

CEQA Notice of Exemption

TO: Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: Community Development Department
411 W. Ocean Blvd, 3rd Floor
Long Beach, CA 90802

L.A. County Clerk
Environmental Fillings
12400 E. Imperial Hwy., Room 1201
Norwalk, CA 90650

Exemption Number: 23-134

Project Title (Application Number): Community Hospital Deed

Project Location – Specific: 1720 Termino Avenue, 1760 Termino Avenue and 4111 E. Wilton Street

Project Location – City/County: **City of Long Beach, Los Angeles County, California**

Description of Nature, Purpose and Beneficiaries of Project:

The amendments to a lease agreement and restrictive covenants on the property as well as the transfer of the property to MWN Community Hospital, LLC. The amendments to leases and deeds removes the restrictive covenant requirement to operate the existing facility as an acute-care hospital and allows for acute uses and healthcare related community-serving uses.. All other restrictions on the property remain in effect including the City institutional zoning, existing deed restrictions, compliance with the Alquist-Priolo Act, HCAI permitting requirements and other general restrictions.
The purpose of this change relates to the transfer and continued operation of the facility for non-acute medical services and related community-serving uses as well as the ability (but no longer requirement) to operate acute-care medical services.

Public Agency Approving Project: **City of Long Beach, California**

Person or Agency Carrying Out Project: City of Long Beach

Exempt Status: **(Check One)**

- Ministerial (Sec 21080(b)(1); 15268);
- Declared Emergency (Sec 21080(b)(3); 15269(a));
- Emergency Project (Sec 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: See attached 1,3,5,12,CommonSense (15061(b)(3))
- Statutory Exemption. State code number: _____

Reasons why project is exempt:

The project will result in no physical change to the building or land. The lease and deed change removes the requirement to operate an acute-hospital but does not require such operation. The sale of the property results in no physical change.

Lead Agency

Contact Person: Christopher Koontz Contact Phone: 562.570.6288

Signature: Christopher Koontz Digitally signed by Christopher Koontz
Date: 2023.10.16 10:44:08 -07'00' Date: October 24, 2023 Title: Director, Community Development



OFFICE OF THE CITY ATTORNEY

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DAWN A. MCINTOSH
City Attorney

October 24, 2023

GARY J. ANDERSON
Assistant City Attorney

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Adopt categorical exemption CE-23-134 and find the amendments to Amended and Restated Lease No. 35432 and restrictive covenants on the Property located at 1720 Termino Avenue, 1760 Termino Avenue, and 4111 E. Wilton Street and the transfer of the property to MWN Community Hospital, LLC are categorically exempt from the California Environmental Quality Act. (District 3)

DISCUSSION

The City has been ordered to comply with its obligations under the California Environmental Quality Act (CEQA) concerning actions taken by the City Council in relation to the Community Hospital property located at 1720 Termino Avenue, 1760 Termino Avenue, and 411 E. Wilton Street (the "Subject Property").

Background:

Since the 2018 closure of Community Hospital of Long Beach, the City Council has taken numerous actions in relation to the Subject Property including the following:

- On June 19, 2018, the City Council authorized an Exclusive Negotiating Agreement with Molina, Wu Network, LLC for the lease and potential development of the Subject Property as an acute care facility;
- On March 12, 2019, the City Council authorized (a) a short-term lease (interim Lease) with MWN Community Hospital, LLC, a California limited liability company ("MWN"), for the interim lease of the Subject Property and (b) a Letter of Intent related to the development of a long-term replacement lease between the City and MWN for the operation of an acute care facility at the Subject Property;
- On October 15, 2019, the City Council authorized (a) a Lease between the City and MWN for the Subject Property for the provision of an acute care

hospital for a period of 45 years, with the option of two 10-year extensions by MWN; (b) amendment of existing deed restrictions to allow a for-profit hospital and (c) reimbursement to MWN up to \$1M per year on an annual basis for the first five years of the term, and up to \$2M per year on an annual basis for years 6-15, to assist with seismic retrofit construction costs of the hospital facility. Funding in an amount not to exceed \$25M was committed to this effort through Measure A allocation.

- On February 15, 2022, the City Council authorized (a) the First Amendment to Lease No. 35432 for modifications to various provisions of the Lease and (b) adoption of a Resolution finding that the Subject Property remains necessary for City's use as a general healthcare campus with related community-serving uses and authorizing the recordation of amended covenants continuing to restrict the use of the Subject Property to healthcare uses by removing the acute care facility use requirement and adding healthcare related community-serving uses;
- On October 4, 2022, the City Council (a) declared the Subject Property as surplus; (b) authorized a Purchase and Sale Agreement with MWN for the transfer of the Subject Property in accordance with certain provisions of the Restated Lease No. 35432; and (c) adopted Categorical Exemption CE-22-149 to determine that the transfer was categorically exempt from CEQA pursuant to the Class 12 exemption for surplus government property transfers.

On November 18, 2022, Warren Blesofsky filed a petition for writ of mandate (Case Number 22STCP04144) ("Writ Petition") challenging the declaration of surplus property and alleging that the City violated CEQA by segmenting an alleged change of use from the transfer of the Subject Property that was the subject of Categorical Exemption CE-22-149 adopted by the City Council on October 4, 2022.

On October 5, 2023, the Court granted the Writ Petition as to the cause of action for Violation of CEQA. In its ruling and order the Court invalidated Categorical Exemption CE-22-149 and ordered that the City shall comply with its obligations under CEQA concerning the transfer of the Subject Property to MWN and the amendments to the Amended and Restated Lease No. 35432 and the restrictive covenants on the Subject Property to remove the requirement for the operation of an acute care facility and allow for the possibility of non-acute medical and related community-serving uses in the existing medical campus. (the "City Council Actions").

The City believes that the amendments to the Amended and Restated Lease No. 35432 and the restrictive covenants on the Subject Property do not rise to the level of requiring review as they simply allow for a less intense use of the Subject Property that is the same nature as the original required use and therefore do not constitute a "project" for purposes of CEQA. The amendments to the Lease and restrictive covenants allow, but do not require, the transition from acute care to non-acute care. The amendments result in no major changes to the medical complex, its overall healthcare use, its occupancy, the land or the structures. Significantly, the amendments only allow for the non-acute healthcare and acute healthcare use of

the Subject Property without changes to the existing medical campus and will result in the same or less intensive use. Based on existing restrictions, particularly the City's Zoning regulations, any other use of the property would require additional action by the City and CEQA review as would a proposed physical change to the medical campus. The current use of the Subject Property is a vacant health care facility, with the ability to resume health care facility operations in the future. There is no specified plan for use of the Subject Property. CEQA does not require speculation and any potential future decision by the owners of Community Hospital to pursue future discretionary approvals cannot be anticipated at this time.

Furthermore, even if the amendments do constitute a project under CEQA, they are categorically exempt from CEQA on multiple bases.

Therefore, to comply with the Court's order, City staff recommends the City Council adopt Categorical Exemption CE-23-134 (Attachment A) based on the CEQA analysis provided below.

CEQA Analysis:

The net result of the City Council Actions in relation to the Subject Property does not involve a change of use to a new use but rather allows for the possibility of less intensive uses of the same restricted character of the Subject Property. The prior restrictions on the Subject Property included a requirement to maintain an acute-care hospital whereas the new restrictions allow for acute and non-acute care. Non-acute and acute-care facilities and operations are similar, but the non-emergency nature of non-acute care involves shorter hours of operations, less use of ambulance service (with attendant sirens and noise) and overall less intensive operations. No change to the physical structures on the Subject Property has been authorized. No permits, licenses, zoning or entitlement changes were requested or granted as part of the City Council Actions. The City Council Actions only allow for the non-acute care and acute care use of the Subject Property without changes to the existing medical campus and will result in the same or less intensive use. Based on existing restrictions, particularly the City's Zoning regulations, any other use, as well as a physical change to the medical campus, would require additional action by the City and CEQA review.

The Subject Property is an existing urban site within the City of Long Beach that does not have habitat value and is not otherwise located in an area of statewide, regional, or areawide significance as delineated in Section 15206(b)(4) of the CEQA Guidelines.

The net result of the City Council Actions is reflective of the existing environmental setting and highly restricted nature of regulations applicable to the Subject Property. These restrictions include City Institutional (I) Zoning, the deed restrictions (as modified), the Alquist Priolo Act, state regulation (HCAI) of health care facilities, as well as other restrictions on the Subject Property (including historic preservation).

The continued, restricted use of the Subject Property as set forth in the City Council Actions is categorically exempt from CEQA as it will not result in a direct or

reasonably foreseeable indirect environmental impacts. No change of use is required by the City Council Actions. Any change of use from acute care to non-acute care would be reductive in nature, resulting in fewer environmental impacts, if any. The current use of the Subject Property is a vacant health care facility, with the ability to resume health care facility operations in the future in compliance with City zoning requirements and state law. Based on existing restrictions, particularly the City's Zoning regulations, any other use of the Subject Property would require additional action by the City and CEQA review as would a proposed physical change to the medical campus.

Categories of Exemption:

The City Council Actions are exempt under five (5) categories consistent with the CEQA Guidelines. The actions qualify for Class 1 (Existing Facilities – 15301), Class 3 (Conversion – 15303), Class 5 (Minor Alterations to Land Use Restrictions – 15305), Class 12 (Sale of Surplus – 15312), and the Common Sense Exemption (15061(b)(3)). The City Council Actions qualify for these exemptions individually and cumulatively, fitting the criteria for each and also as a series of the five (5) categories. The City Council, in adopting this Categorical Exemption, is analyzing reasonably foreseeable potential future actions that may arise from the City Council Actions. The purpose of CEQA is not to speculate but rather to disclose potential environmental impacts. The City Council Actions allows for the non-acute care and acute care use of the Subject Property without changes to the existing medical campus and will result in the same or less intensive use. Any use of the Subject Property beyond the less intrusive acute care use would require CEQA review and additional action on the part of the City. Likewise, a proposed physical change to the medical campus would require CEQA review and additional action by the City.

Class 1 (Existing Facilities – 15301): The City Council Actions relate to the continued use of an existing facility. In this case an existing health care facility will continue to be a healthcare facility. The City Council Actions do not require the change in use from an acute-care facility to a non-acute-care facility. The City Council Actions result in a reduction in the intensity of use of the facility with no physical or operational expansion. The change in ownership of the facility has no environmental impact or impact on the continued use of the Subject Property. The regulations certified by the Natural Resources Secretary state “[c]lass 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of ‘existing facilities’ itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use.” The City Council Actions fit exactly within the description of the Class 1 exemption. The City Council Actions allow for the non-acute care and acute care use of the Subject Property without changes to the existing medical campus and will result in the same or less intensive use. Any other use of the Subject Property or any physical changes to the medical campus would require CEQA review and additional action on the part of the City.

Class 3 (Conversion – 15303): The City Council Actions relate to the minor conversion of an existing facility. In this case, an existing health care facility will continue to be a health care facility, but the acute care portion of its operations will not be required to continue. A small structure, the hospital emergency room, may be converted to another use such as urgent or non-emergency health care, but that is not required. Future operations will be the same or similar to prior operations, but in either event will be equal to, or less intense, than the prior operations. The transfer also has no physical impact or operational impact. The regulations certified by the Natural Resources Secretary state “[c]lass 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel.” The City Council Actions result in no physical change to the Subject Property. The City Council Actions may, but are not required to, result in future changes to acute-care facilities, such as the emergency room, which represent only a small portion of the medical campus. Other facilities, including patient rooms, surgical suites, waiting rooms, administrative space, and other facilities will continue to be used as they currently exist.

Class 5 (Minor Alterations to Land Use Restrictions – 15305): The City Council Actions relate to the minor modifications to land use restrictions. In this case a change to a lease and deed restriction, as well as a change in ownership, with no physical or more impactful operational change and no change to zoning, permits, entitlements or other controls applicable to the Subject Property. The City Council Actions allow, but do not require, the use of the Subject Property for non-acute care medical facilities in lieu of past acute care operations. This is consistent with the Resources Secretary guidance for use of the class 5 exemption, which “consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density” In this case the Subject Property will undergo no physical change, is primarily flat, and the City Council Actions do not result in any increase in density (no new square footage or activity is authorized) and the land-use remains in the institutional (health care) category with the minor modification from acute care to non-acute care being authorized, but not required, by the City.

Class 12 (Sale of Surplus – 15312): In transferring the surplus property the City Council Actions were exempt under Class 12. The Subject Property is not located in an area of statewide, regional or areawide concern as identified in CEQA Guidelines 15206(b)(4). As such the relevant language from the regulations certified by the Natural Resources Secretary states “[c]lass 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4).” The City completed the surplus process and was eligible to transfer the Subject Property pursuant to this Class 12 exemption.

Common Sense Exemption (15061(b)(3): The whole of the project is also exempt under the Common Sense exemption to CEQA. The City Council Actions do not have the potential to have a significant adverse environmental impact in any area. As described herein, the City Council Actions will not have a significant

detrimental effect on the environment because a change that allows for a less intense form of the same use, is not an effect on the environment. A change in ownership is also not an effect on the environment. The City Council Actions result in the opportunity to, but not the requirement to, operate a non-acute care facility in lieu of the acute-care facility that exists. No changes to structures, no exterior construction, no new emissions or source of hazards or any other impacts, as defined in CEQA or illustrated in Appendix G of the CEQA Guidelines, occur as a result of the City Council Actions. Instead, the change in use from acute care to non-acute care would result in a reduction in operations on the Subject Property. A reduction in operations is not an impact under CEQA.

Understanding the restrictions on the Subject Property:

The City Council Actions allow, but do not require, the transition from acute care to non-acute care at the Subject Property, however all other restrictions on the site remain. To understand the impact (if any) from the City Council Actions the potential use of the Subject Property has to be understood within the confines of these existing restrictions.

Uses are limited under the City's existing Institutional (I) zoning regulations that are enumerated in Long Beach Municipal Code (LBMC) Chapter 21.34 and restrict both possible uses of the site and prescribe a future discretionary process. LBMC Section 21.34.020 requires a new long-range development plan for future actions, including modifications to the health care campus, improvements to the physical buildings or other changes. LBMC Section 21.34.025 requires a discretionary Site Plan Review for any future modifications to the Subject Property. The Subject Property is further restricted by LBMC Section 21.34.110 and Table 34-1 which limits the site to health care and other institutional uses, otherwise a discretionary zone change would be required pursuant to LBMC Section 21.25.101.

Uses continue to be limited under the revised lease and deed restrictions enacted by the City. The City Council Actions allow for, but do not require, the prior acute-care use to transition to non-acute care. The facility is not changing, and the health care nature of the lease and deed restrictions do not change. The effect of the deed restriction remains for "facilities necessary to offer medical, health-care and related services . . .," and the net effect is limited or no change to the Subject Property. As CEQA does not call for speculation, the limited nature of the impact of the City Council Actions is negligible.

The Alquist Priolo Act prevents any intensification of use at the Subject Property. Chapter 7.5 of the Public Resources Code restricts properties atop or proximate to earthquake faults (the AP zone). The Subject Property structures, and all but a small proportion of the land, fall within such AP zone (see Attachment B). Public Resource Code Section 2621.7(e)(3) prevents the City from issuing any permit that would increase the human occupancy of the Subject Property absent the unlikely waiver of geologic report requirements pursuant to Public Resource Code Section 2623 and approval by the State Geologist.

The Department of Health Care Access and Information (HCAI) imposes strict regulations upon the Subject Property pursuant to Division 107 of the

California Health and Safety Code. HCAI maintains jurisdiction not only over hospitals but over skilled nursing facilities, intermediate facilities, specialty and other non-acute facilities, and shares responsibilities with local jurisdictions over clinics and medical offices. These restrictions are relevant to the Subject Property as changes to the facility are not foreseeable nor possible without further regulatory action by HCAI which would be speculative to predict at this time.

The Community Hospital building is a recognized historic structure and subject to additional restrictions including provisions of LBMC Section 2.63.080. The Municipal Code requires a Certificate of Appropriateness (COA) prior to any modifications to the 1922 hospital building. Any future changes to the building would be subject to evaluation against the Secretary of the Interior's Guidelines for Rehabilitation of Historic Structures and a review by the Cultural Heritage Commission (CHC) in addition to any other permit requirements or environmental analysis.

Taken together these restrictions inform the City Council Actions and the associated Categorical Exemption. The City Council Actions allow, but do not require, the transition from acute care to non-acute care. The City Council Actions also includes lease, sale and transfer documents that have no direct or indirect impact on the environment. No major changes to the complex, its overall healthcare use, its occupancy, the land nor the structures, are allowed, facilitated or contemplated in the City Council Actions. The City Council Actions only allow for the non-acute care and acute care use of the Subject Property without changes to the existing medical campus. Based on existing restrictions, particularly the City's Zoning regulations, any other use of the property, as well as a proposed physical change to the medical campus, would require additional action by the City and CEQA review. CEQA does not require speculation and any future decision by the owners of the Subject Property to pursue future discretionary approvals cannot be anticipated at this time.

The exemption is not barred by any of the exceptions found in the CEQA Guidelines:

The Subject Property and the City Council Actions will not create any substantial impacts upon the environment nor create any special circumstances. CEQA Guidelines Section 15300.2 lays out exceptions and special circumstances that constrain the use of a categorical exemption. None of these exceptions apply to the City Council Actions:

The Subject Property is not in a special location where the City Council Actions would impact environmental resources of hazardous or critical concern. The City Council Actions do not involve any physical changes to the footprint of buildings nor physical construction at the Subject Property. Further, the Subject Property does not contain any special species of concern and the City Council Actions will not expose any persons or property to new hazards.

The City Council Actions will have no cumulative effect beyond the scope discussed for this project and this categorical exemption. The City Council Actions are the whole of the project. The new owner is authorized, but not required, to

transition from an acute to non-acute medical facility. Any actions beyond this minor change would be speculative and would require subsequent approvals beyond the scope of this action and are not reasonably foreseeable.

There are no special circumstances that would lead to a substantial effect on the environment due to those special circumstances. The whole of the City Council Actions involves no expansion of the Subject Property but rather a reduction in its operations that will have no substantial impact on the environment.

The Subject Property is not located on a designated scenic highway nor does it result in any impacts to scenic highways. The Subject Property is not a listed hazardous waste site. While a portion of the Subject Property is a historic resource, the City Council Actions do not involve any change to the historic resource and the Long Beach Municipal Code prevents any inappropriate modifications to the historic structure.

In short, the City Council Actions are categorically exempt from CEQA and will have no to minimal impact on the Subject Property, an impact that will be equal to or less impactful to the environment than prior operations.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

DAWN A. MCINTOSH, City Attorney

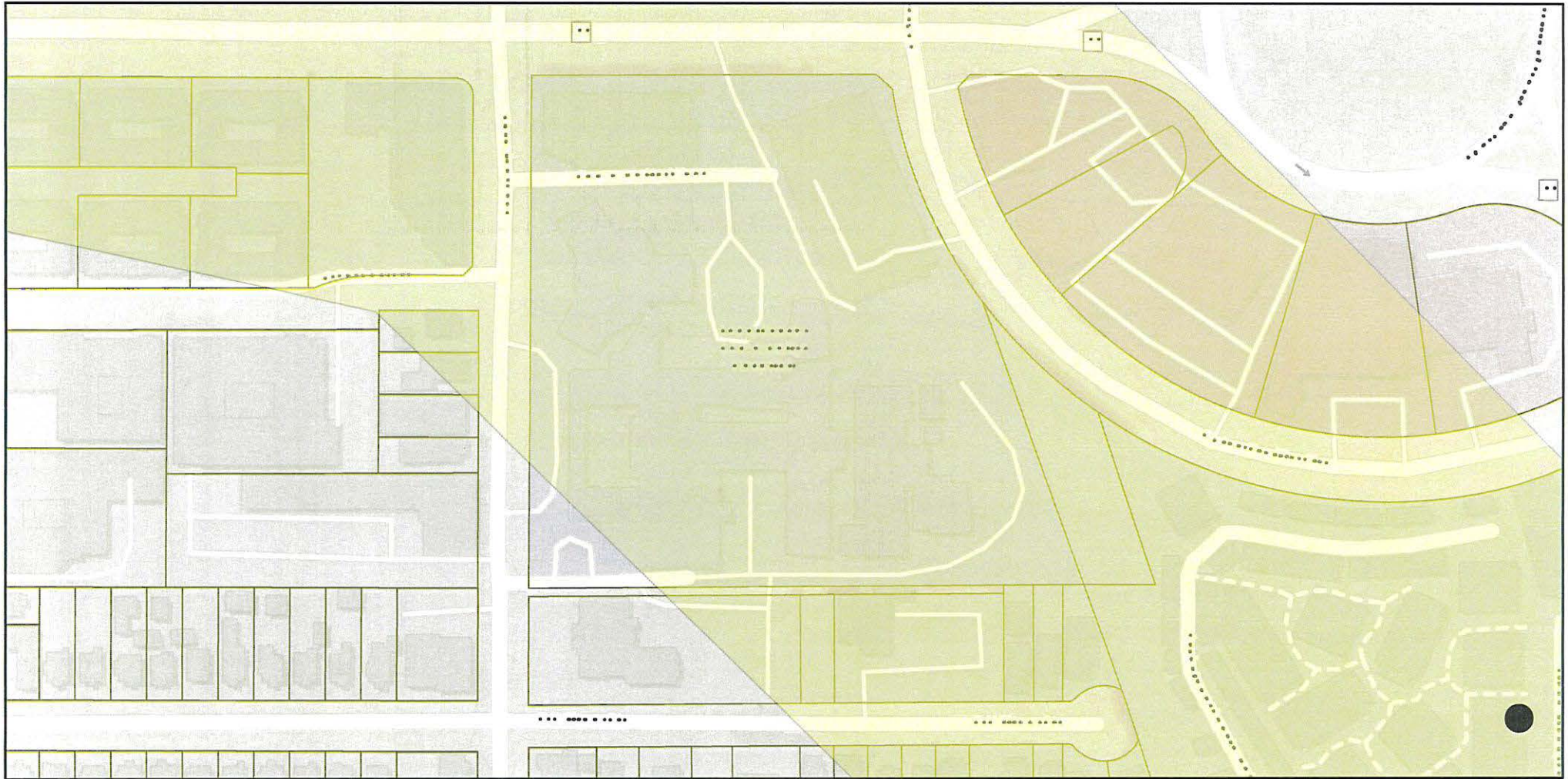


By



Erin Weesner-McKinley
Deputy City Attorney

ATTACHMENTS: A – CATEGORICAL EXEMPTION (CE-23-134)
 B – COMMUNITY HOSPITAL – ALQUIST-PRIOLO FAULT ZONE MAP

Community Hospital - Alquist-Priolo Fault Zone



Legend

-  Alquist-Priolo Fault Zone
-  Assessor Parcels

0 0.02 0.04 0.09 Miles