality Control Board (RWQCB), the area within the limits of the proposed outpatient medical facility's footprint will need to be excavated to a depth of 20 feet below grade and replaced with suitable fill material. Thus, it was conservatively estimated that the Project would require approximately 37,073 cy of soil export and 37,073 cy of soil import.

COMMENT 3.24

3. Biological Resources

Unfortunately, the only survey of the site in the MND was performed by an arborist, not a biologist. Further, the survey was conducted toward the end of the dry season. Biological resources, and especially migratory birds, could potentially exist on the site or use the site. In fact, while the Project site is largely disturbed, seasonal ponding has been reported on the site, and this ponding is consistently used by migratory birds during the winter months.

Johnny Edwards, who has owned the property adjacent to MLK Marlton's for more than 30 years, spoke to this effect at the public hearing, as did the representative of MLK Marlton, Fred Leeds. Mr. Edwards' affidavit to this effect is attached as Exhibit "2," while Mr. Leeds' affidavit is attached as Exhibit "3".[sic] Such layperson evidence is sufficient to make a fair argument that there may be a significant impact on the environment under CEQA, and that accordingly an EIR must be prepared. (See *Pocket Protectors, v. City of Sacramento (2004) 124 Cal. App. 4th 903* ("relevant personal observations by area residents" may be properly considered substantial evidence.) Specifically, Mr. Edwards has attested that he has owned the property since 1983 and Mr. Leeds attest that he has been a real estate broker working in this area for more than 30 years.

They have both observed the following:

- In the last several years because of numerous vacancies at the commercial properties in the former Plaza the westernmost portion of the Parking/ Access Area, approximately 1 acre in size and including a portion of the Project site, has fallen into disuse such that the pavement has disintegrated in this area;

- Because the grade of the site declines toward the west, storm water from the entire parking lot tends to flow into this 1-acre area during the winter;

- During the winter vegetation between 1 and 2 feet high has consistently grown up during the winter and the spring; and

- Hundreds of migratory birds consistently use this vegetation during recent winters.

[Graphic insert: Winter ponding area (from MND Figure III-5)

Mr. Parker, in his letter, speculates that these ponding conditions arc the result of "manmade features," such as "construction activity and pits excavated in for fill, sand or gravel." (See Parker Letter, response to comment 15.1. at pg. 39.) On this basis, Mr. Parker contends that the ponds arc likely to be subject to an exemption from regulation under the Clean Water Act. However. Mr. Parker points to no evidence that the ponding conditions result from construction activity or excavated pits. To the contrary, the evidence presented by both Mr. Leeds and Mr. Edwards unequivocally indicates that the conditions result purely from the natural slope of the property, and have occurred in the absence of any construction activity or excavation, as existing pavement has simply disintegrated from disuse of the western portion of the site.

RESPONSE 3.24

This comment reiterates the comments previously addressed in on our July 25 correspondence regarding comment 15.1. The commenter asserts a significant impact would occur with respect to biological resources due to the fact that seasonal ponding has historically been observed on the Project Site, and migratory birds have been observed during the winter months. However, as analyzed in the MND, the Project Site is currently vacant and devoid of any seasonal ponding or vegetation except for invasive weed species and eight Mexican fan palm trees. The Project Site does not contain any critical habitat or support any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

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The evolution of the development, disrepair, and redevelopment of the former Santa Barbara Plaza Project Site has been documented in several aerial photographs. The aerial photograph presented in Figure II-2 of the MND, was taken in the Spring of 2012 (see source of Photo dated May 2012, in lower left frame). This image shows active building demolition and remediation activities taking place on-site and off site within the Santa Barbara Plaza. This image clearly shows that the site condition previously observed on site (as shown in the Aerial Photographs depicted in the photograph location inset maps in Figures II-3 through II-6), have changed considerably. Nevertheless, the MND addressed the potential impact upon migratory bird species with the incorporation of mitigation measure IV-20 (see MND page III-23).

Nesting birds are protected under the Federal Migratory Bird Treaty Act (MBTA) *(Title 33, United States Code, Section 703 et seq., see also Title 50, Code of Federal Regulation, Part 10)* and Section 3503 of the California Department of Fish and Game Code. Accordingly, the Applicant will be required to comply with mitigation measure IV-20: Habitat Modification (Nesting Native Birds, Non-Hillside or Urban Areas), to ensure that no significant impacts to nesting birds would occur. With mitigation, the Project would result in a less than significant impact upon sensitive biological species or habitat and therefore the preparation of an EIR is not warranted.

To provide further assurance that the MND has adequately addressed potential impacts upon migratory bird species, Michael Josselyn, PhD, Principal and Certified Professional Wetland Scientist, WRA Inc., was contacted for a professional opinion on the adequacy of the proposed mitigation measure IV-20. Mr. Josselyn is a Certified Wetland Scientist with over 35 years of experience in environmental consulting and is the Principal and founder of WRA Inc. WRA, employs 60 professionals with offices in northern and southern California, and performs construction monitoring on projects throughout the State with specific oversight on compliance with federal and state laws related to protection of sensitive habitat and species. As noted in the correspondence dated October 23, 2014, (included as attachment B to this letter), Mr. Josselyn has confirmed that mitigation measure IV-20 is feasible and appropriate in complying with the MBTA, and will reduce any impacts to migratory birds to a less than significant level. Mr. Josselyn further notes that the water which temporarily ponds in depressions resulting from ongoing remediation and demolition activities following storm events is not considered a sensitive habitat under the federal Clean Water Act. In the attached WRA correspondence, Mr. Josselyn explains that Project Site meets a number of exemptions under the Clean Water Act including man-induced features resulting from altered hydrology (construction actions); artificial ponds used for settling purposes; isolated areas that that also lack a significant nexus to waters of

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the US; and water-filled depressions created as a result of construction activity is directly applicable to the current Project Area. As a result, no further mitigation requirements are necessary as it relates to these water-filled construction related depressions.

COMMENT 3.25

4. Geology and Soils

The MND contends that impacts associated with on-site geological conditions will be mitigated by the import and export of soil, but this process in itself triggers impacts on air quality, water quality, and noise. In particular, the removal of additional peat materials in the area around the building footprint would require additional use of heavy equipment which would generate noise and air emissions. The only alternative to removing these materials - i.e., driven piles- would create significant noise and vibration impacts affecting nearby residential and institutional uses, as discussed below.

RESPONSE 3.25

This comment was previously addressed in our prior written correspondence dated July 25, 2014 responding to Mr. Henning's July 17, 2014 comment letter. See response to comment 16.1. As stated previously the Project would not be constructed with the use of pile drivers. As stated on page III-32 of the MND in response to CEQA Checklist Question VI(a)(ii):

> *"GeoBase, Inc. recommends fill and foundation alternatives that may be suitable for the Proposed Project: removal of the peat soils and silts with peat and organic inclusions and replacement with properly compacted backfill soils or the implementation of deep foundations with no soil removal.* ***The Proposed Project would follow the recommendation to remove the peat soils beneath the building footprint, to a depth of approximately 20 feet.****" (emphasis added).*

Contrary to the commenter's assertion that the MND failed to address secondary impacts upon air quality, water quality and noise, each of these issues were adequately addressed in the MND. Again, Mr. Henning's claim that these issues were not addressed is entirely unsubstantiated and incorrect.

COMMENT 3.26

5. Hazardous Materials

The MND acknowledges that the Project site "is currently undergoing soil remediation efforts conducted by the Applicant under the direction and oversight of the Los Angeles Regional Water Quality Board (LARWQCB)." Specifically, studies conducted by consultants determined that there were four former dry cleaners and a former gas station/auto center, each of which was identified as a "potential contributing source of recognized environmental concerns (RECs)." (MND at pg. III-43.)

Notably, the Phase II environmental site assessment performed by Stantec concluded that "Tetrachloroethene (PCE) concentrations exceeded screening levels at two former dry cleaners." These former dry cleaners (now both demolished) were located on Santa Rosalia Avenue, directly across the street from dense multi-family residential neighborhoods. PCE is one of the well-recognized cancer-causing solvents that made Erin Brockovich famous.

Other than to acknowledge the existence of these dangerous PCEs, the MND wholly fails to address their extent, much less the remediation of the problem. The depth and breadth of the PCE plume is not analyzed, despite its location immediately adjacent to residential neighborhoods. Nor is the impact on the water table analyzed. Further, the only mitigation measure in the MND concerning remediation is a requirement that the applicant receive a clearance from the Los Angeles Fire Department. Meanwhile, the MND simply fails to expressly incorporate the detailed recommendations of Geosyntec, the Phase II environmental consultant, which included:

- Installation of groundwater monitoring wells onsite for collecting representative groundwater quality data, and monitoring these wells for four quarters.

- Further delineation of the onsite impacted soil found at the former dry cleaner operations, to characterize the lateral and vertical impacted soil extent.

- Installation of offsite temporary soil vapor probes near residences and monitoring them during and one year after the property entitlement and soil excavation activities ire [sic] completed, to demonstrate that there is no human health risk associated with the soil vapors and to verify the reducing trend of the soil vapor concentrations over time.

Given the proven existence of PCEs on the site, the MND's failure to discuss the extent of the contamination, or to explain how the contamination will be remediated, is a startling omission, and raises questions of environmental justice in this primarily working class African-American community, which mainly lacks the awareness and/or resources to secure the attention of City officials. Moreover, since the MND does not expressly incorporate as mitigation measures the

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recommendations of the Phase II environmental consultant, there is unquestionably a fair argument with mitigation the Project would have a significant impact in connection with hazardous materials.

Mr. Parker's letter seeks to avoid this result by referring to the soil remediation efforts presently underway under the direction of the Los Angeles Regional Water Quality Control Board, noting that while a comprehensive discussion of these remediation efforts is wholly excluded from the MND, "all of this information is publicly available." (See Parker Letter, response to comment 17.1, at pg. 42-43.) Mr. Parker then concedes that information about groundwater and soil monitoring that has taken place subsequent to the 2012 Geosyntec report was not incorporated into the MND, and then seeks to supplement the record with this information. The information concerns groundwater monitoring wells, soil borings, vapor probes, and the like.

The existence of this additional information is yet more reason why an EIR should have been prepared. First, the underlying documents that describe these remediation activities and the results of the various tests are simply not in the record in any form. Instead, the City and the public must rely purely on the second-hand assertions of an environmental consultant with no background in the subject matter, much less experience with the site conditions being described. Second, none of this information was presented by the City before a decision was made to proceed with an MND. Third, by Mr. Parker's own admission, the post-2012 site work, including soil borings and monitoring wells, indicates that there is in fact, PCE contamination: "The results from the 2013 investigation indicate that PCE-impacted soil is delineated laterally and vertically, with planning currently underway for the removal of impacted soil via excavation." (See Parker Letter, response to comment 17.1, at pg. 43.)

The public deserves more than a single sentence in an obscure letter from a non-expert stating that there is PCE contamination just a few feet from residential properties. An EIR should be prepared to study both the extent of this contamination and how it will be remediated.

RESPONSE 3.26

The soil remediation activities currently being conducted on the Project Site under the oversight of the Los Angeles Regional Water Quality Control Board and the Los Angeles Fire Department are independent actions and are not a part of the Proposed Project. The remediation effort currently underway does not compel the lead agency to approve the project. The remediation efforts are based on performance standards for ensuring the former contaminated soils are remediated to an acceptable level.

COMMENT 3.27

6. Land Use

A significant impact on land use and planning is considered to occur if a project is inconsistent with applicable general plans and regional plans. As noted above, the Project would violate the Crenshaw Corridor Specific Plan, and the Design Guidelines adopted pursuant to that plan, in at least two respects: (I) by placing parking lots immediately adjacent to the public street rather than behind buildings, in violation of Design Standard 11 i; and (2) by encircling the entire property in a cage-like fence almost at the property line, in violation of Design Standard 8a. Moreover, the MND does not even mention, much less analyze, the manifest negative land use impact arising from the Project's violation of Design Standard 8a; the Land Use section of the MND does not even mention this inconsistency.

In addition to being subject to the Crenshaw Corridor Specific Plan, the Project is governed by the West Adams-Baldwin Hills-Leimert Community Plan. That plan specifically calls out the Santa Barbara Plaza site, and notes "the need for a master plan on the property to prevent incongruent, incremental development" on the site. (See pg. III-17.) In addition to this, Specific Plan Policy 1-1.5 states: "Require that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development." The Project does not meet these standards.

Further, Policy 7-2.2 of the West Adams-Baldwin Hills-Leimert Specific Plan Policy 7-2.2 states that "New development projects should be designed to minimize disturbance to existing traffic flow with proper ingress and egress to parking." When the site functioned as Santa Barbara Plaza/Marlton Square, commercial uses were located at the perimeter of the approximately twenty acre plaza and parking was pooled in the central portion of the site, with access to all of the various commercial uses provided from driveways located at Martin Luther King Boulevard, Santa Rosalia, Marlton, and Buckingham. As currently designed, the Project would create a separate parking area for just the medical building, thereby excluding the other commercial uses from that area. Moreover, the design provides for only the medical building - and not the other commercial uses - to take vehicular access from the three present driveways on Buckingham and Santa Rosalia, apparently to the exclusion of the other commercial uses. This would create a substantial disturbance to existing traffic flow utilizing the other commercial properties. This is in itself a significant impact on land use.

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RESPONSE 3.27

As noted in our previous response to Mr. Henning's comment letter dated July 17, 2014, inconsistencies with adopted land use policies and or regulations do not by themselves constitute a significant adverse impact upon the environment. (See Response to Comment 18.1.1 in our July 25, 2014 correspondence.) Pursuant to the policies and procedures outlined in the Specific Plan and LAMC, there are processes and requisite findings that need to be made to support the approval of various exceptions to the adopted land use regulations and design guidelines. With approval of the entitlement requests, and adoption of the required justifications, land use inconsistency impacts would be resolved and the projects land use impacts would be rendered less than significant.

COMMENT 3.28

7. Noise

The large 4-story medical building that is the heart of the Project is directly across Santa Rosalia Avenue from a densely populated multi-family residential neighborhood. The project site is also directly to a large senior complex consisting of 70 units. A church and a YMCA are also directly across the street, and another church and a child care center less than 500 feet away.

The noise impacts on all of these sensitive receptors would extend over the entire construction phase of the project, which is estimated to be 16 months including grading, foundation and construction. (MND at pg. 66.)

[Graphic insert: Noise Monitoring and Sensitive Receptor Location Map (from MND)

The MND makes generic assumptions about the construction equipment and methods to be used in the Project. This results in optimistic measurements of noise impacts, rather than worst-case scenarios. Yet elsewhere in the MND there is evidence that noise impacts could be much worse than predicted by the MND. As just one example, the Geology and Soils section states that the project geotechnical consultant, GeoBase, "recommends fill and foundation alternatives that may be suitable for the Proposed Project: removal of the peat soils and silts with peat and organic inclusions and replacement with properly compacted backfill soils or the implementation of deep foundations with no soil removal as an alternative to removal of peat materials." (MND, pg. III-32.) Deep foundations can only be installed with pile drivers, which can generate noise in excess of 1 00 dB as well as significant ground vibration. Yet, the Mitigated Negative Declaration does

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not assume that this equipment might be used. The use of pile drivers in itself would be a significant adverse noise impact, affecting hundreds if not thousands of nearby residents, as well as a host of other sensitive receptors not even considered in the MND.

Moreover, even with generic assumptions about construction equipment and methods, the MND noise analysis concedes outright that without mitigation, there would be a significant construction noise impact on six of the eight off-site sensitive receptors analyzed, including the entire residential neighborhoods to the south and west of the project. Specifically, the analysis concedes:

> "[T]he estimated construction-related noise levels associated with the Proposed Project would exceed the numerical noise threshold of75 dBA at 50 feet from the noise source as outlined in the City Noise Ordinance, and the typical construction noise levels associated with the Proposed Project would exceed the existing ambient noise levels at six of the identified off-site sensitive receptors by more than the 5 dBA threshold established by the L.A. California Environmental Quality Act Thresholds Guide during all construction phases."

Remarkably, however, the MND claims that this impact has been mitigated to a level of insignificance. The MND initially points out that while construction noise appears on its face to violate both the City Noise Ordinance and the City's CEQA thresholds, "construction noise levels are exempt from the 75 dB A noise threshold if all technically feasible noise attenuation measures are implemented." (MND at pg. III-69.) Since it is obviously not "technically feasible" to shield nearby residential and other sensitive uses from the extreme and sustained noise caused by a major construction project, the MND essentially states that because of this qualified language the Project- however disruptive -will not necessarily violate the City's noise ordinance.

However, not technically violating the noise ordinance does not mean that the Project will not have a significant impact on residential neighbors. The City cannot simply wave away a significant noise impact by declaring it legal under its noise ordinance. In fact, there is a significant noise impact- both because 75 dBA is by any reasonable measure an extremely high level of noise, and because the separate exceedance of the 5 dBA threshold established by the City's CEQA Thresholds guide is in itself the basis for a finding of significant impact.

The MND avoids the obvious conclusion that this significant impact cannot be mitigated to a level of insignificance by engaging in the same sleight of hand as the City's noise ordinance. It asserts that various mitigation measures, including compliance with the very same (albeit

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admittedly ineffectual) City noise ordinance and a handful of other purportedly noise-attenuating measures "would ensure impacts associated with construction-related noise levels are mitigated to the maximum extent feasible and temporary construction-related noise impacts would be considered less than significant." (MND at pg. III-71.) Like the noise ordinance, the other noise-attenuating measures are rendered toothless because they are all qualified with vague phrases like "state-of-the-art" or non-obligatory qualifiers such as "to the maximum extent possible."

The noise analysis, in other words, finds that there is a significant impact, asks the applicant to make its best efforts to try to reduce noise, and then on that basis - and that basis alone - declares the impact to be less than significant. The City cannot do this. The construction noise impacts of the project are significant, and they are not mitigated. Thus, there is a fair argument that the Project, after mitigation, will have a significant construction noise impact. An EIR should be prepared to analyze this potential impact.

RESPONSE 3.28

The commenter's assertion that the Project will be built using pile drivers is incorrect. No pile drivers will be used during construction. The correct text as stated on page III-32 of the MND in response to CEQA Checklist Question VI(a)(ii):

> *"GeoBase, Inc. recommends fill and foundation alternatives that may be suitable for the Proposed Project: removal of the peat soils and silts with peat and organic inclusions and replacement with properly compacted backfill soils or the implementation of deep foundations with no soil removal.* ***The Proposed Project would follow the recommendation to remove the peat soils beneath the building footprint, to a depth of approximately 20 feet.****" (emphasis added).*

The commenter further asserts that the noise analysis in the MND is inadequate and that because the ambient noise levels would exceed the numeric thresholds during construction, thus triggering the need to prepare an EIR. The noise impacts have been analyzed in accordance with the *L.A. CEQA Thresholds Guide* and the City's Noise Ordinance, which states that a project's construction noise impacts are considered to be mitigated to a less than significant level if the project complies with the permissible hours of construction activities and implements all feasible mitigation measures for the purposes of reducing noise impacts. Thus, based on the provisions set forth in LAMC 112.05, implementation of Mitigation Measure XII-20 would ensure impacts associated with construction-related noise levels are mitigated to the maximum extent feasible and temporary construction-related noise impacts would be considered less than significant.

Specifically, Mitigation Measure XII-20 Increased Noise Levels (Grading and Construction Activities), provides for the following mitigation efforts:

> • The Project shall comply with the City of Los Angeles Noise Ordinance No. 144,331 and 161,574, and any subsequent ordinances, which prohibit the emission or creation of noise beyond certain levels at adjacent uses unless technically infeasible.
>
> • Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 6:00 pm on Saturday.
>
> • The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
>
> • Noise and groundborne vibration construction activities whose specific location on the Project Site may be flexible (e.g., operation of compressors and generators, cement mixing, general truck idling) shall be conducted as far as possible from the nearest noise- and vibration-sensitive land uses, and natural and/or manmade barriers (e.g., intervening construction trailers) shall be used to screen propagation of noise from such activities towards these land uses to the maximum extent possible.
>
> • Barriers such as, but not limited to, plywood structures or flexible sound control curtains extending eight feet in height shall be erected around the perimeter of the construction site to minimize the amount of noise during construction on the nearby noise-sensitive uses.
>
> • The Project shall comply with the City of Los Angeles Building Regulations Ordinance No. 178,048, which requires a construction site notice to be provided that includes the following information: job site address, permit number, name and phone number of the contractor and owner or owner's agent, hours of construction allowed by code or any discretionary approval for the site, and City telephone numbers where violations can be reported. The notice shall be posted and maintained at the construction site prior to the start of construction and displayed in a location that is readily visible to the public.

The commenter's objection to the City policy is not supported by any facts or technical studies to indicate that the Project's noise impacts would be more severe than any other development project within the City.

COMMENT 3.29

8. Public Services

As discussed above, the Project blocks two of the driveway accesses historically used by other properties in the former Plaza, and partially blocks a third. This blockage of access has serious implications for public safety and thus public services such as police and fire, including the following:

- Emergency vehicles such as fire trucks, police cars and ambulances would be limited in their means of access to the various properties in the former Plaza, as well as to the large parking lot that lies in its midst.

- Isolated areas of the former Plaza could become attractive nuisances, increasing the need for police response.

- Physical separation of the various properties and elimination of street access for existing parking areas for any of the properties could allow more opportunity for the commission of crimes such as burglaries and robberies, increasing the need for police services.

All of these constitute potentially significant impacts on public services which should have been analyzed in an EIR.

RESPONSE 3.29

The commenter is asserting that the Proposed Project would block access to historic land uses that no longer exist within the former Marlton Square Project Site. As stated in the MND, vehicular access to the Project Site will be provided primarily from a proposed two-way access easement driveway from Martin Luther King Jr. Boulevard and three secondary driveways; one on Buckingham Road and two on Marlton Avenue. A vehicular service entrance will be provided off Santa Rosalia Drive.

Emergency vehicle access was addressed in the MND in response to CEQA Checklist Question XIV(i). As stated on page III-81 of the MND, construction impacts to emergency access would be considered to be less than significant for the following reasons: (1) Emergency access would be maintained to the Project Site during construction through marked emergency access points approved by the LAFD; (2) Construction impacts are temporary in nature and do not cause lasting effects; and (3) Partial lane closures, if determined to be necessary, would not significantly affect

emergency vehicles, the drivers of which normally have a variety of options for avoiding traffic, such as using their sirens to clear a path of travel or driving in the lanes of opposing traffic. Additionally, if there are partial closures to streets surrounding the Project Site, flagmen would be used to facilitate the traffic flow until construction is complete.

The commenter's assertion that the Project would block access to properties within the former Marlton Square Project Area is entirely unsubstantiated. Mr. Leeds' properties are currently accessible by emergency vehicles from driveway access points from Martin Luther King Jr. Boulevard and Marlton Avenue. The Project does not propose any on or off site improvements which would block the existing access driveways that connect to Mr. Leeds' properties.

COMMENT 3.30

9. Transportation and Traffic

The traffic study prepared by the applicant estimated that the Project would generate a net increase of approximately 2,846 daily trips, including 188 trips in the a.m. peak hour and 228 trips in the p.m. peak hour. (See memorandum in file from Tomas Carranza of LADOT to Karen Hoo, dated October 8, 2013.) Although the traffic study goes to great pains to avoid declaring any of the resulting traffic to constitute a significant impact, in fact there is a fair argument that a significant impact would exist.

RESPONSE 3.30

The comment correctly restates the weekday daily, AM and PM peak hour trip generation forecasts associated with the Kaiser Permanente Baldwin Hills Crenshaw Medical Office Building (MOB) project. Contrary to the commenter's statement "...the traffic study goes to great pains to avoid declaring any of the resulting traffic to constitute a significant impact...," the traffic impact study did include statements regarding the conclusion and finding of significant traffic impacts. As shown in ***Table 9-1*** of the *Traffic Impact Study - Kaiser Permanente Baldwin Hills Crenshaw MOB Project*, prepared by Linscott, Law & Greenspan, Engineers (LLG), July 8, 2013, based on the adopted City of Los Angeles Department of Transportation's (LADOT's) significant traffic impact threshold criteria, one intersection was forecast to be significantly impacted by the Project under two analysis conditions. Specifically, Intersection No. 15 (Arlington Avenue/Martin Luther King, Jr. Boulevard) was forecast to be significantly impacted under both the "Existing With Project" and "Year 2016 Future With Project" conditions. Moreover, Section 10.0 of the traffic impact study summarizes the transportation mitigation

program and a Mitigated Negative Declaration was subsequently prepared based on the City's findings that all significant impacts would be reduced to less than significant levels with mitigation.

LADOT staff reviewed the LLG traffic impact study and subsequently issued their departmental clearance letter on October 8, 2013, which stated, "This report summarizes the results of the traffic analysis, which adequately evaluated the project's traffic impacts on the surrounding community, and identifies the transportation mitigation measure to off-set this impact." Section C (Significant Traffic Impact) of the departmental clearance letter confirms this finding of significant traffic impact. The LADOT letter notes that in addition to the requirement of the Applicant to fund and construct a new traffic signal at the Martin Luther King, Jr. Boulevard driveway (i.e., if warranted and authorized by the City) and implementation of a Transportation Demand Management (TDM) plan, it was recommended that the TDM program also include the following strategies:

- Allowance for flexible and alternative work schedules;
- Administrative support for the formulation of carpools/vanpools;
- Promotion of transit, walk or bike to work events;
- Design the project to ensure a bicycle, transit, and pedestrian friendly environment;
- A one-time fixed-fee of $100,000 to be deposited into the City's Bicycle Plan Trust Fund to implement bicycle improvements within the Baldwin Hills/Crenshaw area.

COMMENT 3.31

First, as discussed above, the Project would eliminate existing vehicular access driveways presently used by other existing commercial properties at the Santa Barbara Plaza site. This would affect site deliveries, employees and customers alike. Without the easy access to the rear of the properties that is presently afforded by the driveways at Santa Rosalia Drive and/or Marlton Avenue, vehicles would have to queue on the only remaining driveway at Martin Luther King Jr. Blvd., which could impede traffic and/or block parking along that major artery. The impact would be especially severe for trucks making deliveries and at times of day when customer visits peak at various locations. In addition, because they would be deprived of adequate parking in the parking lot, customers and other visitors would be forced to cruise public streets to look for on-street parking, causing congestion and traffic conflicts. All of these are potentially significant adverse impacts that have not even been addressed, much less mitigated, in the MND.

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Mr. Parker, in his letter, attempts to avoid this obviously significant impact on traffic by alleging that "none of the existing land uses within the former Marlton Square area are accessible through the Project Site." (See Parker Letter, response 21.1 .2, at pg. 54.) However, this lack of access is merely the result of Kaiser's recent- and illegal- blockage of the longstanding historic access to the Plaza properties by the construction of a fence around the Kaiser property, which blockage is subject at any time to be removed pursuant to a court process instituted by MLK Marlton or any other affected property. For purposes of CEQA, this temporary blockage of access does not avoid a finding that permanent blockage of such access by the proposed construction project would constitute a significant impact on traffic around the Plaza site.

Second, as discussed above, by eliminating two of the historic access driveways to the properties at the Plaza site, and by constricting a third, the Project would potentially result in inadequate emergency access to some or all of the numerous other commercial properties on the site, and to what remains of the large shared Parking/Access Area. With the Project, the only remaining driveway access for all of the commercial parcels other than the applicant's Project would be the driveway at Martin Luther King Jr. Boulevard.

Mr. Parker argues in his letter that this significant impact on emergency access will not occur because "it is reasonable to assume that any future development of the other non-Kaiser ... parcels ... would likely become consolidated as part of a larger redevelopment plan/project which could have very different access and parking schemes than what has been existing since the 1950's." (See Parker Letter, response 21.1.3. at pg. 55.) This is merely self-serving speculation designed to avoid environmental review. There are structures and uses on the Plaza property that remain precisely as they have been for decades- including those of MLK Marlton and its neighbor. Johnny Edwards. Other than the Kaiser project there is no other project presently proposed for any site within the Plaza property, and there is no land use plan or other document that dictates or even predicts how development will unfold on the Plaza property. Thus, Mr. Parker has no business assuming that the Plaza will develop in any particular way, much less in a manner completely different from the historical pattern.

RESPONSE 3.31

The commenter's assertion that emergency access to Mr. Leeds properties is affected by the Kaiser Project Site is false. As shown in Figure II-2, Aerial Photographs of the Project Site, vehicular access to Mr. Leed's properties is clearly depicted in Views 6 and 7 in Figure II-4, Photographs of the Project Site. View 6 shows the current access point from Martin Luther King Jr. Boulevard, which provides access to approximately 110 surface parking spaces within the

parking isle that parallels Martin Luther King Jr. Boulevard and directly fronts Mr. Leeds' properties. The parking isle also provides direct and primary access to the surface parking lot that is located between Mr. Leed's buildings. (See photograph included in response to Comment 1.12).

COMMENT 3.32

Third, the traffic study improperly reduces the base trip generation by fifteen percent for transit trips. The Los Angeles Department of Transportation June 2013 manual (Traffic Study Policies and Procedures) allows a reduction of up to fifteen percent in assumed trip generation if a project is within a quarter mile walking distance of transit station or Rapid Bus stop. However, this trip credit is predicated on the Project meeting certain other conditions including implementation of all of the following standards:

- Provision of a wider than standard sidewalk along the streets fronting the Project through additional sidewalk easement or by dedicating additional right-of-way beyond street standards.

- Improvement of the condition and/or aesthetics of existing sidewalks leading to transit station(s) with adequate lighting to provide for a safer pedestrian environment.

- Provision of continuous paved sidewalks I walkways with adequate lighting from all buildings in the Project to nearby transit services and stops, including mid-block paseos.

- Implementation of transit shelter improvements/beautification.

While some of these may be provided with the Project, they are not all described in the MND. Therefore, the traffic study has improperly calculated trip generation and its conclusions of no significant impact are rendered invalid.

RESPONSE 3.32

This comment was previously addressed in our July 25, 2014 correspondence in response to comment 21.1.4. As stated previously, traffic volumes expected to be generated by the Project during the weekday AM and PM peak hours, as well as on a daily basis, were estimated using rates published in the ITE *Trip Generation Manual*. ITE Land Use Code 720 (Medical-Dental Office) trip generation average rates were used to forecast the traffic volumes expected to be generated by the Project.

The ITE manual contains trip rates for a variety of land uses (including office buildings, shopping centers, condominiums, etc.), which have been derived based on traffic counts conducted at existing sites. However, the traffic count data submitted to ITE is for free-standing sites generally located in suburban locations, which likely do not reflect the trip generation characteristics for projects located in urban areas such as the Project Site area of the Baldwin Hills Crenshaw area of the City of Los Angeles. Thus, the trip rates provided in the ITE *Trip Generation Manual* (derived from traffic counts at suburban projects) would be expected to overstate the trip generation potential of projects located in this area of Los Angeles, including the Project.

As stated on page 1 of the ITE *Trip Generation Manual, 9th Edition, User's Guide and Handbook*: "Data were primarily collected at suburban locations having little or no transit service, nearby pedestrian amenities, or travel demand management (TDM) programs. At specific sites, the user may wish to modify trip generation rates presented in this document to reflect the presence of public transportation service, ridesharing, or other TDM measures; enhanced pedestrian and bicycle trip-making opportunities; or other special characteristics of the site or surrounding area. When practical, the user is encouraged to supplement the data in this document with local data that have been collected at similar sites." As previously documented, the area adjacent to the Project Site provides public transportation service, as well as enhanced pedestrian and bicycle trip-making opportunities. However, to provide a conservative, worst-case analysis, no adjustments were made to the ITE trip generation rates to account for a reduction in vehicle trips based on trips that may be made, for example, by biking or walking.

The City of Los Angeles traffic study guidelines do allow trip generation adjustments for projects located in transit rich and walkable locations (refer to Item No. 6, Transit Credit, beginning on page 6 of the guidelines). The City's adopted traffic study guidelines (Item No. 6.b) state, "Developments within a ¼ mile walking distance of a transit station, or of a RapidBus stop, may qualify for up to a 15% transit credit. The actual credit provided will be determined by an analysis of the transit service frequency and density at the specified transit station or RapidBus stop." As indicated in ***Table 4-3*** and ***Figure 4-2*** of the LLG traffic impact study (as referenced in Response 21.1.1, above), an extensive number of existing transit lines including RapidBus lines are located in the immediate vicinity of the Project Site and the traffic study includes documentation of the number of buses/trains during the AM and PM peak hours (i.e., headways information). Based on this documentation, LADOT subsequently approved a 15% transit credit to be applied to the ITE medical office building trip generation rates (i.e., the suburban/free-standing ITE trip generation rates which reflect little or no transit availability) in order to account for the existing transit availability, service headways as well as the nearby Metro customer center.

The formal traffic impact study Memorandum of Understanding (MOU) outlines this 15% reduction factor and the MOU was executed with LADOT on June 7, 2013.

In addition, while the comment continues by paraphrasing the City's traffic study guidelines with respect to the listed improvements that influence the amount of transit credit that may be approved by LADOT for a development project, the commenter's introductory statement, "However, this trip credit is predicated on the Project meeting certain other conditions including implementation of all of the following standards:" is simply not accurate. Item No. 6.b of the City's adopted traffic study guidelines states the following:

"To obtain the maximum credit, applicants should implement the following improvements listed in priority order:" Thus, the emphasis in the comment noting that implementation of all conditions is a requirement in order to obtain approval of a 15% transit credit is not accurate. The guidelines include the key word "should" and as such, is an advisory condition, not a mandatory condition. The Applicant has taken into consideration the list of improvements in the design of the Project. Refer also to Response 21.1.1 for a discussion of the project's trip generation, the expected significant traffic impacts and associated mitigation measures. The traffic study reflects proper application of the transit credit and the conclusions of the traffic study remain valid.

COMMENT 3.33

Fourth, the traffic study for the Project indicates that when other cumulative projects in the area are taken into account, many of the study area intersections will experience significant degradation of traffic level of service over time. For some of these, the Project would have a de minimis effect, increasing levels-of-service (LOS) by barely .001, and on that basis the MND may have assumed that there was no significant impact. However, there are cases in which the Project does contribute a measurable, greater-than-de-minimis effect to the significant cumulative impact. These include La Brea and Jefferson (at which the p.m. peak hour increases from .837 to .946, with the Project contributing .004 to the .l 09 cumulative increase in LOS); and Crenshaw and Stocker (at which the p.m. peak hour increases from .834 to .963, with the Project contributing .009 to the .129 cumulative increase in LOS). In these locations, the cumulative impact on traffic is significant.

RESPONSE 3.33

This comment was previously addressed in our July 25, 2014 correspondence in response to comment 21.1.5. As stated previously, the commenter's noting of the specific volume to capacity

(*v/*c) ratio increases forecast due to cumulative traffic at the La Brea Avenue/Jefferson Boulevard intersection is not correct. In both the LLG traffic impact study and the LADOT clearance letter (dated October 8, 2013) the existing PM peak hour *v/c* ratio for this intersection is 0.878 (LOS D), not 0.837 as referenced by the commenter. The commenter's reference to the specific *v/c* ratio increases forecast due to cumulative traffic at the Crenshaw Boulevard/Stocker Street intersection is correct. Given this clarification, however, the significance of the potential impacts of project-generated traffic was identified using the traffic impact criteria set forth in LADOT's *Traffic Study Policies and Procedures,* June, 2013. According to the City's published traffic study guidelines, the impact is considered significant if the project-related increase in the *v/c* ratio equals or exceeds the thresholds presented below.

City of Los Angeles Intersection Impact Threshold Criteria		
Final *v/c* ratio	**Level of Service**	**Project Related Increase in *v/c***
> 0.701 - 0.800	C	equal to or greater than 0.040
> 0.801 - 0.900	D	equal to or greater than 0.020
> 0.901	E or F	equal to or greater than 0.010

The City's Sliding Scale Method requires mitigation of project traffic impacts whenever traffic generated by the proposed development causes an increase of the analyzed intersection *v/c* ratio by an amount equal to or greater than the values shown above. For the two intersections referenced by the commenter, none of the above significance thresholds are exceeded.

While the degradation in traffic conditions and overall intersection operations due to both the cumulative development projects and growth in ambient traffic have been forecast and reported, the project's contribution to these degradations remains insignificant based on the above City adopted threshold criteria. The conclusions of the traffic impact study remain valid.

COMMENT 3.34

Fifth, LADOT found that there is a significant impact pre-mitigation at the intersection of Arlington A venue and Martin Luther King Jr. Boulevard, and yet the MND proposes a purely illusory measure to mitigate this impact below a level significance- namely, the preparation in the future of a Transportation Demand Management (TDM) plan. (See Carranza memorandum dated 1 0/8/13.) According to the LADOT memorandum, a TDM plan "includes design elements and trip reduction strategies, [which] would reduce the Project's overall trip generation by discouraging single occupancy vehicle use and by promoting the use of alternative travel modes." However, the MND merely requires that this plan be provided to LADOT for review; it contains

no specifics about what the TDM must contain, and there is no evidence that any particular measure would in fact reduce trips sufficiently to bring the impact below a level of significance. Therefore, it was improper for the MND to assume that the significant impact at Arlington and Martin Luther King Jr. Boulevard would be mitigated to a level of insignificance. Instead, there is a fair argument that even with mitigation the Project would have a significant impact on traffic at this intersection.

RESPONSE 3.34

This comment was previously addressed in our July 25, 2014 correspondence in response to comment 21.1.6. As stated previously, the Applicant will be required to comply with the provisions of the City's Transportation Demand Management and Trip Reduction Measures Ordinance (LAMC § 168700). While the commenter is correct that the preparation of the TDM plan will occur in the future and therefore the exact level of trip reduction is not yet able to be determined, the comment fails to acknowledge several important and key requirements and facts as it relates to the City's determination that the future implementation of the full TDM plan would afford at least a ten percent (10%) reduction in trip generation:

1) As it relates to the TDM plan, a Preliminary TDM program must be prepared and provided to DOT for review prior to the issuance of the first building permit for the project and a Final TDM program approved by DOT (using the standards set forth in LAMC § 168700) is required prior to the issuance of the first certificate of occupancy for the project. Therefore, absent approval of the plan/s, project construction and subsequent occupancy cannot be obtained.

2) As part of complying with the LAMC §168700, the Applicant shall execute and record a Covenant and Agreement that the trip reduction features required by this Ordinance will be maintained, that required material specified in Subdivision 3 (a) (1) – (5) will be continually posted, and that additional carpool/vanpool spaces within the designated preferential area will be signed and striped for the use of ridesharing employees based on the demand for such spaces. The Covenant and Agreement shall be acceptable to the Department of Transportation (using the standards set forth in LAMC § 168700).

3) As it relates to monitoring, the Department of Transportation shall be responsible for monitoring the owner/applicant's continual implementation and maintenance of the project trip reduction features required by LAMC § 168700.

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4) In the DOT departmental clearance letter dated October 8, 2013, DOT recommended that the TDM program also include the following strategies:
    - Allowance for flexible and alternative work schedules;
    - Administrative support for the formulation of carpools/vanpools;
    - Promotion of transit, walk or bike to work events;
- Design the project to ensure a bicycle, transit, and pedestrian friendly environment;
- A one-time fixed-fee of $100,000 to be deposited into the City's Bicycle Plan Trust Fund to implement bicycle improvements within the Baldwin Hills/Crenshaw area.

In conclusion, given the above assurances, the mitigation measure remains valid and is expected to reduce the project's significant traffic impacts at the Arlington Avenue/Martin Luther King, Jr. Boulevard intersection to a less than significant level.

COMMENT 3.35

L. Conclusion.

"No house should ever be on a hill, or on anything. It should be of the hill."-- *Frank Lloyd Wright*

The Project as proposed is being put "on" the neighborhood where it sits. It is not "of" the neighborhood. As such, it should be denied outright.

Very truly yours, John A. Henning, Jr.

RESPONSE 3.35

The commenter's remarks are noted for the record and will be considered by the decision makers. No specific response is required.

COMMENT LETTER No. 4

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Avenue
Los Angeles, CA 90048
August 15, 2014

COMMENT 4.1

FINAL LETTER OPPOSING PROJECT (emphasis added per commenter's letter)

VIA ELECTRONIC MAIL

South Los Angeles Area Planning Commission
c/o James Williams, Commission Secretary
City of Los Angeles
200 N. Spring St., Room 272
Los Angeles, CA 90012

Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR I ENV-2013-4103-MND (3780 W. Martin Luther King Jr. Boulevard and 4055-4081 S. Marlton Avenue) (South Los Angeles Area Planning Commission Meeting Date: August 19. 2014)

Honorable Commissioners:

> "Iceberg, right ahead."
>
> --Lookout Frederick Fleet at 11:40 p.m., April14, 1912, from the crow's nest of the RMS *Titanic*.

This Commission is the last real chance to steer the City away from an ill-conceived proposal that would effectively steal parking and access from its neighbors and embroil the City in needless litigation. The staff report for this project concedes that Kaiser has not established that it has the right to build its facility on this site, or to exclusively use it for parking and other purposes. Thus, my client, MLK Marlton LLC, still vigorously opposes the project. [1]

RESPONSE 4.1

The commenter's opposition to the Proposed Project is noted for the record and will be considered by the decision makers. No specific response is required.

COMMENT 4.2

The applicant, Kaiser Foundation Health Plan, Inc. ("Kaiser") has brought this situation upon itself. Kaiser bought the property in May 2012, more than two years ago. At that time they were

[1] MLK Marlton owns the parcels at 3710 and 3718 Martin Luther King Jr. Boulevard. We submitted a 41- page letter to you dated August 12, 2014.

fully on notice that a recorded Declaration of Restrictions ("Declaration") stated that a large portion of the sit [sic] "shall not be used for any purpose other than the parking of automobile and other vehicles and for the purpose of ingress and egress to other lots in Tract 16050."

Regrettably, Kaiser did not go to the other property owners in the tract and seek permission to use the property for a different purpose. Nor did Kaiser apply to a court for a determination that the Declaration was extinguished or otherwise invalid.

Instead, in December 2013, Kaiser filed an application with the City to build this project directly onto the land burdened by the Declaration. In hundreds of pages of application materials, Kaiser made no mention whatsoever of the Declaration.

This was an outright fraud, committed against the City.

Kaiser's fraud would have gone undiscovered, except that two property owners in the tract objected. One of these property owners is my client, MLK Marlton. The other is Johnny Edwards, who has owned the adjacent parcel with his wife for more than 30 years. Both Mr. Edwards and the representative of my client, Fred Leeds, have supplied the Commission with signed affidavits asserting their unequivocal right to enforce the Declaration. These affidavits are attached.

It may initially appear as though these objections were raised at the last minute, when City staff held its public hearing on July 18, 2014. In fact, my client strenuously objected to this project directly with Kaiser more than three months earlier. On March 17, 2014, my client's attorney wrote a letter to Kaiser in which he specifically cited to the Declaration and objected to Kaiser's plan to build a project on the land subject to it. Kaiser's attorneys replied to that letter on March 26, 2014, and while they disputed the legal effect of the Declaration, they clearly acknowledged its existence, and strongly implied that Kaiser had been aware of it all along. Both of these letters are attached.

Meanwhile, since November 2013, many months before my client wrote to Kaiser, other property owners in the tract have been embroiled in litigation over similar attempts by the City itself to seize exclusive control over land burdened by the Declaration. Kaiser has never contended that it was unaware of this litigation, and as a sophisticated property owner surely was well aware of it.

While these disputes were raging over the use of parking and access in the Center, Kaiser continued pursuing its permits, and actively concealed all evidence of these disputes from the City.

Finally confronted with these objections at the public hearing on July 18th, Kaiser presented a self-serving opinion by its own lawyer, who tried to explain away the Declaration with a series of specious arguments. My client's attorney, Geoff Gold, has fully responded to these arguments in his letter dated August 12, 2014, which was included in the Commission's hearing packet. Meanwhile, there is nothing in the record indicating that the City's lawyer- i.e., the City Attorney- agrees with Kaiser that the Declaration is void and/or unenforceable.

Staff, to its credit, has acknowledged that this is a valid issue. The staff report (at page A-4) states, "the applicant has been asked by the Department of City Planning to provide a record of property affidavits and title report to determine if the parking restriction is a valid record."

Yet despite staff's request, as of yesterday, August 14,2014, Kaiser had not submitted any title report or other evidence indicating whether the Declaration is still in force. Evidently, Kaiser believes that it can simply ignore the request with impunity, or perhaps wait until the very last moment to insert the requested documents into the record.

In any event, regardless of what Kaiser may submit in the final moments of this proceeding, it simply cannot resolve this dispute. Instead, the facts are simply these:

- Kaiser has never disputed that the Declaration is recorded against its property.
- Kaiser's title report cannot establish that the recorded Declaration is unenforceable, but rather, merely shows what one title insurance company is willing to insure against.
- The City Attorney has not agreed with Kaiser.
- The only thing that can establish that the Declaration is unenforceable would be a decision by a court of law, and neither Kaiser nor any of its predecessors in interest in the property have ever sought such a decision.

Given these facts, this Commission has just one real option: To deny the project.

Very truly yours,

John A. Henning, Jr.

Enclosures

RESPONSE 4.2

With respect to the alleged parking Declaration, see separate response provided by Kaiser's legal counsel Loeb and Loeb, dated August 19, 2014. As the alleged parking Declaration does not require additional analysis with respect to CEQA, no further response is required.

CONCLUSION

Based on the information provided above, the lead agency has complied with Sections 15070 to 15073 of the State CEQA Guidelines. In addition, and consistent with Section 15064 of the State CEQA Guidelines, the information presented above illustrates that the Appellant's have not introduced any substantial evidence to support a fair argument that the project may have a significant effect on the environment. As such, the preparation of an EIR is not warranted.

Should you have any questions regarding any of the responses or issues addressed above, please contact me at (661) 257-2282 or by email at shane@parkerenvironmental.com.

Sincerely,

PARKER ENVIRONMENTAL CONSULTANTS

Shane Parker

Attachment A: *Bracketed Letters from Armen Ross, dated September 9, 2014, and John A. Henning Jr., dated September 11, 2014, August 12, 2014, and August 15, 2014, respectively.*

Attachment B: *Correspondence from Michael Josselyn, PhD, Principal and Certified Professional Wetland Scientist, WRA Inc., dated October 23, 2014.*

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COMMENT LETTER No. 1

Attachment "1"

Justifications/Reason for Appealing Determination
APCS-2013-4102-SPE-DRB-SPP-SPR

I am appealing the #3 determination of the South Los Angeles Area Planning Commission that, "Denied the Exception from Section 14C and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow a 2'-6" high fence on top of the required 3'-6" high wall (total 6'-0" high) adjacent to surface parking lots fronting along adjacent streets and a 6'-0" high fence fronting along adjacent streets."

I am aggrieved by the decision because the determination is contrary to public safety concerns by law enforcement and detrimental to the overall success of the facility. Safety is a concern in all neighborhoods and a 3'-6" wall is inviting to unwelcomed guests to a facility that is being built first to accommodate Kaiser Members living in the surrounding neighborhoods and additionally for the immediate community. The facility will be open to the public during business hours, but not after closing. Therefore, it should not be inviting to members of Kaiser or the general public after hours. Security and safety will ensure that this facility, which is long in coming to our community, will remain as aesthetically pleasing and welcoming to the community when it opens as it will be ten, twenty, thirty years from now. 1.1

The decision makers erred or abused their discretion because The Crenshaw Corridor Specific Plan should not be interpreted so rigidly as to impose impediments to new projects that will benefit the greater community by bring sorely needed development, critical services, jobs, and economic infusion to the retail businesses in the area.

COMMENT LETTER No. 2

Justification/Reason for Appealing
Appeal to City Council
Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND

The within appeal is filed on the ground that the South Los Angeles Area Planning Commission ("SLAAPC") erred and abused its discretion by approving the project and accepting the mitigated negative declaration ("MND") as the environmental review for the project.

Appellant MLK Marlton LLC is aggrieved by the decision because it is the owner of two parcels that are less than 200 feet from the Project site and is directly affected by the proposed development, and because it is a property owner and taxpayer and in the City of Los Angeles and as such is entitled to the full enforcement by the City of both local zoning laws and the California Environmental Quality Act.

2.1

The points at issue are fully described in the attached letters to the SLAAPC dated August 12, 2014, and August 15, 2014, respectively. The SLAAPC ignored these points in its deliberations, with the exception of the objections made to the requested Specific Plan Exception for fence height, which were sustained. Moreover, subsequent to these two letters no additional evidence was submitted by the applicant or anyone else sufficient to support the various approvals and findings made by the SLAAPC. Thus, it is unnecessary to prepare additional correspondence to the City Council in the context of this appeal.

The decision maker erred and/or abused its discretion because (1) the project violates the City's zoning code; (2) an Environmental Impact Report should have been prepared instead of an MND; (3) the various approvals are not supported by adequate findings; and (4) the findings are not supported by substantial evidence in the record.

2.2

COMMENT LETTER No. 3

JOHN A. HENNING, JR.
ATTORNEY AT LAW
125 N. SWEETZER AVENUE
LOS ANGELES, CALIFORNIA 90048

TELEPHONE: (323) 655-6171
E-MAIL: jhenning@planninglawgroup.com

August 12, 2014

VIA HAND DELIVERY

South Los Angeles Area Planning Commission
c/o James Williams, Commission Secretary
City of Los Angeles
200 N. Spring St., Room 272
Los Angeles, CA 90012

Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND
(3780 W. Martin Luther King Jr. Boulevard and 4055-4081 S. Marlton Avenue)
(South Los Angeles Area Planning Commission Meeting Date: August 19, 2014)

Honorable Commissioners:

I represent MLK Marlton LLC ("MLK Marlton"), which owns the parcels at 3710 and 3718 Martin Luther King Jr. Boulevard and which opposes the above-referenced project (the "Project") proposed by Kaiser Foundation Health Plan, Inc. ("Kaiser"). The Project is scheduled for a hearing before your commission on August 19, 2014.

My client opposes this project on the ground that it violates the City's zoning ordinance and the Crenshaw Corridor Specific plan, and because it would inject a soulless, inward-facing and completely gated institutional use into the middle of a densely populated residential area. In addition, my client strenuously objects to the use of a Mitigated Negative Declaration as the environmental review for the Project. Instead, because there is a fair argument of numerous significant impacts in a host of impact categories, the City should prepare an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act (CEQA). 3.1

My client initially wrote to the Commission's hearing officer, Michelle Singh, on July 17, 2014, explaining why the Project should be denied and why an EIR should be prepared. In our July 17 letter, we focused especially on uncontroverted evidence that the Project site is subject to a Declaration of Restrictions ("Declaration") requiring that a substantial part of the site be used only for parking and vehicular access to benefit MLK Marlton and others.

On July 18, 2014, Ms. Singh conducted a public hearing regarding the Project. At the hearing, Kaiser's counsel, Paul Rohrer of Loeb & Loeb LLP, appeared on behalf of Kaiser, and asserted various grounds for the City to ignore the Declaration. Subsequently, Mr. Rohrer wrote a letter to Ms. Singh dated July 25, 2014, in which he elaborated on these and other arguments. Also on July 25, Kaiser's environmental consultant, Shane Parker of Parker Environmental Consultants, wrote a 61-page letter to Ms. Singh responding to the various points made in our July 17 letter. 3.1

Neither of Kaiser's letters adequately rebuts my client's arguments for denial of the Project, or its contention that the there is substantial evidence supporting a fair argument that a significant environmental impact exists, requiring preparation of an EIR. To the contrary, by tying themselves into knots with convoluted rationales, the letter writers each illustrate that there is a spirited dispute on virtually every count, and especially with regard to parking and access. These disputes must be resolved by an EIR, not by an exchange of letters that is invisible to the public.

Mr. Rohrer, the lawyer, uses what is essentially magical thinking to explain away the existence of a restrictive covenant that is recorded against the title of a substantial portion of the subject property, and which specifies that the property must be used only for parking and access, not for buildings and a private "park". Leaving aside the merits of Mr. Rohrer's arguments, at the outset the Department of City Planning must understand its limits here. The Department is simply in no position to accept the unproven and self-serving legal opinions of an applicant's lawyer, in the face of a recorded document to the contrary. The fact is that the covenant exists, Kaiser does not dispute its existence, and neither Mr. Rohrer nor the applicant has ever gone to court to obtain a declaration that the covenant is extinguished. Thus, for purposes of both the "fair argument" standard and the underlying permits, the City must assume that the covenant is not extinguished. 3.2

Mr. Parker, the environmental consultant, also does not explain in his letter why a "fair argument" of a significant environmental impact cannot be made here. The letter reads like an advocacy piece from Kaiser's public relations machine. In a desperate attempt to "plug every hole" in the MND and thereby avoid any further environmental review of this project, Mr. Parker repeatedly resorts to circular reasoning and injects new "factual" allegations that were never considered in the MND. He also misinterprets the law. He parrots Mr. Rohrer's convoluted 3.3

legal opinion about the restrictive covenant as though it were gospel, rather than being one lawyer's opinion of a disputed matter. 3.3

My client's real estate counsel, Geoff Gold of Ervin Cohen & Jessup, has responded to Mr. Rohrer's arguments in more detail in his letter dated August 12, 2014, which is submitted concurrently with the within letter. In sum, Mr. Gold establishes that the Declaration is on its face fully in effect and fully enforceable by MLK Marlton, and that even if it weren't fully enforceable MLK Marlton has acquired an easement by implication, an easement by prescription, or both across the parking and access. As a result, the Project either (a) utterly lacks the minimum on-site parking required by the zoning code; or (b) will effectively deprive the other property owners in the Plaza, and their employees and customers, of the parking and access to which they are legally entitled and that they presently enjoy and have come to rely upon. In either event, the Project requires the preparation of an EIR, because there is at least a fair argument that the parking effects of the Project will constitute significant impacts on the environment. 3.4

I will address the points made by Mr. Parker below, in the context of a complete description of the project and our various arguments. In addition, we have attached as Exhibits 2 and 3 the affidavits of Johnny Edwards and Fred Leeds, respectively. These affidavits reflect the essence of their testimony at the July 18 public hearing as well as additional evidence sufficient to support a fair argument that the Project would have a significant impact on the environment.[1]

For the Commission's convenience, the new material responsive to Mr. Parker's letter will be highlighted in yellow.

A. Project Area.

The Project is an enormous 105,000 square foot outpatient medical facility on a larger commercially-zoned "superblock" bounded by Martin Luther King Jr. Boulevard to the north, Marlton Avenue to the east, Santa Rosalia Drive to the south and Buckingham Road to the west. This block was once known as Santa Barbara Plaza, and from the early 1950s until the commencement of redevelopment in the late 1990s, it housed more than 250 individual local-serving businesses located on approximately 50 separate parcels. In more recent years, the entire block has been referred to as Marlton Square. 3.5

[1] The attached affidavits are unsigned; original signed affidavits will be presented to the Commission on or before the Commission's meeting on August 19, 2014.

Neighborhood Context (From ZIMAS)

The site is surrounded on all sides by stable, historically African-American residential neighborhoods, churches and other small-scale commercial uses. The nearby residential uses include (1) a large senior housing facility on Buckingham Road, immediately adjacent to the site; (2) several hundred multi-family residences (zoned R-3) across Buckingham Road and Santa Rosalia Drive to the west and southwest (zoned R-3); and (3) a single family neighborhood across Martin Luther King, Jr. Blvd. to the northeast. As evidenced by the mailing labels supplied by the applicant, more than 1000 individual residences are within a 500 foot radius from the Project. Many of these residential neighbors are less than 100 feet away from the Project boundary. My client's principals and their related entities own more than 30 buildings with over 500 residential apartments in close proximity to the site.

3.5

Surrounding Land Use Map (MND, Figure II-7)

3.5

28. View of adjacent senior housing development, easterly facing from Buckingham Road.

25. View of neighboring properties across Santa Rosalia Drive and Buckingham Road, southwesterly facing.

26. View of neighboring property across Buckingham Road from the subject site, southwesterly facing.

Residential Properties Less than 100 Feet From Project
(from Applicant's Site Photo Exhibit)

3.5

B. Project Description.

The applicant proposes to construct a four-story, approximately 60 feet in height, 105,000 square foot outpatient medical facility on a parcel 8.65 acres in size. Solar panels on the roof would raise the height by an additional 11 feet, to 71 feet. There would be 525 surface parking spaces in four separate parking lots. Two of these would be behind the medical building, and two of which would be alongside the building and directly adjacent to Santa Rosalia Drive. Project vehicles would take their access from five separate driveways. The primary access would be to Martin Luther King, Jr., Boulevard, via an existing access easement located on adjacent property. Secondary access would be taken through three on-site driveways, one on Buckingham Road and two on Marlton Avenue. A fifth driveway to Santa Rosalia Drive would provide access only to service vehicles. The Project would alter, enclose and make private three existing access points to the parking area reserved for property owners on Marlton Square.

Site Access points (from Site Plan)

C. **Project Approvals Requested.**

The applicant seeks the following project approvals:

1. Adoption of the Mitigated Negative Declaration (Case No. ENV-2013-4103-MND).

2. Pursuant to Section 16.05 of the LAMC, Site Plan Review for a development which creates more than 50,000 gross square feet of floor area;

3. Pursuant to Section 11.5.7.F.1 (f) of the Municipal Code, a Specific Plan Exception from Design Standards of the Crenshaw Corridor Specific Plan, as follows:

   a. An exception from section 14c and Design Standard 11i of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow two surface parking lots to be located on the sides of the structure, fronting along Santa Rosalia Drive and portions of Marlton Avenue and Buckingham Road; and

   b. An exception from section 14c and Design Standard 8a of the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual to allow a 2'-6" high fence on top of the required 3' – 6" high wall (total 6'-0" high) adjacent to surface parking lots fronting along adjacent streets and a 6'-0" high fence fronting along adjacent streets;

4. Pursuant to Section 11.5.7.C of the Municipal Code, a Project Permit Compliance determining compliance with the applicable regulations of the Crenshaw Corridor Specific Plan.

5. Pursuant to Section 16.50 of the Municipal Code, and Section 14 of the Crenshaw Corridor Specific Plan, a Design Review of the Project with the applicable Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual.

3.6

D. **The Project is Built on a Shared Parking and Access Area That the Applicant Does Not Control.**

The entire Project is built on a fallacy, namely, that the applicant has exclusive control over its 8.65 acre site. In fact, more than half of the Project site lies within an area that is shared with numerous other private property owners, including my client, MLK Marlton, pursuant to a longstanding recorded Declaration of Restrictions that is the equivalent of a mutual parking and access easement.

3.7

Given the uncontested legal rights of my client and other property owners in the former Plaza property, the applicant here is attempting to do something that it cannot do under the City's zoning code: To build structures and parking lots on areas which are, in fact, designated by the Declaration for use by third parties, and solely for parking and access/egress to the respective parcels owned by those third parties. For this reason alone, the City cannot approve this Project.

A large percentage of the Project site quite obviously overlaps with a longstanding parking area that has been shared by all of the properties on the perimeter of the superblock on which the site is located. Although subsequent demolition and construction have obscured this fact, a 2001 aerial photo from ZIMAS clearly shows the shared parking area in use as one continuous reservoir containing more than 700 spaces and having several access points, including two driveways that the applicant now wants to have closed as part of the Project.

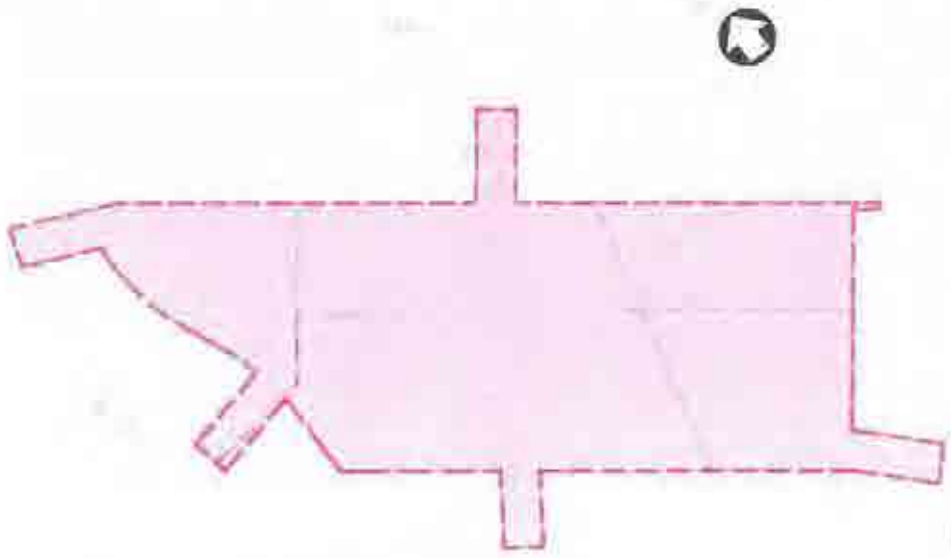
Shared Parking Area Overlapping Project Site (2001 photo from ZIMAS)

3.7

This parking area and five of the driveway accesses to it (including the Project's primary access to Martin Luther King Jr. Blvd.) are all subject to a recorded Declaration of Restrictions dated July 18, 1950, which is attached as Exhibit "1" to this letter. The Declaration was recorded at a time when the superblock on which the Project is proposed to be located was a single, unsubdivided parcel. The main purpose of the Declaration was to enable the owner of that parcel to subject all of the land to specific conditions, restrictions, terms, and covenants prior to subdividing it and selling the individual parcels to various commercial owners. This land later became Santa Barbara Plaza (the "Plaza"), and finally, during redevelopment, was renamed Marlton Square.

The stated purpose of the Declaration is to benefit the respective owners of the Plaza property, and it accordingly contains numerous provisions concerning the development and maintenance of the various properties in a consistent and reasonable manner. However, its primary operative term – Article I of ten distinct articles – is that that the two largest lots in the Plaza (Lots 51 and 52), consisting together of approximately 8 acres in the approximate center of the Plaza and including the five present access driveways to surrounding streets (the "Parking/Access Area") "shall not be used for any purpose other than the parking of automobile and other vehicles and for the purpose of ingress and egress to other lots in Tract 16050." For all intents and purposes, this provision established a parking and access easement across the entire Parking/Access Area for the benefit of all of the property owners, which is depicted below.

3.7



Parking/Access Area (Lots 51 and 52) Subject to Recorded Declaration

In addition to Article I, which restricts the Parking/Access Area solely to use for parking and access, Article VIII of the Declaration refers to the creation and incorporation of an entity called "Santa Barbara-Crenshaw Parking Company" (the "Parking Corporation"). This entity was formed July 19, 1950, the day after the Declaration was recorded. The Declaration clearly contemplated that the parking in the Parking/Access Area would be shared by all properties in the Plaza through the operation of the Parking Corporation, using the following means:

a. The Parking Corporation would run the Parking/Access Area;

b. Each property owner at the Plaza would, upon taking title to the property, be deemed to agree automatically to accept shares of stock in the Parking Corporation;

c. Each property owner would, upon becoming a property owner, be obligated to pay its portion of the cost of operation and maintenance of the Parking/Access Area.

The Parking Corporation did, in fact, operate for many years performing precisely this function. As evidence of this, a subsequent agreement recorded October 17, 1963, by and between the Parking Corporation and one of the property owners at the Plaza, acknowledged that the Parking Corporation was organized for the purpose of acquiring, owning and operating the Parking/Access Area and the entire Parking/Access Area was actually deeded to the Parking Corporation "for the purpose of furnishing parking to certain commercial lots". 3.7

As late as 1968, more than 18 years after its creation, the Parking Corporation was still issuing formal stock certificates to property owners in the Plaza property, and as late as 1983, these certificates were still being formally transferred from property owner to property owner using a written instrument. One example of such a certificate and the subsequent transfer to Johnny Edwards, the present owner of the property at 3724 Martin Luther King Jr. Boulevard, are attached to Mr. Edwards' affidavit, which is attached as Exhibit "2" to this letter.

From their subdivision in 1950 until the late 1990s, the approximately 50 separate parcels around the perimeter of the former Santa Barbara Plaza were held in separate ownerships. However, the Plaza fell on hard times during the 1980s, and was targeted for redevelopment. In the late 1990s, the Community Redevelopment Agency of Los Angeles (CRA/LA) began acquiring the various properties using eminent domain, and it ultimately completed this process and demolished most of the structures in the former Plaza. CRA/LA then reassembled some of the properties into a smaller number of parcels, and began selling them off to private owners.

With many of the commercial properties vacant or underutilized in recent years, the Parking Corporation, which was formed to oversee the sharing of parking within the Plaza

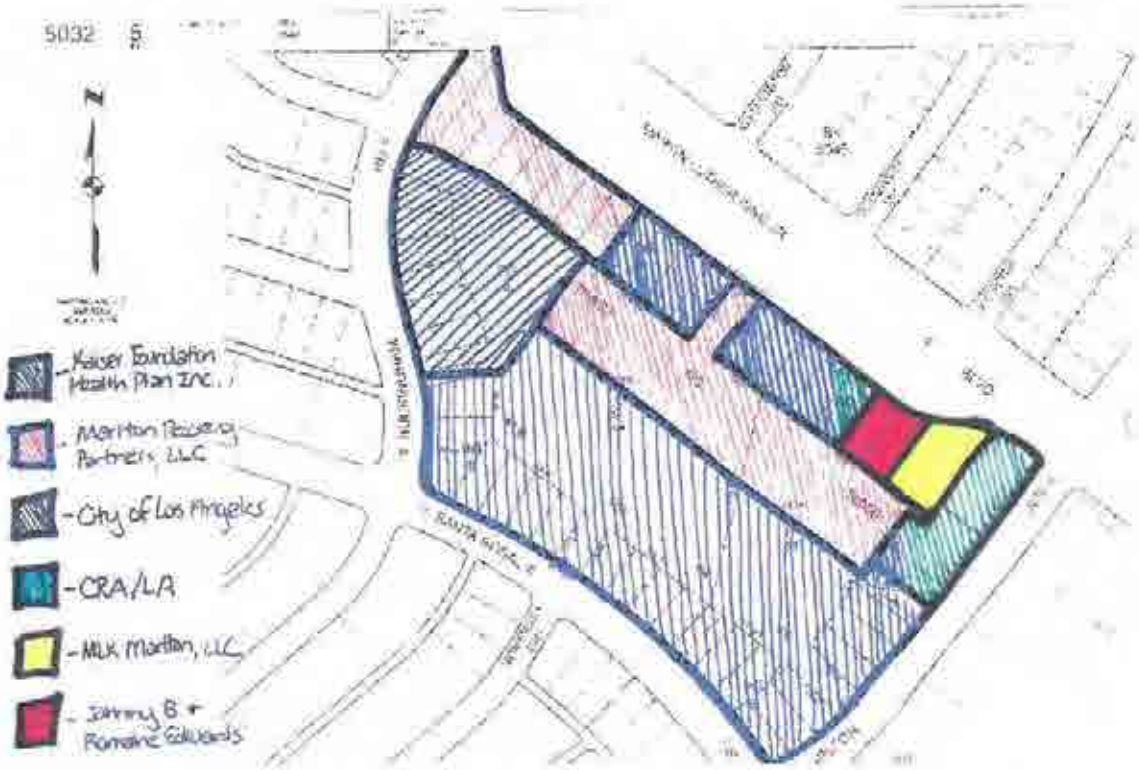
property, eventually ceased operating. According to corporate filings obtained from the California Secretary of State, the Parking Corporation was suspended by the California Franchise Tax Board on or about September 4, 2007, presumably for failure to pay taxes. Nonetheless, the legal rights and obligations of the various property owners to use the Parking/Access Area for parking and access survive any suspension of the technical corporate status of the Parking Corporation. Indeed, while not used to its full capacity, the Parking/Access Area has been continuously in use for parking and access, both by my client and by other property owners in the former Plaza, through to the present. My client's representative, Fred Leeds, will testify to this fact at the hearing.

Meanwhile, although 64 years have passed since it was recorded, the Declaration, which restricts the use of the Parking/Access Area only to parking and access for the benefit of the various properties in the former Plaza property, remains fully in effect. The Declaration expressly provides that all of the restrictions contained therein run with the land, do not expire, and bind all present and future owners and their respective successors-in-interest. Further, because the Declaration was recorded, all of the various entities currently holding title to property at the Plaza, including the applicant here, purchased such property subject to the Declaration and are accordingly subject to all of these restrictions and conditions.

Thus, unless and until there is a court ruling to the contrary, for purposes of this Project the City must assume that the Declaration remains effect, and binds the applicant for this Project. 3.7

Although all of the owners of parcels located on the former Plaza property have rights to use the Parking/Access Area pursuant to the Declaration, as a result of the acquisition and reassembly of property by CRA/LA the actual ownership of the property underlying that area is presently divided among three separate entities: Kaiser Foundation Health Plan, Inc. (the applicant for this Project); Marlton Recovery Partners LLC, and the City of Los Angeles.

The parcels owned by these entities, and the present ownerships of the remainder of the properties in the former Santa Barbara Plaza, are depicted in the drawing below. Kaiser Foundation Health Plan, Inc., the applicant here, owns the largest of the CRA-assembled parcels, which includes more than half of the Parking/Access Area. That parcel is depicted in shaded blue. Marlton Recovery Partners, LLC, owns most of the remaining Parking/Access Area, including the shared driveway access to Martin Luther King Jr. Boulevard. Its property is depicted in shaded red. The other ownerships include my client, MLK Marlton, LLC, depicted in solid yellow; its immediate neighbor, Johnny B. and Romaine Edwards, depicted in solid red; the City of Los Angeles, which owns the Buckingham Place Senior Apartments property and another portion of the Parking/Access Area, depicted in shaded black; and the Community Redevelopment Agency of Los Angeles (CRA/LA), depicted in shaded green.



Property Ownership in Lots Adjacent to Project Site

The applicant, Kaiser, purchased its 8.65 acre property in 2012. Concurrent with this purchase, it entered into an Easement Agreement with Marlton Recovery Partners LLC, which was recorded May 29, 2012. Under the Easement Agreement, Marlton Recovery Partners, which owns a large portion of the Parking/Access Area, including the access driveway to Martin Luther King Jr. Boulevard, granted to the applicant a sixty (60) foot wide easement across a portion of the Parking/Access Area for vehicular and pedestrian ingress and egress to the applicant's property. This grant on its face did not initially appear to violate the Declaration since the use of the Parking/Access Area parcels is, by the terms of the Declaration, expressly for "parking ... and ... ingress and egress to other lots," including the applicant's lots.

However, subsequent to the 2012 purchase and in apparent preparation for developing this Project, the applicant has brazenly violated the Declaration by constructing and maintaining fences across its property line, and directly through the center of the Parking/Access Area, thereby blocking all other property owners, including my client, from their rightful access to the parking lots, and to several of the access driveways to those lots.

3.7

My client has formally objected to Kaiser about this violation of its rights under the Declaration and both my client and its neighbor, the Edwards, have recorded the requisite statutory notice of intent to preserve their respective interests in the Parking/Access Area. However, Kaiser has refused to restore access to either my client or the Edwards.

There has already been litigation over the illegal blockage of other portions of the Parking/Access Area by another property owner in the former Plaza property. On November 13, 2013, Marlton Recovery Partners LLC filed a complaint against the CRA/LA and the City (Los Angeles Superior Court Case No. BC527351), claiming that the defendants illegally blocked a portion of the Parking/Access Area with a masonry wall and fence in violation of the Declaration, and seeking a determination that this area must be made available for parking and ingress/egress. This action is now pending and a trial is set for March 9, 2015. 3.7

E. The Project Does Not Have Enough Parking to Satisfy the Zoning Code.

As the MND confirms, the Project has only the precise minimum number of parking spaces required by the zoning code. LAMC section 12.21.A.4 requires 5 parking spaces per 1,000 square feet, and that for 105,000 square feet of development the Project requires a minimum of 525 parking spaces. As reflected by the table below in the MND, the Project provides exactly that number of spaces.

Table II-2
Summary of Required and Proposed Parking Spaces

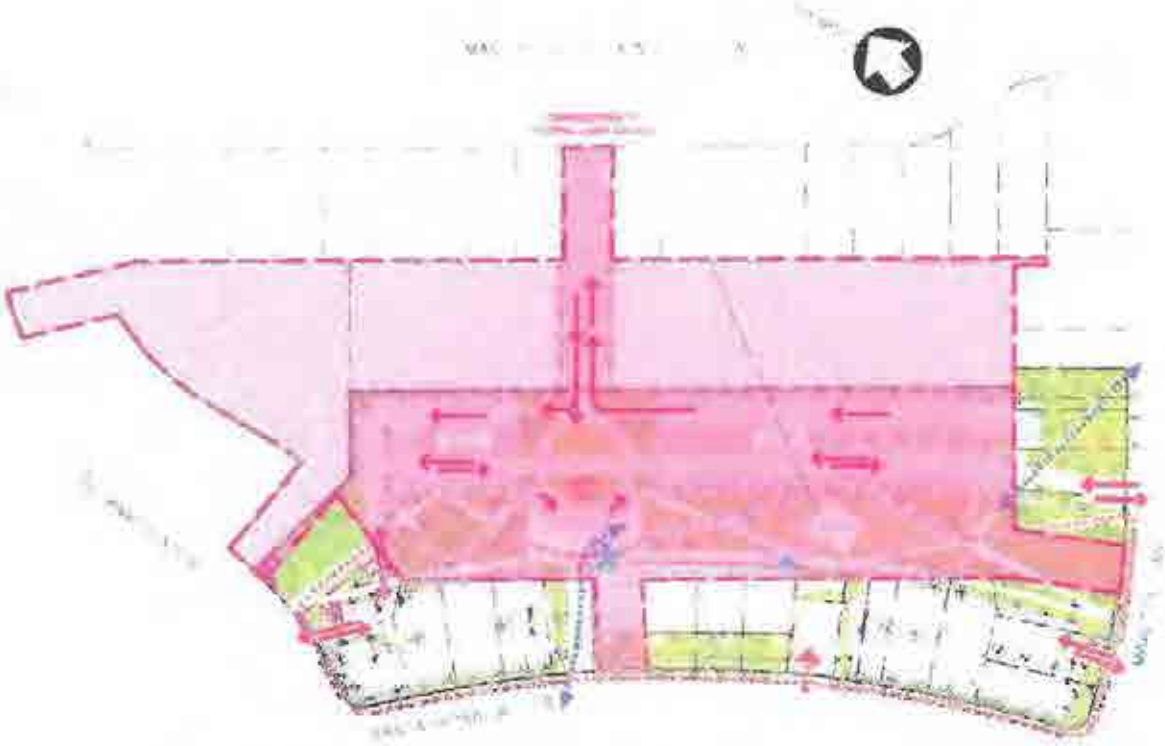
Description	Quantity	Parking Required by Code [a]		Parking Provided
		Rate	Spaces	
Outpatient Medical Facility				
	105,000 sf	5 spaces per 1,000 sf	525	525
		TOTAL	**525**	**525**
Bicycle Parking				
Short-Term Parking	--	1 per 10,000 sf of floor area	10.5	11
Long-Term Parking	--	1 per 5,000 sf of floor area	21	21
		TOTAL	**21.5**	**22**

Notes:
sf square feet
[a] Parking requirements pursuant to LAMC Section 12.21 A.4.
Source: HOK, November 14, 2013.

3.8

Parking Table from MND (Table II-2)

Yet as illustrated by the drawing below, which overlays the Parking/Access Area over the Project's site plan, the Project's northern parking area, which consists of 305 (i.e., about 60%) of the total 525 parking spaces provided, lies directly over the Parking/Access Area shared by MLK Marlton and other neighbors. Moreover, a portion of the facility itself is constructed above this shared area, and the structures, parking and landscaping included in the Project completely block two of the driveway accesses presently shared by the other property owners (one to Marlton Ave. and the other to Santa Rosalia Drive), and partially block a third access to Buckingham Road.



Parking/Access Area overlaying Site Plan

Since the two northern parking areas depicted for the Project are in fact subject to an easement pursuant to which other the owners of other properties have the right to park in the same location, the applicant cannot satisfy its minimum code parking requirements by way of parking located in this area. Therefore, the Project violates the zoning ordinance and does not qualify for a Site Plan Review determination. In addition, the lack of minimum code parking also means that the Project's impact on parking has not been mitigated to a level of insignificance, and that there is a fair argument that there will be a significant impact on parking in the neighborhood. Therefore, an EIR should have been prepared.

3.8

Kaiser's environmental consultant, Shane Parker, contends that pursuant to a recent amendment to CEQA, parking impacts and aesthetic impacts need not be considered by the City. (See July 18, 2014 letter from Shane Parker to Michelle Singh ("Parker Letter") response to Comment 6.1, at pg. 16.) Specifically, Mr. Parker states that SB 743 (codified as Public Resources Code section 21155.4) statutorily exempts this project from any review of aesthetic or parking impacts. In fact, SB 743 does not apply to this project at all, since the project is neither a "residential, mixed-use residential, or [an] employment center project". Manifestly, this project has no residential component, so it does not qualify as "residential" or "mixed-use residential." In order to qualify as an "employment center" project, a project must meet the definition set forth in Public Resources Code section 21099, including the requirement that it have "a floor area ratio of no less than 0.75." Here, the project's FAR is only .28 to 1, which is far less than 0.75. Therefore, the project does not qualify as an "employment center" project and is not subject to the statutory exemption set forth in section 21155.4. 3.9

F. **The Project Deprives Existing Commercial Businesses of the Parking That They Require.**

The applicant proposes to feed its own development aspirations at the expense of every other property owner in the former Plaza, and at the expense of residential and commercial neighbors who experience and relate to the Plaza property on a daily basis.

The more than 700 parking spaces in the shared Parking/Access Area is a resource that was intended to be, and which has historically always been, shared among all of the approximately 50 separate commercial properties surrounding the former Plaza. By privatizing more than half of this parking for a single development, and by eliminating two of the access driveways leading to this parking, the applicant will starve all of the other property owners of their rightful parking and access, thereby impinging not only on their legal rights, but also on the use and future development of their respective properties. 3.10

The representative of my client, Fred Leeds, spoke to this issue at the public hearing, and his affidavit to the same effect is attached hereto as Exhibit "3" to this letter. Mr. Leeds testifies that he owns two parcels at the northeastern portion of the former Plaza, both of which are presently used for commercial stores; that these enterprises rely on the parking within the Parking/Access Area; that his immediate neighbor, Johnny B. and Romaine Edwards owns a restaurant that has also long relied on this parking; that he is presently in escrow to buy the Edwards property; that he has a preliminary plan for a new commercial development consisting of between 40,000 and 80,000 square feet to include a sporting goods store and a fitness center on these combined properties, and is awaiting letters of intent from two publicly traded companies to complete this transaction; that the project could require as many as 320 parking spaces under the City of Los Angeles zoning code; and that if he is deprived of full use of the

Parking/Access Area these developments could be jeopardized.

In addition, because the Project deprives all of the other existing businesses and commercial properties located around the perimeter of the Plaza of the parking that is the lifeblood of any commercial enterprise, the Project has the potential to exacerbate the blight and decay already apparent in the Plaza and surrounding commercial areas. 3.10

Finally, the injection of a new parking-intensive use into an area with a historic lack of parking would also harm the adjoining residential neighborhoods. In these areas, most of the multi-family buildings date from the 1930s and 1940s, and accordingly they already have far less parking than would normally be required under modern codes. Thus, the residential streets are already clogged with cars, and parking is difficult to find. Any additional parking load imposed by a large new medical facility with inadequate parking, or by other commercial properties on the former Plaza whose parking has been displaced by such a facility, would merely subject these residential neighbors to even more parking strain. 3.11

Kaiser's environmental consultant, Mr. Parker, contends that my client "has failed to provide any factual evidence that a lack of parking exists in the Project Area." (See Parker Letter, response to Comment 7.1, at pg. 18.) However, Fred Leeds, the representative of MLK Marlton, has presented evidence of a lack of parking in the residential neighborhood, and his affidavit to the same effect is attached hereto as Exhibit "3" to this letter. Such layperson evidence is sufficient to make a fair argument that there may be a significant impact on the environment under CEQA, and that accordingly an EIR must be prepared. (See *Pocket Protectors, v. City of Sacramento* (2004) 124 Cal. App. 4th 903 ("relevant personal observations by area residents" may be properly considered substantial evidence.) In particular, Mr. Leeds testifies as follows: 3.12

- He is familiar with the residential neighborhoods to the south and west of the project, as he owns numerous multi-family residential apartment buildings in this area.
- In his experience the buildings there do not have sufficient off-street parking to meet the needs of the residents and their visitors, and as a result street parking is constantly occupied and difficult to find.
- Any unsatisfied parking demand from the Kaiser project would seriously impact these residential neighborhoods by either depriving residents of a place to park entirely, or at least forcing them to park far from their residents and walk home, including late at night.

- Many of his tenants are women and elderly people who are subject to be the targets of opportunistic crimes such as robbery or assault if they are forced to park far from their homes, especially at night.

3.12

G. **An Exception Should Not be Granted From the Specific Plan Design Standard Requiring Parking Lots to Be at the Rear of Buildings.**

The Project seeks two Specific Plan Exceptions from section 14c of the Crenshaw Corridor Specific Plan, which provides for compliance with the Crenshaw Corridor Specific Plan Design Guidelines and Standards Manual. Neither of these exceptions should be granted.

The first requested exception is from Design Standard 11i, which provides:

> **Design Standard 11i**. Surface parking lots, parking structures, garages and carports shall always be to the rear of the buildings.

3.13

Under the requested exception, two large parking lots on the south side of the property would be placed directly adjoining public streets, adjoining the medical facility and in the front yard of the property. This would create two classic "dead zones," each more than 500 feet in length, of the type that is universally frowned upon by the city planning profession. It would also permanently deprive the densely populated residential neighborhoods to the south and west of the Project of any meaningful relationship with the commercial property in the former Plaza akin to the relationship that it historically enjoyed for almost 50 years until the CRA took over the property and began demolishing structures in the 1990s.

The application presents a series of rationales purportedly supporting the grant of the requested exception. None of these rationales support the mandatory findings for a specific plan exception as set forth in L.A.M.C. section 11.5.7.F. These mandatory findings include:

(a) That the strict application of the regulations of the specific plan to the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;

(b) That there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use of development of the subject property that do not apply generally to other property in the specific plan area.

(c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other

3.14

property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question.

(d) That the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property.

(e) That the granting of the exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.

The applicant does not present even a single "practical difficulty," "unnecessary hardship," "exceptional circumstance," or "special circumstance" warranting an exception to Design Standard 11i. Instead, the applicant recites a series of vague policy reasons to grant the exception. The MND itself states the rationale this way:

> "Due to the unique size and shape of the Project Site, the utilization of only 18 percent of the allowable FAR for development, and the proposed configuration of a central open space plaza providing public access through the Project Site, the proposed Specific Plan Exception is a necessary and reasonable request. The placement of the surface parking lots along the sides of the structure will allow parking stalls to be located at a shorter distance to the buildings entrances, which is necessary for visitors and patients accessing the outpatient medical facility. The Plan layout will also allow for a central open space plaza, which will provide a unique community benefit by facilitating pedestrian traffic through the site and providing a large centralized open space area to be utilized for passive social and community events. The configuration of the open space Plaza will also provide walking and jogging areas, areas of respite with seating, and a pedestrian oriented garden that is expected to serve the needs of medical office staff, patients and visitors at the site. Therefore, with approval of the Exception from the Specific Plan Design Guidelines the Proposed Project would have a less than significant impact upon a City-designated scenic highway."

3.14

Elsewhere the application (Attachment B to Master Land Use Application) states the rationale for an exception to Design Standard 11i as follows:

> The practical difficulties and hardships in locating all of the parking to the rear are related to the large size of the site, its three street frontages to the front and sides of the building, and no street or alley to the rear of the building. Another practical difficulty is that medical clinics and offices require significantly more parking than other commercial uses.

These rationales are not sufficient to justify an exception from the specific plan. First, it is not a "practical difficulty" or "hardship" that a medical clinic/office structure requires more parking than other uses. It is the applicant's decision, voluntarily made, to use the site for this purpose, and to build a structure of this size. The property could as easily be developed with a use and/or structure size that would require less parking and allow all of the parking to be provided behind the building.

Second, the existence of three street frontages and the fact that the Project site is of a "unique size and shape" does not preclude placing parking to the rear of the structure. To the contrary, as the applicant repeatedly emphasizes throughout the application, this is an 8.65 acre site with ample room to buffer parking from adjacent residential areas. It is the applicant that has chosen, for its own reasons, to push the parking lots directly up against the street. 3.14

Third, the fact that there is no street or alley to the rear of the building has no bearing on the need to place parking lots adjacent to the street frontages. As the applicant has pointed out, there are five separate access points for this project, leading from all directions, and the primary access point at Martin Luther King Jr. Boulevard leads through an access easement directly to the rear of the property. It is difficult to conceive of a situation with better access to parking at the rear of the property.

Fourth, the provision of a purported offsetting "community benefit" of "a large centralized open space area to be utilized for passive and social and community events" does not warrant a deviation from the requirement. The large centralized open space area touted by the applicant is, in fact, completely fenced off and privatized for use solely by the staff, patients and visitors to the Kaiser development. Design Standard 11i, in contrast, is designed to ensure that the Project relates properly and directly to the street and nearby land uses, and that it retains a human scale, rather than being separated by a soulless parking lot.

Mr. Parker's letter attempts to buttress Kaiser's request for an exception from the Specific Plan requirement to place parking lots at the rear of buildings, by making a series of specious arguments about the purported community benefits from the open space to be provided, the "abundant landscaping and design elements" and the "thoughtfully designed building." (Parker Letter, response to comment 8.1, at pg. 21-23.) These contentions, taken collectively, do not 3.15

even come close to meeting the stringent findings necessary to grant such an exception, which have little to do with the purported benefits of a project. Moreover, they are not even good reasons for the City to exercise its discretionary authority in this case.

Mr. Parker begins by implying that this private, gated "open space" is the equivalent of a public park, because Kaiser intends to offer health classes to the community and "host local artists and musicians." However, this is anything but a public park: When Kaiser's "park" is closed, which is to say after 7 p.m. weekdays and all day on Sundays, there is no access whatsoever. When the park is open, Kaiser completely controls access, even if such access is not literally gated – just as the Grove or Century City shopping centers are controlled by their respective owners. On this unequivocally private property, Kaiser has the right to eject any person at any time, and for any reason. 3.15

Next, in an apparent attempt to establish that there is a "special circumstance" and/or an "exceptional circumstance" unique to this property that would justify an exception from the Specific Plan, Mr. Parker ironically declares that since the site is unusually large – encompassing many formerly individual commercial lots – it is thus "special" or "exceptional". This contention turns the entire purpose of an exception on its head. Exceptions are generally granted to parcels that are unusually small, which make them harder to develop without such relief. Obviously, the larger a parcel is, the less difficult it is to accommodate a design that strictly meets the relevant planning documents. Clearly here, with 8.65 flat acres to maneuver in, Kaiser could easily have proposed a project that would require no exceptions whatsoever. Since they could easily have done so, they must do so.

Mr. Parker also appears to argue that complying with the Specific Plan would present some sort of "hardship" sufficient to meet one of the necessary findings for an exception. First, he says that Kaiser would have to sacrifice its private open space in order to place parking lots behind the building. He does not explain why such open space cannot be placed exactly where the parking lots are now planned, and to better effect for purposes of relating to the street. Second, he says that Kaiser would not be able to "provid[e] the proposed large circular pick-up and drop-off area for members who are too ill or physically unable to drive themselves" and that "the linear stacking of parking" behind the building would make it impossible to "provide abundant ease of access handicap stalls proximate to building entrances." However, Mr. Parker is no architect, and Kaiser's architect is utterly silent on both of these points. The fact is, with 8.65 acres to work with Kaiser could easily have built a more linear building (or multiple buildings) facing Santa Rosalia, with plenty of parking behind it, and plenty of room for handicap stalls immediately adjoining the building, and a circular drop-off. The failure to design the Project in this way is a self-imposed "hardship" that is simply not recognized by law. 3.16

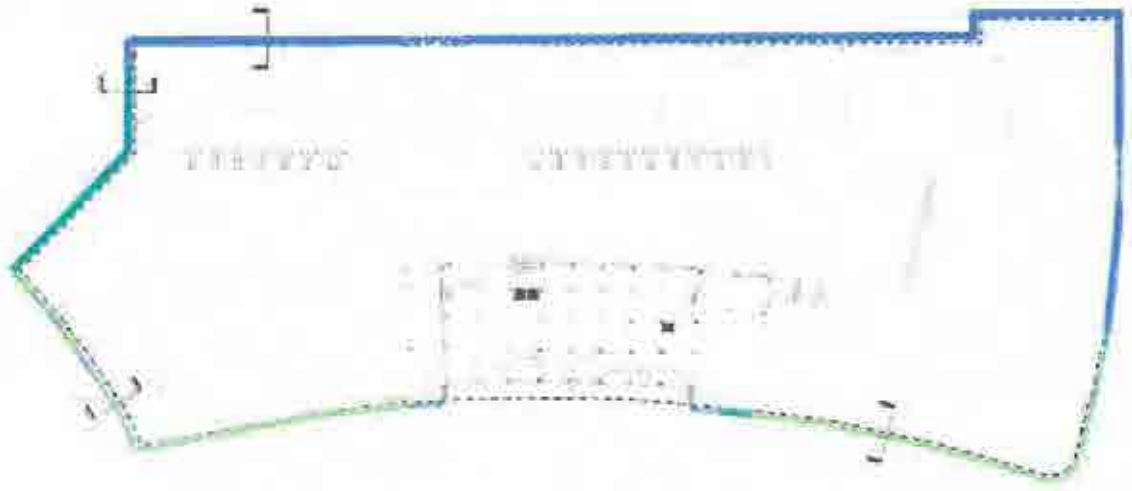
Therefore, no exception to Design Standard 11i should be granted.

H. An Exception Should Not be Granted From the Specific Plan Design Standard Requiring Walls Visible From a Public Street to Be a Maximum of 4 Feet in Height.

The second requested exception is from Design Standard 8a, which provides:

> **Design Standard 8a**. Freestanding walls located parallel to and visible from a public street should provide a minimum three-foot wide landscaped buffer for the length of the wall adjacent to that public street, with a maximum height of four feet. The landscaped buffer should contain clinging vines, oleander trees or similar vegetation capable of covering or screening the length of such wall, and should include the installation of an automatic irrigation system. Chain-link, barbed- wire and wrought iron are not permitted. (Figure F.1)

Under the exception, the Project would essentially eviscerate Design Standard 8a. Instead of a modest, attractive wall up to 4 feet in height, the entire property would be encircled almost at the property line with either 6 foot high fences or, in areas where parking lots are located, by 6-foot fence/wall combinations. In total, there would be more than 2500 feet – almost ½ mile – of linear fencing or wall-fencing, completely sealing off the vast majority of the property from the adjoining public street and creating a "caged-in" appearance for the entire project. 3.17



Perimeter Wall Plan (MND, Figure II-20)

Typical perimeter fences and fences/walls (from application)

3.17

Typical perimeter fence and entry gate (from application)

3.17

The application attempts to justify this perimeter fencing, using benign descriptions about its "visual lightness" and "architectural interest" and characterizing it as consisting of "rectangular aluminum slats" with "no horizontal bar elements." (See memorandum in file from Donna Tripp to Michelle Singh dated June 11, 2014.) In fact, the proposed fence is in most respects indistinguishable in appearance from a wrought iron fence, is to a large degree less transparent than a wrought iron fence, and thus directly contravenes both the letter and the intent of Design Standard 8a.

As with the other requested exception from the Specific Plan, the applicant does not present even a single "practical difficulty," "unnecessary hardship," "exceptional circumstance," or "special circumstance" warranting an exception to Design Standard 8a. Instead, the applicant recites a series of justifications that could be used to justify installing an over-height security fence around virtually any property in the area. (Tripp Memo dated 6/11/14.)

For example, the application cynically attempts to justify the exception on the ground that the Project site "presently is enclosed by an over 6 ft. in height chain link fence." The applicant erroneously believes that since the property owner has encircled the property temporarily in an ugly fence – something that is forbidden by the Crenshaw Specific Plan and is thus illegal – that justifies allowing an ugly fence to be remain on the site forever.

The application also states that "properly securing the large site is a high priority for the applicant," and predicts that "If left unsecured at night, the large surface parking lots and contiguous swaths of central open space can be anticipated to attract youth using the large parking areas for skateboarding or social gatherings, transients using the open park/garden areas for overnight sleeping/camping, vandals and other criminal activity." However, the Crenshaw Specific Plan was drafted with a clear recognition of the need for security, and yet it does not permit – indeed, it actively discourages – the cordoning off of private property from the adjacent commercial and residential neighborhoods. The applicant's security goals must be achieved through some method other than caging in the property.

In this vein, the application goes on to state that "Security cameras or personnel both visible enough to deter unpermitted usage and sufficient in number to cover this 8.6 acre Project Site throughout the night would be infeasible for the Applicant." No facts are provided to support this statement, and it is, on its face, preposterous. Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and their respective subsidiaries reported operating revenue of $13.2 billion for the quarter ending September 30, 2013. (See press release at http://share.kaiserpermanente.org/article/kaiser-foundation-hospitals-and-health-plan-report-third-quarter-2013-financial-results/)

The application also notes that security lighting in particular "would be negatively impactful to adjacent residential uses." This is ironic, given that the primary reason for any night time lighting impact on adjacent residential uses is that the Project intentionally violates (and therefore seeks an exception from) another Design Standard requiring that parking lots be located behind buildings, and therefore out of the view of adjoining residential property. 3.17

The application makes a play for sympathy to the patients of the facility, noting that patients have "disabilities and sensitive health conditions which need additional protection." Yet elsewhere the application contradicts itself, stating that the need for the security fence mainly arises after 7 p.m., when the facility is closed.

The application also boasts of the "2.5 acres of central recreation space," noting the "passive recreational activities" that it will offer and describing it as a "community amenity." However, the applicant downplays the fact that this area is to be entirely behind locked gates, and thus enjoyed only by the applicant's invited guests, staff and patients, to the exclusion of all others in the surrounding neighborhood. In fact, this private "recreation space" will be of no benefit to the community or neighbors, unless they happen to be guests, staff or patients of the applicant. Moreover, the applicant is not content merely to "secure" the property so as to exclude the neighborhood; it goes further and insists that the security fencing be located almost at the property line, therefore depriving hundreds of residential neighbors and thousands of daily passersby of even a proper visual buffer from the street.

In an attempt to show that other nearby properties are enjoying a substantial property right that is denied to the property in question, the application provides photos of a handful of other properties in the area which feature fences of 6 feet or taller, some of them just a few feet long. However, the applicant does not contend that any of these fences is permitted or otherwise legal, much less does it provide evidence of this fact. Nor does the applicant show how small these fences are compared to the large swath of fencing proposed by the applicant here. Rather, the argument appears to be that since other nearby properties have illegal and/or unpermitted fences, this property should be given the legal right to have such a fence, and along a street frontage that is almost ½ mile long.

Finally, the applicant makes another cynical argument in an attempt to support the mandatory finding that the exception would not be detrimental to the public welfare or injurious to nearby property. It contends that because the Project represents a "major private investment" that will "remove an unsightly, blighted property and bring economic vitality to the area," it should be forgiven from this required finding. The contention appears to be that the negative impacts of the exception should be ignored if they are outweighed by the other net benefits of the Project. However, regardless of any net benefit the Project may generate for the area generally, the property closest to the site would be harmed by the continuous cage-like fence that the applicant proposes, as it would cordon off the site from the adjacent residential neighborhoods, thereby depriving them of any connection to the Project and destroying the aesthetic and visual buffer that the Design Standard is intended to preserve. 3.17

For the above reasons, the mandatory findings for an exception to Design Standard 8a cannot be made, and the exception should not be granted.

I. The Site Plan Review Findings Cannot Be Made.

Among the entitlements sought by the applicant is a Site Plan Review. (See LAMC section 16.05.) A Site Plan Review determination requires the decision-maker to make certain findings. (See LAMC section 16.05.F.) The mandatory findings include: 3.18

> 1. That the Project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any application specific plan.
>
> 2. That the Project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will

be compatible with existing and future development on adjacent properties and neighboring properties.

Here, these two mandatory findings cannot be made. Finding 1 cannot be made because, as discussed above, the Project would be improperly caged behind almost ½ mile of 6-foot high security fencing, and because it would place parking lots alongside and in front of, rather than to the rear of, the subject medical facility. These design characteristics violate section 14c of the Crenshaw Corridor Specific Plan (which requires compliance with the Design Guidelines and Standards Manual). 3.18

Finding 2 cannot be made because, the Project is not compatible with existing and future development on adjacent properties and neighboring properties, in numerous respects. These include: (a) the inclusion of over-in-height fencing; (b) the improper location of parking lots adjoining the street frontage; and (c) the absence of adequate off-street parking facilities sufficient to meet the minimum code-required parking for the Project.

Therefore, a Site Plan Review determination cannot be made.

J. A Project Permit Compliance Determination Cannot Be Made.

The applicant seeks a Project Permit Compliance determination concerning compliance with the applicable regulations of the Crenshaw Corridor Specific Plan, pursuant to LAMC section 11.5.7.C. However, since, as discussed above, both the perimeter fence and the placement of parking lots along the street frontages directly violate section 14c of the specific plan, a Project Permit Compliance determination cannot be made. 3.19

K. An Environmental Impact Report Should Be Prepared for the Project.

The Mitigated Negative Declaration prepared for this project was not the proper form of environmental review under the California Environmental Quality Act (CEQA). CEQA provides that "If there is substantial evidence, in light of the whole record before the lead agency, that the Project may have a significant effect on the environment, an environmental impact report shall be prepared." (Public Resources Code, section 21080(d).) The courts emphasize that the threshold for preparing an EIR is a low one: Whenever there is "substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment," a mitigated negative declaration will not suffice and an EIR must be prepared. (*Citizens for Responsible & Open Government v. City of Grand Terrace*, (2008) 160 Cal. App. 4th 1323.) A mitigated negative declaration, on the other hand, is appropriate only when "(1) the proposed conditions avoid the effects or mitigate the effects to a point where clearly no 3.20

significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the Project, as revised, may have a significant effect on the environment." (*Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal. App. 4th 1095, 1119.) Thus, "It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 85.) 3.20

We address below the numerous impact categories in which a fair argument can be made that there will be a significant impact on the environment. An EIR should be prepared on each one of these subjects.

1. Aesthetics

The Project would result in aesthetic impacts due to its failure to meet the requirements of the Crenshaw Corridor Specific Plan and other City policies. The height of the proposed medical building would be approximately sixty feet above grade, with a photovoltaic canopy approximately 71 feet above grade. This is considerably taller than any other structure in the immediate area except the senior housing fronting on Buckingham. The Project is located further from the commercial corridor and will be approximately double the height of the residential structures immediately across Santa Rosalia Ave. from the Project site. Placement of the structure on the southerly portion of the site exacerbates the sense of an abrupt change in scale. 3.21

The Project is located in Subarea C of the Crenshaw Corridor Specific Plan, where building height is limited to a maximum of sixty feet under Specific Plan Section 10. The proposed solar panel canopy exceeds the height limit by eleven feet, raising the total height to 71 feet and further contributing to the sense of mass and abrupt change in scale from the surrounding area. Since the specific plan, unlike the City's zoning code, does not contain an exception from height limits for solar panels, the Project may actually violate the specific plan, but regardless it will create a sense of overwhelming mass and will mark an abrupt change in scale from the surrounding area, resulting in an arguably significant impact on aesthetics.

The applicant also proposes to erect fences along all street frontages. As discussed in greater detail above, the Crenshaw Corridor Specific Plan design guidelines provide that walls may not exceed 4 feet along street frontages. These fences will further contribute to a potentially significant aesthetic impact. Moreover, while the MND acknowledges that the fence was part of the project, and that the applicant would seek an exception from the provision of the specific plan design guidelines that forbid such a fence – the aesthetic impact of this fence was not even mentioned, much less analyzed, in the MND. Finally, because it deprives existing commercial businesses and commercial properties located around the perimeter of the Plaza of the parking 3.22

that is the lifeblood of any commercial business, the Project has the potential to exacerbate the blight and decay already apparent in the Plaza and surrounding commercial areas. (See *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446 (Court required City to perform further CEQA analysis on rezoning of suburban parcel to commercial use because "The potential economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area.") This is a potentially significant impact on aesthetics which should have been analyzed in an EIR.

Mr. Parker's letter reiterates the argument, made in connection with parking impacts, that aesthetic impacts need not be evaluated under SB 743, the recent statutory amendment to CEQA. (See Parker Letter, response to comment 13.1, at pg. 34.) As discussed above, SB 743 does not apply to this project since the project is neither a "residential, mixed-use residential, or [an] employment center project". (In order to qualify as an "employment center" project, a project must meet the definition set forth in Public Resources Code section 21099, including the requirement that it have "a floor area ratio of no less than 0.75"; here, the project's FAR is only .28 to 1.) 3.22

Mr. Parker also argues that aesthetic impacts of a ½-mile long fence should be ignored for purposes of CEQA simply because an exception is being requested under the Specific Plan. (See Parker Letter, response to comment 13.2, at pg. 35.) However, the grounds upon which Kaiser requests that an exception be granted are not primarily aesthetic in nature; rather, they have to do with hardship and special circumstances. If an exception is granted on these grounds, the potential aesthetic impact remains. This potential impact must be analyzed under CEQA.

2. Air Quality

Page 3 of Appendix A of the MND (Air Quality) shows import and export of 37,073 cubic yards of material, reflecting only contaminated soils that are to be removed. This does not include removal of peat materials around future building foundations or removal of undocumented fill materials. Based on the recommended removal depth of 20 feet and building footprint of approximately 25,000 square feet, up to 18,000 additional cubic yards of peat materials may need to be moved from the site. (See Gobies, pp. 15-17.) 3.23

Moreover, the bulk of the contaminated soil is located at the easterly portion of the site where future parking is planned, whereas the medical building would be centrally located on the site. Thus, there would not be a great deal of overlap in soils removed for different purposes, and the work areas would be separated enough that heavy equipment could easily operate in both locations at the same time. This has negative consequences for air quality, as multiple work areas means multiple sources of emissions.

In the MND, based upon the assumption that 37,073 cubic yards would be imported and exported from the site, peak daily emissions of nitrous oxides during the construction were calculated to be 92.5 percent of the South Coast Air Quality Management District's adopted threshold of significance. If the removal of peat materials contributed just 9,300 more cubic yards of grading, this would cause the NOx threshold to be exceeded, causing a significant impact on air quality. 3.23

3. Biological Resources

Unfortunately, the only survey of the site in the MND was performed by an arborist, not a biologist. Further, the survey was conducted toward the end of the dry season. Biological resources, and especially migratory birds, could potentially exist on the site or use the site.

In fact, while the Project site is largely disturbed, seasonal ponding has been reported on the site, and this ponding is consistently used by migratory birds during the winter months. Johnny Edwards, who has owned the property adjacent to MLK Marlton's for more than 30 years, spoke to this effect at the public hearing, as did the representative of MLK Marlton, Fred Leeds. Mr. Edwards' affidavit to this effect is attached as Exhibit "2," while Mr. Leeds' affidavit is attached as Exhibit "3". Such layperson evidence is sufficient to make a fair argument that there may be a significant impact on the environment under CEQA, and that accordingly an EIR must be prepared. (See *Pocket Protectors, v. City of Sacramento* (2004) 124 Cal. App. 4th 903 ("relevant personal observations by area residents" may be properly considered substantial evidence.) 3.24

Specifically, Mr. Edwards has attested that he has owned the property since 1983 and Mr. Leeds attest that he has been a real estate broker working in this area for more than 30 years. They have both observed the following:

- In the last several years because of numerous vacancies at the commercial properties in the former Plaza the westernmost portion of the Parking/Access Area, approximately 1 acre in size and including a portion of the Project site, has fallen into disuse such that the pavement has disintegrated in this area;

- Because the grade of the site declines toward the west, stormwater from the entire parking lot tends to flow into this 1-acre area during the winter;

- During the winter vegetation between 1 and 2 feet high has consistently grown up during the winter and the spring; and

- Hundreds of migratory birds consistently use this vegetation during recent winters.

Winter ponding area (from MND Figure III-5)

3.24

Mr. Parker, in his letter, speculates that these ponding conditions are the result of "man-made features," such as "construction activity and pits excavated in for fill, sand or gravel." (See Parker Letter, response to comment 15.1, at pg. 39.) On this basis, Mr. Parker contends that the ponds are likely to be subject to an exemption from regulation under the Clean Water Act. However, Mr. Parker points to no evidence that the ponding conditions result from construction activity or excavated pits. To the contrary, the evidence presented by both Mr. Leeds and Mr. Edwards unequivocally indicates that the conditions result purely from the natural slope of the property, and have occurred in the absence of any construction activity or excavation, as existing pavement has simply disintegrated from disuse of the western portion of the site. 3.24

4. Geology and Soils

The MND contends that impacts associated with on-site geological conditions will be mitigated by the import and export of soil, but this process in itself triggers impacts on air quality, water quality, and noise. In particular, the removal of additional peat materials in the area around the building footprint would require additional use of heavy equipment which would generate noise and air emissions. The only alternative to removing these materials – i.e., driven piles – would create significant noise and vibration impacts affecting nearby residential and institutional uses, as discussed below. 3.25

5. Hazardous Materials

The MND acknowledges that the Project site "is currently undergoing soil remediation efforts conducted by the Applicant under the direction and oversight of the Los Angeles Regional Water Quality Board (LARWQCB)." Specifically, studies conducted by consultants determined that there were four former dry cleaners and a former gas station/auto center, each of which was identified as a "potential contributing source of recognized environmental concerns (RECs)." (MND at pg. III-43.)

Notably, the Phase II environmental site assessment performed by Stantec concluded that "Tetrachloroethene (PCE) concentrations exceeded screening levels at two former dry cleaners." These former dry cleaners (now both demolished) were located on Santa Rosalia Avenue, directly across the street from dense multi-family residential neighborhoods. PCE is one of the well-recognized cancer-causing solvents that made Erin Brockovich famous. 3.26

Other than to acknowledge the existence of these dangerous PCEs, the MND wholly fails to address their extent, much less the remediation of the problem. The depth and breadth of the PCE plume is not analyzed, despite its location immediately adjacent to residential neighborhoods. Nor is the impact on the water table analyzed. Further, the only mitigation measure in the MND concerning remediation is a requirement that the applicant receive a

clearance from the Los Angeles Fire Department. Meanwhile, the MND simply fails to expressly incorporate the detailed recommendations of Geosyntec, the Phase II environmental consultant, which included:

- Installation of groundwater monitoring wells onsite for collecting representative groundwater quality data, and monitoring these wells for four quarters.

- Further delineation of the onsite impacted soil found at the former dry cleaner operations, to characterize the lateral and vertical impacted soil extent.

- Installation of offsite temporary soil vapor probes near residences and monitoring them during and one year after the property entitlement and soil excavation activities ire completed, to demonstrate that there is no human health risk associated with the soil vapors and to verify the reducing trend of the soil vapor concentrations over time.

Given the proven existence of PCEs on the site, the MND's failure to discuss the extent of the contamination, or to explain how the contamination will be remediated, is a startling omission, and raises questions of environmental justice in this primarily working class African-American community, which mainly lacks the awareness and/or resources to secure the attention of City officials. Moreover, since the MND does not expressly incorporate as mitigation measures the recommendations of the Phase II environmental consultant, there is unquestionably a fair argument with mitigation the Project would have a significant impact in connection with hazardous materials. 3.26

Mr. Parker's letter seeks to avoid this result by referring to the soil remediation efforts presently underway under the direction of the Los Angeles Regional Water Quality Control Board, noting that while a comprehensive discussion of these remediation efforts is wholly excluded from the MND, "all of this information is publicly available." (See Parker Letter, response to comment 17.1, at pg. 42-43.) Mr. Parker then concedes that information about groundwater and soil monitoring that has taken place subsequent to the 2012 Geosyntec report was not incorporated into the MND, and then seeks to supplement the record with this information. The information concerns groundwater monitoring wells, soil borings, vapor probes, and the like.

The existence of this additional information is yet more reason why an EIR should have been prepared. First, the underlying documents that describe these remediation activities and the results of the various tests are simply not in the record in any form. Instead, the City and the public must rely purely on the second-hand assertions of an environmental consultant with no background in the subject matter, much less experience with the site conditions being described. Second, none of this information was presented by the City before a decision was made to

proceed with an MND. Third, by Mr. Parker's own admission, the post-2012 site work, including soil borings and monitoring wells, indicates that there is, in fact, PCE contamination: "*The results from the 2013 investigation indicate that PCE-impacted soil is delineated laterally and vertically, with planning currently underway for the removal of impacted soil via excavation.*" (See Parker Letter, response to comment 17.1, at pg. 43.)

3.26

The public deserves more than a single sentence in an obscure letter from a non-expert stating that there is PCE contamination just a few feet from residential properties. An EIR should be prepared to study both the extent of this contamination and how it will be remediated.

6. Land Use

A significant impact on land use and planning is considered to occur if a project is inconsistent with applicable general plans and regional plans. As noted above, the Project would violate the Crenshaw Corridor Specific Plan, and the Design Guidelines adopted pursuant to that plan, in at least two respects: (1) by placing parking lots immediately adjacent to the public street rather than behind buildings, in violation of Design Standard 11i; and (2) by encircling the entire property in a cage-like fence almost at the property line, in violation of Design Standard 8a. Moreover, the MND does not even mention, much less analyze, the manifest negative land use impact arising from the Project's violation of Design Standard 8a; the Land Use section of the MND does not even mention this inconsistency.

In addition to being subject to the Crenshaw Corridor Specific Plan, the Project is governed by the West Adams-Baldwin Hills-Leimert Community Plan. That plan specifically calls out the Santa Barbara Plaza site, and notes "the need for a master plan on the property to prevent incongruent, incremental development" on the site. (See pg. III-17.) In addition to this, Specific Plan Policy 1-1.5 states: "Require that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development." The Project does not meet these standards.

3.27

Further, Policy 7-2.2 of the West Adams-Baldwin Hills-Leimert Specific Plan Policy 7-2.2 states that "New development projects should be designed to minimize disturbance to existing traffic flow with proper ingress and egress to parking." When the site functioned as Santa Barbara Plaza/Marlton Square, commercial uses were located at the perimeter of the approximately twenty acre plaza and parking was pooled in the central portion of the site, with access to all of the various commercial uses provided from driveways located at Martin Luther King Boulevard, Santa Rosalia, Marlton, and Buckingham. As currently designed, the Project would create a separate parking area for just the medical building, thereby excluding the other commercial uses from that area. Moreover, the design provides for only the medical building – and not the other commercial uses – to take vehicular access from the three present driveways on

Buckingham and Santa Rosalia, apparently to the exclusion of the other commercial uses. This would create a substantial disturbance to existing traffic flow utilizing the other commercial properties. This is in itself a significant impact on land use. 3.27

7. Noise

The large 4-story medical building that is the heart of the Project is directly across Santa Rosalia Avenue from a densely populated multi-family residential neighborhood. The project site is also directly to a large senior complex consisting of 70 units. A church and a YMCA are also directly across the street, and another church and a child care center less than 500 feet away. The noise impacts on all of these sensitive receptors would extend over the entire construction phase of the project, which is estimated to be 16 months including grading, foundation and construction. (MND at pg. 66.) 3.28

Noise Monitoring and Sensitive Receptor Location Map (from MND)

The MND makes generic assumptions about the construction equipment and methods to be used in the Project. This results in optimistic measurements of noise impacts, rather than worst-case scenarios. Yet elsewhere in the MND there is evidence that noise impacts could be much worse than predicted by the MND. As just one example, the Geology and Soils section states that the project geotechnical consultant, GeoBase, "recommends fill and foundation alternatives that may be suitable for the Proposed Project: removal of the peat soils and silts with peat and organic inclusions and replacement with properly compacted backfill soils or the implementation of deep foundations with no soil removal as an alternative to removal of peat materials." (MND, pg. III-32.) Deep foundations can only be installed with pile drivers, which can generate noise in excess of 100 dB as well as significant ground vibration. Yet, the Mitigated Negative Declaration does not assume that this equipment might be used. The use of pile drivers in itself would be a significant adverse noise impact, affecting hundreds if not thousands of nearby residents, as well as a host of other sensitive receptors not even considered in the MND.

Moreover, even with generic assumptions about construction equipment and methods, the MND noise analysis concedes outright that without mitigation, there would be a significant construction noise impact on six of the eight off-site sensitive receptors analyzed, including the entire residential neighborhoods to the south and west of the project. Specifically, the analysis concedes:

3.28

> "[T]he estimated construction-related noise levels associated with the Proposed Project would exceed the numerical noise threshold of 75 dBA at 50 feet from the noise source as outlined in the City Noise Ordinance, and the typical construction noise levels associated with the Proposed Project would exceed the existing ambient noise levels at six of the identified off-site sensitive receptors by more than the 5 dBA threshold established by the L.A. California Environmental Quality Act Thresholds Guide during all construction phases."

Remarkably, however, the MND claims that this impact has been mitigated to a level of insignificance. The MND initially points out that while construction noise appears on its face to violate both the City Noise Ordinance and the City's CEQA thresholds, "construction noise levels are exempt from the 75 dBA noise threshold if all technically feasible noise attenuation measures are implemented." (MND at pg. III-69.) Since it is obviously not "technically feasible" to shield nearby residential and other sensitive uses from the extreme and sustained noise caused by a major construction project, the MND essentially states that because of this qualified language the Project – however disruptive – will not necessarily violate the City's noise ordinance.

However, not technically violating the noise ordinance does not mean that the Project will not have a significant impact on residential neighbors. The City cannot simply wave away a significant noise impact by declaring it legal under its noise ordinance. In fact, there is a significant noise impact – both because 75 dBA is by any reasonable measure an extremely high level of noise, and because the separate exceedance of the 5 dBA threshold established by the City's CEQA Thresholds guide is in itself the basis for a finding of significant impact.

The MND avoids the obvious conclusion that this significant impact cannot be mitigated to a level of insignificance by engaging in the same sleight of hand as the City's noise ordinance. It asserts that various mitigation measures, including compliance with the very same (albeit admittedly ineffectual) City noise ordinance and a handful of other purportedly noise-attenuating measures "would ensure impacts associated with construction-related noise levels are mitigated to the maximum extent feasible and temporary construction-related noise impacts would be considered less than significant." (MND at pg. III-71.) Like the noise ordinance, the other noise-attenuating measures are rendered toothless because they are all qualified with vague phrases like "state-of-the-art" or non-obligatory qualifiers such as "to the maximum extent possible." 3.28

The noise analysis, in other words, finds that there is a significant impact, asks the applicant to make its best efforts to try to reduce noise, and then on that basis – and that basis alone – declares the impact to be less than significant.

The City cannot do this. The construction noise impacts of the project are significant, and they are not mitigated. Thus, there is a fair argument that the Project, after mitigation, will have a significant construction noise impact. An EIR should be prepared to analyze this potential impact.

8. Public Services

As discussed above, the Project blocks two of the driveway accesses historically used by other properties in the former Plaza, and partially blocks a third. This blockage of access has serious implications for public safety and thus public services such as police and fire, including the following: 3.29

- Emergency vehicles such as fire trucks, police cars and ambulances would be limited in their means of access to the various properties in the former Plaza, as well as to the large parking lot that lies in its midst.

- Isolated areas of the former Plaza could become attractive nuisances, increasing the need for police response.

- Physical separation of the various properties and elimination of street access for existing parking areas for any of the properties could allow more opportunity for the commission of crimes such as burglaries and robberies, increasing the need for police services.

3.29

All of these constitute potentially significant impacts on public services which should have been analyzed in an EIR.

9. Transportation and Traffic

The traffic study prepared by the applicant estimated that the Project would generate a net increase of approximately 2,846 daily trips, including 188 trips in the a.m. peak hour and 228 trips in the p.m. peak hour. (See memorandum in file from Tomas Carranza of LADOT to Karen Hoo, dated October 8, 2013.) Although the traffic study goes to great pains to avoid declaring any of the resulting traffic to constitute a significant impact, in fact there is a fair argument that a significant impact would exist.

3.30

First, as discussed above, the Project would eliminate existing vehicular access driveways presently used by other existing commercial properties at the Santa Barbara Plaza site. This would affect site deliveries, employees and customers alike. Without the easy access to the rear of the properties that is presently afforded by the driveways at Santa Rosalia Drive and/or Marlton Avenue, vehicles would have to queue on the only remaining driveway at Martin Luther King Jr. Blvd., which could impede traffic and/or block parking along that major artery. The impact would be especially severe for trucks making deliveries and at times of day when customer visits peak at various locations. In addition, because they would be deprived of adequate parking in the parking lot, customers and other visitors would be forced to cruise public streets to look for on-street parking, causing congestion and traffic conflicts. All of these are potentially significant adverse impacts that have not even been addressed, much less mitigated, in the MND.

3.31

Mr. Parker, in his letter, attempts to avoid this obviously significant impact on traffic by alleging that "none of the existing land uses within the former Marlton Square area are accessible through the Project Site." (See Parker Letter, response 21.1.2, at pg. 54.) However, this lack of access is merely the result of Kaiser's recent – and illegal – blockage of the longstanding historic access to the Plaza properties by the construction of a fence around the Kaiser property, which blockage is subject at any time to be removed pursuant to a court process instituted by MLK Marlton or any other affected property. For purposes of CEQA, this temporary blockage of access does not avoid a finding that permanent blockage of such access by the proposed construction project would constitute a significant impact on traffic around the Plaza site.

Second, as discussed above, by eliminating two of the historic access driveways to the properties at the Plaza site, and by constricting a third, the Project would potentially result in inadequate emergency access to some or all of the numerous other commercial properties on the site, and to what remains of the large shared Parking/Access Area. With the Project, the only remaining driveway access for all of the commercial parcels other than the applicant's Project would be the driveway at Martin Luther King Jr. Boulevard.

Mr. Parker argues in his letter that this significant impact on emergency access will not occur because "it is reasonable to assume that any future development of the other non-Kaiser ... parcels ... would likely become consolidated as part of a larger redevelopment plan/project which could have very different access and parking schemes than what has been existing since the 1950's." (See Parker Letter, response 21.1.3, at pg. 55.) This is merely self-serving speculation designed to avoid environmental review. There are structures and uses on the Plaza property that remain precisely as they have been for decades – including those of MLK Marlton and its neighbor, Johnny Edwards. Other than the Kaiser project there is no other project presently proposed for any site within the Plaza property, and there is no land use plan or other document that dictates or even predicts how development will unfold on the Plaza property. Thus, Mr. Parker has no business assuming that the Plaza will develop in any particular way, much less in a manner completely different from the historical pattern. 3.31

Third, the traffic study improperly reduces the base trip generation by fifteen percent for transit trips. The Los Angeles Department of Transportation June 2013 manual (Traffic Study Policies and Procedures) allows a reduction of up to fifteen percent in assumed trip generation if a project is within a quarter mile walking distance of transit station or Rapid Bus stop. However, this trip credit is predicated on the Project meeting certain other conditions including implementation of all of the following standards: 3.32

- Provision of a wider than standard sidewalk along the streets fronting the Project through additional sidewalk easement or by dedicating additional right-of-way beyond street standards.
- Improvement of the condition and/or aesthetics of existing sidewalks leading to transit station(s) with adequate lighting to provide for a safer pedestrian environment.
- Provision of continuous paved sidewalks / walkways with adequate lighting from all buildings in the Project to nearby transit services and stops, including mid-block paseos.
- Implementation of transit shelter improvements/beautification.

While some of these may be provided with the Project, they are not all described in the MND. Therefore, the traffic study has improperly calculated trip generation and its conclusions of no significant impact are rendered invalid. 3.32

Fourth, the traffic study for the Project indicates that when other cumulative projects in the area are taken into account, many of the study area intersections will experience significant degradation of traffic level of service over time. For some of these, the Project would have a de minimis effect, increasing levels-of-service (LOS) by barely .001, and on that basis the MND may have assumed that there was no significant impact. However, there are cases in which the Project does contribute a measurable, greater-than-de-minimis effect to the significant cumulative impact. These include La Brea and Jefferson (at which the p.m. peak hour increases from .837 to .946, with the Project contributing .004 to the .109 cumulative increase in LOS); and Crenshaw and Stocker (at which the p.m. peak hour increases from .834 to .963, with the Project contributing .009 to the .129 cumulative increase in LOS). In these locations, the cumulative impact on traffic is significant. 3.33

Fifth, LADOT found that there is a significant impact pre-mitigation at the intersection of Arlington Avenue and Martin Luther King Jr. Boulevard, and yet the MND proposes a purely illusory measure to mitigate this impact below a level significance – namely, the preparation in the future of a Transportation Demand Management (TDM) plan. (See Carranza memorandum dated 10/8/13.) According to the LADOT memorandum, a TDM plan "includes design elements and trip reduction strategies, [which] would reduce the Project's overall trip generation by discouraging single occupancy vehicle use and by promoting the use of alternative travel modes." However, the MND merely requires that this plan be provided to LADOT for review; it contains no specifics about what the TDM must contain, and there is no evidence that any particular measure would in fact reduce trips sufficiently to bring the impact below a level of significance. Therefore, it was improper for the MND to assume that the significant impact at Arlington and Martin Luther King Jr. Boulevard would be mitigated to a level of insignificance. Instead, there is a fair argument that even with mitigation the Project would have a significant impact on traffic at this intersection. 3.34

L. **Conclusion**.

"No house should ever be on a hill, or on anything. It should be of the hill." -- *Frank Lloyd Wright*

The Project as proposed is being put "on" the neighborhood where it sits. It is not "of" the neighborhood. As such, it should be denied outright. 3.35

Very truly yours,

John A. Henning, Jr.

Enclosures

COMMENT LETTER No. 4

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August 15, 2014

FINAL LETTER OPPOSING PROJECT

VIA ELECTRONIC MAIL

South Los Angeles Area Planning Commission
c/o James Williams, Commission Secretary
City of Los Angeles
200 N. Spring St., Room 272
Los Angeles, CA 90012

Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND
(3780 W. Martin Luther King Jr. Boulevard and 4055-4081 S. Marlton Avenue)
(South Los Angeles Area Planning Commission Meeting Date: August 19, 2014)

4.1

Honorable Commissioners:

"*Iceberg, right ahead.*"

-- Lookout Frederick Fleet at 11:40 p.m., April 14, 1912, from the crow's nest of the RMS *Titanic.*

This Commission is the last real chance to steer the City away from an ill-conceived proposal that would effectively steal parking and access from its neighbors and embroil the City in needless litigation. The staff report for this project concedes that Kaiser has not established that it has the right to build its facility on this site, or to exclusively use it for parking and other purposes. Thus, my client, MLK Marlton LLC, still vigorously opposes the project.[1]

[1] MLK Marlton owns the parcels at 3710 and 3718 Martin Luther King Jr. Boulevard. We submitted a 41-page letter to you dated August 12, 2014.

The applicant, Kaiser Foundation Health Plan, Inc. ("Kaiser") has brought this situation upon itself. Kaiser bought the property in May 2012, more than two years ago. At that time they were fully on notice that a recorded Declaration of Restrictions ("Declaration") stated that a large portion of the sit "shall not be used for any purpose other than the parking of automobile and other vehicles and for the purpose of ingress and egress to other lots in Tract 16050."

Regrettably, Kaiser did not go to the other property owners in the tract and seek permission to use the property for a different purpose. Nor did Kaiser apply to a court for a determination that the Declaration was extinguished or otherwise invalid.

Instead, in December 2013, Kaiser filed an application with the City to build this project directly onto the land burdened by the Declaration. In hundreds of pages of application materials, Kaiser made no mention whatsoever of the Declaration.

This was an outright fraud, committed against the City.

Kaiser's fraud would have gone undiscovered, except that two property owners in the tract objected. One of these property owners is my client, MLK Marlton. The other is Johnny Edwards, who has owned the adjacent parcel with his wife for more than 30 years. Both Mr. Edwards and the representative of my client, Fred Leeds, have supplied the Commission with signed affidavits asserting their unequivocal right to enforce the Declaration. These affidavits are attached.

4.2

It may initially appear as though these objections were raised at the last minute, when City staff held its public hearing on July 18, 2014. In fact, my client strenuously objected to this project directly with Kaiser more than three months earlier. On March 17, 2014, my client's attorney wrote a letter to Kaiser in which he specifically cited to the Declaration and objected to Kaiser's plan to build a project on the land subject to it. Kaiser's attorneys replied to that letter on March 26, 2014, and while they disputed the legal effect of the Declaration, they clearly acknowledged its existence, and strongly implied that Kaiser had been aware of it all along. Both of these letters are attached.

Meanwhile, since November 2013, many months before my client wrote to Kaiser, other property owners in the tract have been embroiled in litigation over similar attempts by the City itself to seize exclusive control over land burdened by the Declaration. Kaiser has never contended that it was unaware of this litigation, and as a sophisticated property owner surely was well aware of it.

While these disputes were raging over the use of parking and access in the Center, Kaiser continued pursuing its permits, and actively concealed all evidence of these disputes from the City.

Finally confronted with these objections at the public hearing on July 18th, Kaiser presented a self-serving opinion by its own lawyer, who tried to explain away the Declaration with a series of specious arguments. My client's attorney, Geoff Gold, has fully responded to these arguments in his letter dated August 12, 2014, which was included in the Commission's hearing packet. Meanwhile, there is nothing in the record indicating that the City's lawyer – i.e., the City Attorney – agrees with Kaiser that the Declaration is void and/or unenforceable.

Staff, to its credit, has acknowledged that this is a valid issue. The staff report (at page A-4) states, "the applicant has been asked by the Department of City Planning to provide a record of property affidavits and title report to determine if the parking restriction is a valid record."

Yet despite staff's request, as of yesterday, August 14, 2014, Kaiser had not submitted any title report or other evidence indicating whether the Declaration is still in force. Evidently, Kaiser believes that it can simply ignore the request with impunity, or perhaps wait until the very last moment to insert the requested documents into the record.

In any event, regardless of what Kaiser may submit in the final moments of this proceeding, it simply cannot resolve this dispute. Instead, the facts are simply these:

- Kaiser has never disputed that the Declaration is recorded against its property.
- Kaiser's title report cannot establish that the recorded Declaration is unenforceable, but rather, merely shows what one title insurance company is willing to insure against.
- The City Attorney has not agreed with Kaiser.
- The only thing that can establish that the Declaration is unenforceable would be a decision by a court of law, and neither Kaiser nor any of its predecessors in interest in the property have ever sought such a decision.

Given these facts, this Commission has just one real option: To deny the project.

Very truly yours,

John A. Henning, Jr.

Enclosures

4.2

October 23, 2014

Shane E. Parker
Parker Environmental Consultants
25000 Avenue Stanford, Suite 209
Santa Clarita, CA 91355

Re: Kaiser Permanente Outpatient Medical Facility—Baldwin Hills MOB
Environmental Case: ENV-2013-4103-MND

Dear Shane:

Based on my 35 years of experience in environmental consulting as the founder and Principal of WRA, Inc. (www.wra-ca.com), I have been asked to provide my opinion on the adequacy of Mitigation Measure IV-20 (Habitat Mitigation) as it relates to the above referenced project. WRA, a firm employing 60 professionals and with offices in northern and southern California, annually performs construction monitoring on projects throughout the State with specific oversight on compliance with federal and state laws related to protection of sensitive habitat and species. These projects have ranged from small development projects to large power line transmission projects such as Tehachapi Renewable Transmission Line in Los Angeles County and the Sunrise Powerlink in San Diego/Imperial Counties. In addition, our firm regularly consults with federal and state regulatory agencies in Los Angeles County. I am a Certified Professional Wetland Scientist.

The purpose of this letter is to respond to the comment on the project submitted by an attorney representing MLK Marlton, LLC., states that the migratory birds could potentially exist within an area with alleged seasonal ponding occurring on the site. Two affidavits were attached that have stated that they have observed "hundreds of migratory birds" using area an area where storm water accumulates in winter months. Other than these statements, no supporting information was provided such as photographs or species counts to corroborate these statements.

Specifically, the affidavits submitted by Mr. Edwards and Mr. Leeds, attest that they have observed the following:

1. In the last several years because of numerous vacancies at the commercial properties in the former Plaza the westernmost portion of the Parking/ Access Area, approximately 1 acre in size and including a portion of the Project site, has fallen into disuse such that the pavement has disintegrated in this area;
2. Because the grade of the site declines toward the west, storm water from the entire parking lot tends to flow into this 1-acre area during the winter;
3. During the winter vegetation between 1 and 2 feet high has consistently grown up during the winter and the spring; and
4. Hundreds of migratory birds consistently use this vegetation during recent winters.

Citing these observations, the appeal letter asserts that the MND failed to address the presence of migratory birds that may occur on-site during the winter months and that a significant impact under CEQA may occur. However, contrary to this assertion, the MND addressed potential impacts upon migratory bird species with the incorporation of mitigation measure IV-20 (see MND page III-23). Mitigation Measure IV-20, as it appears in the MND is restated as follows:

IV-20 Habitat Modification (Nesting Native Birds, Non-Hillside or Urban Areas)

- Proposed Project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1- August 31 (as early as February 1 for raptors) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture of kill (Fish and Game Code Section 86).

- If project activities cannot feasibly avoid the breeding bird season, beginning thirty days prior to the disturbance of suitable nesting habitat, the applicant shall:

  a) Arrange for weekly bird surveys to detect any protected native birds in the habitat to be removed and any other such habitat within properties adjacent to the project site, as access to adjacent areas allows. The surveys shall be conducted by a qualified biologist with experience in conducting breeding bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than 3 days prior to the initiation of clearance/construction work.
  b) If a protected native bird nest is found, the applicant shall delay all clearance/construction disturbance activities within 300 feet of suitable nesting habitat for the observed protected bird species until August 31.
  c) Alternatively, the Qualified Biologist could continue the surveys in order to locate any nests. If an active nest is located, clearing and construction within 300 feet of the nest or as determined by a qualified biological monitor, shall be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting. The buffer zone from the nest shall be established in the field with flagging and stakes. Construction personnel shall be instructed on the sensitivity of the area.
  d) The applicant shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to the protection of native birds. Such record shall be submitted and received into the case file for the associated discretionary action permitting the Project.

With the implementation of this mitigation measure, it is my professional opinion that the project will not have any significant impacts on migratory birds.

Two issues were raised by these comments (1) the protection of migratory birds and (2) the presence of water on the project site that appears to pond during winter rain events.

Migratory Birds

The federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703–712) protects migratory birds and their active nests, eggs, or young, from possession, sale, purchase, barter, transport, import, export, and take. For purposes of the MBTA, take is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect" (50 CFR 10.12). In general, the MBTA protects all birds occurring in the United States except for house (English) sparrow (*Passer domesticus*), European starling (*Sturnus vulgarisi*), rock pigeon (*Columba livia*), and non-migratory upland game birds. The US Fish and Wildlife Service (Service) has regulatory authority over implementation and enforcement of the MBTA. The Service issued a Memorandum in April 2003 that clarifies that the MBTA does not contain any prohibition on the take of inactive nests that may be present during the non-breeding season.

The MND contains measures to protect migratory birds that are consistently and successfully used in Mitigated Negative Declaration documents approved by the City of Los Angeles and many other lead agencies in Southern California. These measures include protections afforded to migratory birds by the MBTA. Because migratory birds do not establish territories nor nests containing eggs and juveniles present in the winter, construction activities may occur during these months as long as there is no take of the birds themselves. This can be achieved by undertaking construction when the site is dry, or if water is present, by draining the water prior to construction activities such that birds are not present. Such avoidance activities are commonly used and are consistent with the MBTA. During the breeding season, the pre-construction monitoring and avoidance measures as proposed in the MND are consistent with the MBTA and practices adopted by agencies for compliance. Buffers of 300 feet are required to be established around any active nests. Such measures will protect any bird species, both common and sensitive, that may be present during the breeding season.

It is my professional opinion, the measures proposed by the City in the Mitigated Negative Declaration are protective of migratory birds, are measures that are feasible and appropriate in complying with the MBTA, and will reduce any impacts to migratory birds to less than significant.

Regulation under Clean Water Act

The water which temporarily ponds in depressions resulting from ongoing remediation and demolition activities following storm events is not considered a sensitive habitat under the federal Clean Water Act. Section 328 of Chapter 33 in the Code of Federal Regulations (CFR) defines the term "waters of the United States" as it applies to Corps jurisdiction under the Clean Water Act. A summary of this definition of "waters of the U.S." in 33 CFR 328.3 includes (1) waters used for commerce; (2) interstate waters and wetlands; (3) "other waters" such as intrastate lakes, rivers, streams, and wetlands; (4) impoundments of waters; (5) tributaries to the above waters; (6) territorial seas; and (7) wetlands adjacent to waters. None of these categories apply to the temporarily ponded stormwater areas on the site.

The Corps has established technical methods to identify areas as detailed in the U.S. Army Corps of Engineers Wetlands Delineation Manual ("Corps Manual"; Environmental Laboratory 1987), the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region ("Arid West Supplement"; Corps 2008), and applicable Regulatory Guidance Letters. This definition

requires the presence of naturally occurring wetland plants, hydric soils, and wetland hydrology. The subject site is currently under remediation under the guidance of the Los Angeles Regional Water Quality Control Board and therefore has been subject to active demolition and remediation activities. These activities result in some construction related depressions on site that retain stormwater from migrating off-site. Nonetheless, such features are clearly exempted under the Clean Water Act. Included in this category of exemptions are:

- Some man-induced wetlands, including areas that are maintained only due to the presence of man-induced hydrology (1987 Corps Manual)
- Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (33 CFR 328.3a)
- Ditches dug wholly in, and draining only uplands and that do not carry a relatively permanent flow of water (51 Fed. Reg. 41206, Corps 2008)
- Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing (51 Fed. Reg. 41206)
- Artificial reflecting or swimming pools, or other similar ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons (51 Fed. Reg. 41206)
- Water-filled depressions created as a result of construction activity (51 Fed. Reg. 41206)
- Pits excavated in upland for fill, sand, or gravel (51 Fed. Reg. 41206)
- Areas that are isolated from and/or do not have a significant nexus to navigable waters of the U.S. (Corps 2008)

The project site meets a number of exemptions under the Clean Water Act including man-induced features resulting from altered hydrology (construction actions); artificial ponds used for settling purposes; isolated areas that that also lack a significant nexus to waters of the US; and water-filled depressions created as a result of construction activity is directly applicable to the current Project Area. This latter exemption is described more fully within the Preamble to the CWA Regulations (33 CFR Parts 320 through 330), published in the Federal Register on November 13, 1986 (51 Fed. Reg. 41206):

> (e) Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.

Aerial photographs of the site show that the areas that currently pond water were previously developed dry land and that they have been subject to demolition and remediation and are still subject to ongoing remediation under the guidance of the Los Angeles Regional Water Quality Control Board. As such neither the remediation nor the demolition has been abandoned and is necessary as part of the redevelopment of the property as part of the proposed project. Furthermore, the active consideration of the redevelopment site by Kaiser provides further evidence that the redevelopment process has been active and there has been no abandonment of the planning for the property. In my experience with the Corps; construction, demolition, remediation, and ongoing planning activities for a property all qualify as a basis that such water filled depressions are exempt from jurisdiction under the Clean Water Act. As a result, no

further mitigation requirements are necessary as it relates to these water-filled construction related depressions.

Sincerely yours,

Michael Josselyn, PhD

Principal and Certified Professional Wetland Scientist