Item No. 17A

Supplemental Material

For

City of Sacramento City Council Agenda Packet

For the Meeting of: November 27, 2007

☒ Additional Material
☒ Revised Material: Revised Conditions

1. Boundary Limits: Amend Condition R1 to state that the western Boundary Limits for the Mercy Hospital campus is 39th Street, rather than the SPHS campus boundary, and the northern Boundary Limit on H Street excludes the existing and proposed residential complexes. *"Neither Mercy nor any of its affiliates shall acquire an ownership or leasehold interest in or apply for the rezoning or utilization of any residentially zoned real property located within the area bounded by Alhambra and Elvas/65th Street, the UPRR tracks to Hwy 50, excluding any property currently occupied by Sutter Memorial Hospital and excluding the existing Mercy General Hospital campus, as defined on the north by H Street* ***(excluding existing and proposed residential complexes)****, on the south by J Street, on the west* ***by 39th Street*** ~~**by the property line of the Sacred Heart Parish School site**~~*, and on the east by the hospital's property line along 41st Street. For purposes of this condition, "residentially zoned real property" shall include but not be limited to property having any one of the following zoning designations: R-1, R-1A, R-1B, R-2, R-2A, R-2B, R-3, R-3A, R-4, R-5, RMX, or RO. Any modification to this condition shall require approval from the City Council. Mercy shall cooperate with the City to incorporate this condition into the City's General Plan Update in 2008 and any subsequent East Sacramento Community Plan."*

2. Public Plaza: Amend Condition R2 to specify that the proposed public plaza space shall include at least 14,000 square feet at the surface parking lot in the existing school site north of I Street. *"Representatives from Mercy shall work with the Urban Design Manager and the community to develop and implement as part of the heart center project a "pedestrian and streetscape master plan" for the site. The plan shall address internal connections on the campus to ensure the safety and convenience of patients, visitors, and the public who navigate the campus. In addition, the plan shall incorporate an enhanced, shaded, well-articulated, widened and signed pedestrian streetscape around the perimeter of and through key buildings on the entire campus. For example, industrial facilities such as the proposed emergency power generator and oxygen tank at the driveway entrance at 39th and I Streets shall be adequately screened or relocated to a less visible internal location. The plan shall include plazas with fountains and/or gathering areas at key entry points, including the proposed surface parking lot north of I Street on the east side of 39th Street, the area south of the driveway entrance at 39th and I Streets, the bus stop on J Street in front of the South Building, and the proposed surface parking lot where the current chapel is located.* ***The size of the plaza space shall include at least 14,000 square feet at the surface parking lot on the existing school site north of I Street.*** *~~Preliminary landscaping plans being developed by the applicant show an estimated 10 parking spaces removed to incorporate the improvements to the site.~~ The plan shall also consider pedestrian-level lighting, undergrounding the utilities along the east side of 39th Street, exploring the reduction of the curb radii at the 39th and J intersection to improve the pedestrian landings at both the northeast and northwest corners, widening the curb cut at the southwest corner of 39th and H Streets, and other traffic calming measures along the street to enhance pedestrian safety and slow automobile and truck traffic. The City's Urban Design Manager shall review and approve the master plan."*

3. Replacement Housing: Amend Condition N1 to clarify that the Replacement Housing should allow a range of 12-20 residential units, after consideration of community and staff input during the design process. If the Replacement Housing is not owner-occupied, then the property must be transferred to a non-Mercy affiliate. *"The applicant shall work with design review staff and the community to finalize the design of the multifamily complex.* ***The complex shall have between 12 and 20 residential units.*** *The City Urban Design Manager shall approve the final design.* ***If the Replacement Housing is not owner-occupied, then the property must be transferred to a non-Mercy affiliate.***"

4. Neighborhood Traffic Management Program: Add a new Condition as **R37: "Mercy shall pay $200,000 to fund measures required by a Neighborhood Traffic Management Program in the neighborhood**

surrounding the Hospital campus, defined to include 36th on the west, 43rd on the east, McKinley Blvd. on the north and Folsom Blvd. on the south."

5. Luther house on 39th Street – Add condition **G35: "An additional buffer space encompassing 2 parking spaces must be set aside for use as a garden by Ms. Luther to make up for the loss of existing garden space from the new sidewalk, and to act as a buffer area from the school parking and driveway. In addition, the City Arborist shall prescribe mitigation during construction to preserve the heritage Elm tree on the property."**

6. Sacred Heart School – Add condition **G36: "The school construction shall incorporate all feasible measures to avoid damage to the Bunya tree near the corner of 39th and H Street.** The fencing around the school should be either set back away from the sidewalk or relocated. The final fencing plan shall be approved by the City Urban Design Manager."

7. Ferry House at 41st and J – Add condition **R38: "The Planning Director shall approve non-structural mitigation for the increased safety concerns with the main driveway on J Street next to the residential driveway at 41st and J Streets."**

8. Construction Mitigation: Add condition **R39: The following construction mitigation shall be required:**

   a. **Mercy shall communicate regularly through newsletters and emails and meet with community stakeholder group at least quarterly throughout construction of the school, the replacement housing and the new Heart Center.**

   b. **Laydown areas shall be either on the Mercy site or remote from the site itself. No construction laydown areas shall be placed on any nearby street.**

   c. **Construction Mitigation Manager (CMM). The project proponents shall designate and retain an on-site CMM responsible for directing and documenting compliance with all conditions that follow. The CMM shall have complete access to the site and the authority to stop construction if warranted by applicable mitigation conditions. The CMM shall report directly to the City with a weekly report regarding compliance with the following requirements.**

d. **No heavy or noisy outdoor construction on any of the projects shall occur on Sundays or State or Federal Holidays.**

November 19, 2007

City of Sacramento
Planning Department
Attn: Evan Compton
915 I St.
Sacramento, CA 95814

RE: Letter from Walt Seifert regarding bike parking/ access at Sacred Heart School

Evan,

Please accept the following response regarding bike parking and access at the proposed Sacred Heart School site following the letter you received from Walt Seifert (SABA). There are several items that we believe the school design is using to both increase the ability to bike to school/ work as well as make it safe for biking enthusiasts:

1. Currently, the school provides bike racks for a total of 12 bicycles. It is estimated that as many as 15 students bike to school regularly. As commented in the letter, these racks are of an inferior design for bicycle storage and the campus lacks the required bicycle "locker" as requested by city staff. In the proposed design, Sacred Heart School is making provisions for 18 new bike racks for student parking, of design (Saris HD) that will allow for locking of the frame. This is an improvement of 50% over the current number, and these racks are located interior to the campus in a well-lit, supervised area near the administration offices so as to improve security. In addition to the bike racks, SHPS is proposing 6 bike lockers (American Bicycle Security) for faculty parking. The bicycle lockers will allow for 3 times the required city standard and will provide storage of the bicycle in its entirety.

2. Access to the campus is improved by providing a total of 4 means of access/ egress for bicyclists, as opposed to the 1 access point currently used by school on I St. Bicyclists can enter the new campus at two points along both 39th and H St. and concrete walks in these areas are designed to be wider than current city sidewalk standards.

3. Contrary to the remark made in the letter, the school drop/off and vehicular access area is primarily used as a hard court play area during school hours. This area is used for parking only during special event needs. In which case, the total area dedicated to vehicular traffic is less than 1/8th the total land area, not 1/2 as proposed in the letter.

Please accept the preceding in the staff report as evidence that Sacred Heart School is committed to improving the environment for bicyclists in the East Sacramento neighborhood.

Sincerely,

Brian P. Whitmore, AIA
Learning Environments Group

Environmental redline to update findings to be consistent with EIR

[Staff Report Page 37]
Mitigation Measure 7
Avoid grade cuts and excavation within the critical root zone of all retained trees. Pneumatic and hard excavation shall be permitted for fence post locations, but fence post locations shall be moved if roots two inches in diameter are encountered. The project Arborist shall supervise all grade cuts and prune and properly treat all roots subject to damage as soon as possible after excavation. Cut-faces exposed for more than two to three days shall be covered with a dense burlap fabric and watered to maintain soil moisture at least on a daily basis until areas are permanently covered.

[Staff Report Page 47]
5.5 Noise

Impact: 5.5-1 Construction and demolition activities associated with the project would temporarily increase noise at nearby sensitive receptors, including existing residences, the existing Sacred Heart Parish School (SHPS), and the newly constructed Sacred Heart Parish School. Without mitigation, this is a significant impact.

ABBOTT &
KINDERMANN, LLP
ATTORNEYS AT LAW

November 27, 2007

VIA FACSIMILE ONLY

Mayor Heather Fargo and Members of the City Council
Sacramento City Council
915 I Street, 5th Floor
Sacramento, California 95814

Re: Response to Comment 16-2 on the DEIR of Project # PO4-215

Dear Mayor Heather Fargo and Members of the City Council:

This firm serves as legal counsel to Mrs. Clarice Luther. Mrs. Luther lives adjacent to the proposed project at 852 39th Street, Sacramento, California. On August 27, 2007, Mrs. Luther sent a letter to Scott Johnson, Associate Planner, providing various comments to the DEIR for the Mercy General Hospital and Sacred Heart Parish School Mixed Use Project. In the comment identified in the FEIR as Comment 16-2, Mrs. Luther referred to a development impact analysis prepared by John Lichter, a registered arborist. That analysis detailed several recommended design modifications and construction methods (43 total found between pages 5 through 9 of his report) that would mitigate potential impacts to four (4) trees which were the subject of the EIR analysis. The response to Mr. Lichter's recommendations found on page 4-76 of the FEIR states:

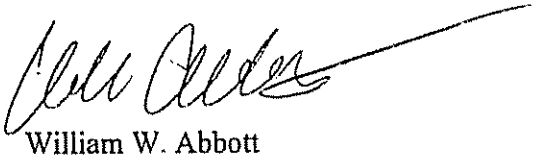
> [T]he City of Sacramento Urban Forest Services reviewed the DIA and determined that the design modifications suggested do not substantially increase the level of protection for heritage trees beyond that provided by the Municipal Code and the mitigation measures included in the Draft EIR, with Initial Study Mitigation Measure 7 modified as shown below.

Under California Environmental Quality Act ("CEQA") Guidelines, section 15088, subdivision (c), "[t]here must be good faith, reasoned analysis [given] in response" to comments. "Conclusory statements unsupported by factual information will not suffice." (*Id.*) Response to Comment 16-2 concludes that the recommended design modifications "do not substantially increase the level of protection." This conclusion is made without any factual basis or critical analysis, and the response lacks a "good faith, reasoned analysis" of the recommendations made in Mr. Lichter's report. In contrast to the detailed recommendations offered by Mr. Lichter, the City's proposed mitigation fails

2100 TWENTY FIRST STREET ▪ SACRAMENTO, CALIFORNIA 95818 ▪ T 916 456 9595 F 916 456 9599
www.aklandlaw.com ▪ blog.aklandlaw.com

to disclose to the public and the City Council exactly what mitigation measure will be undertaken. A mitigation philosophy predicated upon a theory of "trust us to do the right thing" is patently insufficient. Thus, because the response given is conclusory, the City has failed to give an adequate response under CEQA and the existing mitigation lacks meaningful certainty. This EIR should not be certified until such time as an adequate response is proposed and published.

Sincerely,



William W. Abbott

WWA/cmb

cc: rose@adnc.com *(Via Electronic Mail only)*
stevel@universalcustomdisplay.com *(Via Electronic Mail only)*
ecompton@cityofsacramento.org *(Via Electronic Mail only)*
john@treeassociates.net *(Via Electronic Mail only)*
dgoosen@cityofsacramento.org *(Via Electronic Mail only)*

dlh
diepenbrock+ harrison
A PROFESSIONAL CORPORATION

JOHN Y. "JACK" DIEPENBROCK
KAREN L. DIEPENBROCK
KEITH W. McBRIDE
BRADLEY J. ELKIN
EILEEN M. DIEPENBROCK
MARK D. HARRISON
GENE K. CHEEVER
MICHAEL V. BRADY
LAWRENCE B. GARCIA
SUSAN E. KIRKGAARD
ANDREA A. MATARAZZO
JOEL PATRICK ERB
JON D. RUBIN
MICHAEL E. VINDING
JENNIFER L. DAUER
JEFFREY K. DOASO

R. JAMES DIEPENBROCK
(1929–2002)

JEFFREY L. ANDERSON
SEAN K. HUNGERFORD
LEONOR Y. DICDICAN
CHRIS A. McCANDLESS
DAN M. SILVERBOARD
ANDREW P. TAUNAINEN
LAMONT T. KING, JR.
DANIEL J. WHITNEY
DAVID A. DIEPENBROCK
JONATHAN R. MARZ
VALERIE C. KINCAID
BLAIR W. WILL
KRISTA J. DUNZWEILER
JENNIFER D. MCCRARY
SARAH R. HARTMANN
MARK E. PETERSON
JASON S. ROSENBERG

November 27, 2007

Office of the Mayor and City Council
City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814

Re: Response to Comments from East Sacramento Preservation Task Force

Dear Mayor Fargo and Honorable Council Members:

I write on behalf of Mercy General Hospital ("Mercy") in response to a letter, dated November 16, 2007, from the East Sacramento Preservation Task Force ("ESPTF") regarding the Environmental Impact Report ("EIR") for Mercy's proposed development of a new Heart Center and the relocation of the Sacred Heart Parish School, P04-215 ("Project"). ESPTF contends that the Project has "inadequately taken into account the needs of the surrounding neighborhood." (ESPTF Ltr., p.1.) As a result, and based on supposed deficiencies in the EIR, ESPTF requests that the City disapprove the Project in its present form. As discussed below, ESPTF's concerns are without merit.

I. Design Changes Adopted To Accommodate Neighborhood Concerns.

Before addressing the specific issues raised in ESPTF's letter, it is important to place those comments in their proper context. ESPTF and others living in the East Sacramento neighborhood have been actively engaged in reviewing and commenting on the Project's design for several years. Mercy has listened to those concerns. In response, Mercy made significant changes to the Project. These changes include: reducing the number of beds from 342 to 315; moving the Heart Center into the center of the hospital; reducing the Heart Center's height by 27.5 feet; reducing the overall size of the hospital by 100,000 square feet after Mercy agreed to demolish the hospital's East Wing and eliminate the proposed two-story addition for the H Street parking structure; adding 20 residential units, for a net gain of three units over existing conditions; revising the exterior features of those units to better reflect the neighborhood's character; and moving the school to accommodate neighborhood traffic concerns.

400 CAPITOL MALL
SUITE 1800
SACRAMENTO, CA 95814
WWW.DIEPENBROCK.COM 916 492.5000
FAX: 916 446.4535

All of the foregoing changes were made before the City issued the Draft EIR. With respect to the Draft EIR, ESPTF raised over 200 issues, to which the City responded fully. (*See* Final EIR, pp. 4-12 through 4-67.) Having raised nearly every conceivable issue with respect to the Draft EIR, ESPTF merely reiterates many of those points in its letter dated November 16, 2007. Although it should be unnecessary to address points to which the City has already responded, Mercy does so below for purposes of completeness.

II. ESPTF's Contentions Regarding Neighborhood Impacts Are Without Merit and Cannot Support Further Delay of the Project's Approval.

A. The Project's Impact on Residential Traffic Will Be Less Than Significant.

ESPTF's contention that the Project will generate "significant adverse traffic impacts ... on the adjacent well-established residential neighborhood" is unsupported by any evidence and is directly contrary to the EIR's analysis. (ESPTF, p.1.) As demonstrated in the Draft EIR's traffic and circulation study ("Traffic Study"), the Project will generate only a modest amount of new traffic, and thus will have no significant impact on the surrounding neighborhood. (*See* Draft EIR, p. 5.7-28.) The Traffic Study's analysis of the Project's impact on traffic circulation at neighborhood intersections also demonstrates the Project's insignificant impact. Of the 34 intersections studied, many will experience no change in peak hour conditions. (Draft EIR, pp.5.7-39-41.) To the extent the Project causes delays at local intersections, they will typically consist of an imperceptible one tenth (0.10) of a second. (*See ibid.*) A handful of neighborhood intersections will experience slightly longer delays, consisting of approximately one-half second. (*See ibid.*) These anticipated delays are well below the standards of significance currently used by relevant regulatory agencies. (*See id.* at pp. 5.7-32-35.)

1. The Project Is Fully Consistent With General Plan Goals And Policies.

ESPTF criticizes the EIR because it used the same standard for measuring the significance of traffic impacts that the City uses for commercial areas. ESPTF observes that the City has several goals and policies specific to residential neighborhoods, such as those relating to protecting residential neighborhoods from "unnecessary levels of traffic," and approving projects in such a manner as to "minimize vehicular volumes in residential neighborhoods." (ESPTF, p. 2.) ESPTF contends that the Project violates these goals because the EIR supposedly "admits that the proposed project will worsen already bad conditions in this neighborhood[.]" (*Ibid.*) The EIR makes no such "admission." To the contrary, the Draft EIR shows that most of the intersections studied will continue to have an "A" Level of Service rating when the Project is completed. (Draft EIR, pp. 5.7-39-40.) Even if this service rating were ignored, the fact remains that most residential intersections will experience imperceptible delays as a result of the Project. (Draft EIR, pp. 5.7-39-41.) The EIR thus demonstrates that the Project minimizes vehicular volumes in the adjacent residential neighborhoods, and is thus fully consistent with the General Plan's goal of protecting such neighborhoods from unnecessary traffic.

ESPTF's contention that the Project will violate the General Plan's stated goal of achieving an overall Level of Service C on the City's streets, and thus "worsen already bad conditions in the neighborhoods," is misleading because it is based on data for non-residential intersections. (*See* ESPTF Ltr., p. 2.) Of the 34 intersections analyzed, the Traffic Study identified eight (8) with LOS C or below. (*See* Draft EIR, 5.7-39 through 5.7-40.) Most of those eight busy intersections are near the freeway.[1] (*See ibid.*) As noted above, the Traffic Study shows that most *residential* intersections will experience little, if any, additional delays. (*Ibid.*) With respect to the two worst intersections (Alhambra Blvd. and H Street, and US 50 Westbound Ramps and Stockton Blvd.), which currently have "C", "D" and "E" service ratings, the Project is expected to cause further delays of less than one (1) second.[2] (*See ibid.*) Because none of these busy intersections is located in residential areas, ESPTF's contention that the Project violates the General Plan policies relating to traffic in residential neighborhoods is without merit. In short, ESPTF's assertion that the Project will negatively impact traffic in the Project's immediate residential neighborhood is wholly inaccurate.

Because there is no conflict between the Project and the General Plan's goals and policies, and because the Project will have no significant impacts on the neighborhood's current traffic and circulation, no mitigation measures are necessary under CEQA.

2. The EIR Identifies Adequate Mitigation Measures For Construction-Related Traffic.

With respect to construction-related traffic, ESPTF argues that the "proposed mitigation measure[s] for construction related traffic fail[] to mitigate construction traffic impacts to less than significant levels." (ESPTF, p. 3.) This assertion is directly contrary to the EIR's unambiguous text. As discussed on pages 5.7-65 through 5.7-66 of the Draft EIR, Mitigation Measure 5.7-14 establishes performance standards and requires that Mercy implement measures to achieve these standards and reduce construction impacts to a less-than-significant level. The specified traffic management plan must protect pedestrians, bicyclists, and motorists and ensure that all truck trips are scheduled outside of peak hours; construction traffic is also prohibited from residential roadways in the vicinity of the Project. (Draft EIR, p. 3-23.) The Project sponsor is also required to maintain adequate parking at all times, and if necessary, provide remote parking for construction employees. (*Ibid.*) Mercy's obligation to reduce traffic impacts

---

[1] The intersections are 29th and E Streets, 29th and H Streets, 29th and J Streets, 30th and H Streets, Alhambra Blvd. and H Street, Alhambra Blvd. and J Street, 34th Street and US 50 Eastbound Ramp, and US 50 Westbound Ramps and Stockton Blvd.

[2] ESPTF's representations regarding the intersections of Alhambra and H Street, and 39th and J Street are inaccurate. ESPTF states that Alhambra and H is "currently" operating at LOS D and E, and that 39th and J is currently operating at LOS C, and would "noticeably worsen." (ESPTF, p.2, n. 7) (citing Draft EIR 5.7-54-55.) In fact, the referenced Draft EIR discussion represents conditions *projected* for the year 2030 under the Draft EIR's cumulative impact analysis. (*Compare* Draft EIR, 5.7-39-40 *with* 5.7-54-56.) Alhambra and H currently operates at LOS C and D, and the Project is expected to create additional delays of up to seven tenths of one second. 39th and J currently operates at LOS A; and once the Project is completed will have LOS A and B service, depending on the time of day. (Draft EIR, 5.7-40.)

to a less than significant level, and the types of implementation measures that may be used to achieve these standards, are thus unambiguous.

ESPTF makes a related contention that because there supposedly are no "specific standards" guiding the City's review and approval of the construction traffic management plan, it cannot determine what LOS impacts the construction will create, and thus supposedly cannot determine whether the impacts will be fully mitigated. Again, this argument overlooks the requirement that Mercy reduce construction-related impacts to a less than significant level. The applicable standard for measuring significant traffic impacts is stated in the Draft EIR: specifically, a downgrading in LOS classification (e.g., from B to C), or, if the pre-project LOS is D, E, or F, an increase in peak period delays of five seconds or more. (Draft EIR, pp. 5.7-32, 35.) The Draft EIR also provides the criteria for LOS classification. (Draft EIR, pp. 5.7-20-21.) Because the Draft EIR provides the applicable LOS criteria and baseline data for current traffic conditions, the Project's construction-related impacts can be measured against objective performance standards. Mitigation Measure 5.7-14 includes additional criteria that can be objectively measured. These include the prohibitions on truck traffic during peak hours, and construction traffic using residential roadways. (*Ibid.*)

ESPTF's concern regarding the enforceability of the construction traffic mitigation plan is also misplaced. The City and Project Sponsor have an on-going obligation to monitor the Project, and adopted mitigation measures set forth in the mitigation monitoring program are binding; compliance with the measures is required and failure to due so is subject to the City's broad enforcement authority. (*See Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454-455 (granting writ of mandate to compel city to enforce mitigation provisions of EIR); *San Elijo Ranch, Inc. v. County of San Diego* (1998) 65 Cal.App.4th 608 (recognizing injured parties' right to enforce mitigation monitoring program through applicable administrative remedies, or writ of mandate, as appropriate).)

3. On-Site Traffic Flows And Parking Are Properly Addressed In The EIR.

ESPTF argues that the EIR inadequately analyzed Project impacts to traffic along 39th Street as well as the intersection of 39th and I Street. The Traffic Study provides ample information, however, about the Project's possible traffic impacts at those locations. Specifically, the Traffic Study analyzed current and projected traffic volumes along 39th Street, at 39th Street and H, 39th Street and the School Driveway, 39th Street and the Mercy Medical Plaza Driveway, and 39th and J Streets. (Draft EIR, pp. 5.7-39-41.) These are the primary points of access to the site. More importantly, the Traffic Study demonstrates that the Project will have a less than significant impact where the two driveways for the Medical Plaza and School intersect 39th Street: both intersections will remain classified as Level of Service A upon project completion. (Draft EIR, pp. 5.7-39-40.)

ESPTF expresses concern regarding a four-way stop sign City staff included in a report submitted to the Planning Commission. That concern cannot be genuine, however, because ESPTF previously requested that the City install traffic controls at 39th Street and the School

Driveway. (*See* Final EIR, Letter 10, at p.12, issue 46) ("The entry and exit to the school's pick-up and drop-off is exactly opposite the intersection of "I" street and 39th. Without a signal at this intersection, drivers making turns in every direction will face substantial delays and hazards").) ESPTF's current request for further study thus rings hollow. In any event, because that intersection was specifically analyzed in the Traffic Study, no further analysis is required.. *See generally Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376 ("[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project").) The Traffic Study comfortably meets this legal standard.

ESPTF also claims that purported vagueness in the EIR "fails to ensure that the project's parking impacts will be less than significant." (ESPTF Ltr., p. 4.) The EIR, however, contains adequate information regarding parking. For example, it states that the Project will increase off-street parking from 1,312 spaces to 1,465 spaces. The EIR further states that with the addition of 100 off-site parking spaces for employees, the "total supply of 1,565 spaces exceeds the anticipated demand." (Draft EIR, pp. 5.7-50.) Parking impacts are thus less than significant. (*Id.* at pp. 5.7-35, 50.)

B. The Project Will Have No Significant Deleterious Impact on the Community's Character.

As a preliminary matter, Mercy objects to ESPTF's narrow definition of the "community" in which this Project will be located. Mercy has been an integral part of that community since 1925, when it opened its original health care facility at 39th and J Streets. (*See* Draft EIR, pp. 5.3-4.) Given Mercy's long-standing presence in the neighborhood, it is part of the neighborhood's character and identity. In addition, building a first-rate Heart Center at the proposed location is consistent with Mercy's long history of providing quality health care services at its J Street campus. It also bears noting that the area around the Project has long included a mix of retail, office, and commercial uses, especially along J Street and west of the Mercy campus. (*See* Draft EIR, p. 4-2.)

In any event, ESPTF's primary argument regarding the supposed threat to neighborhood character centers on the "adverse traffic impacts to the surrounding neighborhood." (ESPTF Ltr., p 5.) ESPTF points to no evidence whatsoever showing that the Project would have significant impacts on traffic and circulation in the neighborhood surrounding the Project. Rather, as detailed above, the Draft EIR's Traffic Study found precisely the opposite. Upon completion, the Project's impact on neighborhood traffic will be less than significant. In addition, the City has worked to approve the development in such a manner as to minimize vehicular volumes in the residential neighborhoods near the Project. For example, the Project will include ample parking on site, as well as off-site parking, and cash incentives for employees to carpool, bike, or walk to work. (Draft EIR, p. 5.7-50, Final EIR, p. 4-9.) The Project is thus fully consistent with the City's General Plan.

ESPTF also complains that the Project will involve "the destruction of a number of older homes and buildings[.]" (ESPTF Ltr., p.5.) Of course, removing these older homes was not part

of Mercy's original, pre-Draft EIR plan. That aspect of the Project was conceived in response to neighborhood concerns regarding traffic associated with the school's current location. The School did, however, make every effort to design the new school facility so that it would mirror the architectural themes and elements found in the neighborhood. Mercy believes the school's proposed design achieves that objective, but the design speaks for itself. (Draft EIR, figures 2-6, 5.1-7.)

The Project's proposed residential development is also criticized as "bulky and dense." (ESPTF Ltr., p. 5.) The design is, however, consistent with City zoning for that area, as is shown by other "dense" developments in the vicinity. (*See, e.g.*, Figure 2-2.) Nevertheless, Mercy included landscaping along H Street to soften the visual "density" of the units, and a setback consistent with the existing adjacent North Parking Structure. (*See* Draft EIR, Figure 2-7.) The proposed residential development will thus have no significant negative impact on the aesthetic and visual resources of the neighborhood. (Draft EIR, p. 5.1-11) ("The height of the new residential building development would be similar in scale to a 3-story apartment building at the southeast corner of 39th and H Street and the nearby North parking structure. Because the structure would be similar in scale to the surrounding development, the residential structure would not substantially alter the character of the area[.]")

C. There Will Be No Significant Noise Impacts.

ESPTF's concerns regarding noise impacts are narrow, and focus on the following areas: (1) potential impacts to residences adjacent to the new school playground and parking area; (2) the noise impact of heat/air conditioning and other mechanical systems for the school; and (3) noise impacts from truck traffic on school and hospital property. (*Ibid.*) The EIR adequately analyzed all of these impacts. With respect to noise from children playing in the school yard, the Draft EIR took sound measurements four feet from the southern property boundary of the existing school, at a location where there were no intervening structures. (Draft EIR, pp. 5.5-12.) The noise measured at that location averaged 67.7 dBA, which is below the City Noise Ordinance's 70 dBA limit for conditional uses. (*Ibid.*) The Draft EIR also noted that a "predominant noise heard" at this and other locations around the Project site, "was roadway noise," rather than playground sounds. (*Ibid.*)[3] The EIR thus demonstrates that the noise impact of the new school on adjacent residences will be less than significant.[4]

ESPTF's concerns regarding potential noise impacts from the new school's HVAC system is also unfounded. As stated on page 5.5-22 of the Draft EIR, due to the distance from the property line and an anticipated 6 dBA reduction in noise levels due to the roof well

---

[3] Notably, the average of existing daytime noise levels in sampled locations around the Project site ranged from a low of 63.7 dBA to 71.1 dBA, with roadway noise predominating. (DEIR, 5.5-12.) Maximum existing daytime noise levels in sampled locations ranged from 81.9 dBA to 89.3 dBA. (*Id.*)

[4] ESPTF and its retained noise expert insinuate that this noise sampling is inadequate because the new school site will have a yard that is supposedly ¼ of that required for public schools. That metric is irrelevant here because the existing school site is not a public school. In addition, the existing playground area is actually *smaller* than that of the location proposed west of 39th Street, and the new school site will have includes more sound-absorbing tress and turf than the existing site. (*Compare* Draft EIR, Figure 2-2 *with* Figure 2-5.)

shielding, noise levels at 852 39th Street from the closest HVAC unit would be approximately 43 dBA at the exterior of the residence. Similar or even lower noise levels would be experienced at other nearby residences. The sound from this equipment will thus be less than significant.

Finally, the Draft EIR analyzed the noise impacts associated with the modest increase in Project-related traffic. It found that the Project "would add very little traffic noise to existing roadways" around Mercy. (Draft EIR, pp. 5.5-22.) Indeed, the Draft EIR stated that sound would increase by no more than .2 dBA at sampled locations, which is "not discernable from the existing conditions." (*Ibid.*) The EIR thus shows that the impact of noise attributable to Project-related traffic will be less than significant.

In summary, the EIR adequately addresses all of the noise issues ESPTF has raised. As discussed above, the Project will have a less than significant impact on the neighborhood. Accordingly, none of the mitigation measures ESPTF now requests is warranted.

D. ESPTF's Claims Regarding Additional Commercial Growth Are Speculative Because No New Projects Could Be Built Without Proper City Approvals.

ESPTF makes two arguments regarding potential future commercial growth. ESPTF first argues that history "clearly shows that the Proposed Regional Heart Center would lead to future hospital growth, and attract additional medical services to the immediate area." (ESPTF Ltr., p. 7.) Actually, past development points to precisely the opposite conclusion. The proximity of existing medical-related uses near the Project make it less likely that additional services will be locate nearby; the hospital is well-served by those current nearby facilities, which is why the Project is sited where it is, rather than another location where additional facilities would need to be built.

ESPTF's second future growth argument is based on proposed rezoning of the hospital's parking lot from a residential designation to a Hospital zone. ESPTF believes this new designation will make future hospital expansion inevitable. The concern is misplaced. First, the parking lot is currently used by the school, and the rezoning is a necessary part of relocating the school and building the new Northwest Parking structure. Second, and as ESPTF recognizes, any change in use for the parking lot would inevitably require City approval, and possibly environmental review, depending on the nature of the project. Finally, and most importantly, the Project does not contemplate any future change in use for that parking lot, nor is the scope or nature of any such future change reasonably foreseeable at this time. Accordingly, consideration of a speculative, hypothetically possible but unplanned future use is not required in this EIR. CEQA is triggered only when there is an actual project that is subject to governmental approval. (*See* Pub. Resources Code, § 21080; CEQA Guidelines, § 15352 (no CEQA review is required where there is no "project" under consideration); *see also Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464, 474 (creation of an entity to finance school activities was not a "project" under CEQA because creating the entity was not "an essential step culminating in action which may affect the environment").) (Internal citation and quotation omitted).

E. The EIR Adequately Considered Possible Alternatives.

Both of the arguments ESPTF makes regarding the EIR's analysis of alternatives are without merit. ESPTF first argues that the City should have "fully" evaluated ESPTF's "draft" alternative. Of course, CEQA does not require consideration of every conceivable project alternative. CEQA Guidelines § 15126.6(a). Rather, the EIR need only consider "a reasonable range" of feasible alternatives. (*Ibid.*; *see also Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028-29 (noting that although there were literally thousands of "reasonable alternatives" to the proposed project, the EIR's discussion of four alternatives provided all that was legally required: "information sufficient to permit a reasonable choice of alternatives so far as environmental impacts are concerned"); *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151 ("four alternatives ... represent enough of a variation to allow informed decision making").) The Project EIR easily meets this standard, because it considered six alternatives, of which three were considered in detail, after three were found to be infeasible. (*See* DEIR, 6-1 through 6-18.) The Project EIR easily meets this standard, because it considered six alternatives, of which three were considered in detail, after three were found to be infeasible. (*See* Draft EIR, pp. 6-1 through 6-18.)

In its second argument regarding analyzed alternatives, ESPTF contends the EIR "fails to analyze the impacts and benefits of off-site alternatives." (ESPTF Ltr., p. 8.) This statement is incorrect; two of the three alternatives considered placing either the entire hospital or the Heart Center at another location. (Draft EIR, pp. 6-1 through 6-18.) ESPTF implicitly acknowledges this, but simply disagrees with the EIR's conclusion that placing the Heart Center at another location would have greater environmental impacts than building it at the proposed location. ESPTF cannot reasonably dispute, however, that the proposed Project enjoys superior access to alternative modes of transportation than the off-site alternatives. Development at one of the off-site alternatives would thus result in greater usage of single occupancy vehicles, and all of the negative environmental impacts associated with such vehicular traffic. (*See* Draft EIR, pp. 6-17.) More broadly, the EIR reasonably determined that development of the Heart Center at any alternative location would have environmental impacts that would be "equal to or more severe than the proposed project," including greater negative impacts on agricultural and biological resources. (*Id.* at pp. 6-17-18.) Finally, ESPTF's statement that other locations "do not consist of narrow and congested residential roads" incorrectly characterizes the traffic conditions surrounding the Project. As noted above, the intersections in the immediate vicinity of the Project are not "congested," and the Project will not significantly impact existing traffic flow. (*See* Draft EIR, pp. 5.7-39 through 5.7-40.)

In short, the EIR's analysis of possible project alternatives fully complies with CEQA. No further analysis is required.

F. ESPTF's Contention Regarding Unaddressed Potential Hazards Lacks Factual Support.

As it did when commenting upon the Draft EIR, ESPTF contends that testing for hazardous materials should be conducted now, rather than immediately before demolition. The argument is nonsensical because the Draft EIR presumed the building contains asbestos, lead, mercury, and PCBs, and recommended a thorough inspection of the building by an Environmental Specialist before any demolition work proceeds. (*See* Draft EIR, pp. 5.4-4-5, 5.4-16.) Accordingly, ESPTF has no basis for insisting upon immediate testing; such testing would not alter the EIR's analysis or its recommended mitigation measure (5.4-2) relating to hazardous materials.

ESPTF's other concern regarding "hazards" relates to the 6,000 gallon liquid oxygen tank that will be installed near the corner of 39th and I Streets. ESPTF contends the EIR failed to adequately assess "actual dangers" the tank may pose. (ESPTF Ltr., p.9.) The EIR did consider the new tank, and noted that although it is larger than the exiting 900 gallon tank, it will be located in the same location. As a result, the EIR concluded that "the potential for accidental upset to the new tank would not be any greater than the potential for accidental upset in the current tank." (Draft EIR, p. 5.4-17.) In addition, the Final EIR noted that the new tank will be housed in a building constructed of reinforced masonry and surrounded by concrete and steel barriers that will protect it from any vehicles that might traverse the 25 feet setback separating the building from 39th Street. (Final EIR, 4-38, Response to Comment 10-102.) ESPTF's concern that leaks from the larger tank pose greater risks than the current 900 gallon tank does not justify delaying this Project's approval. No further environmental review is required because the same monitoring equipment that would identify a leak from a 900 gallon tank would also work effectively for the larger tank. The same response procedures would also apply.

G. The Project's Convenient Location and Design Features Will Help Reduce Greenhouse Gas Emissions.

In broadly asserting that the EIR "fails to disclose and analyze [the] proposed project's Greenhouse Gas ("GHG") emissions," ESPTF overlooks several important facts. (ESPTF Ltr., p. 9.) First, and foremost, CEQA requires analysis of a project's "significant" environmental impacts, and there are no accepted standards in place to help determine when a particular project's impacts are cumulatively significant. (*See* Larry Greene, Air Pollution Control Officer, Sacramento Metropolitan Air Quality Management District, Letter Addressing Climate Change in CEQA Documents, Sept. 6, 2007.) Without such baseline information, it is virtually impossible to determine whether mitigation measures would reduce such impacts to a less than significant level, which is all that CEQA requires. (*See* DEIR, 5.2-14.) The Draft EIR disclosed this reality as follows:

> The very nature of global warming makes it impossible to identify either the incremental effect or the effects of other current and foreseeable projects, pursuant to the CEQA process. Therefore, there is no basis for determining what is 'cumulatively considerable' which

> would typically lead to a CEQA threshold of significance.... Lacking the necessary facts and analysis to support a conclusion as to the 'significance' of global warming, the City is unable to determine the effectiveness of potential mitigation measures. (Draft EIR, p. 5.2-14.)

Second, despite the difficulty of determining whether the Project's GHG emissions are significant enough to warrant mitigation under CEQA, the Project includes several forward-looking features. These include energy conservation measures imbedded into the Project's design, construction materials, and systems, all of which reduce the Project's carbon footprint. (*See* Draft EIR, pp. 2-31 through 2-33 and 5.2-15 through 5.2-16.) These elements reflect Mercy's decision to integrate goals and strategies included in the *Green Guide for Healthcare*, a guide that is drawn from LEED, and its voluntary agreement to participate in SMUD's "Savings By Design" program. These new designs, materials, and systems are unquestionably superior to those included in the buildings the Project will replace, which include the 50-year-old East Wing. ESPTF completely ignores this important fact.

Mercy has also agreed to implement a program that rewards those who do not use single-occupancy vehicles: carpoolers will receive gas cash cards ($35, $50, and $75 depending on the number of carpoolers) and bicyclers, walkers, and carpoolers who do not require a parking space will receive $4 cafeteria vouchers for every day they do not drive. (Final EIR, p. 4-9.) City staff concluded that this program is worth more in dollars than the parking cash-out program the Sacramento Metropolitan Air Quality Management District ("Air District") proposed in its comments to the Draft EIR. (*Ibid.*) Plainly, this program could significantly, if not fully, offset GHG emissions associated with the modest amount of new vehicular traffic the Project is expected to generate.

In addition, the Air District recognized that the Project's location in an established neighborhood is "good for air quality" because it provides jobs for those living in nearby neighborhoods. (Final EIR, Ltr. 7, p. 1.) The District also recognized that such a "location is preferable to a new location on the edge of the urban area." (*Ibid.*) The District thus implicitly recognized that the off-site Alternative would, as the Draft EIR found, be environmentally inferior to the Project. (*See* Draft EIR, p. 6-17 ("The Off-Site Alternative would generally result in impacts more severe than the proposed project").)

Based on the foregoing, City staff determined that the "design features and measures included in the Project substantially assist in reducing the greenhouse gas effects of the Project and that no further mitigation is required." (Final EIR, p. 4-9.) This conclusion is reasonable and fully justified.

ESPTF's assertion that the EIR "failed to disclose and analyze" the Project's GHG emissions is, in short, wholly inaccurate. (ESPTF Ltr., p. 9.) The issue was carefully considered, and ESPTF cannot credibly argue that further mitigation measures are warranted.

III. Mercy Must Meet Seismic Safety Standards By 2030 And The Current Project Is The Most Efficacious Method of Achieving Them.

Contrary to ESPTF's contention, the revised hospital seismic safety standards and rating methodology — recently approved by the Sate Building Standards Commission — do *not* trigger any change in the EIR's analysis of the construction necessary to make MGH compliant with state seismic safety standards." (ESPTF Ltr., p. 1.) Rather, the new methodology permits buildings that are not near active fault zones to be reclassified from Structural Performance Category ("SPC") 1 to SPC2. The new methodology does not eliminate the requirement that facilities obtain a SPC5 rating by 2030. Moreover, because the East Wing will be demolished under the proposed Project, the Heart Center is, by definition, a replacement structure that must achieve a SPC5 rating by 2030. It has always been Mercy's objective to obtain SPC5 ratings for the Heart Center, and the Project evaluated in the EIR has always been designed to achieve that rating. Mercy's decision to achieve an SPC5 rating on the Heart Center before 2030 merely reflects a sound management decision to perform building upgrades before they become even more costly to achieve. In short, the change in seismic safety standards does not justify any change in the proposed Project, nor does it require any change in the Project's EIR.

IV. Conclusion

None of the issues raised in ESPTF's November 16, 2007, letter require further study or delay in approving this Project. Mercy respectfully requests the Mayor and Honorable members of the City Council to certify the Project's EIR and adopt its recommended Mitigation Monitoring Program, and to approve the Project.

Very truly yours,

Diepenbrock Harrison
A Professional Corporation

By: Andrea Matarazzo
Andrea Matarazzo

Enclosure (without its accompanying exhibits)

Exhibit A

Letter Addressing Climate Change in CEQA Documents, Sept. 6, 2007

SACRAMENTO METROPOLITAN
AIR QUALITY
MANAGEMENT DISTRICT

Larry Greene
AIR POLLUTION CONTROL OFFICER

September 6, 2007

Subject: **Addressing Climate Change in CEQA Documents**

To whom it may concern:

Global warming is one of the most significant environmental issues facing the business and environmental community today. We now have sufficient knowledge of both the role of greenhouse gases (GHG) and the availability of mitigation measures to properly analyze the potential global warming impacts of projects under the California Environmental Quality Act (CEQA). The purpose of this letter is to provide interim recommendations for local agencies to use in analyzing and mitigating global warming impacts pending development of guidelines by the Office of Planning and Research as directed by SB 97.

The major anthropogenic (man-made) GHGs are carbon dioxide, methane, and nitrous oxide, and the primary sources of these emissions are vehicles (including trains and planes), energy plants, and industrial and agricultural activities. Consequently, GHG emissions may be increased through the approval of a wide variety of projects, including residential, commercial, and mixed-use developments, transportation system expansions, and other construction and development activities. Applying energy efficient building components, design, and siting practices to these projects can reduce these impacts. Since current emissions are already significantly effecting global warming, it is critical that these new projects, and others like them, be analyzed to determine whether they will worsen the warming process and whether there are mitigation measures available to reduce any impacts identified.

To date, local decision-making agencies, the District, the state, and the federal government have not developed specific GHG thresholds of significance for use in preparing environmental analyses under the California Environmental Quality Act (CEQA). The absence of thresholds, however, does not negate the CEQA mandate to analyze all potentially significant impacts, including emissions of greenhouse gases.

Agencies have the discretion to determine, based on a variety of factors, whether a particular impact is significant.[1] To insure consistency and fairness, the CEQA Guidelines encourage agencies to adopt significance thresholds.[2] Neither the Act nor the Guidelines, however, require the adoption of thresholds as a prerequisite to analyzing impacts. To the contrary, significance criteria are commonly developed by the experts that prepare the CEQA analysis, based on their assessment of the technical evidence.[3] In fact, CEQA may require additional analysis even if a project meets an adopted standard, if other evidence indicates the project may nonetheless have a significant impact.[4]

---

[1] *National Parks & Conservation v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1356-1357 (agency may apply different thresholds depending on the nature of the area affected).
[2] 14 CCR 15064.7
[3] 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont. Ed. Bar 2006) § 31.2, p. 621, citing *Napa Citizens for Honest Govt. V. Napa County Bd. Of Supervisors* (2001) 91 Cal.App.4th 342, 362 (significance standard for traffic developed by EIR drafters).
[4] *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1380-1382 (project that meet FCC noise standards could still have a significant effect if it caused a substantial increase in the ambient noise levels for adjoining areas); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App. 4th 1099, 1109-1111 (project meeting hydrology significance thresholds could still have a potentially significant impact because thresholds did not address all hydrology and water impacts of the project); *Mejia v. City of Los Angeles*

777 12th Street, 3rd Floor • Sacramento, CA 95814-1908
916/874-4800 • 916/874-4899 fax
www.airquality.org

Consequently, despite the lack of a GHG threshold, the District recommends that CEQA environmental documents include a discussion of anticipated GHG emissions during both the construction and operation phases of the project. This recommendation is consistent with comments made by the previous and current California Attorney Generals on Land Use projects undergoing CEQA review. Models are already available to estimate GHG emissions from projects, and the District staff can help agencies select and refine models to accommodate their specific projects.

Analysis of the impacts is not simply a technical exercise. If the analysis demonstrates that a project may have a significant impact, there are many practical climate change mitigation measures available to reduce or eliminate the project impacts. And avoiding feasible mitigation today will require other projects to implement more difficult and costly mitigation in the future as GHG levels increase in the atmosphere. Moreover, many projects include elements that mitigate GHG emissions (energy measures, solar roofs, mixed use housing, etc) and the benefits of these measures should be noted.

The District is available to help agencies in their analysis of GHG emissions. In addition, to aid local jurisdictions in identifying feasible mitigation, the District has attached a list of feasible mitigation measures drawn from comments made by the California Attorney General that will reduce GHG emissions by reducing the stationary and travel related energy use associated with the new development.[5] A copy of this list is attached to this letter. We have also attached a summary of recent agency and court decisions related to this topic. If you have any question regarding CEQA and climate change, please do not hesitate to contact Larry Robinson at <lrobinson@airquality.org>.

Sincerely,

Larry Greene
Air Pollution Control Officer

Enclosures

(2005 130 Cal.App.4th 322, 342 (agencies can not apply standards or thresholds "in a way that forecloses the consideration of any other substantial evidence showing that there may be a significant effect).
[5] California Attorney General, "*Comments on Draft Environmental Impact Report for Coyote Valley Specific Plan*," Letter to the City of San Jose, 19 Jun. 2007.