

**Sedgwick**<sub>LLP</sub>

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CK # 1001054130 \$ 601.-

December 21, 2012

*Via Courier*

Scott Sanchez  
Zoning Administrator  
San Francisco Planning Department  
1650 Mission Street  
San Francisco, CA 94103

Re: 901 16th Street, Case No. 2011.1300 (A 941-1674 ST - 3949/001)  
Request for Letter of Determination Regarding Kaiser Permanente Use Allocation  
File No.: 03869-000009

Dear Mr. Sanchez:

We are writing on behalf of our client, Kaiser Foundation Health Plan, Inc. ("Kaiser"), which has filed an application with the City of San Francisco to develop a five-store, 189,600-square foot, outpatient medical services building (the "Kaiser Building") at 901 16<sup>th</sup> Street, an area that is zoned UMU with a 68-foot height limit. This proposed expansion is in anticipation of Health Care Reform and the need for improved access to health care services for the approximately 50,000 Kaiser Permanente members living or working in the southern and eastern neighborhoods of San Francisco, consistent with the goals of the Health Care Master Plan adopted by the City of San Francisco. The proposed Kaiser Building, together with the proposed construction of approximately 181 dwelling units directly to the south, in a four-story building fronting 17<sup>th</sup> Street (the "Residential Building"), comprise a larger development (the "Project") that will be subject to the City's "Large Project Authorization" process pursuant to Planning Code Section 329 and is currently undergoing environmental review.

We request a Letter of Determination to confirm the following:

1. The correct methodology for determining the vertical controls for office use imposed by Section 803.9(h) upon the Project in light of the Large Project Authorization requirement;
2. That any designated office floor in the Kaiser Building may also contain non-office uses that are otherwise permitted under the UMU zoning district; and
3. The character and allocation of specified uses within the Kaiser Building.

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### *Vertical Controls for Office Use.*

Section 803.9(h) of the San Francisco Planning Code governs the vertical controls for office uses within the MUG and UMU districts. Section 803.9(h) generally stipulates that office uses are prohibited on the ground floor of buildings in these districts, and may be permitted on stories above the ground floor only if they are designated as office stories. Generally, five-story buildings (such as the proposed Kaiser Building) may have two designated office stories, and four-story buildings (such as the proposed Residential Building) may have one designated office story. However, “[f]or projects with multiple buildings, consolidation of permitted office stories may be permitted, pursuant to the controls set forth in 329(d)(8) [*i.e.*, the Large Project Authorization Process].” (Planning Code Section 803.9(h)(4)(E).) Per Section 329(d)(8), this consolidation may occur so long as the increase “would result in a *total square footage of office space* no greater than that which would otherwise be permitted by the project” (emphasis added).

The Planning Code expressly allows the “designation of a *particular* story” (see Planning Code Section 803.9(h)(4)(D)), and there is no language in the Planning Code that mandates using the average square footages of one or more buildings within a project to determine the maximum office square footage. Thus, in the case of the Project, the correct methodology for determining the maximum allowable office square footage within the Project should be to designate a specific, proposed floor in the four-story Residential Building and add the square footage of that floor to the square footage of any two specific, proposed floors of the five-story Kaiser Building. Further, this total amount of office uses may be consolidated entirely within the Kaiser Building.

For illustrative purposes only, if a designated 54,500-square-foot floor of the four-story Residential Building were added to a designated 45,500-square-foot floor and a designated 47,500-square-foot floor within the five-story Kaiser Building, then up to 147,500 square feet of office space could be developed within the Kaiser Building under Section 395(d)8.

In your prior emails dated February 29, 2012 (forwarded by Ken Rich on March 1, 2012) and March 9, 2012 (both enclosed), you confirmed that you agreed with this methodology for determining the total square footage of office space, and acknowledged that the project sponsor may consolidate all of this office space within the Kaiser Building, so long as that consolidation “would result in a total square footage of office space no greater than that which would otherwise be permitted by the project.” We now seek formal confirmation of this issue as part of the requested letter of determination.

### *Distribution of Office and Non-Office Space*

There are many non-office functions in a medical services building. In your prior emails dated February 29, 2012 (forwarded by Ken Rich on March 1, 2012) and March 9, 2012, you confirmed that you agreed that any designated office floor in the Kaiser Building may also contain non-office uses that are otherwise permitted under the UMU. You also agreed that the permitted overall amount of office uses may be distributed in any way throughout all of the floors in the Kaiser Building above the ground floor,

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so long as the distribution would result in a total square footage of office space no greater than that of any single designated floor of the four-story Residential Building plus any two designated floors of the five-story Kaiser Building. We now request formal confirmation of this issue as part of the requested letter of determination.

### *Character and Allocation of Uses*

Much of the space in the new Kaiser Building will contain uses that we have already determined should be characterized as “medical services” under the Planning Code pursuant to our prior email exchanges with you. (Under Section 890.114, medical services are “generally an office use.”) However, there are certain uses within Kaiser’s program for the Kaiser Building that should be considered permitted uses within the UMU district and are distinct from the “office”/“medical services” space subject to the office vertical controls discussed above.

Relying in part upon your prior emails dated February 29, 2012 (forwarded by Ken Rich on March 1, 2012) and March 9, 2012, we have identified various activities as non-office uses that are exempt from the maximum office square footage calculation required pursuant to Section 803.9(h). We have described each such use below,<sup>1</sup> and request a determination that each one a) should be considered a “non-office use” conforming to the applicable Planning Code classification we have assigned to it, and b) is otherwise permitted within the UMU District as an independent, principal use. We also seek a determination that the uses proposed for the first floor of the Kaiser Building would be permitted to be located on that floor. All of the various non-office uses within the Building are identified by use and floor on the enclosed plans.

#### 1) Café

The 1,138-square-foot ground floor café will provide food and beverages for sale to employees, visitors, and members of the general public, including the residents of the adjacent Residential Building. The café will likely be operated by a third party vendor.

The applicable Planning Code classification would be “Retail Sales and Services” (PC § 890.104), which is defined as a “commercial use which provides goods and/or services directly to the consumer and not for resale and is accessible to the general public.”

According to the UMU Mixed Use Zoning Control Table, “Retail Sales and Services” are permitted within UMU Districts pursuant to Planning Code Section 843.45, though they are subject to size and formula retail controls. Thus, the Café use is permitted within the UMU District.

#### 2) Healthy Living Store

The 2,156-square-foot Healthy Living Store will carry a wide variety of products (including books, cookbooks, videos, workout DVDs, meditation CDs, and exercise aids such as pedometers, yoga mats

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<sup>1</sup> The square footages provided in this letter are approximate and are subject to change as design development for the Kaiser Building progresses.

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and straps) to promote the health and well-being of the community. It will also provide information and booking of health education classes, internet access to sites with current and reliable health information, and tip sheets on various health topics. The Healthy Living Store will be located on the ground floor and will be open to the general public.

The applicable Planning Code classification would be "Retail Sales and Services" (PC § 890.104), which is defined as a "commercial use which provides goods and/or services directly to the consumer and not for resale and is accessible to the general public."

According to the UMU Mixed Use Zoning Control Table, "Retail Sales and Services" are permitted within UMU Districts pursuant to Planning Code Section 843.45, though they are subject to size and formula retail controls. Thus, the Healthy Living Store use is permitted within the UMU District but would require conditional use authorization if it constituted a formula retail use.

3) Pharmacy

The 4,271-square-foot pharmacy will be located on the ground floor and will fill prescriptions generated by the on-site Kaiser Permanente health care operations. The pharmacy will also sell over the counter drugs and health aids to the general public, similar to other retail pharmacies, and is open to the general public.

The applicable Planning Code classification would be "Retail Sales and Services" (PC § 890.104), which is defined as a "commercial use which provides goods and/or services directly to the consumer and not for resale and is accessible to the general public."

According to the UMU Mixed Use Zoning Control Table, "Retail Sales and Services" are permitted within UMU Districts pursuant to Planning Code Section 843.45, though they are subject to size and formula retail controls. Thus, the pharmacy use is permitted within the UMU District, but will require conditional use authorization due to its size, and also in the event that it constituted a formula retail use.

4) Vision Essentials Store

The 7,079-square-foot Vision Essentials store will provide one-stop, total eye care, similar to LensCrafters or Pearle Vision stores. The store will sell an extensive selection of prescription eyewear, contact lenses, sunglasses, industrial safety eyewear, magnifying aids and related supplies to both Kaiser members and non-members. In addition to the sales staff and opticians, as is often the case with LensCrafters and Pearle Vision stores, contact lens fitters, optometrists, and/or ophthalmologists will be available to assist customers with eye exams and glasses and contact lens fittings. This store will be located on the ground floor and open to the general public.

The applicable Planning Code classification would be "Retail Sales and Services" (PC § 890.104), which is defined as a "commercial use which provides goods and/or services directly to the consumer and not for resale and is accessible to the general public."

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According to the UMU Mixed Use Zoning Control Table, "Retail Sales and Services" are permitted within UMU Districts pursuant to Planning Code Section 843.45, though they are subject to size and formula retail controls. Thus, the Vision Essentials store is a permitted use within the UMU District, but will require conditional use authorization due to its size, and also in the event that it constituted a formula retail use.

5) Miscellaneous Building Support

There are several "back of the house" operational support uses to support the entire building that are accessory to the other principal uses in the building and for functional reasons are located on the first floor of the building, as follows:

<b>Support Use</b>	<b>Square Footage</b>
Miscellaneous Building Support, including circulation, vertical transport/stairs, electrical, exterior wall	8,258
Clinical Technology Support	222
EVS (environmental services, including compliance with federal, state, and local environmental regulations)	843
Facilities Management	560
IT Closets	1,356
Mail Room	117
Materials Handling	1,313
Security Operations	72
Bicycle Parking Area (including exercise space, showers, and locker rooms for bike riders)	690

None of these building support uses fronts 16<sup>th</sup> Street, but rather they are generally at the rear of the first floor, where they are essentially below grade as the site slopes uphill from 16<sup>th</sup> Street. The UMU district's prohibition on ground floor office uses does not prohibit these accessory building service uses from being located on the ground floor of a multi-use building, where for functional reasons they need to be located, just as there is no prohibition on an office lobby being located on the ground floor.

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6) Support Laboratory

The 3,683-square-foot, second-floor support laboratory will collect specimens in the outpatient environment, and coordinate all tests ordered by physicians (including all blood and body fluid tests) on an outpatient basis. These tasks will include: receipt of test orders, procurement and registration of specimens, coordination of transfer for testing, and communication of results to clinicians who need them. While many of the specimens collected will be sent out of the building to other laboratories for testing, some testing could be conducted with the use of one or more machines located within the laboratory. Since most of the testing will happen at on site stations, the support laboratory will function similarly to a “Quest Diagnostics” or “Labcorp” stand-alone laboratory. While these types of laboratories are often located near medical offices (in many cases in the same building), they are also sometimes stand-alone, and thus the laboratory use should be classified separately from the remainder of the medical offices in the Kaiser Building.

The applicable Planning Code classification would be “Laboratory” (PC § 890.52), which is defined in pertinent part as:

Laboratory shall mean space within any structure intended or primarily suitable for scientific research. The space requirements of uses within this category include specialized facilities and/or built accommodations that distinguish the space from office uses (as defined in Section 890.70), light manufacturing (as defined in Section 890.54(a)), or heavy manufacturing (including uses listed in 226(g) through 226(w)). Examples of laboratories include the following:

- (f) Support laboratory.

As noted above, the support laboratory in the Kaiser Building will support the medical services within the building by coordinating and undertaking outpatient testing and specimen analysis. The support laboratory will have specialized facilities and built equipment to accommodate these activities. Thus, the support laboratory fits within the definition of a “Laboratory” in Planning Code Section 890.52.

All laboratories other than “life science” laboratories are permitted in UMU Districts (Planning Code Section 843.86). “Life science” laboratories can be distinguished from the support laboratory that is proposed as part of the Kaiser Building because “life science” is defined as “an industry that involves the integration of natural and engineering sciences and advanced biological techniques using organisms, cells, and parts thereof for products and services” (see Planning Code Section 890.53). In other words, “life science” laboratories focus on aspects of biotechnology, such as scientific research, the production of trial medicines, and development of medical techniques. Examples of such laboratories include Fibrogen and QBE, both located in Mission Bay (where the Planning Code expressly permits life science laboratories), Genentech and Novartis, whose business is not the furnishing of support services to physicians, but rather to perform research to explore new biotechnological products and services. By contrast, the function of uses such as Quest Diagnostics, Labcorp, and Kaiser’s laboratory, is to provide services – i.e., to support the collection and analysis of specimens ordered by physicians. Thus, Kaiser’s proposed support laboratory fits squarely within the category of “support laboratory” (not “life science” laboratory), and is permitted within the UMU District.

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7) Cosmetic Services

The 2,042-square-foot Cosmetic Services salon on the fifth floor will be open to the general public. Many of the products and services that this unit will provide are akin to those offered by ULTA Beauty Salons ([www.ulta.com](http://www.ulta.com)) throughout the United States. The Cosmetic Services store will sell a broad range of skincare products, including ColoreScience, Kinerase, Obagi, ProCyte, SkinCeuticals, and Topix. No surgical services will be undertaken in this space.

The services provided are expected to include:

- Skincare services such as chemical peels, corrective make-up consultations, extractions, facial waxing, facials, make-up consultations, microdermabrasion, Obagi® consultations, skin care consultations, and vibradermabrasion; and
- Laser and non-surgical services such as BOTOX®, cosmetic removal of moles & skin tags, Endermologie® cellulite treatment, fat injections (liposculpting), Brazilian wax treatment, fillers (e.g. JUVÉDERM®, Restylane®), Fraxel Re:Pair laser treatment, Fraxel Re:Store laser treatment, IPL photo rejuvenation, laser hair removal, laser removal of brown spots, laser skin resurfacing, laser tattoo removal, laser vein treatment, scar revision, and sclerotherapy.

The applicable Planning Code classification would be “Personal Service” (PC §890.116), which is defined as:

A retail use which provides grooming services to the individual, including salons, cosmetic services, tattoo parlors, and health spas, excluding massage establishments subject to Section 218.1 of this Code located within South of Market Districts, or instructional services not certified by the State Educational Agency, such as art, dance, exercise, martial arts, and music classes, except that in the South of Market Districts, arts activities falling within Section 102.2 shall not be considered personal services.

The Cosmetic Services salon will function similarly to a salon or spa that provides cosmetic services. No medical or allied health services will be provided, and skincare products will be sold at retail prices. Thus, the activities of the Cosmetic Services unit are best characterized as Personal Services.

The UMU Mixed use Zoning Control Table categorizes “Personal Services” as a subset of “Retail Sales and Services” (see the third column of PC § 843.45). According to the UMU Mixed Use Zoning Control Table, “Retail Sales and Services” are permitted within UMU Districts pursuant to Planning Code Section 843.45, subject to size and formula retail controls. Thus, the Cosmetic Services use is permitted within the UMU District.

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Thank you very much for your efforts to date in helping Kaiser to provide state of the art health care to the eastern and southern neighborhoods of San Francisco. We look forward to receiving your determination as to the matters in this letter at your earliest convenience. In an effort to expedite the process and to assist you in your endeavors, we have prepared the enclosed draft Letter of Determination for your consideration, which we understand is the practice in San Francisco. Please do not hesitate to contact me with any questions you may have.

Very truly yours,

A handwritten signature in black ink that reads "Anna C. Shimko". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Anna Shimko  
Sedgwick LLP

Enclosures

Cc: Steve Wertheim  
Ben Fu  
Ken Rich  
Indrajit Obeysekere  
Jay Murphy

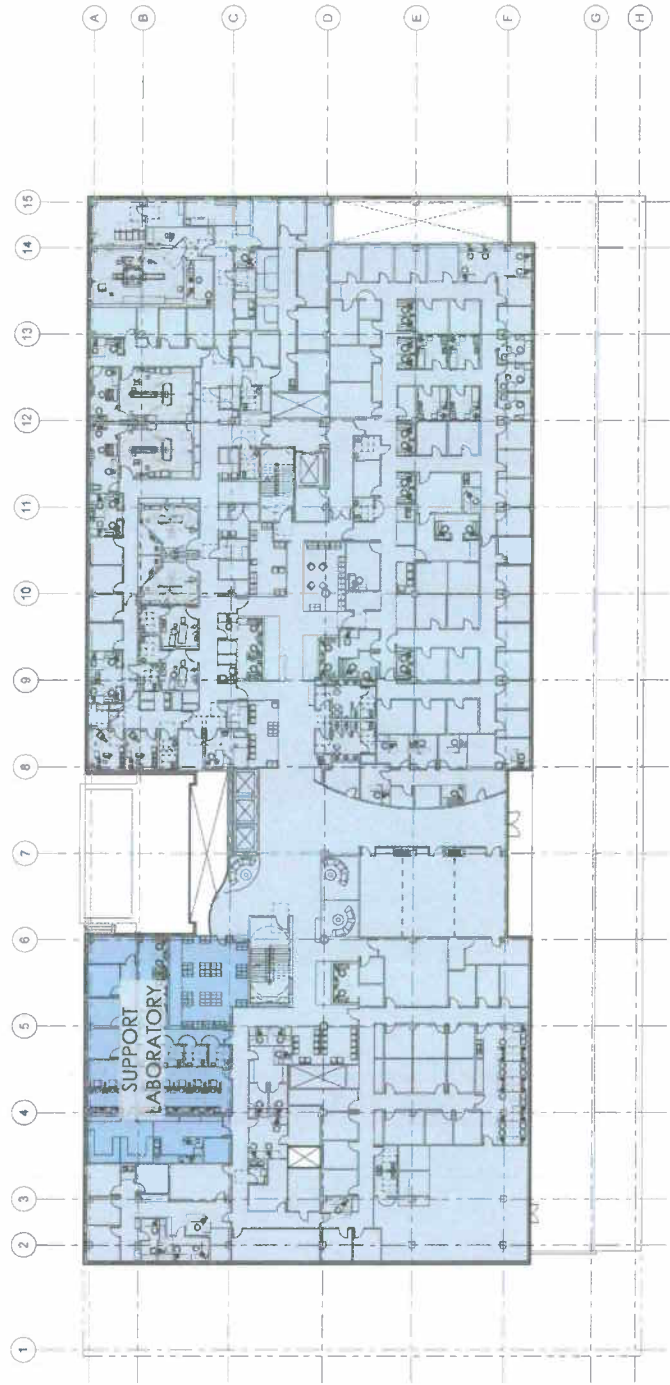




**LEVEL 1 GRAPHIC KEY**

- RETAIL, including circulation, lobby, exterior wall, building shafts  
Does not include shafts serving only garage
- NON CONDITIONED SPACE (Parking & Drop-Off)
- BUILDING SUPPORT / UTILITIES
- NON CONDITIONED SPACE (Loading Dock)
- 61,672 BGSF - SUB TOTAL**

- 180 BGSF - Shafts From Garage
- 61,852 BGSF - TOTAL**

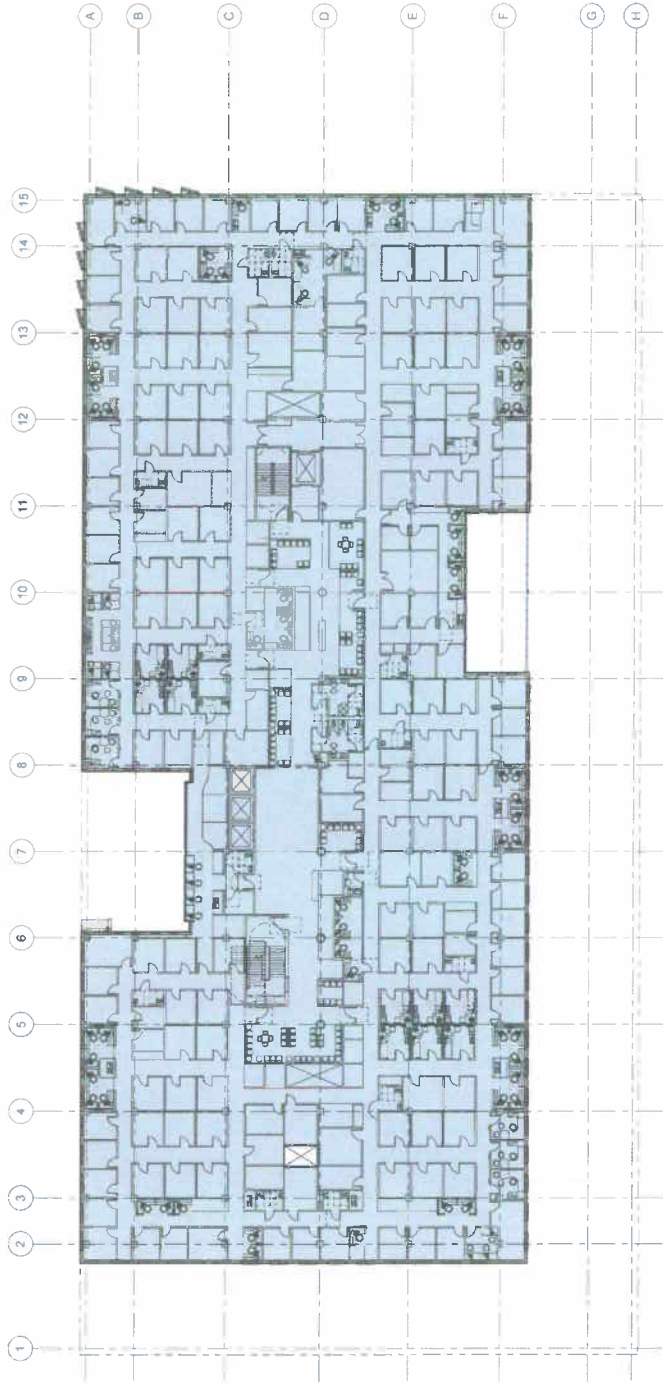


**LEVEL 2 GRAPHIC KEY**

■ KP OFFICE including circulation, exterior wall, shafts, building support shafts from parking & double height spaces not included

■ SUPPORT LAB - KP PERMITTED USE  
47,636 BGSF - SUB TOTAL

□ 76 BSGF - Exhaust Shafts From Garage  
47,712 BGSF - TOTAL

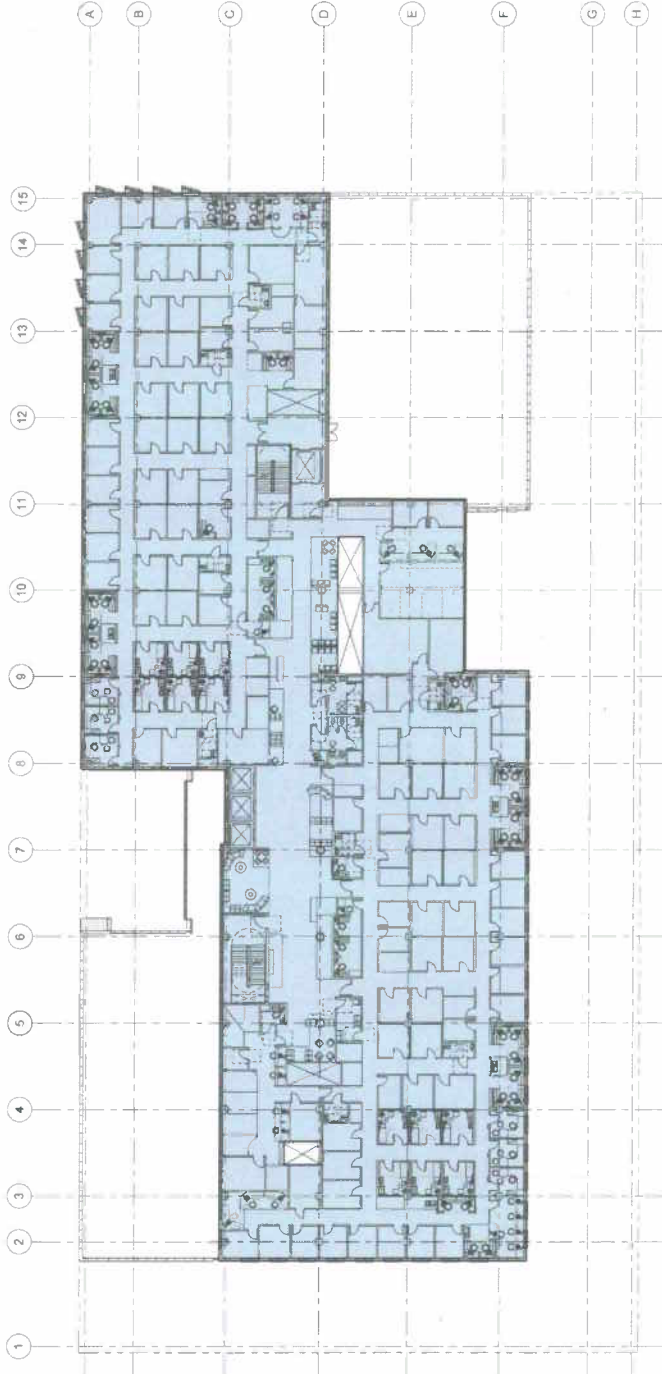


**LEVEL 3 GRAPHIC KEY**

**KP OFFICE** Including building circulation, exterior wall, shafts, building support shafts from parking & double height spaces not included

**48,448 BGSF - SUB TOTAL**

**79 BGSF - Exhaust Shafts From Garage**  
**48,527 BGSF - TOTAL**

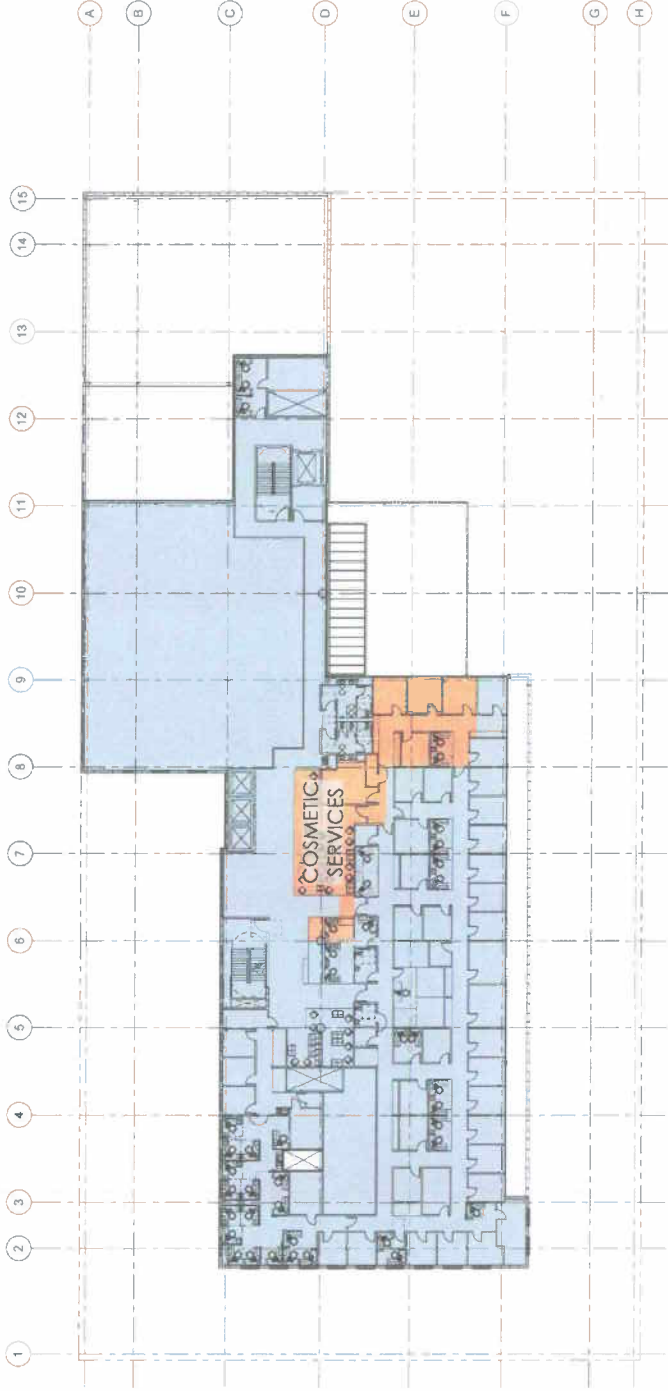


**LEVEL 4 GRAPHIC KEY**

KP OFFICE, Including building circulation, exterior wall, shafts, building support shafts from parking & double height spaces not calculated

**35,771 BGSF - SUB TOTAL**

90 BGSF - Exhaust Shafts From Garage  
**35,861 BGSF - TOTAL**



**LEVEL 5 GRAPHIC KEY**

■ KP OFFICE, including exterior wall, shell space for future MOB, shafts, building support, circulation shafts from parking & double height spaces not included

■ PERSONAL SERVICES - KP PERMITTED USE  
**25,620 BGSF - SUB TOTAL**

□ 90 BSGF - Exhaust Shafts From Garage  
**25,710 BGSF - TOTAL**