

ATTACHMENT NO. 12

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
865 South Figueroa Street, Suite 2800 | Los Angeles, CA 90017-2543
Telephone: 213.622.5555 | Facsimile: 213.620.8816
www.allenmatkins.com

Fernando Villa
E-mail: fvilla@allenmatkins.com
Direct Dial: 213 955 5647 File Number: 374598-00001/LA1089442.04

Via Email/U.S. Mail

August 21, 2017

City of Culver City & Culver City Planning
Commission
Planning Division
9770 Culver Boulevard
Culver City, CA 90232

**Re: Comments to Clarett West "Brick and Machine" Project &
Proposed Mitigated Negative Declaration**

Honorable Members of the Culver City Planning Commission:

This firm represents Prospect Medical Holdings, Inc. ("**Prospect**"), owner of the Southern California Hospital at Culver City ("**SCH-CC**" or "**Hospital**"), located at 3828 Delmas Terrace in the City of Culver City ("**Culver City**").

Since its opening in 1925, SCH-CC has dedicated itself to providing quality care to the residents of both Culver City and adjacent West Los Angeles communities. SCH-CC is a 420-bed general acute care facility that offers a wide range of inpatient and outpatient acute care services to residents, including an orthopedic center, cardiovascular services, acute rehabilitation, sub-acute care, psychiatric care and chemical dependency programs. Additionally, SCH-CC operates a 24-hour emergency services center, which serves as a paramedic receiving station and is staffed by board-certified emergency physicians and nurse specialists. Indeed, it is the only emergent care hospital in the geographic boundaries of Culver City.

We present below SCH-CC's concerns and objections regarding the adverse, significant environmental, health and safety impacts to the environment, including the Hospital, which will result from the mixed-use project proposed by Clarett West Development, commonly referred to as the "Brick and Machine" project (the "**Project**"), for the property directly adjacent to and south of the Hospital at 9735 Washington Boulevard (the "**Property**"). As detailed below, SCH-CC objects to this Project on the basis that the proposed Initial Study and Mitigated Negative Declaration (the "**MND**") is legally inadequate, is not supported by substantial evidence, and neglects to consider significant impacts of the Project on SCH-CC.

The MND fails to identify a number of the Project's potentially significant environmental impacts, and fails to adequately address and/or propose appropriate mitigation measures for many of the impacts the MND does identify. Accordingly, the MND fails to comply with the requirements of the California Environmental Quality Act ("CEQA") and the guidelines enacted under CEQA ("CEQA Guidelines").¹ At a minimum the administrative record before the City has substantial evidence to support a fair argument that the Project may have a significant effect on the environment that has not been previously identified. Consequently, an Environmental Impact Report ("EIR") must be prepared to evaluate each such impact for its potentially significant effects, to discuss measures that feasibly mitigate such impacts to insignificance, and to describe a reasonable range of project alternatives that lessen the Project's environmental impacts.

California law provides that an EIR is required whenever substantial evidence supports a "fair argument" that significant impacts may occur.² The "fair argument" standard creates a "low threshold" for requiring preparation of an EIR.³ As CEQA Guidelines Section 15064(f)(1) makes clear:

"If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect."

Thus, even if substantial evidence would also support the opposite conclusion, an EIR is nevertheless required. Reliance by the City on a MND is a shortcut to CEQA's preference for the preparation of a full EIR where it may be fairly argued based on substantial evidence that significant impacts might occur in the construction or subsequent completion of a project. Indeed, there is a "strong presumption in favor of requiring EIRs."⁴

Further, there is a possibility that these significant impacts may not have available feasible measures to mitigate them to insignificance, in which case an EIR and supporting Statement of Overriding Considerations would be required for this additional reason. Finally, if

¹ Pub. Res. Code ("PRC") §§ 21000 *et seq.*; Cal. Code of Reg., Title 14, §§ 15000 *et seq.*

² *Laurel Heights Improvement Association v. Regents* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

³ *No Oil*, 13 Cal.3d at 75.

⁴ PRC § 21082.2(d); 14 Cal. Admin. Code § 15064(f)(1); *California Clean Energy Cttee. v. City of Woodland* (2014) 225 Cal.App.4th 173; *No Oil, Inc.*, *supra*, 12 Cal.3d 68.

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significant effects are identified for the Project, then, as noted, an evaluation of Project alternatives is warranted to reduce the Project's significant environmental impacts.⁵ For these and other reasons detailed below, the MND is legally insufficient, and the Project requires preparation of an EIR.

The following discussion and objections are preliminary in nature, as SCH-CC has not had sufficient time or opportunity to retain experts who could assist in analyzing the MND's deficiencies discussed in this letter, and has not had access to the various studies on which the MND presumably rests. The SCH-CC only received notice of the upcoming Planning Commission hearing and a copy of the IS/MND and Traffic Study less than one week ago. At that time, neither the Staff Report nor many of the studies upon which the IS/MND relies (including but not limited to the noise and air quality analyses) were available on the City's website. As such, SCH-CC reserves the right and intends to further assess the MND's and the Project's sufficiency under CEQA, the CEQA Guidelines and other applicable law, and to augment the comments and objections raised in this letter.

I. THE MND FAILS TO COMPLY WITH CEQA.

A. Geological & Soil; Seismic Safety.

The proposed MND does not identify significant geological and soil impacts because it fails to evaluate several possible significant effects that the Project's excavation plan will have on the Hospital. For example, as proposed, the Project will require excavation and trenching around the existing Hospital building to construct the three-story subterranean parking garage and to install utility lines and related fixtures and support systems. This excavation work will be performed vertically and within unconsolidated sediments or artificial fill. If not undertaken with appropriate preventative and protective measures, slumping of material in the excavation walls and/or trenches could endanger workers and seriously undermine the structural integrity and safety of the Hospital by undercutting ground support for the foundations of the Hospital structures.

Further, installation of utilities or other subsurface construction in connection with the Project could require temporary dewatering activities which the MND likewise wholly fails to address. Even temporary dewatering could cause settlement, which could crack the foundations, walls, or floor slabs of the Hospital's existing buildings and other structures, given the Project's close proximity to the existing Hospital structures.

Finally, the MND lacks any evaluation of how the Project's excavation plan could impact the SCH-CC's ability to comply with strict State-mandated standards for seismic stability that apply uniquely to Hospitals and other healthcare facilities. As a facility regulated by the Office of Statewide Health Planning and Development ("OSHPD"), the Hospital is subject to very stringent geological standards

⁵ PRC § 21002.

adopted pursuant to Senate Bill 1953 ("SB 1953"), codified at California Health & Safety Code sections 130000 through 130070.⁶ Among other standards, the SB 1953 Program and related SPC-2 compliance measures require that acute and emergent care providers like the Hospital retrofit their facilities by July 1, 2019 such that they will not have more than a 1.20% probability of collapse in the event of an earthquake with a 10% chance of exceedance in 50 years ($\pm$ 475-year return period). Retrofit plans must be submitted to and approved by OSHPD's Seismic Compliance Unit of the Facilities Development Division. The Hospital's seismic engineers have analyzed the SCH-CC buildings and prepared a plan for the required retrofit.

Based upon our seismic engineer's preliminary analysis, there is a risk that the Project's proposed grading/excavation plan, if not carefully evaluated and strictly implemented, may interfere with the Hospital's ability meet and implement its current seismic retrofit plan. If not properly executed with limitations and considerations specific to the neighboring Hospital, implementation of the proposed grading plan has the potential to eliminate lateral and subjacent support that the Property currently provides to the Hospital, rendering the building less durable. If that were to occur, the Hospital would face an imminent risk of closure for an inability to meet the SB 1953 building collapse standards under the Hospital's current retrofit plan as a direct result of the Project's excavation plan.

These, and potentially other, significant geological impacts must be properly evaluated and feasible mitigation measures imposed to prevent permanent impacts – such as underpinning and stabilization of existing Hospital buildings prior to trenching or other construction activities, provision of permanent shoring such as tie-ins, and specific requirements for *strict* adherence to the Project's excavation plans. In the absence of specified parameters and additional site-specific seismic evaluation, the sole mitigation measure proposed in GEO-1 of the IS/MND is inadequate.

Such potential impacts unquestionably would "expose people or structures to potential substantial adverse effects, including loss, injury or death" from strong "seismic shaking", "seismic-related ground failure" and an "unstable soil" as a result of the Project. CEQA Guidelines, *Appendix G, Geology and Soils*. As such, these potential impacts must be evaluated and feasible mitigation sufficiently addressed. *Id.*

The Hospital has previously notified the developer in an effort to resolve this matter, but no resolution has been reached, as the developer has been so far unwilling to expand the MND's analysis or make changes to the excavation plan that would mitigate or eliminate these impacts.

⁶ SB 1953 was an amendment to and furtherance of the Alfred E. Alquist Hospital Seismic Safety Act of 1983 (Alquist Act). The regulations developed as a result of this statute are deemed to be emergency regulations and became effective upon approval by the California Building Standards Commission and filing with the Secretary of State on March 18, 1998.

B. Traffic.

The traffic analysis in the MND is inadequate in scope and fails to impose *any* mitigation measures to mitigate the potentially significant traffic impacts of this Project on both the Hospital and the surrounding neighborhood. For example, nowhere in the Traffic Impact Report or supporting Scoping Memorandum of Understanding (the "TIR") is there an explanation of the traffic engineer's rationale for limiting the traffic impact analysis for a Project of this size and complexity to only seven intersections. This rationale must be explained, and the scope of this analysis expanded, in order to properly evaluate and mitigate the traffic impacts caused by expanding the existing uses on the Property to *ten times* their current size. Specifically, the Project proposes to redevelop the Property by replacing the existing 2-story 16,079 square foot building with a 7-story 163,477 square foot building, which is a much more intensive use of this site and will generate far more traffic trips as a consequence. Nevertheless, the traffic analysis in the IS/MND oddly and without any evidentiary support concludes that there would be *no* significant traffic impacts caused by the Project.

In addition, the TIR does not analyze the potentially significant impacts of both temporary construction and permanent project traffic on the SCH-CC emergent care facilities and emergency response times. As the MND acknowledges, the Project and the SCH-CC are immediate neighbors. Indeed, the Project's proposed primary entrance and a primary point of access to the Hospital's emergent care "Tower Building" are both on Delmas Terrace, a narrow 2-lane thoroughfare. Emergency vehicles regularly enter and exit the Tower Building by utilizing this street. Furthermore, a number of pedestrians regularly traverse across Delmas Terrace from the main non-emergent building to the emergent Tower Building – including physicians and staff responding to emergency "codes" as well as family members and friends of patients. Since neither the MND nor the TIR evaluate these impacts, the MND does not comply with CEQA.

Project traffic thus has the potential to significantly impede vehicular and pedestrian access to the SCH-CC's emergency facilities, thereby increasing emergency responsive times – especially during peak hours. This could be of particular concern during Project construction if, for example, trucks hauling soil or other materials to or from the Project site idle next to the emergency exits and impair the ability of ambulances to ferry patients to the ER. The IS/MND is therefore deficient as it fails to discuss and proposed appropriate mitigation measures for the Project's traffic and particularized emergency access impacts, both during construction and later operations.

Finally, neither the TIR nor the IS/MND discuss the traffic impacts of the Project on street segments. The TIR likewise does not provide any rational basis for the high number of trip reductions granted for internal linkages and pass-by traffic, or for why a 15% credit (rather than some lower percentage) for the Project's proximity to mass transit is justified. In the absence of a rationale for these traffic impacts analysis issues, there is at minimum a "fair argument" that the IS/MND's conclusion that the Project would not result in any significant traffic impacts is not supported by substantial evidence in the record.

C. Noise.

The Noise impacts discussion in the IS/MND is likewise inadequate. The IS/MND fails to analyze the noise impacts of the Project in a manner that accounts for sensitive receptors and/or that documents compliance with Culver City's Interior Noise Standards.

The IS/MND fails to analyze whether the noise generated by the Project would result in significant noise impacts by exceeding the interior noise standards for the Hospital and nearby residential uses, which are both subject to an interior noise standard of 45dBA(CNEL).⁷

Further, while the IS/MND identifies mitigation measures NOISE-1 through NOISE-4 to mitigate construction noise impacts on hospital and residential use, there is no substantial evidence to support the conclusion that these mitigation measures will be effective in reducing the potentially significant noise impacts of the Project.⁸ Of particular concern to the SCH-CC is the IS/MND's failure to analyze noise impacts on sensitive uses such as the adjacent Hospital and residences. The IS/MND does not assess the noise impacts on these sensitive uses after incorporation of the mitigation measures in order to determine the effectiveness of the mitigation measures to reduce the significance of construction noise impacts.

Moreover, none of these mitigation measures account for the particularities of constructing a project of this size directly adjacent to a 24-hour emergency care facility housing critically ill and injured patients. Mitigation measure NOISE-1 proposes to limit construction activities to the hours of 8:00 PM and 8:00 AM Monday through Friday, 7:00 PM and 7:00 AM on Saturdays, and 7:00 PM and 10:00 AM on Sundays. However, since the SCH-CC treats patients 24 hours a day, 7 days a week, these time limitations will not mitigate noise impacts on the Hospital during permitted construction hours directly adjacent to where critical patients are being treated.

Also, as noted, the Hospital and Project's extremely close proximity and shared use of Delmas Terrace make construction noise impacts particularly harmful to patients. For example, SCH-CC anticipates that significant noise impacts will result from construction trucks hauling soil and materials to the Project site idling in or near Delmas Terrace, next to the ER facility and ICU. The IS/MND does not analyze or propose to mitigate these unique potential impacts.

Finally, as the IS/MND acknowledges, the Hospital building could suffer structural damage impact as a result of the vibration impacts from the Project's construction activities. The IS/MND identifies a mitigation measure NOISE-5, which requires the developer to use low-impact construction technologies; avoid the use of heavy vibrating equipment, *where possible* (implicitly acknowledging that this will sometimes be impossible); and avoid driving piles where necessary to avoid structural damage.

⁷ City of Culver City Noise Element.

⁸ PRC § 21100(b)(3); CEQA Guidelines § 15126.4.

However, there is no substantial evidence to support the conclusion that this mitigation measure will be effective in reducing the potentially significant impact of structural damage and extreme vibrations.⁹ In addition to the proposed noise mitigation measures, the Project proponent should be required to implement a vibration, crack, and line and grade monitoring program at existing residential and the Hospital buildings located within 15 feet of construction activities and to provide a report to the City Chief Building Official regarding crack and vibration monitoring conducted during demolition and construction phase. Following additional evaluation of these issues, this additional may ensure that the proposed mitigation measure NOISE-5 is effective in minimizing structural damage to the existing buildings.

D. Public Services.

The public services analysis in the MND does not address the significant adverse impacts of the Project on, and the likelihood that it will lengthen, emergency response time for ambulances and the Fire Department to reach the Hospital's ER. It is particularly important that this impact be analyzed and adequately mitigated, if impacts are found to be significant, because as analyzed in detail above 1) the Project and Hospital are immediate neighbors, and both the ER entrance and proposed main entrance to the Project are on Delmas Terrace, a narrow 2-lane thoroughfare; and 2) as the Hospital is the only emergency service provider in the City, the speed of its emergency response time is of critical importance.

E. Land Use & Planning

The Project is not compatible with the surrounding neighborhood and uses, and will have a significant adverse effect on surrounding properties, including the Hospital. The scale, size and the intensity of this mixed use Project, in comparison to the existing relatively low-impact two-story bank building, makes it incompatible to the neighboring sensitive Hospital use and its patients because of the noise, traffic and pedestrian access issues created by the Project. As discussed above, the construction trucks for the Project may also affect the ability of the emergency vehicles to access the Hospital's Emergency Room during construction period. As such, the IS/MND does not fully disclose or evaluate the impacts of the Project regarding compatibility with neighboring uses, and fails to identify feasible measures to mitigate such impacts.

II. THE PROJECT ENTITLEMENTS ARE NOT SUPPORTED BY THE REQUIRED FINDINGS.

As discussed above, the IS/MND for the Project is deficient and it fails to adequately address the Project's impacts on the neighboring Hospital use and is also incompatible with the surrounding uses. Therefore, the proposed Project entitlements (Site Plan Review, General Plan Amendment and Zone Change) are likewise deficient because the required findings of the Project's compliance with CEQA

⁹ PRC § 21100(b)(3); CEQA Guidelines § 15126.4.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

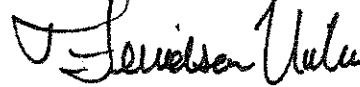
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and compatibility with the surrounding uses cannot be made. Further, now that the Project's staff report is available, the SCH-CC intends to conduct a detailed review to determine that all required other findings in support of the Project entitlements are supported by substantial evidence in the record.

We request the City to prepare an EIR that adequately discusses the impacts discussed in this letter, identifies feasible measures to mitigate them to insignificance and addresses a reasonable range of Project alternatives, all as required by CEQA.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fernando Villa", written in a cursive style.

Fernando Villa