

**FINDINGS APPROVED BY PLANNING AND LAND USE MANAGEMENT
COMMITTEE ON 11/4/2014**

**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.

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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 1/2" 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

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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.

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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, Leimert 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

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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	Fence Image
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		4 ft. tall?	
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	

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<p>4020 Buckingham m Rd.</p>	<p>Senior housing</p>	<p>Yes</p>	
<p>Buckingham m Rd. (between Santa Rosalia & MLK Jr. Blvd.</p>	<p>Apartment buildings</p>	<p>Yes</p>	

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.

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(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.

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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.

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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

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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.

The following addresses the credibility of written and oral testimony provided by parties associated with MLK, Marlton, LLC (“**Marlton**”), which is the current owner of the property located at 3710 and 3718 Martin Luther King, Jr. Blvd. (the “**Leeds Property**”), in their opposition to the Project and Marlton’s appeal (the “**Appeal**”) to the City Council. The testimony includes oral statements and written affidavits by Fred Leeds (“**Mr. Leeds**”),¹ who is variously referred to in his statements and in the statements and filings of his various counsels as the current owner of the Leeds Property, the manager of Marlton and the managing member of Marlton. Mr. Leeds is in escrow to buy the property located at 3724 Martin Luther King, Jr. Blvd. (the “**Edwards Property**”),² which is owned by Johnny Edwards (“**Mr. Edwards**”) and his wife. Mr. Edwards has also provided oral testimony and an affidavit.

Mr. Leeds and Mr. Edwards are not credible witnesses, and therefore, evidence and testimony presented by them may be disregarded when applying the “fair argument” standard articulated in the California Environmental Quality Act³ (“**CEQA**”).

1. **Executive Summary.**

a) **California Law Empowers the Council to Disregard Evidence Presented by a Witness who is not Credible.** When reviewing an MND, the City Council is legally empowered to determine that a witness is not credible, if the witness has a financial interest in the outcome of the review or if the witness has made misrepresentations.

b) **Courts will Defer to the Council’s Finding that a Witness is not Credible.** Any evidence presented by a noncredible witness may be disregarded by the City Council. Credibility determinations made by the City Council are given deference by a reviewing court, if the City Council identifies in the record evidence supporting its credibility findings.

c) **Testimony by Mr. Leeds and Mr. Edwards.** Mr. Leeds and Mr. Edwards have testified to the existence of environmental harms, including those related to aesthetics and biology, without third-party substantiation.

d) **Testimony by Mr. Leeds and Mr. Edwards is Not Credible.**

i) **Mr. Leeds has a Financial Interest in a CEQA Claim Against Kaiser’s Project.** As a beneficial owner of the Leeds Property and the purchaser of the Edwards Property, Mr. Leeds stands to financially benefit from the lawsuit he has directed Marlton to file against Kaiser, the CRA/LA and the City. In the suit, Marlton seeks monetary damages as well as various valuable property rights from Kaiser. Marlton, through its counsel, has expressed an interest in settling all claims – including CEQA claims related to the MND – if Kaiser would purchase the Leeds Property and the Edwards Property or provide valuable property rights to

¹ Affidavit of Fred Leeds, dated August 11, 2014, attached to the Appeal as Exhibit 3 (“**Leeds Affidavit.**”).

² Affidavit of Johnny Edward, dated August 11, 2014, attached to the Appeal as Exhibit 2 (“**Edwards Affidavit.**”).

³ Codified at California Public Resources Code Section 21000 *et seq.*

Marlton and Mr. Leeds. Obviously, the settlement value of Marlton's monetary and property claims against Kaiser are increased by the potential viability of a CEQA suit against Kaiser.

ii) Mr. Leeds has a Financial Interest in a CEQA Claim Against Kaiser's Project. Mr. Edwards has contracted to sell the Edwards Property to Mr. Leeds and will receive financial remuneration from that sale. The value of the Edwards Property to Mr. Leeds – and, hence his desire to complete the purchase – is increased by the settlement value of his claim or ability to resell the Edwards Property to Kaiser at an increased price. Consequently, Mr. Edwards has a financial interest in creating a CEQA claim against Kaiser.

iii) Mr. Leeds has Made Misrepresentations. Mr. Leeds has made various inconsistent and misrepresentative claims with regard to Mr. Leeds's ownership and acquisition of the Leeds Property.

e) Kaiser Respectfully Requests that the Council Make Credibility Findings. Kaiser respectfully requests that the City Council consider the law and facts set forth in this letter and determine whether the Suggested Findings are meritorious and supported by sufficient evidence. If the City Council determines that the Suggested Findings are meritorious and supported by sufficient evidence, then Kaiser respectfully requests that the City Council adopt the Suggested Findings.

2. Discussion of Legal Requirements.

The City Council Is Empowered to Make Credibility Determinations. When considering the MND, the City Council has the authority to make determinations as to the credibility of evidence presented in the record and may disregard any evidence it determines not to be credible.⁴ Courts have held that “it is true that an administrative agency charged with undertaking . . . environmental analysis is entitled to disbelieve even the uncontradicted testimony of a witness or witnesses if it is inherently improbable or if the witness has an interest in the matter under dispute”⁵ Consequently, the City Council has discretion to disregard as

a) not credible any evidence presented by a witness who has an interest in the matter under dispute.⁶

In addition, Courts have held that where a witness has made misrepresentations or given inconsistent testimony “the City ha[s] discretion to discount [the witness's] credibility.”⁷ Consequently, the City Council has discretion to disregard as not credible evidence presented by a witness who has given testimony that is inconsistent or misrepresentative.⁸

⁴ *Bowman v. City of Berkeley*, 122 Cal. App. 4th 572, 582 (2004); *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*, 29 Cal. App. 4th 1597, 1602 (1994).

⁵ *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles*, 134 Cal. App. 3d 491, 504 (1982) (citing Witkin, Cal. Evidence (2d ed. 1966) Introduction of Evidence at Trial, §§ 1112-1113, pp. 1028-1029).

⁶ *Newberry Springs Water Ass'n v. County of San Bernardino*, 150 Cal. App. 3d 740, 750 (1984) (“The administrative agency is entitled to believe or disbelieve even uncontradicted testimony of a witness if the witness has an interest in the matter under dispute.”).

⁷ *Id.* (administrative agency had discretion to determine that the expert witness evidence presented in the record was not credible due to misrepresentations expert had made in prior proceedings for nuisance abatement of his property).

⁸ *Bowman*, *supra*, 122 Cal. App. 4th at 582-583.

b) Courts Give Deference to Credibility Determinations Made by a Lead Agency. It is established that courts reviewing findings made by a lead agency defer to credibility determinations made by the agency.⁹ In applying the appropriate standard courts must “review the record and determine whether there is substantial evidence in support of a fair argument the [project] may have a significant environmental impact, *while giving the City the benefit of the doubt on any legitimate, disputed issues of credibility.* In effect, [courts] apply a hybrid, quasi-independent standard of review.”¹⁰ Thus, courts “should not substitute [their] own credibility determinations for those of the public agency.”¹¹

c) The Lead Agency Must Identify Evidence in the Record Supporting Its Credibility Determinations. To assist courts in recognizing when a question of credibility has been addressed by the lead agency, courts require that “before an agency may rely on its purported rejection of evidence as not credible, it must first identify that evidence with sufficient particularity to allow the reviewing court to determine whether there were legitimate, disputed issues of credibility.”¹² Thus, a lead agency must identify evidence in the record that supports its credibility determinations.¹³

3. Law and Facts Empower the City Council to Disregard Unsupported Facts Alleged by Mr. Leeds and Mr. Edwards. Pursuant to the facts set forth below, California law empowers the City Council to determine that Mr. Leeds and Mr. Edwards are not credible witnesses.¹⁴ Accordingly, the City Council may determine to disregard testimony or other evidence provided by, or on behalf of, Mr. Leeds and Mr. Edwards.¹⁵ Specifically, lay opinions provided by Mr. Leeds, Mr. Edwards and Mr. Leeds’s counsel alleging potential aesthetic and biological impacts of the Project are unsupported by third-party evidence and should be disregarded as not credible.

a) Mr. Leeds and Mr. Edwards Have Financial Interests in Opposing the Project. We ask the City Council to determine that Mr. Leeds and Mr. Edwards are not credible witnesses because, as described below, both have a financial interest in the present matter.¹⁶

⁹ *Quail Botanical Gardens Foundation, supra*, 29 Cal. App. 4th at 1602-1603; *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1400 (1995); *Bowman*, 122 Cal. App. 4th at 582; *Consolidated Irrigation Dist. v. City of Selma*, 204 Cal. App. 4th 187, 208 (2012).

¹⁰ *Quail Botanical Gardens Foundation, supra*, 29 Cal. App. 4th at 1603 (emphasis added); *see also, Bowman*, 122 Cal. App. 4th at 582; *Stanislaus Audubon Society, Inc. v. County of Stanislaus*, 33 Cal. App. 4th 144, 151 (1995).

¹¹ *Gentry, supra*, 36 Cal. App. 4th at 1400.

¹² *County Sanitation Dist. No. 2 v. County of Kern*, 127 Cal. App. 4th 1544, 1597 (2005) (citing *Leonoff, supra*, 222 Cal. App. 3d at 1351-1353, as an example where the lead agency properly provided evidence in the record to support its credibility determination); *see also, Consolidated Irrigation Dist., supra*, 204 Cal. App. 4th at 208 (citing *Bowman, supra*, 122 Cal. App. 4th 572, as an example where an agency identified, with sufficient particularity, its reasons for disregarding a witnesses testimony as not credible).

¹³ *Id.*

¹⁴ *Quail Botanical Gardens Foundation, supra*, 29 Cal. App. 4th at 1602; *Bowman, supra*, 122 Cal. App. 4th at 582-583.

¹⁵ *Id.*

¹⁶ *Brentwood Assn. for No Drilling, supra*, 134 Cal. App. 3d at 504; *Newberry Springs Water Ass'n, supra*, 150 Cal. App. 3d at 750.

i) Existing Property Litigation. Mr. Leeds is the owner, manager or managing member of Marlton, which is currently involved in a suit (the “**Litigation**”) asserting property rights claims against Kaiser, the CRA/LA a Designated Local Authority (the “**CRA/LA**”), and the City of Los Angeles (the “**City**”).¹⁷ In the Litigation, Marlton asserts property rights claims on which many of its claims under CEQA also hinge.¹⁸ Marlton seeks monetary damages for the alleged impairment of its property interests as well as various valuable property rights.¹⁹ Marlton’s counsel has informed this letter’s author, and, reportedly, other parties to the Litigation (including the City), that Marlton desires that Kaiser participate in mediation for the Litigation in which any potential CEQA claims would also be settled by Kaiser or the City’s purchase of the Leeds Property or grant of valuable property rights to Marlton.²⁰

ii) Value of CEQA Claim. Because the existence of a CEQA claim would be expected to increase Marlton’s settlement value for the Litigation, through which valuable property rights and monetary payment is being sought, Marlton and Mr. Leeds have financial interests in pursuing a CEQA claim that includes the same property rights allegations asserted in the Litigation. Consequently, Mr. Leeds has a financial interest in opposing the Project’s MND, which is sufficient to find that he is not a credible witness and that unsupported evidence submitted by him be disregarded.

iii) Mr. Leeds has Contracted to Purchase the Edwards Property. Mr. Leeds has stated that he has contracted to purchase the Edwards Property.²¹ Accordingly, Mr. Edwards’s interests are aligned with Mr. Leeds because a diminution in any potential settlement amount that Mr. Leeds receives may affect Mr. Leeds’s purchase of the Edwards Property from Mr. Edwards. Thus, like Mr. Leeds, Mr. Edwards should also be found not to be a credible witness because of his financial interest in opposing the MND, and unsupported evidence submitted by him should be disregarded.

b) Leeds’s Testimony Contains Misrepresentations. Pursuant to the facts set forth below, evidence presented by Mr. Leeds should be disregarded as not credible due to misrepresentations and inconsistencies contained in his testimony.²²

i) The Leeds Affidavit Contains Obvious Misrepresentations and Inconsistencies. The Leeds Affidavit contains misrepresentations and inconsistencies with regard to Mr. Leeds’s ownership of the Leeds Property.²³ In the Leeds Affidavit, Mr. Leeds both

¹⁷ See *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) (attached as Exhibit C).

¹⁸ See *Id.*

¹⁹ See *Id.*

²⁰ Kaiser presents this information not to prove liability on the part of Marlton with regard to its property claims in the Litigation or its CEQA claims. Instead, Kaiser presents this information for the purpose of showing that Mr. Leeds has bias or prejudice and therefore his testimony is not credible. See e.g., *Moreno v. Sayre*, 162 Cal. App. 3d 116, 126 (1984); Cal. Evid. Code § 1152.

²¹ Leeds Affidavit.

²² *Bowman, supra*, 122 Cal. App. 4th at 582-583.

²³ Leeds Affidavit.

states that he has owned the Leeds Property since 2012²⁴ and that he has owned the Leeds Property “for about a year.”²⁵ Since the Leeds Affidavit is dated August 11, 2014, these statements are contradictory, because, if Mr. Leeds had owned the property for about a year, he would have owned the Leeds Property since approximately August 11, 2013, more than eight months after the last day of 2012. Moreover, less than a month after the date of the Leeds Affidavit, Mr. Leeds submitted title records to the court handling the Litigation demonstrating that that Marlton acquired the Leeds Property on October 7, 2013,²⁶ which contradicts both of his statements in the Leeds Affidavit.

ii) Mr. Leeds had Opportunity to Amend his Misrepresentations. Mr. Leeds presented the Leeds Affidavit including the inconsistent statements described above to the South Los Angeles Area Planning Commission (“APC”) for the hearing on August 19, 2014 (“APC Hearing”).²⁷ The inconsistencies contained in the Leeds Affidavit were challenged by this letter’s author as part of Kaiser’s response submitted for the APC Hearing.²⁸ However, to date, Mr. Leeds has failed to correct his inconsistent and misrepresentative statements and has included them in the material submitted with the Appeal. Therefore, Mr. Leeds’s misrepresentations contained in the APC proceedings and in this Appeal are sufficient to find that Mr. Leeds is not a credible witness.

4. **Request for Findings.** Based on the law and facts set forth above, we respectfully request that the City Council find that Mr. Leeds and Mr. Edwards are not credible witnesses. We further ask that the City Council find that to the extent Mr. Leeds and Mr. Edwards provide testimony or other evidence in the administrative record, all such evidence should be disregarded. Specifically, we ask that the City Council find that evidence provided by Mr. Leeds, Mr. Edwards or Marlton’s counsel on Mr. Leeds behalf with regard to any potential aesthetic or biological impact of the Project, should be disregarded as not credible.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *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) (attached as Exhibit C).

²⁷ See August 18, 2014 letter from Paul Rohrer to the South Los Angeles Area Planning Commission, Re: Case No. APCS-2013-4102-SPE-DRB-SPP-SPR / ENV-2013-4103-MND; Response to Comment Letters, at p. 9, fn. 39.

²⁸ *Id.*